

Status Report
by the
***Nunez* Independent**
Monitor

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Table of Contents

Introduction.....	1
Background.....	1
Considerations for Appointing a Remediation Manager.....	3
Overarching Considerations for Remedial Relief.....	4
Structural Aspects of Remedial Relief.....	5
Key Objectives for the Remediation Manager’s work	7
Practical Considerations for Appointment of Remediation Manager	8
Update on Receiverships In Other Jails and Prisons	9
Update on Remediation Manager Candidates & Proposed Remediation Manager Order.....	11
Remediation Manager Candidates	11
Proposed Remediation Manager Order.....	12
Conclusion	15
 Appendix A – Monitor’s Submission	
<i>Exhibit A:</i> Comprehensive Chart of Objections and Proposals	
<i>Exhibit B:</i> Clean version of the Court’s Proposed Order reflecting the changes proposed by the Monitoring Team and any additional changes in which the Parties consent/do not object	
 Appendix B – Defendants’ Submission	
Defendants’ Memorandum in Support of Proposed Changes to Remediation Manager Proposed Order	
Defendants’ Supplemental Memorandum in Support of Objections and Requested Changes to the Proposed Order Regarding the Remediation Manager	
○ <i>Appendix A:</i> Redlined version of the Court’s Proposed Order reflecting the changes proposed or consented to by the Defendants	
○ <i>Appendix B:</i> Clean version of the Court’s Proposed Order reflecting the changes proposed or consented to by the Defendants	
 Appendix C – Plaintiffs’ Counsel Submission	
Plaintiffs’ Memorandum of Law Concerning Proposed Changes to Remediation Manager Proposed Order	

- *Exhibit A*: Redlined version of the Court’s Proposed Order reflecting the changes proposed by the Plaintiff Class, jointly with the Southern District of New York
- *Exhibit B*: Clean version of the Court’s Proposed Order reflecting the changes proposed by the Plaintiff Class, jointly with the Southern District of New York
- *Exhibit C*: Department of Correction Organization Chart as of June 3, 2025

Appendix D – Updated Summary Chart of Receivership Cases

Appendix E – Excerpts of Provisions Regarding Termination of Receivership Authority from Other Correctional Receivership Orders

Appendix F – Updated Index of Court Filings cited in the Receivership Charts

INTRODUCTION

This is the second report by the Monitoring Team regarding remedial relief related to the motion for contempt.

BACKGROUND

The litigation regarding the motion for contempt was initiated on August 10, 2023 when the Court granted Plaintiffs' Counsel's application to move for contempt regarding 18 provisions of the *Nunez* Court Orders ("the Contempt Provisions"). Counsel for the Plaintiff Class and the Southern District of New York ("SDNY") filed their initial briefs on November 17, 2023 (dks. 601 to 610). The motions were fully briefed on May 30, 2024. Following several meet and confers convened by the Monitoring Team, the Parties each filed a revised Statement of Facts and Plaintiffs' Counsel filed a Supplemental Statement of Facts on July 30, 2024 (dks. 762 to 764). On September 25, 2024, the Court held oral arguments. The Court then directed the Monitoring Team and the Parties to meet and confer regarding remedial relief proposals. On November 26, 2024, the Court issued an Order of Contempt and again directed the Parties to meet and confer regarding remedial relief proposals (dkt. 803). The Monitoring Team and the Parties engaged in extensive discussions between September 2024 and January 2025. On January 24, 2025, the Monitor issued a report that included separate submissions from the Defendants and the Plaintiff Class and the SDNY regarding proposals to the Court for remedial relief (dkt. 811). The Parties made a number of subsequent filings in support of their proposals and in response to each other's proposals. Other filings by *amici*, responses to those submissions and additional submissions by Defendants and the Plaintiff Class and SDNY were made prior to the Court's issuance of the May 13, 2025 Order.

On May 13, 2025 the Court issued an order regarding the remedial relief to address the Court's finding of contempt (dkt. 846). In the May 13, 2025 Order, the Court explained it "has fashioned a remedy designed to ameliorate Defendants' contempt by empowering a skilled outside professional (the '*Nunez* Remediation Manager') to develop a phased action plan specifically focused on the areas in which the Court has found Defendants to be in contempt and, subject only to the Court's authority and the provisions of the orders entered in this case, to direct the implementation of that plan in collaboration with the Commissioner, who will retain primary responsibility and authority for achieving compliance with the remaining unsatisfied requirements of the *Nunez* Court Orders." *See* May 13, 2025 Order at pg. 35. The Commissioner will retain primary responsibility and authority for achieving Substantial Compliance with the hundreds of other provisions of the *Nunez* Court Orders.

This report provides a summary of the recent meet and confers among the Parties, along with commentary from the Monitoring Team. Detailed Appendices contain proposals for the Court's Remediation Manager Order, Memoranda of Law from Defendants and the Plaintiff Class, along with an updated Summary of Receiverships.

CONSIDERATIONS FOR APPOINTING A REMEDIATION MANAGER

The Monitoring Team has been working with the stakeholders in this case for almost a year regarding the proposed remedial relief. That work has been guided by the Monitoring Team's significant expertise in the Department's operations and compliance with the *Nunez* Court Orders, as well as the Monitoring Team's expertise in other confinement systems across the country. The Monitoring Team has also worked to better understand remedial relief that has been imposed in other systems in order to learn how aspects of those models could possibly be utilized in this system.

The Monitoring Team certainly supports and embraces the Court's findings that it must "identify[. . .] a form of remedy that will achieve rapid change in the safety profile of Rikers Island and compliance with Court orders." Dkt. 803 at pg. 53. In an effort to develop the best possible model for relief that addresses the Court's objectives and fits the contours of the intractable problems facing the Department, the Monitoring Team developed the following framework for consideration. This framework informs the Monitoring Team's recommendations for the Court's potential selection of the Remediation Manager and the Court's Order governing the Remediation Manager's work in four key areas, which are explained in more detail in the narrative that follows:

- Overarching considerations for remedial relief;
- Structural aspects of remedial relief;
- Key objectives for the Remediation Manager's work; and
- Practical considerations for the interface between the Remediation Manager's work, the Department and the Monitoring Team.

OVERARCHING CONSIDERATIONS FOR REMEDIAL RELIEF

The imposition of a Receiver (or Remediation Manager, in this case) is an extreme and rarely used remedy to address dangerous and intractable conditions of confinement in jails and prisons.¹ Given the combination of long-standing, complex problems in confinement facilities and the infrequent application of this approach, evidence regarding the effectiveness and sustainability of the solutions devised by other correctional receivers is mixed, largely anecdotal and context-specific. The overarching goal for the Remediation Manager must be to improve the jails' conditions, but "if the government can't plausibly maintain a receiver's gains, the mechanism defeats itself, perpetuating a vicious cycle of backsliding, neglect, and litigation."² It is for these reasons the Court has carefully crafted a remedy to establish clear parameters of authority, identified specific goals and expectations, and reinforced the importance of implementing sustainable reforms that can be maintained by the City to ensure that control of the jails is returned to the City as quickly and sustainably as possible.

The Remediation Manager must establish and institutionalize the Department's internal capacity to operate in a manner that meets requirements of the eighteen contempt provisions. In other words, the Office of the Remediation Manager itself must not become another entrenched obstacle that further complicates the extant labyrinth of issues. Bureaucratic hurdles have long been reported as obstacles to reform, and it would be counterproductive to create a Remediation Manager structure that propagates additional layers of officialdom. To be certain, significant resources will be needed to advance the reform effort, but they must be deployed thoughtfully

¹ Southall, A. (2024, November 29). Can a court's 'last resort' fix New York City's jails? The New York Times. <https://www.nytimes.com/2024/11/29/nyregion/rikers-receivership.html?smid=nytcore-ios-share&referringSource=articleShare>

² Stroud, H. (2025, August 13). What's next in the federal court takeover of Rikers Island? Brennan Center for Justice. <https://www.brennancenter.org/our-work/analysis-opinion/whats-next-federal-court-takeover-rikers-island#:~:text=Imagine%20a%20receiver%20manages%20to,the%20jails%20confirms%20the%20point.>

and critically, and with almost surgical precision, focused on *implementing* improved practices by the Department's own operators and *addressing* obstacles to compliance with independent sustainability by the Department always at the forefront. It is critical for members of the Remediation Manager's team to be selected based on their ability to build the Department's internal, institutional capacity to independently operate a safe jail system. For that reason, we recommend that the Remediation Manager Team must consist of members with *bona fide* credentials in sound correctional practice and in stimulating the type of culture change needed for the Department to improve practice and sustain progress.

STRUCTURAL ASPECTS OF REMEDIAL RELIEF

The Monitoring Team has summarized the Court's stated goals for the Remediation Manager, along with a brief explanation of the value these goals bring to the reform effort.

1. **Direct Court Oversight**: The structure must provide for direct Court oversight of the Remediation Manager's work with respect to *Nunez* requirements for use of force and safety.³
2. **Qualities of the Remediation Manager**: The individual selected to be the Remediation Manager must have proven and relevant expertise in sound correctional management and operations and the core competence to catalyze the culture change necessary to achieve the Court's mandate to bring the Department into compliance with the Contempt Provisions.
3. **Return to Local Control**. The Court emphasized the mandate to restore local control over the jails' management by the City and Department as quickly as possible. This

³ To be clear, direct Court authority would not contemplate granular, day-to-day input from the Court.

mandate requires the Remediation Manager to focus on developing in the Department an institutionalized capacity to maintain the reforms independently of external actors. This is evident in the requirements for the Remediation Manager to identify and implement several interconnected strategies, including:

- a. Strategies centered on collaboration with the Department's own leadership and functions.
 - b. A framework for operating the Office of the Remediation Manager that optimizes existing structures and functions and that minimizes additional bureaucracy and expense.
 - c. A specific plan to transition full authority over the jails back to Defendants as quickly as possible.
4. **Sustainable Initiatives:** Transformational, durable change in the Department's practices can only be accomplished by careful, wise utilization of existing Departmental assets, and building new, internal assets that are necessary to achieve a constitutionally adequate level of safety. The Court explained that the Remediation Manager must, throughout their tenure, focus their attention on sustainable strategies that will enable Defendants to regain control of jail governance while maintaining the necessary level of transformation.
5. **Collaborating with and Leveraging the Monitoring Team's Expertise:** The Remediation Manager will have a significant learning curve. To that end, the Remediation Manager will need to leverage the Monitoring Team's resources and knowledge gained through its long-term engagement with the Department as a way to understand how the Department operates, its challenges, and its previous efforts to achieve compliance with the Contempt Provisions, as well as the reasons those efforts

were not successful. The roles of the Monitoring Team and the Remediation Manager must be complimentary and not duplicative. The Remediation Manager must be focused on how to implement and operationalize reforms necessary to achieve compliance with the Contempt Provisions. The Monitoring Team will function as a resource and will continue to provide neutral and independent assessments of the jails' operations and the status of compliance with the *Nunez* Court Orders, including the Contempt Provisions.

6. **Decisive Action**: The Remediation Manager must be willing and able to address any potential obstacles that inhibit or impede compliance with the Contempt Provisions, regardless of how politically challenging or unpopular the decisions may be with various stakeholders. Whenever possible, working within existing, functional structures and parameters is preferred; however, at times, new approaches will be needed to resolve long-standing obstacles to reform and additional relief from the Court may have to be sought when necessary. Many of these decisions may be unpopular with various stakeholders, and the Remediation Manager and Department leadership must remain steadfast in the face of strong and persistent opposition or pressure from stakeholders. They must have the fortitude to engage with various constituencies, make tough decisions, and take firm action when required. This will likely include identifying and taking appropriate steps to make necessary changes to policies, contracts, regulations, or other impediments to achieving compliance with the Contempt Provisions.

KEY OBJECTIVES FOR THE REMEDIATION MANAGER'S WORK

The Court emphasized in its May 13, 2025 Order that the overarching goal of the Remediation Manager is for the Department to achieve Substantial Compliance with the 18 Contempt Provisions. To that end, the Court explained that this will require: "address[ing] the

key issues that have blocked compliance with the Consent Judgment and subsequent Court Orders, [namely]:

- insufficiently resourced leadership,
- a lack of continuity in management,
- failures of supervision and cooperation between supervisors and line officers,
- a lack of skill or imagination to create and implement transformative plans,
- and an unwillingness or inability to cooperate with Monitoring Team recommendations to accomplish the urgently necessary changes in the safety profile of the jails.”

The Monitoring Team emphasizes that addressing intractable problems related to staff deployment and staff competency must also be essential objectives for the Remediation Manager’s work.

PRACTICAL CONSIDERATIONS FOR APPOINTMENT OF REMEDIATION MANAGER

The Remediation Manager will have a steep learning curve while under significant pressure to begin the difficult work of ameliorating the dangerous conditions in the jails. The Contempt Provisions clearly identify *what* must be done, but the critical issue is *how* the Department’s practices can be changed. It is ***critical*** for the Remediation Manager to *first* and *simultaneously* develop the necessary relationships with those working in the Department and Monitoring Team while also developing an understanding of the Department’s operation, the reasons the Department was found to be in contempt with the 18 provisions, and the various challenges that have inhibited the implementation of the Court’s requirements for these 18 provisions.

The appointment of a Remediation Manager will indisputably impact the Department's operations and the work of the Monitoring Team. First, strategies for introducing the Remediation Manager to the Department's leadership and key divisions, facilities and their leadership, staff, and the Monitoring Team are needed to ensure that the Remediation Manager can begin to build relationships, identify existing assets and develop a perspective on how to best leverage those assets. In doing so, the Monitoring Team may also serve as a resource to provide critical context and information about attempts to prior efforts to implement reforms, obstacles to those initiatives, and lessons learned that will help the Remediation Manager avoid repeating past mistakes and target efforts more effectively. In addition, many logistical issues will need to be addressed including office space, communication strategies, and a process for requesting and receiving information, among others. Both the Department and the Monitoring Team will need to reconfigure their own operations to incorporate and accommodate the Remediation Manager, which will require them to deploy resources to support the Remediation Manager and to accelerate the Remediation Manager's learning curve, all while maintaining legacy operations and fulfilling existing responsibilities. As the Remediation Manager begins to develop new strategies, a process for collaborating with the Department at various levels and incorporating feedback from the Monitoring Team will be essential to ensure that all stakeholders are well-informed and able to contribute to the development of viable and sustainable approaches to pursuing compliance with the Contempt Provisions.

UPDATE ON RECEIVERSHIPS IN OTHER JAILS AND PRISONS

The Monitoring Team previously provided the Court with a detailed summary of the nine cases in which a Receiver has been appointed in a jail or prison context. The Court may benefit from information about two developments that have since occurred. In particular, a Receiver was

appointed in another case (*Coleman*) and a Receiver has been officially appointed in *Hinds County* (the case had previously been stayed subject to an appeal). The materials regarding receivership in other jurisdictions have thus been updated and are included in Appendices D and F. Further, given the significant discussion amongst the Parties regarding the potential termination of the Remediation Manager's authority, the Monitoring Team has pulled the relevant excerpts from the other jurisdictions on how the termination proposals occurred in those matters in Appendix E.

UPDATE ON REMEDIATION MANAGER CANDIDATES & PROPOSED REMEDIATION MANAGER ORDER

The Monitoring Team and the Parties have been actively engaged in various meet and confers regarding proposed remedial relief since September 2024. Most recently, since May 2025, the Monitoring Team has engaged the Parties in frequent communications, numerous group meetings among all Parties and the Monitoring Team, and separate meetings between the Monitoring Team and individual Parties regarding the Remediation Manager candidates and the Court's proposed remediation manager order.

REMEDATION MANAGER CANDIDATES

With respect to candidates to serve as the Remediation Manager, the Monitoring Team and the Parties evaluated almost 30 confidential applications for the Remediation Manager position that were submitted to the Court. The Monitoring Team and the Parties carefully scrutinized the applications, and the Parties reported interviewing numerous potential candidates and checking the references of those candidates. The Monitoring Team supported the process by helping develop a process for evaluating the applications and facilitating engagement among the Parties. The Monitoring Team frequently communicated with and convened meetings among the Parties regarding the process for assessing the applications, discussing the applicants and ultimately, recommending specific candidates to the Court.

On August 29, 2025, the Monitoring Team submitted a confidential, *in camera* report to the Court that included submissions from counsel for the Plaintiff Class, the Southern District of New York, and Defendants containing their recommended candidates for the Remediation Manager. In its May 13, 2025 Order, the Court explained that “[o]nce the Court has received the parties’ recommendations, the Court may interview the proposed candidates and any others it

deems appropriate to review, and the Court shall select the Nunez Remediation Manager. It is necessary for the Court to have ultimate control over the selection of the Nunez Remediation Manager in order to correct the violation of federal rights, as identified in the Contempt Order and Opinion, because, ultimately, the Receiver will be an agent of and answer only to the Court.” *See* the Court’s May 13, 2025 Order at pg. 47.

PROPOSED REMEDIATION MANAGER ORDER

The Monitoring Team has facilitated extensive negotiations regarding the Court’s proposed Remediation Manager Order and has compiled objections and alternative proposals for the Court’s consideration. In an effort to condense the issues for the Court’s consideration, the Monitoring Team attempted to distill the issues such that areas of agreement could be easily identified and matters under dispute could be clearly articulated.

The complex issues under evaluation, along with the significant number of individuals representing the stakeholders who have many different perspectives, required significant coordination by the Monitoring Team and frequent engagement and back and forth with the stakeholders’ representatives. In particular, during the past month, the Monitoring Team and the Parties have communicated nearly daily about these issues. Each of the entities participated fully in the process, made good faith efforts to find areas of agreement, and provided specific suggestions and a thoughtful rationale for their proposed changes. The sheer number of provisions being negotiated made this a cumbersome process, but the Parties’ tenacity and responsiveness were essential components to developing a comprehensive submission to the Court. The supplemental materials attached to this report are designed to show each Party’s position on proposed edits and any remaining objections or issues. These materials include:

- **Appendix A – Monitor’s Submission**

- *Exhibit A: Comprehensive Chart of Objections and Proposals*: This chart lists each provision of the Order, whether any changes to the Court’s language have been proposed, and the extent to which agreement has been achieved. For each provision there is a brief summary explaining the proposals, along with relevant explanations and other information from the Monitoring Team, Defendants, and counsel for the Plaintiff Class and SDNY as necessary, depending on the proposal.
- *Exhibit B*: Clean version of the Court’s Proposed Order reflecting the changes proposed by the Monitoring Team and any additional changes in which the Parties consent/do not object to.
- **Appendix B – Defendants’ Submission**
 - Defendants’ Memorandum in Support of Proposed Changes to Remediation Manager Proposed Order
 - Defendants’ Supplemental Memorandum in Support of Objections and Requested Changes to the Proposed Order Regarding the Remediation Manager
 - *Appendix A*: Redlined version of the Court’s Proposed Order reflecting the changes proposed or consented to by the Defendants
 - *Appendix B*: Clean version of the Court’s Proposed Order reflecting the changes proposed or consented to by the Defendants
- **Appendix C – Plaintiffs’ Counsel Submission**
 - Plaintiffs’ Memorandum of Law Concerning Proposed Changes to Remediation Manager Proposed Order

- *Exhibit A*: Redlined version of the Court’s Proposed Order reflecting the changes proposed by the Plaintiff Class, jointly with the Southern District of New York
- *Exhibit B*: Clean version of the Court’s Proposed Order reflecting the changes proposed by the Plaintiff Class, jointly with the Southern District of New York
- *Exhibit C*: Department of Correction Organization Chart as of June 3, 2025

In addition to the issues requiring resolution identified in the Comprehensive Chart, there is one provision related to information sharing that is still being negotiated among the Parties.

The Monitoring Team recommends that the Court permit the Monitoring Team to provide a submission on September 24, 2025 with the outcome of those discussions.

CONCLUSION

The Department of Correction remains in a state of flux. A significant number of urgent and time-sensitive issues directly related to the jails' elevated risk of harm continue to be at the forefront of the Monitoring Team's work but are present against a backdrop of significant uncertainty. A number of decisions to be made in the coming months will chart the path forward for the Department. The Defendants' Motion for Reconsideration is fully briefed and requires resolution by the Court. That motion, at least in part, overlaps with the detailed objections to the proposed Order regarding the Remediation Manager addressed in this report and which the Court must also resolve. Upon resolution of these motions and objections/proposals, the Court may choose to appoint a Remediation Manager. The upcoming City elections in November 2025 also add an additional level of uncertainty. Despite these many unknowns, addressing the safety and security of the jails and working to ameliorate the risk of harm must remain at the forefront of the work.

APPENDIX A

Comprehensive Chart of Objections and Proposed Revisions by Defendants, Plaintiff Class/SDNY and the Monitoring Team

WHEREAS Clauses

Overarching Global Edits – we note the following global edits regarding Order:
Capitalize Benchmarks
Define Remediation Manager Team and replace Nunez Remediation Manager with Team as necessary
Definition of Acceptance Effective Date/Start Date/Authority Date (depending on outcome of Court’s decisions)
Capitalize Substantial Compliance
Capitalize Contempt Provisions

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff’s Class/SDNY Proposed Revisions	Monitor Recommendations
WHEREAS Clause, Page 1	in this matter to correct the violations of the constitutional rights of people incarcerated in jails operated by the New York City Department of Correction	in this matter to correct the violation ~~s~~ of the constitutional rights of people incarcerated in jails operated by the New York City Department of Correction		in this matter to correct the ~~violations~~ <u>violation</u> of the constitutional rights of people incarcerated in jails operated by the New York City Department of Correction
<u>Summary of Objections/Proposals:</u> There is consent/no objection by the Parties and Monitoring Team to the proposed revisions.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
WHEREAS Clause, Page 2	the <u>Nunez</u> Independent Monitor (the “Monitor”)			the <u>Nunez</u> Independent Monitor (the “Monitor” <u>or “Monitoring Team,” which shall each refer to the Monitor and members of the Monitoring Team</u>)
<u>Summary of Objections/Proposals:</u> There is consent/no objection by the Parties and Monitoring Team to the proposed revisions.				

Section I: Appointment of Nunez Remediation Manager and Nunez Remediation Manager’s Duties

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ I, ¶ A Appointment of <u>Nunez</u> Remediation Manager and <u>Nunez</u> Remediation Manager’s Duties	[NAME] is here by appointed to serve in this case as <u>Nunez</u> Remediation Manager, with the responsibility and authority to take all necessary steps to promptly achieve Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with the Contempt Provisions.			[NAME] is ~~here by~~ <u>hereby</u> appointed to serve in this case as <u>Nunez</u> Remediation Manager, with the responsibility and authority to take all necessary steps to promptly achieve Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with the Contempt Provisions.
<u>Summary of Objections/Proposals:</u> There is consent/no objection by the Parties and Monitoring Team to the proposed revisions.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ I, ¶ B Appointment of <u>Nunez</u> Remediation Manager and <u>Nunez</u> Remediation Manager’s Duties	The <u>Nunez</u> Remediation Manager’s work shall be guided by benchmarks identified in the “Remediation Action Plan,” a work plan designed to achieve Substantial Compliance with the Contempt Provisions within three years of the date the Court files the <u>Nunez</u> Remediation Manager’s Acceptance of this appointment on the public docket for this case (“Acceptance Effective Date”), subject to extension of the target period for any particular elements of the plan upon a showing of good cause therefor. The process to determine the substance of the Remediation Action Plan is detailed in Section II.A.			The <u>Nunez</u> Remediation Manager’s work shall be guided by ~~benchmarks identified in~~ the “Remediation Action Plan,” a work plan <u>that includes specific and concrete steps and milestones</u> designed to achieve Substantial Compliance with the Contempt Provisions ~~within three years of the date the Court files the <u>Nunez</u> Remediation Manager’s Acceptance of this appointment on the public docket for this case (“Acceptance Effective Date”), subject to extension of the target period for any particular elements of the plan upon a showing of good cause therefor.~~ The ~~process to determine the substance of the~~ Remediation Action Plan is detailed in Section II.A.
<u>Summary of Objections/Proposals:</u> There is consent/no objection by the Parties and Monitoring Team to the proposed revisions.				
<u>Monitoring Team’s Explanation:</u> The Monitoring Team recommends all requirements related to the Remediation Action Plan (“RAP”) are addressed in § II for clarity. We recommend removal of the timing of the RAP here because that is also addressed in § II, ¶ A, ii and it is confusing, potentially unclear and possibly conflicting to have two different provisions (worded slightly differently) to address the timing and content of the RAP. Further, the language regarding the change to any timing of the RAP will also be addressed in § II, ¶ A below.				
<u>Defendants’ Position:</u> No objection.				
<u>Plaintiffs’/SDNY’s Position:</u> No objection.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ I, ¶ C Appointment of <u>Nunez</u> Remediation Manager and <u>Nunez</u> Remediation Manager’s Duties	The <u>Nunez</u> Remediation Manager shall provide leadership and executive management with the goal of developing and implementing a sustainable system that protects the constitutional rights of incarcerated people.			The <u>Nunez</u> Remediation Manager shall provide leadership and executive management <u>with respect to achieving Substantial Compliance with the Contempt Provisions</u> with the goal of developing and implementing a sustainable system that protects the constitutional rights of incarcerated people.
<u>Summary of Objections/Proposals:</u> The Defendants do not object to the Monitor’s recommendation, but the Plaintiffs’/SDNY oppose and contend the language should remain as drafted by the Court so no changes are necessary.				
<u>Monitoring Team’s Explanation:</u> The Monitor recommendation is made in response to the feedback from Defendants. In light of the Court’s May 13, 2025 Order, the proposal from Defendants to include a reference to the Contempt Provisions appears reasonable and consistent with the Court’s decision that the RM’s authority is related to achieving compliance with the Contempt Provisions.				
<u>Defendants’ Position:</u> Defendant do not object to the language proposed by Plaintiffs’/SDNY below for the reasons set out in Defendants’ Memorandum of Law in Support of Objections and Proposed Changes, Dated July 9, 2025 (“Defs. Objs.”), SECTIONS I & II: Remediation Action Plan and Benchmarks on pgs. 3-4.				

Plaintiffs’/SDNY’s Position: We oppose. We think the Court’s original language was clear, and the scope of the Remediation Manager’s authority is clearly defined elsewhere. Including this additional language on that topic here is both unnecessary and confusing. However, if the Court thinks some additional language is appropriate, we do not object to this construction, which we proposed during this revision process as an alternative should the Court adopt language to this effect.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ I, ¶ D Appointment of <u>Nunez</u> Remediation Manager and <u>Nunez</u> Remediation Manager’s Duties	The <u>Nunez</u> Remediation Manager shall be answerable only to the Court.			
No proposed revisions or objections.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § I Appointment of <u>Nunez</u> Remediation Manager and <u>Nunez</u> Remediation Manager’s Duties				<u>The Nunez Remediation Manager shall maintain an office within Department headquarters or on Rikers Island and shall</u> [Monitor Proposal: <u>be onsite with sufficient frequency, regularity, and duration to carry out their duties.</u>] [Defendants’ Proposal: <u>not work remotely more than two business days per week.</u>]
Summary of Objections/Proposals: Consent/no objection to the language in the first part of the sentence through “and shall.” There are two different proposals after “and shall.” The Plaintiffs’/SDNY do not oppose the Monitor’s recommended language, but oppose the Defendants’ proposal. The Defendants’ oppose the Monitor’s proposal. Plaintiffs’/SDNY oppose the Defendants’ proposal. Monitoring Team’s Explanation: The Monitoring Team agrees with the Parties that the RM’s onsite presence at DOC is critical. The Monitoring Team’s recommendation is modeled off language from the <i>Hinds County</i> Order on Receiver’s Duties which stated: “The Receiver’s authority and decisions are subject to review by the Court. To exercise these powers, the Receiver shall be onsite at RDC with sufficient frequency, regularity, and duration to carry out the Court’s Orders” <i>See U.S. v. Hinds Cnty., et al.</i>, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2, ¶ 5. While the Monitoring Team agrees the RM should be onsite as much as possible, the Defendants’ proposal that the RM “shall not work remotely more than two business days per week” does not appear feasible because it sets a strict schedule with no flexibility. There are a number of legitimate reasons that the RM may work remotely, which the Monitoring Team’s construction permits while reinforcing the importance of the RM’s onsite presence. Defendants’ Position: Defendants’ object to the language as recommended by the Monitoring Team beginning with “be onsite...”. Defendants explain the basis for its proposal in Def. Objs., SECTION I, E-G: Full-Time and On-Site Requirements on pgs. 4-5; Defendants’ Supplemental Memorandum of Law in Support of Objections and Proposed Changes, dated September 10, 2025 (“Def. Supp. Objs.”) at 4. Plaintiffs’/SDNY’s Position: We oppose the construction by Defendants beginning with “not work.” This level of detail is not necessary in this Order. However, we agree onsite presence is important and so we do not oppose the recommendation by the Monitoring Team. We also note that the Remediation Manager is not a City employee, so remote work rules that apply to City employees are inapplicable.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § I Appointment of <u>Nunez</u> Remediation Manager and <u>Nunez</u> Remediation Manager’s Duties		<u>The Nunez Remediation Manager shall inspect all Department facilities housing persons in custody at least one per month.</u>		
Summary of Objections/Proposals: Defendants’ proposal is opposed by the Plaintiffs’/SDNY. The Monitor takes no position. Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the Parties regarding the extent to which this requirement may be needed. Defendants’ Position: <i>See</i> Defs. Objs., SECTION I, E-G: Full-Time and On-Site Requirements on pgs. 4-5.				

Plaintiffs’/SDNY’s Position: We oppose. This level of detail is not necessary in this Order. Per the DOC website, DOC currently holds incarcerated individuals in 10 active facilities, including 2 hospital wards, and each facility varies in population and security needs. We expect the Remediation Manager to exercise professional judgment in allocating inspection time among them. (See <https://www.nyc.gov/site/doc/about/facilities.page>). We propose instead the language we suggest above, in response to Defendants’ proposed “New Provision in § I,” which we believe is sufficient to cover the point that the Remediation Manager needs to be onsite regularly.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § I Appointment of <u>Nunez</u> Remediation Manager and <u>Nunez</u> Remediation Manager’s Duties		The Nunez Remediation Manager shall be employed as the Remediation Manager on a full time basis, and shall maintain no other employment or contract work except as expressly approved by the Court, after notice and opportunity to be heard by the parties.		

Summary of Objections/Proposals: Defendants’ proposal is opposed by Plaintiffs’/SDNY. The Monitor takes no position.

Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the Parties regarding the extent to which this requirement may be needed.

Defendants’ Position: See Def. Objs.,SECTION I, E-G: Full-Time and On-Site Requirements on pgs. 4-5; Def. Supp. Obj. at 4.

Plaintiffs’/SDNY’s Position: We oppose. As an initial matter, the Remediation Manager is not an “employee” of the City. In addition, the Court's original language in § XI, ¶ E, which we think should remain in the Order, sufficiently covers this principle of limiting any outside work performed by the Remediation Manager. We also particularly oppose language such as “after notice and opportunity to be heard by the parties.” We do not believe it is necessary to litigate these exceptions.

Section II: Development and Implementation of the Remediation Action Plan

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ II, ¶ A Development and Implementation of the Remediation Action Plan	The Nunez Remediation Manager, in consultation with the Commissioner and the Monitoring Team, shall develop a Remediation Action Plan.			The Nunez Remediation Manager, in consultation with the Commissioner and the Monitoring Team, shall develop a Remediation Action Plan. ~~The~~ [Defendants’ Proposal: to complete within two- years after] [Plaintiffs’/SDNY Proposal: to be executed within the initial two-year period following] ~~the Court’s approval of the~~ Remediation Action Plan. ~~Nothing in this provision relates to the tenure of the Nunez Remediation Manager, or the duration of their authority with respect to a specific Contempt Provision, which is governed exclusively by Sections III and IX.~~
Summary of Objections/Proposals: Consent/no objection to the RAP covering two years, but two different proposals about the measurement of timing construction for the two years in yellow highlight. There is consent/no objection to the proposed language at the end of the provision starting with “the Court’s approval”. Upon finalization of the Order, a cross reference to the provisions regarding the duration and tenure of the RM is needed in the highlighted sections in yellow. Monitoring Team’s Explanation: for Revisions: The Monitor proposes these changes to streamline and clarify the timing and content of the RAP so it appears in one place in the order. <i>Timing:</i> The Monitor recommends the RAP cover two years versus three years. The work within the agency is very dynamic, as demonstrated over the last 10 years of monitoring. The practical reality is that developing a plan beyond 2 years is speculative at best. Case in point, every Remedial Order developed has required refinements or additions within 2 years. Given that the RM will have limited familiarity with the agency and have limited time to develop the RAP, the likelihood that an operationally practicable plan can be developed for work beyond 2 years does not seem feasible. Given that, we recommend the plan focus on the <i>first</i> two years of the RM’s work. Additional work is likely necessary, but it is most reasonable and feasible that a plan for that additional work should be made <i>at that time</i> versus trying to modify an existing, no longer feasible plan. Further, we recommend the timing of the plan be measured from the time the RAP is approved versus the time the RM is appointed/starts developing the plan. <i>Language for Timing:</i> The Monitoring Team defers to the Court regarding Plaintiffs’/SDNY and Defendants’ positions regarding the description of the timing. <i>Clarification of Tenure and Duration:</i> The final sentence was proposed by Plaintiffs’/SDNY to ensure that it is clear that the tenure and duration of the Remediation Manager is exclusively governed by Sections III and IX and only terminates when the conditions set forth in those Sections are met. Defendants report that they do not object to its inclusion. We therefore included it in the Monitor’s recommendations. We note that Plaintiffs’ proposal includes a cross reference to Sections III.C and IX.A in their proposal. Given the vast number of proposed revisions, the Monitoring Team believes it is premature to include specific references given it is unclear what the final numbering of the provisions will be and so we highlight the provisions requiring cross referencing so they can be completed when the final order is completed. Defendants’ Position: For the reasons stated in Defs. Objs. at 3, Defs. Supp. Objs. at 3, defendants believe that the Remediation Manager should be able to complete their work within a two year period following the Court’s approval of the RAP. Although extension of the period is permissible under the Order, the Order should not presume that the two-year period is intended to be “initial” and will be extended. Defendants have no objections to the language at the end of the provision beginning with “the Court’s approval”. Plaintiffs’/SDNY’s Position: First, with regard to the dispute as to “complete within” versus “executed within the initial,” we think the formulation proposed by Defendants could be read to suggest that the development of the plan is going to occur within 2 years, which is not the case. We therefore propose our language to clarify that the RAP will include steps to be executed within this initial two-year period. Second, with regard to the language at the end of the provision beginning with “the Court’s approval,” we do not object because we understand that given these revisions, the Order does not require or imply that if the RAP is two years, it is expected that Substantial Compliance be achieved in that time. We think the term of the RAP should either remain three years—of course, with the ability to be changed with the needs of the Remediation Manager’s work and the reform effort (as the next proposed revision reflects) —or the language should not imply that Substantial Compliance can be reached in two years. Lastly, the addition of the final sentence is intended to ensure that it is clear that the tenure of the Remediation Manager is exclusively governed by Sections III and IX and only terminates when the conditions set forth in those Sections are met.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § II Development and Implementation of the Remediation Action Plan	The Remediation Action Plan shall identify the specific and concrete steps that are necessary to achieve substantial compliance with the Contempt Provisions within no more than three years of the Nunez Remediation Manager’s Acceptance Effective Date. The Remediation Action Plan shall include transformative and sustainable initiatives which shall include, any positive initiatives currently underway that must be sustained or enhanced.	<u>The Benchmarks set forth in the Remediation Action Plan shall be specific, objectively defined metrics reflecting the minimum requirements for Substantial Compliance with the Contempt Provisions (the “Final Benchmarks”) or interim targets for compliance (“Interim Benchmarks”). The Benchmarks shall constitute objective metrics for the satisfaction of constitutional requirements, and shall not require actions, conditions or results that are not required by constitutional standards. The Remediation Action Plan shall have the minimum number of Final Benchmarks intended to reflect Substantial Compliance with the Contempt Provisions, and more than one Contempt Provision may be satisfied by achievement of the same Benchmark. Benchmarks under this Order are not intended to replace the definition of Substantial Compliance under the Consent Judgment, although they should be relevant to that determination.</u>		<u>i. The Remediation Action Plan shall identify the:</u> 1. <u>include</u> specific and concrete steps that are necessary to achieve <u>substantial compliance</u> Substantial Compliance with the Contempt Provisions <u>within no more than three years of the Nunez Remediation Manager’s Acceptance Effective Date.</u> (“Benchmarks”). The Remediation Action PlanBenchmarks shall <u>be organized into priorities with specified milestones to be achieved within 12-month periods, beginning with the safety-related areas and actions that are most urgently in need of attention;</u>
Summary of Objections/Proposals: Consent/no objection to the Monitor’s Proposal <i>except</i> Defendants oppose defining the first sentence as Benchmarks and propose a separate definition for benchmarks. The proposed definition of Benchmarks by Defendants is opposed by the Monitoring Team and the Plaintiffs’/SDNY. Monitoring Team’s Explanation: For clarity, the Monitoring Team has recommended the specific requirements for the RAP are placed in separate paragraphs. The Monitoring Team proposes three separate paragraphs. Paragraph (a) is discussed in this box and then (b) and (c) which are discussed in the box below. The Monitoring Team has recommended that the Order include a definition of Benchmarks. The Monitoring Team found that there was confusion among the parties and the Monitoring Team as to what constituted a Benchmark and that there was not a common understanding of what constituted a Benchmark. Given the lack of a common understanding of a Benchmark and the role that Benchmarks play in both the development of the RAP and the termination of the RM’s authority over the Department, a common understanding of what the Benchmarks will be is necessary. With respect to the Defendants’ proposed Benchmarks, the Monitoring Team appreciates the effort to have greater clarity about what constitutes a Benchmark. The Monitoring Team also agrees with the Court in encouraging incremental progress that can lead towards the termination and transition of the RM’s authority. Defendants’ proposal as drafted raises some concerns. First, it is the Monitoring Team’s understanding that the Benchmarks are intended to be specific and concrete steps to be taken in order to <i>achieve</i> Substantial Compliance with the Contempt Provisions. Defendants’ proposed language appears to suggest that the Benchmarks will serve as setting the standard for assessing compliance. This appears to be a fundamental difference between how the Court and the Defendants conceive the Benchmarks. With respect to any proposal to set the standard for assessing compliance, we note that the assessment of compliance is already set by CJ § XX, ¶ 18. Further, it is the responsibility of the Monitor, not the RM or the Parties-to determine how compliance is assessed, so the Defendants’ proposed language conflicts with the fundamental role of the Monitor. <i>See</i>, e.g., CJ § XX, ¶¶ 1 and 23. With respect to the proposed standard for assessing compliance, the Monitoring Team notes that exclusively setting objective metrics as the sole measurements to assess progress or compliance is simply not reasonable or feasible for the reasons outlined in the Monitor’s Reports (most recently, see the May 22, 2025 Monitor’s Report at pgs. 40 to 43). Defendants’ Position: Defendants do not oppose the language except propose different text for the definition of Benchmarks. <i>See</i> Defs, Objs., SECTIONS I & II: Remediation Action Plan and Benchmarks on pgs. 3-4. Defendants do not intend that Benchmarks replace the determination of Substantial Compliance, which remains a judgment within the purview of the Monitor and the Court according to the Consent Judgment. Rather, the Benchmarks are intended to be a guide to achieving Substantial Compliance. Defendants believe that the Court should have the authority to limit the RM’s authority depending in achievement of Benchmarks or Substantial Compliance with the Contempt Provisions, but that termination of that authority be mandatory when Substantial Compliance with the Contempt Provisions is achieved. <i>See</i> ; Defs. Supp. Objs. at 5-6. Defendants propose some changes to their proposed language to clarify the import of the Benchmarks and to address the Monitor’s concerns. Plaintiffs’/SDNY’s Position: We do not oppose the language recommended by the Monitor. We oppose the definition proposed by Defendants. Defendants’ construction of “Benchmarks” is too narrow given the dynamic process unfolding and the Monitor’s repeated warnings that statistical metrics do not, on their own, accurately measure progress in this context. Moreover, “Substantial Compliance” is defined in the Consent Judgment and should not be redefined here with relationship to as-yet-undetermined Benchmarks. We share the Monitor’s understanding that the benchmarks “are intended to be specific and concrete steps to be taken in order to <i>achieve</i> Substantial Compliance with the Contempt Provisions,” rather than “serv[ing] as setting the standard for assessing compliance.” We do not believe that it is appropriate to ask the Remediation Manager to develop “objective metrics” that define what constitutes “satisfaction of constitutional requirements” with respect to the operation of a jail system. While the Remediation Plan may include benchmarks that include outcome-based measures or certain metrics designed to assess improvement in different areas, Defendants’ proposed language is unworkable.				
RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § II	Further, the Remediation Action Plan shall address relevant recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions. These actions shall be organized into priorities with specified benchmarks to be achieved			<u>b.</u> include transformative and sustainable initiatives which shall include any positive initiatives currently underway that must be sustained or enhanced. ~~Further, the~~

Development and Implementation of the Remediation Action Plan	within 12-month periods, beginning with the safety-related areas and actions that are most urgently in need of attention.			~~Remediation Action Plan shall address relevant recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions. These actions shall be organized into priorities with specified benchmarks to be achieved within 12-month periods, beginning with the safety-related areas and actions that are most urgently in need of attention.~~ [Defendants propose the additional text of <u>The initiatives must necessarily be operationally feasible to the Department and include reasonable implementation plans tailored to the Department's operations.</u>]; and c. <u>address recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions.</u>
Summary of Objections/Proposals: The Monitoring Team proposes a formatting change to the text in the first sentence so it is its own paragraph, which all parties consent/no objection. Separately, Defendants propose additional language in (b), but the Plaintiffs'/SDNY oppose the additional text by Defendants. The revisions made to (c) are on consent or with no objections. Monitoring Team's Explanation: For part (b), The Monitoring Team does not propose changes to the language from the original Court order and just placed this language in a separate paragraph so it is easier to follow. We note that Defendants have proposed that the provision include additional language that the RAP is operationally feasible and include reasonable implementation plans. The Monitoring Team has raised the fact that the RAP must necessarily be operationally feasible and include reasonable implementation plans. We determined that the language wasn't necessary because a RAP simply won't work if it isn't operationally feasible or doesn't include reasonable implementation plans. To the extent that the RAP does include projects that are either not operationally feasible or do not have reasonable implementation plans, the Monitoring Team believes that can be addressed via the Monitor's recommendations in (c). For part (c), The Monitoring Team proposes that the introductory clause is removed because it is not necessary. The qualifier that the recommendations must be relevant is unnecessary and creates the possibility that certain recommendations from the Monitor could be irrelevant or not be addressed, which we don't anticipate to be an issue. The language at the end of (c) was moved to paragraph (a) above. In short, it is the Monitoring Team's understanding that there are no objections to any of the language proposed by the Monitoring Team, but that Defendants have proposed additional language for (b) that the Court will need to determine whether to include. Defendants' Position: Defendants propose additional language for paragraph (b). No objections to (c). Plaintiffs'/SDNY Position: No objections to the Monitor's revisions in (b) or (c). With respect to the proposed language by Defendants in (b), Plaintiffs and the Government agree with the Monitor that the language is not necessary. The RAP itself is a plan, and it is odd to require the initiatives set forth in that plan to also include implementation plans.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ II, ¶ A, I Development and Implementation of the Remediation Action Plan	The Remediation Action Plan shall be provided to counsel for the Plaintiff Class and the United States in draft form for comment within 90 days of the date of the Acceptance Effective Date. Counsel for the Plaintiff Class and the United States shall provide the Remediation Manager, Commissioner, and the Monitoring Team with their comments on the Remediation Action Plan, if any, within 21 days of receipt. The Remediation Manager, in consultation with the Commissioner and Monitoring Team, shall consider the comments from Counsel for the Plaintiff Class and the United States and make any changes deemed			The Remediation Action Plan shall be provided to ~~counsel for the Plaintiff Class and the United States~~ <u>the parties</u> in draft form for comment within 90 days of the date ~~of the of the~~ <u>of the [the Nunez Remediation Manager's Acceptance of this appointment on the public docket for this case ("Acceptance Effective Date, Counsel for the Plaintiff Class and the United States")]</u> . The parties shall provide the <u>Nunez</u> Remediation Manager, ~~Commissioner, and~~ the Monitoring Team, <u>and the other parties</u> with their comments on the Remediation Action Plan, if any, within <u>2130</u> days of

	necessary before filing the final proposed Remediation Action Plan with the Court. The final Remediation Action Plan shall be filed with the Court for approval within 21 days of receipt of comments from the Counsel for the Plaintiff Class and United States.			receipt. The Nunez Remediation Manager, in consultation with the Commissioner and Monitoring Team, shall consider the comments from ~~Counsel for the Plaintiff Class and the United States~~ the parties and make any changes deemed necessary before filing the final proposed Remediation Action Plan with the Court. The final Remediation Action Plan shall be filed with the Court for approval within 21 days of receipt of comments from the ~~Counsel for the Plaintiff Class and United States~~ parties . Defendants’ Proposal: The parties shall have at least 20 business days to respond to the Nunez Remediation Manager’s application pursuant to this provision, prior to the Court entering any Order in response to the application.]
Summary of Objections/Proposals: There is consent/no objection to the revisions regarding the inclusion of “parties” (instead of Plaintiffs/SDNY) and the revisions to the timing for the comment period. There are separate proposals regarding the issue of Acceptance/Start Date and the corresponding definition. Finally, Plaintiffs oppose the Defendants’ proposed language at the end of this provision and the Monitoring Team doesn’t believe it is necessary. Monitoring Team’s Explanation: This provision includes three proposed changes. First, the changes permit all Parties to comment on the RAP. The original language contemplated consultation with the Commissioner, but the Defendants’ proposed that Defendants should also have an opportunity to comment on the RAP (and we understand there is no objection from Plaintiffs’/SDNY). Second, depending on the outcome of the Court’s determination of when the RM may start/be granted authority (<i>see</i> the Monitoring Team’s recommendation in Section § XII (Effective Date) regarding this issue), the timing for the initiation of the RAP will need to be tailored to match when the RM actually begins doing his work. For instance, the RM may accept the position on one day but start work on a different day. We believe the timing of the RAP should be tied to when the RM actually begins working if there is a difference between the time of acceptance and when the RM starts work. The text in brackets should be defined/tailored once that has been determined by the Court. Third, Defendants proposed some revisions to the timing for the exchange of comments and feedback, which we adopted. Finally, with respect to the Defendants’ proposal for an opportunity to respond to the RM’s submission, the Monitoring Team does not believe a presumptive briefing schedule is necessary. Defendants’ explanation: No objection. Plaintiffs’/SDNY explanation: No objection to the Monitor’s proposed language but for our proposed revision to the Court’s original language to remove the phrase “on the public docket for this case” from the definition of Acceptance Effective Date, because it presents an apparent conflict with the language of Proposed Order Section XII, which says the order is effective when the Remediation Manager returns a signed copy of the order to the Court via email, not public filing. We have no objection to such acceptance being filed on the public docket, of course, and would indeed appreciate if it were. The revision is simply proposed to avoid any conflicting readings of those two provisions. We also noting that we oppose the Monitor’s proposed revision in XII (B) regarding delayed conferral of authority, so in our view the only revisions necessary to this provision are (1) revision on consent of “Plaintiff Class and United States” to “parties;” (2) change to the timing of the comment period (Defendants’ proposal to which we do not object); and (3) definition of Acceptance Date as it was deleted from § I, ¶ B (with the caveat about the “public docket” language we note in the paragraph just above this one). We also note that we think “Acceptance Effective Date” can be defined to mean the date that the Remediation Manager steps into the role, given the word “effective,” should the Court wish to avoid having different “Acceptance” and “Start” dates. This could therefore read: “the Nunez Remediation Manager’s Acceptance of this appointment, (“Acceptance Effective Date”), on which they will begin work.” We object to Defendants’ proposed language and the end of the provision, as we agree with the Monitor that this Order need not predetermine a briefing schedule about an unknown issue of unknown complexity.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ II, ¶ A, ii Development and Implementation of the Remediation Action Plan	The Remediation Manager may thereafter seek to modify or amend the Remediation Action Plan upon application to the Court. The Remediation Manager shall consult with the Commissioner and the Monitoring Team in advance of any application before making any such application to the Court and any such application shall be made on notice to the parties and the Monitoring Team.		The Nunez Remediation Manager may thereafter seek to modify or amend the Remediation Action Plan, including changing the timing of the target period for any particular element of the Remediation Action Plan , upon application to the Court. The Remediation Manager shall consult with the Commissioner, ~~and~~ the Monitoring Team, and the parties in advance of any application before making any such application to the Court and any such application shall be made on notice to the parties and the Monitoring Team.	The Nunez Remediation Manager may thereafter seek to modify or amend the Remediation Action Plan, including changing the timing of the target period for any particular element of the Remediation Action Plan , upon application to the Court. The Nunez Remediation Manager shall consult with the Commissioner and the Monitoring Team ~~in advance of~~ on any ~~application~~ modifications . The Nunez Remediation Manger shall then provide the

				[Defendants proposal: <u>proposed revised</u> Remediation Action Plan to the parties for comment before making any such application to the Court and any such application shall be made on notice to the parties and the Monitoring Team. Defendants’ Proposal: <u>The parties shall have at least 20 business days to respond to the Nunez Remediation Manager’s application pursuant to this provision, prior to the Court entering any Order in response to the application.</u>]
Summary of Objections/Proposals: There is consent/no objection to the changes to the revisions to add “Nunez” before Remediation Manager for consistency. The additional text in the first sentence is also on consent/no objection. There are two different proposals regarding the consultation/comment period. The Defendants do not oppose the Monitoring Team’s proposal. The Plaintiffs’/SDNY oppose the Monitoring Team’s proposal. Plaintiffs oppose the Defendants’ proposed final sentence and the Monitoring Team does not believe Defendants’ proposed language is necessary. Monitoring Team’s Explanation: The process for modification of the RAP, including extension of time (originally in § I, ¶ B), was all consolidated into this provision so that the modification process is all managed by the same requirements. The Monitoring Team proposes different language than that of Plaintiffs’/SDNY. As with the creation of the RAP, the Monitoring Team believes the process for the revisions of the RAP should <i>first</i> be initiated with consultation with the Commissioner and the Monitoring Team as it is most practical and logistically feasible. The Commissioner and Monitoring Team will be working with the RM on the implementation of the RAP all the of the time. The Parties can then obtain the document for comment after obtaining the input from the Monitor and Commissioner. As currently drafted, this appears to permit a simultaneous process, which is burdensome and inefficient. Given our extensive experience in addressing <i>Nunez</i> matters, we strongly recommend that this process occur <i>first</i> with the Commissioner and the Monitor. The Parties can then comment and will then also have the benefit of the feedback, if any, from the Commissioner and Monitor regarding the operational feasibility of the proposed revisions. Further, we note that nothing in the Monitoring Team’s construction implicates concerns that Plaintiffs’/SDNY believe will hinder the RM’s ability to communicate with the Parties or share ideas. The RM can communicate with the parties as needed, but the RAP is necessarily an operational document and we think that first addressing those matters with those directly engaged in this process is most practical and feasible and does not preclude the Parties from also commenting. Defendants’ Position: Do not oppose the Monitor’s proposal. Defendants agree that a meet and confer with all parties is appropriate before the RM makes any application to the Court. Defendants agree with the Monitor that the RM should also consult with the Monitoring Team and the Commissioner prior to proposing any changes to the parties for a meet and confer, or the Court. Plaintiffs’/SDNY’s Position: We oppose the Monitor’s construction. We do not believe formally requiring the Remediation Manager to consult with the Monitor and the Commissioner about modifications to the RAP before discussing any proposed modifications with the Parties is necessary or helpful in this context. The Remediation Manager should feel free to discuss any element of their work—or changes to that work—with all stakeholders as they deem appropriate or useful in their judgment. These revisions impose an unnecessarily restrictive process on a dynamic reform effort. In our view the language we proposed—simply requiring consultation with the Commissioner, the Monitoring Team, and the parties prior to making a court application and without unnecessarily articulating the order in which the RM must do so—is most appropriate. We object to Defendants’ proposed language and the end of the provision, as we do not believe this Order should predetermine a briefing schedule about an unknown issue of unknown complexity.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ II, ¶ B Development and Implementation of the Remediation Action Plan	Implementation of the Remediation Action Plan must begin immediately upon its approval by the Court. This work shall be undertaken in collaboration with the Commissioner to the greatest extent consistent with efficiency, effectuation of change, and the fostering of a respectful, sustainably safety-oriented approach to management.	Implementation of the Remediation Action Plan must begin immediately upon its approval by the Court. This work shall be undertaken in collaboration with the Commissioner ~~to the greatest extent consistent with efficiency, effectuation of change, and the fostering of a respectful, sustainably safety-oriented approach to management~~		
Summary of Objections/Proposals: Defendants propose removal of text, which is opposed by Plaintiffs’/SDNY. The Monitoring Team takes no position. Monitoring Team’s Explanation: Monitor defers to the Court and the Parties regarding this revision. Defendants’ Position: <i>See</i> Defs. Objs., SECTIONS I & II: Remediation Action Plan and Benchmarks on pgs. 3-4. Plaintiffs’/SDNY’s Position: We oppose. This original language is necessary and consistent with the Remediation Manager’s role as the ultimate authority with regard to the actions needed to be taken to comply with the Contempt Provisions.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ II, ¶ C	Within 30 days following Court approval of the Remediation Action Plan, the Remediation Manager, the Monitoring Team, and the Commissioner shall jointly	Within 30 days following Court approval of the Remediation Action Plan, the <u>Nunez</u> Remediation Manager, the Monitoring Team, and the Commissioner		Within 30 days following Court approval of the Remediation Action Plan, the <u>Nunez</u> Remediation Manager, the Monitoring Team, and the

Development and Implementation of the Remediation Action Plan	develop an updated DOC organizational chart that includes delineation of the reporting lines of divisions, operational functions, and personnel that are subject to the direct authority of the Remediation Manager and the Commissioner, respectively, and those where both exercise direct authority over aspects of the divisions, operations, and personnel. In the event of conflict regarding divisions of labor, the <u>Nunez</u> Remediation Manager has ultimate authority.	shall jointly develop an updated DOC organizational chart that includes delineation of the reporting lines of divisions, operational functions, and personnel that are subject to the direct authority of the <u>Nunez</u> Remediation Manager and the Commissioner, respectively, and those where both exercise direct authority over aspects of the divisions, operations, and personnel. In the event of conflict regarding divisions of labor, the <u>Nunez</u> Defendants or the <u>Nunez</u> Remediation Manager ~~has ultimate authority~~ may bring the matter to the attention of the Court for resolution, with notice and opportunity to be heard by the parties.		Commissioner shall jointly develop an updated DOC organizational chart that includes delineation of the reporting lines of divisions, operational functions, and personnel that are subject to the direct authority of the <u>Nunez</u> Remediation Manager and the Commissioner, respectively, and those where both exercise direct authority over aspects of the divisions, operations, and personnel. In the event of conflict regarding divisions of labor, the <u>Nunez</u> Remediation Manager has ultimate authority.
Summary of Objections/Proposals: Defendants propose revisions which are opposed by the Plaintiffs’/SDNY. The Monitor takes no position. The revisions to include “Nunez” before Remediation Manager are for consistency and on consent/no objection. Monitoring Team’s Explanation: Monitor defers to the Court and the Parties regarding this revision. Defendants’ Position: <i>See</i> Defs. Objs., SECTIONS I & II: Remediation Action Plan and Benchmarks on pgs. 3-4. Plaintiffs’/SDNY’s Position: We oppose Defendants’ proposal. The Remediation Manager’s role as the ultimate authority with regard to what needs to be done to comply with Contempt Provisions is an important structural component of this Order, without which it may not be workable. Moreover, of course any party may bring any issue to the Court at any time, whenever it is appropriate to do so, without the Order so prescribing.				

Section III: Assessment of Compliance & Transition Back to DOC Control

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ III, ¶ A Assessment of Compliance & Transition Back to DOC Control	The Monitor shall file a report within 130 days following each Reporting Period ¹ describing the efforts the Department and the Remediation Manager have taken to implement the requirements of the Remediation Action Plan and evaluating the extent to which the Department and Remediation Manager have complied with the benchmarks of the Remediation Action Plan and each of the Contempt Provisions.		~~After the Remediation Action Plan has been approved by the Court, the bi-annual Monitor’s Report for each Reporting Period² describing the~~ <u>shall also include a description of the efforts the Department and the Nunez Remediation Manager have taken to implement the requirements of the Remediation Action Plan and evaluating an evaluation of the extent to which the Department and Remediation Manager Defendants have complied with the benchmarks of the Remediation Action Plan and each of the Contempt Provisions. Upon a finding by The reports should also describe the Monitoring Team that one or more of</u> ~~the extent to which the Defendants have met the benchmarks of the Remediation Action Plan or the Contempt Provisions is set forth in the Remediation Action Plan.~~	~~The Monitor shall file a report within 130 days following each Reporting Period³ describing the efforts the Department and the Remediation Manager have taken to implement the requirements of the Remediation Action Plan and evaluating the extent to which the Department and Remediation Manager have complied with the benchmarks of the Remediation Action Plan and each of the Contempt Provisions.~~
Summary of Objections/Proposals: The Monitoring Team has proposed moving this provision to § VI, which Defendants do not object to. However, Plaintiffs’ contend the language should remain in this section. The proposals regarding the language for the Monitor’s reports can be found in Section VI. Monitoring Team’s Explanation: With respect to the timing of the Monitor’s Report, this language is no longer necessary in this order because it is addressed in Consent Judgment § XX, ¶ 17 and modified by the Court’s July 25, 2025 Order (dkt.888). Further, for clarity and to avoid confusion, we suggest all requirements related to Monitor’s reports are addressed within the provisions related to the Monitor’s Role in §VI of this order. In particular, we recommend the text regarding the content of the Monitor’s Reports (beginning with Upon approval”...) is moved to § VI, ¶ B of the Order so the requirements for the content of the Monitor’s Report are all in one place. Defendants’ Position: No objections. Plaintiffs’/SDNY’s Position: We oppose moving this paragraph to Section VI because this description of what the Monitor’s reports will cover is necessary context for the following two paragraphs, regarding what will happen if the Monitor finds Substantial Compliance in such reports. Regarding the changes Plaintiffs propose to the text of this provision (as opposed to its placement within the Order), our basis is set forth below in Section VI.B, where the Monitor and Defendants propose to move this provision. Defendants’ and the Monitor’s position on Plaintiffs’ proposed changes are also included in that section.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ III, ¶ B Assessment of Compliance & Transition Back to DOC Control	Upon a finding by the Monitoring Team that one or more of the benchmarks of the Remediation Action Plan or the Contempt Provisions is in Substantial Compliance, the Court shall determine whether Substantial Compliance with the relevant benchmark(s) and/or Contempt Provision(s) has been achieved.		~~Upon a finding by the Monitoring Team that one or more of the benchmarks of the Remediation Action Plan or the Contempt Provisions is in Substantial Compliance, the Court shall determine whether Substantial Compliance with the relevant benchmark(s) and/or Contempt Provision(s) has been achieved.~~ <u>In the event the Monitor finds Defendants to be in Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with one or more of the Contempt Provisions during a Reporting Period, the Nunez Remediation Manager shall, within 15 days, work with the Commissioner on a Transition Plan that outlines: (i) how to sustain the progress achieved, (ii) the steps the Nunez Remediation Manager will take to prepare the Department to operate independently in the relevant area, and (iii) the actions the Department will take to maintain the required</u>	Upon a finding by the Monitoring Team that one or more of the benchmarks of the Remediation Action Plan or the Contempt Provisions is in <u>Partial or</u> Substantial Compliance, the ~~Court~~ <u>Nunez Remediation Manager</u> shall ~~determine whether Substantial Compliance~~ <u>begin working with the Commissioner to prepare a Transition Plan that shifts responsibility for all functions related to the relevant benchmark(s) and Benchmark or Contempt Provision(s) has been achieved, back to the Department.</u>

¹ The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.
² The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.
³ ~~The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.~~

			<u>performance level and sustain compliance. The Monitor shall be consulted on the Transition Plan.</u>	
Summary of Objections/Proposals: There are two different proposals – one proposed by Plaintiffs and one proposed by the Monitoring Team. Defendants agree with the Monitor’s proposal. The Plaintiffs’/SDNY oppose the Monitor’s proposal. Monitoring Team’s Explanation: The Monitoring Team supports the Court’s overarching goals that the work of the RM must support sustainable reforms by the Defendants and that return to local control must occur as quickly as possible. To that end, transition planning should begin as soon as possible, which is why we propose it is initiated with a finding by the Monitoring Team of Partial Compliance. Of course, more work will be needed to achieve Substantial Compliance, but the RM should be working with the Defendants on ways to ensure this occurs with their involvement and ultimate return to control. This approach reinforces the Court’s stated goal that the return occur as quickly as possible. May 13, 2025 Order at pg. 36. With respect to the Court’s evaluation of Benchmarks, the Monitoring Team believes the Court’s goal to identify ways for the RM to return authority back to the Defendants before SC with an entire provision has been met is important and necessary and therefore, the original proposal by the Court should remain. We further reinforce the need for sustainability of the reforms when authority transitions back to Defendants. We do think it is important to note the distinction between termination of authority of the RM and the termination of the provision itself. As noted in other parts of this order, the provision is not terminated upon the removal of the RM’s authority. In fact, a key part of sustainability is that monitoring will continue following the transition of the RM’s authority back to Defendants. Defendants’ Position: Defendants agree with the Monitor’s proposed changes because it is essential that the RM’s authority over a specific area be terminated when that authority is no longer needed to remedy an ongoing constitutional violation. For the same reason, defendants do not agree that a period of successive compliance periods should be required before reversion of authority to the Commissioner. <i>See</i> Def.. Objs. I at 6; Def. Modification Memorandum at 24-25; and Def. Supp. Objs. at 4-5. Even if one or two Courts have disregarded this requirement without consideration of the legal implications under the PLRA, that does not provide any significant authority that the practice could withstand legal scrutiny. Plaintiffs’/SDNY’s Position: We oppose the Monitor’s revisions. First, regarding the timing of transition planning: we too share the Court’s goals for sustainable progress with swift return of control to Defendants when progress can be sustained. As such, we have proposed a change here that would require transition planning to begin swiftly after one finding by the Monitor—rather than requiring a judicial finding—that the Defendants are in Substantial Compliance with a Contempt Provision. But triggering such work with one <i>Partial</i> Compliance rating does not support sustainable and efficient reform. The record in this case is replete with evidence that a Partial Compliance rating from the Monitor does not mean Defendants are on a path toward Substantial Compliance (as we described in our Memorandum of Law in Opposition to Defendants’ Motion to Reconsider, Dkt. 889, at 9-11). Indeed, this Court found Defendants in contempt for provisions that the Monitor had rated Partially Compliant. The Monitor’s proposal means that transition planning should start on those provisions right now. Moreover, Partial Compliance can represent a wide range of conduct, because under the Consent Judgment it only means that Defendants have “achieved compliance on some component” of a provision while “significant work remains” to achieve the Substantial Compliance required by the Nunez Orders. Dkt. No. 249, at 54 n.3. A point at which “significant work remains” is not an appropriate point at which transition planning should begin. That would likely be a waste of time and resources, as the record demonstrates that it could be years before Defendants achieve sustained (or even initial) findings of Substantial Compliance, rendering that transition planning stale. We strongly oppose any transfer of authority based on “findings that benchmarks have been achieved.” Plaintiffs and the Government recognize the utility of benchmarks as guideposts for the work under the Remediation Action Plan and as potential indicators of Defendants’ progress towards compliance. However, meeting to-be-determined benchmarks is not the same as achieving substantial compliance with the Contempt Provisions. Not only do we think that terminating authority based on meeting benchmarks is likely unworkable given the piecemeal and as-yet-unknown nature of those benchmarks, but benchmarks are not governed by the same ratings requirements as are Contempt Provisions and this dual-track compliance assessment process is untenable. There is a clear, incremental process by which Defendants may reassume the authority that this Order grants to the Remediation Manager: by achieving Substantial Compliance with individual Contempt Provisions. Subdividing that process will not be feasible, given the nature of benchmarks as steps <i>toward</i> a particular area of compliance, rather than independent functions themselves, and their likely character as an inevitably difficult-to-sever piece of a broader strategy. In our view, attempting to break them off in a piecemeal fashion will be a barrier to a sustainable reform effort. This waters down the efficacy of the remedial orders already in place in this case. This order’s grant of authority to the Remediation Manager is a remedy to cure contempt of specific provisions of court orders and should stay in place until the contempt is purged and Defendants are in compliance. The Remediation Plan, and the benchmarks included in those, should be viewed as the path to get to substantial compliance—not a replacement for it.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ III, ¶ C Assessment of Compliance & Transition Back to DOC Control	Within 30 days of the Court’s finding, the <u>Nunez</u> Remediation Manager shall be obligated to work with the Commissioner on a Transition Plan that outlines (1) how to sustain the progress achieved, (2) the steps the Remediation Manager will take to prepare the Department to operate independently in the relevant area, and (3) the actions the Department will take to maintain the required performance level and sustain compliance.		~~Substantial Compliance, the Court shall determine whether Substantial Compliance with the relevant benchmark(s) and/or Contempt Provision(s) has been achieved. Within 30 days of the Court’s finding, the <u>Nunez</u> Remediation Manager shall be obligated to work with the Commissioner on a Transition Plan that outlines (1) how to sustain the progress achieved, (2) the steps the Remediation Manager will take to prepare the Department to operate independently in the relevant area, and (3) the actions the Department will take to maintain the required performance level and sustain compliance.~~	~~Within 30 days of the Court’s finding, the <u>Nunez</u> Remediation Manager shall be obligated to work with the Commissioner on a~~ <u>The Transition Plan that outlines shall include:</u> (1) how to sustain the progress achieved, (2) the steps the <u>Nunez</u> Remediation Manager will take to prepare the Department to operate independently in the relevant area, and (3) the actions the Department will take to maintain the required performance level and sustain compliance. <u>The Transition Plan shall prepare for the termination of the Nunez Remediation Manager’s authority within 1 year of the end of the Monitoring Period in which the Monitor finds the relevant benchmark or Contempt Provision in Substantial Compliance. The Monitor shall be consulted on the Transition Plan.</u> <u>Within 30 days of the issuance of the Monitor’s Report finding that one or more of the benchmarks of</u>

				the Remediation Action Plan or one or more of the Contempt Provisions is in Substantial Compliance, the Transition Plan shall be finalized, implemented, and submitted to the Court by the Nunez Remediation Manager.
Summary of Objections/Proposals: There are two different proposals. Plaintiffs have one proposal. The Monitoring Team has a separate proposal, which Plaintiffs oppose. Defendants consent to the Monitor’s two proposed provisions with one exception. Defendants oppose the inclusion of the two sentences in the first paragraph beginning with “The Transition Plan shall prepare for the termination…” Monitoring Team’s Explanation: The Monitoring Team proposes that the period for the Transition Plan is one year from the end of the Monitoring Period in which Substantial Compliance is achieved. For example, if Substantial Compliance is achieved in the 20th Monitoring Period (January to June 2025), the time would be counted from June 30, 2025 to June 30, 2026. We believe this is sufficient time to implement and sustain the Transition Plan, while also permitting the other <i>Nunez</i> processes to occur including the filing of the Monitor’s Report (which occurs approximately 5 and a half months after the end of the Monitoring Period) and for the necessary Court proceedings to take place and conclude. As noted in the next section, of course, alterations to this timing can be made by the Court if necessary. The Monitoring Team also recommends it is consulted on the Transition Plan. Finally, the Monitoring Team proposes the Transition Plan is provided to the Court as the Order does not currently require either submission or implementation of the Transition Plan as the current construction only requires the plan be created (and implies implementation). Defendants’ Position: Defendants consent to the Monitor’s proposed language, except they object to the additional language in this section regarding termination of the RM’s authority within one year for the reasons stated above with respect to Section II, B. Plaintiffs’/SDNY’s Position: As we noted in our comments to § III, ¶ B above, we do not oppose Defendants’ revision that reflects that the Remediation Manager will begin work on a transition plan 15 days after the first Monitor finding that a <i>Contempt Provision</i> (but not a benchmark) is in Substantial Compliance. We also do not object to the Court’s description of what the transition plan should contain, and have therefore included those requirements in our transition planning proposal in § III, ¶ B above. Because both the trigger for developing and the contents of a transition plan are covered in § III, ¶ B under our proposal, we would omit the current § III, ¶ C. Furthermore, we strongly believe that termination of the Remediation Manager’s authority over any Contempt Provision should still require a judicial finding that Defendants are in sustained Substantial Compliance for three successive reporting periods, as we explain below with regard to § III, ¶ D. We reiterate our strong opposition to using “benchmarks” as triggers for transition plans or, as we articulate in other sections, termination of the Remediation Manager’s authority. We oppose the Monitor’s proposed revisions (but for the proposal that the Remediation Manager work with the Monitor as well as the Commissioner in developing the Transition Plan, which we think reasonable and have included in our proposed revisions to § III, ¶ B). As we have explained, we think the Court’s construction requiring three reporting periods of Substantial Compliance critically important. In our view, the Monitor’s proposal that requires transition of authority one year following one <i>Monitor</i> finding of Substantial Compliance is inconsistent with the Court’s correctly-formulated termination structure because, as has happened multiple times in the past, Defendants could backslide into Partial or Non-Compliance during that period. The Monitor’s proposed revisions effectively set a one-year sunset period on the Remediation Manager’s authority over the relevant Contempt Provision regardless of whether Defendants sustain the Substantial Compliance required by the Court’s orders. Such a construction prioritizes process over results and does not adequately prioritize the utility of appointing a Remediation Manager as an investment in the sustainability of compliance. We also strongly oppose the sentence that begins “Within 30 days of the issuance of the Monitor’s Report…” for two reasons. First, we think it overly prescriptive for this Order to set a 30-day deadline by which the Remediation Manager must develop a Transition Plan for any Contempt Provision. The Remediation Manager may be developing a plan for more than one Contempt Provision, and additionally, not all Contempt Provisions require the same level of complexity (“implement the Use of Force Directive” will likely require much more complex transition planning than “improve painful escort holds.”). Moreover, the Remediation Manager should be permitted to weigh in—with the professional judgment for which the Court is appointing them—on how long a particular Transition Plan (or the transition it describes) will take at a particular moment in the reform effort. Second, the Remediation Manager should not be required to “implement” the Transition Plan within 30 days as the Monitor’s proposal reflects, both because of the importance of allowing the Remediation Manager to be involved with developing the timelines for transition planning and because termination of the Remediation Manager’s authority should only occur after the Court has found sustained Substantial Compliance, as we describe in the paragraph above and in our comments to § III, ¶ B. The Remediation Manager should, as our proposal reflects, begin work on the Transition Plan within 15 days of the first Monitor finding of Substantial Compliance—we want that Plan to be thoughtful, practical, and ready to be implemented after Defendants have sustained Substantial Compliance—but to rush the transition with arbitrary timelines that may not reflect operational realities is unworkable.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ III, ¶ D Assessment of Compliance & Transition Back to DOC Control	The Remediation Manager’s authority over the relevant benchmark of the Remediation Action Plan or Contempt Provision shall be terminated upon the Monitoring Team’s filing of the Monitor’s Report that reports the benchmark of the Remediation Action Plan or Contempt Provision in Substantial Compliance for the third successive Reporting Period.	<u>Upon the Court’s finding that the City is in Substantial Compliance with one or more Contempt Provisions or that a reduction in the Nunez Remediation Manager’s authority is otherwise warranted pursuant to Section III.D above, the Nunez Remediation Manager’s authority over the relevant benchmark of the Remediation Action Plan or Contempt Provision(s) and any related Benchmarks shall be terminated upon the Monitoring Team’s filing of the Monitor’s Report that reports the benchmark of the Remediation Action Plan or Contempt Provision in Substantial Compliance for the third successive Reporting Period as soon as possible and in no event later than 30 days following the Court’s finding.</u>	~~The Remediation Manager’s authority over the relevant benchmark of the Remediation Action Plan or Contempt Provision shall be terminated upon the Monitoring Team’s filing of the Monitor’s Report that reports the benchmark of the Remediation Action Plan or Contempt Provision in Substantial Compliance for the third successive Reporting Period.~~ <u>In the event the Monitor finds Defendants to be in Substantial Compliance with one or more Contempt Provisions for three successive Reporting Periods (i.e. for 18 months), the Court shall determine whether Substantial Compliance with the relevant Contempt Provision(s) has been achieved. The Nunez Remediation Manager’s authority over the relevant benchmark of the Remediation Action Plan or Contempt Provision(s) shall be terminated only upon the Monitoring Team’s filing of the Monitor’s</u>	<u>Upon receipt of the Transition Plan, the Court shall determine whether Substantial Compliance with the relevant benchmark(s) and/or Contempt Provision(s) has been achieved and shall approve the Transition Plan, with any modifications the Court deems necessary.</u> The <u>Nunez</u> Remediation Manager’s authority over the relevant benchmark of the Remediation Action Plan or Contempt Provision shall be terminated ~~upon~~ <u>within 1 year of the Monitoring Team’s filing of the Monitor’s Report that reports</u> ~~Period in which the Monitor finds the relevant benchmark of the Remediation Action Plan or Contempt Provision in Substantial Compliance for the third successive Reporting Period. This date may be modified by the Court as necessary.~~

			~~Report~~ Court’s finding, after having heard from the parties, that ~~reports the benchmark of the Remediation Action Plan or Contempt Provision~~ Defendants have been in Substantial Compliance <u>with the Contempt Provision</u> for ~~the third~~ three successive Reporting ~~Period~~ Periods.	
Summary of Objections/Proposals: There are three different proposals. For the Monitor’s proposal, the Defendants consent to the Monitor’s first paragraph (Upon transition…), but object to the second paragraph. Defendants propose a separate second paragraph after the Monitor’s proposal “Upon transition.” Plaintiffs oppose the Monitor’s proposal in its entirety. Defendants oppose Plaintiffs’/SDNY’s proposal. Monitoring Team’s Explanation: The Monitoring Team recommends that the Court’s finding is initiated with the submission of the Transition Plan in order to further reinforce the importance of sustainability. The Monitoring Team agrees with the Court that such finding should be made upon the first finding of Substantial Compliance given the importance of returning local control as quickly as possible and ensuring transition planning has occurred as soon as possible to support sustainable reforms. Ultimately, the Defendants, not the RM, need to sustain the reforms so we recommend the Court reinforce the need for a smooth transition and sustainable reforms by Defendants. Ongoing sustainability of the reforms by the RM does not mean that the Defendants will then in fact sustain such reforms when authority is transitioned back to them. Finally, it must be noted that the termination of the RM’s authority is not the same as the termination of the provision. The Defendants will be subject to ongoing monitoring, which is critical to support the sustainability of the reforms. We appreciate the feedback from Plaintiffs/SDNY that the Transition Plan is likely to be a dynamic document and thus submission to the Court and/or entering it as a Court Order may not be a feasible option. Given that, alternatively, one options could be that the RM could either advise the Court the Transition Plan is final and/or just provide a copy for in camera review. As flexibility on the transition is paramount, the Monitor’s proposal regarding transition planning could be altered to just set the specific time for when the transition period will be completed. Defendants’ Position: Defendants consent to the proposed language in the first paragraph of the Monitor’s proposal and object to the second paragraph for the reasons stated above. Plaintiffs’/SDNY’s Position: Our proposed revisions to this subsection are intended to create the clearest and most workable standard for when and how the Remediation Manager’s authority will terminate over a particular Contempt Provision. Under our proposal, as we understand that the Court indicated in Section IX.A, the Remediation Manager’s authority with respect to a specific Contempt Provision would terminate only upon the Court’s finding of substantial compliance for three successive Reporting Periods (not just the Monitor’s assessment). We believe requiring sustained compliance is not only critical given the history in this case, but is also in line with what other courts have recognized is necessary in crafting other receivership orders. <i>See United States v. Miami-Dade Cnty.</i>, No. 13-cv-21570, Stipulated Order Regarding Appointment of Independent Jail Compliance Director (S.D. Fla. Feb. 16, 2023), Dkt. 260 at 13; <i>Plata v. Schwarzenegger</i>, No. C01-1351, Order Appointing Receiver at 6 (N.D. Cal. Feb. 14, 2006), Dkt. 473 at 7; <i>Jones v. Gusman</i>, 2:12-cv-00859, Stipulated Order for Appointment of Independent Jail Compliance Director (E.D. La. June 21, 2016), Dkt. 1082 at 3. We revised the language to be consistent with Section IX.A as we understand it. Again, we strongly oppose tying termination of authority to benchmarks rather than Contempt Provisions for the reasons we describe above. We think the Contempt Provisions represent an incentive for incremental return of authority to Defendants, and in fact is the only practical manner in which such incremental return can happen without compromising the effectiveness and sustainability of the Remediation Manager’s work. We oppose Defendants’ proposal for the reasons we articulated in our comments on § III, ¶¶ B and C: that in our view one reporting period of Substantial Compliance is insufficient to demonstrate sustained Substantial Compliance, that benchmarks should not trigger transition planning or termination of the Remediation Manager’s authority, and that setting an arbitrary 30-day period to terminate authority or implement a transition plan is unworkable and contrary to goals of sustainable reform. We oppose the Monitor’s proposal for similar reasons. We agree that a judicial finding should be necessary before the Remediation Manager’s authority terminates (as our proposed revisions to § III, ¶ B reflect), but think it critically important that the Court conduct that evaluation after sustained compliance is demonstrated by three findings, over three successive Monitoring Periods, of Substantial Compliance. One Monitor finding of Substantial Compliance is, in our view, a premature basis to trigger a judicial evaluation given the record of backsliding in this case. Of course we agree with the Monitor that it is Defendants, not the Remediation Manager, who must sustain compliance—but the goal of the transition planning period and the requirement of a showing of sustained compliance before transitioning authority back to Defendants is to ensure that there is a solid foundation of compliance that will at last allow for sustainable change. We do not think the fact that the Contempt Provision “will remain” after the Remediation Manager’s departure, with attendant monitoring, is sufficient to address this concern. Indeed, the reason a Remediation Manager is being appointed is because the existence of court orders that were independently monitored for nearly a decade has been an insufficient remedy for the constitutional violations in this case. Finally, the Monitor’s proposal that the Court enter the Transition Plan as a Court order is premature and potentially unworkable. We expect transition plans to have extensive operational detail that may not be appropriate for a Court order (or may not meet the applicable PLRA standards for injunctive relief), and the proposal would also add another layer of Court orders in this matter. The Court can address the Transition Plan as it sees appropriate when those circumstances arise.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § III Assessment of Compliance & Transition Back to DOC Control		<u>The Court shall routinely assess the progress of the Remediation Action Plan following the issuance of the Monitor’s Report. At a minimum, after every Reporting Period, the Court shall determine, after an opportunity to be heard by the parties, whether the Remediation Action Plan has resulted in: (a) substantial and demonstrable progress in achieving Substantial Compliance with the Contempt Provisions or achievement of the Benchmarks; (b) whether such efforts have resulted in a substantial reduction in the risk of harm currently facing incarcerated individuals and DOC staff; and (c) whether Substantial Compliance with the Contempt Provisions or</u>		

		<u>achievement of the Benchmarks, or other factors, warrants a reduction in the authority of the Nunez Remediation Manager.</u>		
Summary of Objections/Proposals: Defendants propose language that is opposed by Plaintiffs’SDNY. To the extent that the Court determines an assessment like the one proposed by Defendants should be adopted, the Monitor has proposed some considerations for the Court in the explanation below. Monitoring Team’s Explanation: The Monitoring Team appreciates the overall goal stated by the Court, and emphasized by Defendants, that return to local control should occur as quickly as possible. To that end, the Court has devised the inclusion of benchmarks in consideration of termination of the RM’s authority to find incremental ways to return power to local control. As to Defendants’ proposal, should the Court believe a broader consideration for reduction of the RM’s authority is necessary, the Court may want to consider the recent Hinds County Order. In the Hinds Order, the Court ruled that, “Each year, the Receiver shall schedule a formal assessment with the Court, during which the Court will regularly assess progress under the Receivership and determine whether the Receiver’s duties should be modified or eliminated.” <i>See U.S. v. Hinds Cnty., et al.</i>, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2, § V. If the Court were to adopt such an approach in this case, the Court could consider if a similar type of assessment would be appropriate following the filing of the Monitor’s Reports or after a certain number of Monitor’s Reports (note, in Hinds County there will be no Monitor Reports during the duration of the receivership). Defendants’ Position: Defendants believe that the Court should re-evaluate the RM’s authority after any finding of improved compliance by the Monitor. To presume otherwise would allow the RM’s authority to continue past the time that it is necessary to remedy an ongoing constitutional violation, in violation of the PRLA. Even if one or two Courts have disregarded this requirement without consideration of the legal implications under the PLRA, that does not provide any significant authority that the practice could withstand legal scrutiny. <i>See</i> Def. Supp. Objs. at 5-6. Plaintiffs’/SDNY’s Position: We strongly oppose. We fully expect that the Court will evaluate the information received from the Remediation Manager and the Monitoring Team to assess the effectiveness of all entities in the case. We oppose, however, the proposed addition of this provision, because we do not think it necessary for the Court to make the findings therein described, and think it inadvisable to introduce another process regarding the RAP that will not result in any apparent change. The Court’s findings about Substantial Compliance – that trigger a transfer of authority back to Defendants, by contrast -- have clear utility. Additionally, there is already a built-in opportunity for the Court to assess whether progress is being made, in the Monitor’s reports. The Court is always, of course, free to take whatever action is appropriate in response to the information the Court is receiving—but requiring the Court to make intermittent findings is unnecessary and burdensome. Defendants’ proposed additional language will essentially require the Court to conduct a full hearing and make findings with respect to the 18 Contempt Provisions and progress under the RAP after each six-month Reporting Period.				

Section IV: Powers of the Nunez Remediation Manager

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV Powers of the <u>Nunez</u> Remediation Manager	Powers of the <u>Nunez</u> Remediation Manager. The <u>Nunez</u> Remediation Manager shall have all powers necessary to achieve Substantial Compliance with the Contempt Provisions, including but not limited to:		Powers of the <u>Nunez</u> Remediation Manager. <u>Beginning on the Acceptance Effective Date,</u> the <u>Nunez</u> Remediation Manager shall have all powers necessary to achieve Substantial Compliance with the Contempt Provisions, including but not limited to:	Powers of the <u>Nunez</u> Remediation Manager. The <u>Nunez</u> Remediation Manager shall have ~~all the following~~ powers ~~necessary to achieve Substantial Compliance with the Contempt Provisions, including~~ <u>but not limited to:</u>
Summary of Objections/Proposals: There are two different proposals. Plaintiffs’/SDNY proposal is opposed by Defendants. The Defendants agree with the Monitoring Team’s proposal, but it is opposed by Plaintiffs’/SDNY. Monitoring Team’s Explanation: The Monitor’s recommended language was intended to streamline this section. The following provisions regarding General and Specific Powers both explain the powers are imposed because they are necessary to achieve Substantial Compliance. This provision appears to also potentially raise some ambiguity and inconsistency with the Court’s explanation in the May 13th Order (and provisions of this order) that it has placed certain limits on the authority of the RM and so “all” and “including but not limited to” did not appear consistent with the Court’s ruling. For example, the Court explains the RM has the same authority as the Commissioner, but not that beyond that of the Commissioner without seeking and receiving approval from the Court for additional powers. Another example in the Court’s May 13th Order explains “<i>the Nunez Remediation Manager will not be empowered to unilaterally cancel or execute collective bargaining agreements, but will have the authority of the Commissioner in determining the DOC’s needs and positions with respect to contract provisions relevant to remediation of the Contempt Provisions. This grant of power to the Remediation Manager is thus narrowly drawn, extends no further than necessary to correct the violation of the Contempt Provisions, and is the least intrusive means necessary to correct the violation of the Contempt Provisions as required by the PLRA.</i>” The proposed revisions are made to be consistent with the provision that permits the RM to seek additional power from the Court if it believes it is necessary to achieve Substantial Compliance, but the RM does not have an automatic grant of authority to have additional power beyond what is enumerated in the Order. Accordingly, it does not appear accurate for the Order to state that the RM has <i>all</i> powers necessary to achieve Substantial Compliance, when the Court has explained that the grant of power is narrowly drawn and extends no further than necessary. With respect to Plaintiffs’/SDNY proposal, to the extent it is adopted by the Court and the Court also adopts the recommendation of the Monitor regarding acceptance date/start date (which is addressed Section XI of this order), we recommend the Court ensure that the clause about the Effective Date is reconciled with when the RM’s authority may be initiated. We cross reference that here given Plaintiffs’/SDNY proposal. Defendants’ Position: Defendants agree with the Monitor’s proposal and <i>See</i> Defs, Objs. SECTION IV: Powers of the Remediation Manager on pgs. 6-8. This provision is intended to make more clear the Court’s stated intention that the “powers granted to the Nunez Remediation Manger” will not be “limited during the time period that the Remediation Action Plan is being developed.” In other words, the Remediation Manager’s authority begins on his first day on the job, not after the Remediation Action Plan is approved by the Court. This does not conflict with setting the “Acceptance Effective Date” for the date the RM actually begins work, rather than the date he indicates to the Court that he intends to take the position. The RM can file his formal acceptance of the position on the docket on the day he actually starts the job. Therefore, this provision does not conflict with the Monitor’s concern raised in the comment of 8/18/25. Plaintiffs/SDNY Positions: We propose adding “Beginning on the Acceptance Effective Date” to the beginning of this provision to make clear that the Remediation Manager’s authority commences at the time they begin the role, in accordance with the Court’s May 13 Order. See Dkt. 846 at 44 (“To be clear, the responsibilities and authority of the Nunez Remediation Manager shall not be constrained by the particular stages of the Remediation Action Plan, nor are the powers granted to the Nunez Remediation Manager limited during the time period in which the Remediation Action Plan is being developed. Instead, the Remediation Manger shall at all times possess all of the necessary authority and responsibility to address non-compliance with the Contempt Provisions”). This clarification eliminates any doubt that the Remediation Manager has full authority from day one to respond to the current crisis, within the scope of this Order, and need not await further, likely protracted, negotiation and satellite litigation before getting to work. We object to the Monitor’s proposal and think the Court’s construction was clear, appropriate and should be maintained. We disagree with the Monitor’s legal argument that the Court’s original language offends the needs/narrowness/intrusiveness constraints of the PLRA. For the Court to grant all authority <i>necessary</i> to achieve compliance with the Contempt Provisions, and then to provide a non-exhaustive list of specific powers that reflect that authority, is entirely consistent with the PLRA. This construction is also consistent with grants of authority in other receivership orders. <i>See Plata</i> Receivership Order at 3; <i>Doe v. Cook County</i> Transitional Administrator Order at 4. We do not think the provision is reasonably read to confer unlimited powers, as the powers are already constrained throughout the Order. By contrast, the Monitor’s proposal will invite satellite litigation over whether actions fall within the specific grants of authority, which will slow the reform effort.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, A Powers of the <u>Nunez</u> Remediation Manager	General Powers: The <u>Nunez</u> Remediation Manager shall have the authority to exercise all powers vested by law in the Commissioner to the extent necessary to achieve compliance with the Contempt Provisions. The <u>Nunez</u> Remediation Manager shall have such powers to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contracting, legal, and other operational functions of the DOC to the extent necessary to achieve compliance with the Contempt Provisions.	General Powers: The <u>Nunez</u> Remediation Manager shall have the authority to exercise all powers vested by law in the Commissioner to the extent necessary to achieve ~~compliance~~ <u>Substantial Compliance</u> with the Contempt Provisions. The <u>Nunez</u> Remediation Manager shall have such powers <u>of the Commissioner</u> to control, oversee, supervise, and direct all administrative, personnel, ~~financial, accounting, contracting, legal,~~ and other operational functions of the DOC to the extent necessary to achieve compliance with the Contempt Provisions. <u>Notwithstanding any other provision of this Order, such powers as are granted to the Nunez Remediation Manager by this Order shall be limited by the laws, rules and regulations of the City and State of New York, and the</u>		General Powers: The <u>Nunez</u> Remediation Manager shall have the authority to exercise all powers vested by law in the Commissioner to the extent necessary to achieve <u>Substantial e</u> Compliance with the Contempt Provisions. The <u>Nunez</u> Remediation Manager shall have such powers to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contracting, legal, and other operational functions of the DOC to the extent necessary to achieve compliance with the Contempt Provisions.

		<u>contracts and Collective Bargaining Agreements to which the City is a party, to the same extent as the authority of the Commissioner is so limited. The mention of a power or authority in this Order does not imply that the power or authority is necessarily available to the Commissioner or the Nunez Remediation Manager if it is not otherwise available to the Commissioner under state or local law.</u>		
Summary of Objections/Proposals: The Plaintiffs’/SDNY oppose the proposal from Defendants. Plaintiffs’/SDNY contend the language should remain as originally drafted. The Monitoring Team takes no position except to recommend the use of Substantial Compliance in this provision. Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the Parties with respect to this revision except to recommend the use of Substantial Compliance in this provision. Defendants’ Position: <i>See</i> Defs. Objs., SECTION IV: Powers of the Remediation Manager on pgs. 6-8 and Defs. Supp. Objs. at at 7-9. This umbrella limitation is intended to govern each and every power of the RM that is provided for in the Order. Plaintiffs’/SDNY’s Position: Regarding Defendants’ second proposed change (the addition of “of the Commissioner”), we oppose this revision because we think it unnecessary, as the section already makes clear that the Remediation Manager has the powers vested by law in the Commissioner. Should the Court think adding “of the Commissioner” is necessary, we do not object. We oppose the Defendants’ next change (deleting “financial, accounting, contracting, and legal”). As the organization chart provided by Defendants makes clear, the Commissioner does carry some authority in financial, accounting, contracting, and legal matters, and the Remediation Manger should carry that same level of authority. Finally, we oppose Defendants’ addition of the final two sentences as they are unnecessary. Orders are construed consistent with existing law. As to the Monitor’s and Defendants’ proposed change of “compliance” to “Substantial Compliance,” we do not think the change is necessary, but do not object should the Court prefer that construction.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, B Powers of the <u>Nunez</u> Remediation Manager	Specific Powers: Without in any way limiting the <u>Nunez</u> Remediation Manager’s general powers detailed in Paragraph A above, the <u>Nunez</u> Remediation Manager shall have the authority to exercise the following specific powers to the extent necessary to achieve compliance with the Contempt Provisions, and to the extent vested by law in the Commissioner:	Specific Powers: Without in any way limiting the <u>Nunez</u> Remediation Manager’s general powers detailed in Paragraph A above, the <u>Nunez</u> Remediation Manager shall have the authority to exercise the following specific powers, <u>solely</u> to the extent <u>that they: (i) are</u> necessary to achieve compliance with the Contempt Provisions, ~~and to the extent~~ <u>(ii) are</u> vested by <u>City and state</u> law in the Commissioner.		Specific Powers: Without in any way limiting the <u>Nunez</u> Remediation Manager’s general powers detailed in Paragraph A above, the <u>Nunez</u> Remediation Manager shall have the authority to exercise the following specific powers to the extent <u>that they: (a) are</u> necessary to achieve compliance with the Contempt Provisions, and ~~to the extent~~ <u>(b) are</u> vested by <u>City and State</u> law in the Commissioner:
Summary of Objections/Proposals: Defendants proposal is opposed by Plaintiffs/SDNY. Plaintiffs/SDNY propose the language remain as is. The Monitoring Team consents to Defendants’ proposal except for the use of the word “solely” of which the Monitoring Team takes no position. Monitoring Team’s Explanation: The Monitoring Team takes no position on “solely”, but consents to the additional text proposed by Defendants as we believe it brings necessary clarity to the provision. Defendants’ Position: <i>See</i> Defs. Obs., SECTION IV: Powers of the Remediation Manager on pgs. 6-8 and Defs. Supp. Objs. at7-9. Plaintiffs’/SDNY Position: We oppose. This language is unnecessary and the Court’s original language was clear.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, B, i Powers of the <u>Nunez</u> Remediation Manager	The <u>Nunez</u> Remediation Manager shall have the authority to enact or change DOC policies, procedures, protocols, systems, and practices implicated by the Court’s contempt findings.			The <u>Nunez</u> Remediation Manager shall have the authority to enact or change DOC policies, procedures, protocols, systems, and practices ~~implicated by the Court’s contempt findings.~~
Summary of Objections/Proposals: There is consent/no objection by the Parties and Monitoring Team to the removal of this text. Monitoring Team’s Explanation: We propose the deletion of this clause because the overarching paragraph explains the limitations on the RM’s power. The addition of “implicated” suggests that there is an additional standard beyond what is necessary. Further, it is unknown what is meant by “the Court’s contempt findings.”				

Defendants’ Position: Defendants agree.
Plaintiffs’/SDNY’s Position: We do not object to the Monitor’s recommendations.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, B, ii Powers of the <u>Nunez</u> Remediation Manager	The <u>Nunez</u> Remediation Manager shall have the authority to establish personnel policies and direct personnel actions. The <u>Nunez</u> Remediation Manager shall have the power to create, modify, abolish, or transfer employee and contractor positions, as well as to recruit, hire, train, terminate, promote, demote, transfer, and evaluate employees and contractors. The <u>Nunez</u> Remediation Manager shall have the authority to assign and deploy DOC staff.	The <u>Nunez</u> Remediation Manager shall have the authority to establish personnel policies and direct personnel actions. The <u>Nunez</u> Remediation Manager shall have the power to create, modify, abolish, or transfer employee and contractor positions, as well as to recruit, hire, train, terminate, promote, demote, transfer, and evaluate employees and contractors. The <u>Nunez</u> Remediation Manager shall have the authority to assign and deploy DOC staff <u>as necessary to implement the Remediation Action Plan.</u>		

Summary of Objections/Proposals: First, Defendants proposal this language is its own paragraph (versus maintaining it in the one above) and also add the additional clause as proposed by Defendants. Plaintiffs’/SDNY oppose both changes. The Monitoring Team takes no position.
Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the Parties with respect to this revision.
Defendants’ Position: <i>See</i> Defs. Objs., SECTION IV: Powers of the Remediation Manager on pgs. 6-8; Defs. Supp. Objs. at 7-9. Adding this limitation helps avoid ambiguity about whether a particular personnel action is necessary to achieve Substantial Compliance with a Contempt Provision, by requiring that it be related to a specific element of the RAP.
Plaintiffs’/SDNY’s Position: We oppose. We do not understand why “the authority to assign and deploy DOC staff” should be in a separate clause. In our view, putting that sentence into its own paragraph introduces confusion because the first two sentences remain linked and the last is offset into its own provision—a construction that implies that “the power to create, modify, abolish, or transfer employee and contractor positions, as well as to recruit, hire, train, terminate, promote, demote, transfer, and evaluate employees and contractors” is a personnel policy or personnel action, whereas “the authority to assign and deploy DOC staff” is not. In our view that is confusing and frankly incorrect. We think the Court’s original construction was the right one.
We disagree with adding the clause “as necessary to implement the Remediation Action Plan” because the scope of the Remediation Manager’s specific powers is already properly defined as “to the extent necessary to achieve compliance with the Contempt Provisions” at the beginning of Section IV.B, and that scope should not be changed with regard to this specific power or any power.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, B, iii Powers of the <u>Nunez</u> Remediation Manager	The <u>Nunez</u> Remediation Manager shall have the authority to determine the DOC’s needs and positions with respect to contract provisions relevant to remediation of the Contempt Provisions.	The <u>Nunez</u> Remediation Manager shall have the authority to determine the DOC’s needs ~~and positions~~ with respect to contract provisions ~~relevant to remediation of the Contempt Provisions.~~		

Summary of Objections/Proposals: Defendants’ proposal is opposed by Plaintiffs’/SDNY. The Monitoring Team takes no position.
Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the Parties with respect to this revision.
Defendants’ Position: <i>See</i> Defs. Objs., SECTION IV: Powers of the Remediation Manager on pgs. 6-8; Defs, Supp. Objs. at 7-8.
Plaintiffs’/SDNY’s Position: We oppose. The Remediation Manager should have the ability to determine the agency’s position with respect to particular contractual provisions that relate to their powers, which could include the DOC’s recommendation/views on whether a particular contractual provision needs to be modified or renegotiated to achieve compliance.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, B, iv Powers of the <u>Nunez</u> Remediation Manager	The <u>Nunez</u> Remediation Manager shall have the authority to procure and contract for supplies, equipment, tangible goods, and services.			

No proposed revisions or objections.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, B, v Powers of the <u>Nunez</u> Remediation Manager	The <u>Nunez</u> Remediation Manager shall have the authority to review, investigate, and take disciplinary or other corrective or remedial actions with respect to any violation of DOC policies, procedures, and protocols implicated by the Court's contempt findings.			The <u>Nunez</u> Remediation Manager shall have the authority to review, investigate, and take disciplinary or other corrective or remedial actions with respect to any violation of DOC policies, procedures, and protocols ~~implicated by the Court's contempt findings.~~
Summary of Objections/Proposals: There is consent/no objection by the Parties and Monitoring Team to the removal of this text. Monitoring Team's Explanation: We propose the deletion of this clause because the overarching paragraph explains the limitations on the RM's power. The addition of "implicated" suggests that there is an additional standard beyond what is necessary. Further, it is unknown what is meant by "the Court's contempt findings." Defendants' Position: Defendants agree. Plaintiffs'/SDNY's Position: We do not object to the Monitor's recommendations.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, B, vii Powers of the <u>Nunez</u> Remediation Manager	In exercising the powers conferred by this Order, the <u>Nunez</u> Remediation Manager shall use reasonable best efforts to consult and work collaboratively with the Commissioner.			
No proposed revisions or objections.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, B, viii Powers of the <u>Nunez</u> Remediation Manager	The <u>Nunez</u> Remediation Manager shall have the authority to delegate any of these powers to the Commissioner and to retract or constrict such delegations as the <u>Nunez</u> Remediation Manager, in the <u>Nunez</u> Remediation Manager's discretion, deems necessary.			
No proposed revisions or objections.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, C Powers of the <u>Nunez</u> Remediation Manager	Commissioner's Role: The Commissioner shall retain all of Commissioner's authority in areas not implicated by the Contempt Provisions. The Commissioner and the <u>Nunez</u> Remediation Manager are urged and expected to work collaboratively in aid of the goals of compliance with the Nunez Orders and the safe, sustainable management of the jails. The <u>Nunez</u> Remediation Manager shall have the authority to direct the Commissioner to take any steps that the <u>Nunez</u> Remediation Manager deems necessary to comply with the requirements of the Contempt Provisions. It is			Commissioner's Role: [Two proposals for the first sentence] Defendants' Proposal: The Commissioner shall retain all of Commissioner's authority ~~in areas not implicated by~~ under the supervision and direction of the Nunez Remediation Manger, to the extent such supervision and direction is necessary to implement the Remediation Action

	expected that Defendants, and the Commissioner and DOC leadership, will work closely with the <u>Nunez</u> Remediation Manager to facilitate the <u>Nunez</u> Remediation Manager’s ability to perform their duties under this Order.			Plan or otherwise to achieve compliance with the Contempt Provisions. Plaintiffs’ Proposal: The Commissioner shall retain exclusive ~~all of Commissioner’s~~ authority in areas that do not fall within implicated by the Contempt Provisions.] The Commissioner and the <u>Nunez</u> Remediation Manager are urged and expected to work collaboratively in aid of the goals of compliance with the Nunez Orders and the safe, sustainable management of the jails. The <u>Nunez</u> Remediation Manager shall have the authority to direct the Commissioner to take any steps that the <u>Nunez</u> Remediation Manager deems necessary to comply with the requirements of the Contempt Provisions. It is expected that Defendants, and the Commissioner and DOC leadership, will work closely with the <u>Nunez</u> Remediation Manager to facilitate the <u>Nunez</u> Remediation Manager’s ability to perform their duties under this Order. <u>Nothing in this Order shall authorize the Nunez Remediation Manager to take any employment action with respect to the Commissioner.</u>
Summary of Objections/Proposals: There are two different proposals from the Defendants and Plaintiffs’/SDNY with respect to the first sentence of the provision. The Monitor takes no position on the different proposals, but notes it advised the parties the original construction of the language was confusing and so we recommended that revisions to this first sentence appeared necessary. There is consent/no objection by the Parties and Monitoring Team with respect to the inclusion of the last sentence of the provision. Monitoring Team’s Explanation: The Monitoring Team advised the Parties that the original language was confusing and so revisions were necessary. The Monitoring Team defers to the Court and the Parties with respect to the proposals. Defendants’ Position: The Commissioner must retain operational authority except subject to the RM’s supervision and direction in those areas relating to the Contempt Provisions. The Commissioner should not be excluded from exercising authority in overlapping areas, even if the RM may have superior authority in some respects in that area. Defs. Maintain their objection to this language because the Commissioner must maintain authority to operate DOC so long as her actions are consistent with the RM’s lawful directions. If the Commissioner has no authority with respect to anything affecting Contempt Provision compliance, then the Commissioner would have unclear operational authority in virtually any operational context. Rather the Commissioner should retain authority, subject to supervision and direction by the RM in areas within the RM’s lawful purview. That is as workable as the relationship between the First Deputy Commissioner and the Commissioner, except for the ambiguous nature of the RM’s authority which remains under any scenario other than Defendants’ Compliance Director proposal. <i>See</i> also Defs. Objs., SECTION IV: Powers of the Remediation Manager on pgs. 6-8. Plaintiffs’/SDNY’s Position: We strongly oppose Defendants’ proposal. First, the Remediation Action Plan should not be included in defining the Remediation Manager's role nor the Commissioner's role. Not only are the contents of the RAP currently unknown, but this Order clearly defines the Remediation Manager's authority and powers, and conflating the RAP with those powers is incorrect. Moreover, this language appears to introduce another standard to define the Remediation Manager’s authority: "to the extent such supervision and direction is necessary to...achieve compliance with the Contempt Provisions." This is confusing and unnecessary. We remain of the view that our construction is most appropriate. Further, we note that we think Defendants’ comments misapprehend the nature of a Remediation Manager remedy, and seek to neutralize it. The Commissioner cannot retain her authority in areas within the scope of the Remediation Manager, nor work only at the Remediation Manager’s “lawful directions.” Rather, the Remediation Manager must have full authority in those areas. We fully expect that the Remediation Manager will delegate to the Commissioner the authority to continue taking action in many areas, as the Court’s order already provides in § IV, ¶ B(viii). But acting pursuant to a delegation is not the equivalent of the Commissioner retaining authority. It is our understanding that this provision was included to make clear that the Commissioner will continue to have exclusive authority in operational areas that do not relate to the Contempt Provisions; our proposed edits are intended to make this more clear. We agree to the change regarding employment actions against the Commissioner.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, D Powers of the <u>Nunez</u> Remediation Manager	Additional Powers: The <u>Nunez</u> Remediation Manager may, after consultation with the Commissioner and the Monitoring Team, petition the Court on notice to the parties and the Monitoring Team for such additional powers as are necessary to achieve compliance with the Contempt Provisions consistent with Section II.			Additional Powers: The <u>Nunez</u> Remediation Manager may, after consultation with the Commissioner, ~~and~~ the Monitoring Team, ~~and the parties,~~ petition the Court on notice to the parties and the Monitoring Team for such additional powers as are necessary to achieve compliance with the

				Contempt Provisions consistent with Section II. [Plaintiffs propose that “consistent with Section II” is removed] [Monitor’s Proposal: <u>The Remediation Manager shall provide the position (which may include a request to be heard) of the parties and the Monitoring Team in any application to the Court.</u>] [Defendants’ Proposal: <u>The parties and the Monitoring Team shall have at least 20 business days to respond to any petition for additional powers by the Remediation Manager.</u>]
Summary of Objections/Proposals: The changes to the first sentence regarding the addition of the parties are on consent/no objection. Plaintiffs propose the clause “consistent with Section II” is removed. Defendants oppose the removal and the Monitoring Team takes no position. As for the last sentence, there are two different proposals for the last sentence. With respect to the last sentence, Plaintiffs’/SDNY do not object to the proposal by the Monitor. The Monitor and Plaintiffs’/SDNY object to Defendants’ proposal. On a formatting note, the Monitoring Team has proposed that the Additional Powers section has two subsections – this paragraph and the next one. However, as noted below, Plaintiffs object to the second paragraph in this provision. Monitoring Team’s Explanation: The Monitoring Team recommends consultation with the Parties occurs as part of this process. We take no position on the removal of “consistent with Section II.” We recommend adding the final sentence because it reflects the current practice in this case in which an application should reflect the positions of the Parties. We think the RM would benefit from having the Parties’ guidance on what to include in the application and that the Court would benefit from knowing the position of the Parties and the Monitoring Team when the application is submitted. Given the variety of processes in this case, we think affirmatively stating the information that should be included in the application is helpful. We appreciate that the position of a party may be that they oppose the application or otherwise wish to have an opportunity to be heard by the Court, which is why we explain that the position could be that they wish to be heard. However, with respect to the Defendants’ proposal, we think presumptively setting a schedule for responses to the application assumes that the Parties will inherently disagree and briefing will be necessary. For instance, the application could be made on consent of all parties and the Monitoring Team. Given the type of request and the position of the parties is not yet known, presumptively setting a briefing schedule does not seem necessary or appropriate and, in fact, may invite litigation when it may not be needed and there is consensus amongst all parties and the Monitoring Team. Defendants’ Position: Defendants do not object to the recommendations of the Monitor in the first sentence. With respect to the final sentence, Defendants object to the proposed last sentence by the Monitor and instead prefer its construction as outlined in the Defendants’ objections. <i>See</i> Def. Obs., SECTION IV: Powers of the Remediation Manager on pgs. 6-8; Defs. Supp. Objs. at 7 n. 6. Plaintiffs’/SDNY’s Position: We consent to the Monitor’s revisions. The Court has provided the parties the opportunity to propose modifications to the Court’s Proposed Order Appointing Nunez Remediation Manager; similarly, in Section II, ¶ A(i) of the proposed Order, the Court outlines a process by which the Remediation Manager is required to solicit and consider comment from the parties on the draft Remediation Action Plan. In line with this critical practice of consultation with the parties, the <i>Nunez</i> Remediation Manager should be required to consult with the parties (not just the Commissioner and the Monitoring Team) before seeking to modify the scope of their powers under the Order. We do not think the last sentence added by the Monitor (requiring the Remediation Manager to provide the positions of the parties in any application to the Court) is necessary, but if the Court thinks it helpful we do not oppose it. We oppose Defendants’ proposal to add the last sentence. We agree with the Monitor that this Order need not predetermine a briefing schedule about an unknown issue of unknown complexity. Finally, we suggest omitting “consistent with Section II” from this provision, because we found the reference to Section II to be confusing. This provision deals specifically with applications to the Court for additional powers of the Remediation Manager, while Section II governs the development and implementation of the Remediation Action Plan, which does not define the scope of the Remediation Manager’s powers. We therefore recommend removing the reference to Section II.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § IV [Previously in § XI, B Other Terms]	The <u>Nunez</u> Remediation Manager shall make reasonable efforts to exercise their authority in a manner consistent with applicable state and local laws, regulations, and contracts. However, in the event the <u>Nunez</u> Remediation Manager determines that those laws, regulations, or contracts impede the <u>Nunez</u> Remediation Manager from carrying out their duties under this Order and achieving compliance with the Contempt Provisions, the <u>Nunez</u> Remediation Manager may petition the Court to waive any legal or contractual requirement that is causing the impediment or seek other appropriate relief on notice to the parties and the Monitoring Team.			The <u>Nunez</u> Remediation Manager shall make reasonable efforts to exercise their authority in a manner consistent with applicable state and local laws, regulations, and contracts. However, in the event the <u>Nunez</u> Remediation Manager determines that those laws, regulations, or contracts impede the <u>Nunez</u> Remediation Manager from carrying out their duties under this Order and achieving compliance with the Contempt Provisions, the <u>Nunez</u> Remediation Manager may ~~after consultation with the Commissioner and the Monitoring Team, and the parties,~~ petition the Court <u>on notice to the parties and the Monitoring Team,</u> to waive any legal or contractual requirement that is causing the impediment or seek other appropriate relief on notice to the parties and the Monitoring Team. [Monitor’s Proposal: <u>The Nunez Remediation Manager shall provide the position (which may</u>

				<u>include a request to be heard) of the parties and the Monitoring Team in any application to the Court.]</u> [Defendants’ Proposal: <u>The parties and the Monitoring Team shall have at least 20 business days to respond to any petition for additional powers by the Remediation Manager.</u>]
Summary of Objections/Proposals: The Monitoring Team proposes moving this paragraph from the Other Terms section which Defendants agree to, but is opposed by Plaintiffs. As for the substantive changes to the text, the proposed language at the end of the sentence “However” is on consent/no objection. As for the proposal at the end of the paragraph, the Monitoring Team proposes one construction which Plaintiffs explain is not necessary. The Monitoring Team and the Plaintiffs’/SDNY oppose the Defendants’ proposal. Monitoring Team’s Explanation: First, the Monitoring Team recommends this provision about the obligations of the RM’s authority as well as potential application for additional power makes most sense in this section versus in the other terms section of this Order. The Monitoring Team recommends consultation with the Commissioner, the Monitoring Team, and the Parties as part of this process, which is required for the additional powers provision (above) and we think this same consultation is useful in this context as well. We added the final sentence because it reflects the current practice in this case in which an application should reflect the positions of the Parties. We think the RM would benefit from having guidance from the Commissioner, Monitoring Team, and Parties on what to include in the application and that the Court would benefit from knowing the position of the Parties and the Monitoring Team when the application is submitted. Given the variety of processes in this case, we think affirmatively stating the information that should be included in the application is helpful. We appreciate that the position of a party may be that they wish to have an opportunity to be heard by the Court which is why we explain that the position could be that they wish to be heard. However, with respect to the Defendants’ proposal, we think presumptively setting a schedule for responses to the application assumes that the application will be opposed and briefing is necessary. Given the type of request and the position of the parties is not yet known, presumptively setting a briefing schedule does not seem necessary or appropriate and, in fact, may invite litigation when it may not be needed and there is consensus amongst all parties and the Monitoring Team. Defendants’ Position: Defendants do not object to moving this provision or the additional text that appears before the bracketed text of “Monitor’s Proposal.” Defendants object to the text in the Monitor’s Proposal bracket and ask the Court include the text proposed by Defendants. Defendants believe that any contested application for an order to preempt local or state law must be fully litigated under the PLRA and constitutional standards, and 20 business days is the minimum time necessary to respond to such a weighty application. There should be no suggestion that an Order superseding state or local sovereignty could be issued without a full and fair opportunity to be heard. Plaintiffs’/SDNY’s Position: We oppose moving this provision from “Other Terms.” We think the Court was correct to position this provision here, rather than in Section IV, because an application to the Court for waiver of a state or local law is not a “power.” Section IV deals generally with the Remediation Manager’s operational authorities, which is different. We think this should remain in “Other Terms” as its own paragraph. We agree with the Monitor’s revisions to the second sentence regarding consultation with the Monitor, the Commissioner, and the parties, as well as the notice requirements. Again, we do not think it necessary for this Order to require the Remediation Manager to provide the parties’ positions in applications to the Court, but if the Court thinks such a requirement would be helpful, we do not oppose it. We oppose Defendants’ proposal to include a predetermined briefing schedule for an unknown issue of unknown complexity, and agree with the Monitor’s view.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, B, vi Powers of the <u>Nunez</u> Remediation Manager	The <u>Nunez</u> Remediation Manager shall have the authority to hire consultants, or obtain technical assistance, as the <u>Nunez</u> Remediation Manager deems necessary to perform their duties under this Order.			Authority to Hire Staff and Consultants: The <u>Nunez</u> Remediation Manager shall have the authority to [Defendants’ proposal: <u>request the Court’s permission to</u>] hire additional <u>qualified staff</u>, consultants, or obtain technical assistance. [Defendants’ proposal: <u>for the Remediation Manager Team (as defined below)</u>] <u>as is reasonably necessary to fulfill the Nunez Remediation Manager duties under this Order without duplication of effort, as the Nunez Remediation Manager deems necessary to perform their duties under this Order. The Nunez Remediation Manager shall reasonably utilize the Department assets and resources it already possesses. The Nunez Remediation Manager shall take all necessary steps to minimize redundancy and the creation of additional bureaucracy with the goal of creating systems that support the sustainable transition back to the Defendants’ control.</u>

Summary of Objections/Proposals: The provision has been moved to its own section on consent/no objection by the Parties and Monitoring Team. With respect to the changes to the text in the provision, the Monitoring Team has proposed revisions. Defendants agree to the Monitor’s changes and have two additional changes on top of the Monitor’s proposal that are highlighted in yellow. The Monitoring Team takes no position on the Defendants’ additions to the Monitor’s proposal. The entirety of the Monitoring Team’s proposal is opposed by Plaintiffs’/SDNY.

Monitoring Team’s Explanation: First, these revisions were made to reconcile the inconsistency between this provision and § VIII, A (which states “The Nunez Remediation Manager may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort.”). The requirement in § VIII, A is similar, but slightly different to the one in this provision. We think the Order should be clear in this respect and that two separate provisions in different parts of the Order are confusing and create unnecessary ambiguity. Second, the additional language was included to address the Court’s five enumerated goals for this Order as stated in the Court’s May 13, 2025 Order at pg. 19. As the Court explained in its May 13, 2025 Order, the Order itself must be constructed in a manner to advance the very goals of the Remediation Manager. As drafted, the Order does not currently include any provisions that require the RM to limit additional bureaucracy and, in fact, the only potential check on the development of the RM Team is for Defendants to object to fees. In the Monitoring Team’s view, that does not adequately reinforce the Court’s stated goals for the RM and the RM Team to support achieving Substantial Compliance in a quick and sustainable manner. The Monitoring Team’s assessment of the limited number of Receiverships in the jail/prison context reinforces the need for the Order to provide such clarity.

Defendants’ Position: Defendants’ agree with the Monitor’s proposal with the addition of “to request to.” with the understanding that this paragraph is intended to refer solely to adding to the Remediation Manager Team, the Defendants additional language reflects the position that the RM should make a request to the Court to hire additional personnel, if not previously approved by the Court. That position is explained in Defendants’ submission regarding selection of the Remediation Manager and in Defendants Objections and proposed changes regarding the Remediation Manager fees and costs.

Plaintiffs’/SDNY’s Position: We object, and think the Court’s original construction was correct. We think the Monitor’s proposed language unnecessary for this Order. The Court is appointing this professional to exercise judgment about what is necessary to perform their duties, which include ensuring Defendants reach Substantial Compliance and then returning authority to Defendants in a sustainable way. This additional language is superfluous and overly prescriptive. In addition, the Order as drafted allows Defendants to object and raise with the Court any expenditures they deem unnecessary. We likewise disagree that the “only potential check on the development of the RM Team is for Defendants to object to fees.” The Remediation Manager Team’s staffing and consultant relationships will be reported publicly and to the Court by, at minimum, the Remediation Manager and the Monitor. Should Defendants or any party have concerns that the development of the Remediation Manager Team is in some way unreasonable, the parties may raise the matter with the Court. Most importantly, the Court can at any time seek clarity from or direct the Remediation Manager regarding any concerns the Court has, as they are an agent of the Court. Further, all of this superfluous language will likely only lead to litigation down the road and allow the City to challenge actions taken by the Remediation Manager and litigate issues like whether the Remediation Manager is “reasonably utiliz[ing] the Department assets and resources it already possesses.” Additional litigation will only stall the reform efforts.

For similar reasons, we also object to Defendants’ proposed additions requiring the Remediation Manager to seek permission every time they seek to hire staff, consultants, or obtain technical assistance. If Defendants are concerned about fees and expenses related to the Remediation Manager’s team, the Court’s order already provides appropriate mechanisms for them to raise those concerns in Proposed Order § VIII(A).

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IV, E Powers of the <u>Nunez</u> Remediation Manager	Access: The <u>Nunez</u> Remediation Manager, including all of their staff and consultants, shall have unlimited access to all records and files (paper or electronic) maintained by the DOC and shall have unlimited access to all DOC facilities, incarcerated people, and DOC staff. This access includes the authority to conduct confidential interviews with DOC staff and incarcerated people. The <u>Nunez</u> Remediation Manager’s ability to interview DOC staff shall be subject to the employee’s right to representation under certain circumstances as set forth in Section 75 of the New York Civil Service Law and MEO-16.			Access: The <u>Nunez</u> Remediation Manager, including all of their staff and consultants, <u>(collectively referred to as the “Remediation Manager Team”)</u> shall have unlimited access to all records and files (paper or electronic) maintained by the DOC and shall have unlimited access to all DOC facilities, incarcerated people, and DOC staff. This access includes the authority to conduct confidential interviews with DOC staff and incarcerated people. The <u>Nunez</u> -Remediation ~~Manager’s~~ <u>Manager Team’s</u> ability to interview DOC staff shall be subject to the employee’s right to representation under certain circumstances as set forth in Section 75 of the New York Civil Service Law and MEO-16. <u>Access to records should not include access to communications between and among DOC personnel and the New York City Law Department that are protected by the attorney-client or work-product privileges.</u>
Summary of Objections/Proposals: There is consent/no objection by the Parties and Monitoring Team to the proposed revisions.				
Monitoring Team’s Explanation: First, the Monitor recommends that the Remediation Manager Team is defined for clarity. This is the first reference to the RM Team which is why the definition appears here. To the extent that the other proposed changes may alter the order, we recommend the RM Team is defined the first time it is addressed in the order. Second, the final sentence is recommended based on feedback from Defendants. We understand that Plaintiffs’/SDNY do not oppose.				
Defendants’ Position: Defendants agree to this change.				
Plaintiffs’/SDNY’s Position: We consent to this revision.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § IV Powers of the <u>Nunez</u> Remediation Manager		<u>Nothing in this Order shall be construed to authorize the Nunez Remediation Manager to take any action that is beyond the remedial powers of the federal courts, or to authorize the Nunez Remediation Manager or the Court to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.</u>		
Summary of Objections/Proposals: Defendants’ proposal is opposed by Plaintiffs’/SDNY. The Monitor takes no position. Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the Parties with respect to this revision. Defendants’ Position: <i>See</i> Def. Objs. SECTION IV: Powers of the Remediation Manager on pgs. 6-8. Plaintiffs’/SDNY’s Position: We oppose. It is not necessary to insert the PLRA’s statutory language into this Order. There is nothing in this Order to suggest that Remediation Manager has the authority to build new jails or raise taxes, and the inclusion of the proposed language will only create confusion.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § IV Powers of the <u>Nunez</u> Remediation Manager		<u>Relief from Unlawful Actions of the Nunez Remediation Manager.</u> The City may seek equitable relief from the Court to the extent that it reasonably believes that the Nunez Remediation Manager has exceeded, or intends to exceed, their authority as set forth by this Order or under other federal, state or local law, or that the Nunez Remediation Manager is or intends to enact a policy or practice or take an action that is unconstitutional or is likely to cause constitutional violations. A present or former employee of the City who has been or will be harmed by termination of their employment or disciplinary action of the Nunez Remediation Manager may also seek such relief. This remedy shall not be exclusive to other remedies or relief from actions of the Nunez Remediation Manager otherwise available under federal, state or local law.		
Summary of Objections/Proposals: Defendants proposal is opposed by Plaintiffs’/SDNY. The Monitor takes no position. Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the Parties with respect to this revision. Defendants’ Position: <i>See</i> Defs. Objs., SECTION IV: Powers of the Remediation Manager on pgs. 6-8. To avoid any ambiguity about the specific sort of adverse action contemplated, limiting it to termination or disciplinary action. Plaintiffs’/SDNY’s Position: We oppose. There is no need to specify that Defendants may seek relief from this Court where appropriate. Further, this Order should not create a new (and likely unworkable) federal right of action for all present and former City employees who feel that they have been “harmed by termination of their employment or disciplinary action” by the Remediation Manager—the latter category likely involving a very large number of potential actions given the level of misconduct identified for use-of-force-related discipline by DOC and the Monitor. This language would require this Court to handle all applications for such relief brought by any City employee.				

Section V: Reporting by the Nunez Remediation Manager

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ V, A Reporting by the <u>Nunez</u> Remediation Manager	The <u>Nunez</u> Remediation Manager shall regularly report to and meet with the Court to update the Court regarding the status of efforts to comply with Contempt Provisions, and any specific obstacles or impediments encountered by the <u>Nunez</u> Remediation Manager.			
No proposed revisions or objections.				
RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ V, B Reporting by the <u>Nunez</u> Remediation Manager	Within 60 days of the date of the Acceptance Effective Date, the <u>Nunez</u> Remediation Manager shall, in consultation with the Monitoring Team, propose for the Court's approval a specific schedule for the submission of regular written reports to be filed on the public docket.		Within 60 days ~~of the date~~ of the Acceptance Effective Date, the <u>Nunez</u> Remediation Manager shall, in consultation with the Monitoring Team, propose for the Court's approval a specific schedule for the submission of regular written reports to be filed on the public docket.	<u>The Nunez Remediation Manager shall file bi-annual reports on the Court's docket ("RM Reports"). The RM reports shall include a description of the actions that the Remediation Manager Team has taken during the Reporting Period to implement the Remediation Action Plan, including achieving Substantial Compliance with the Benchmarks and Contempt Provisions.</u> <u>i. The RM Reports shall be filed in advance of the Monitor's Report with the respective compliance assessment for a particular Reporting Period. The Nunez Remediation Manager shall, in consultation with the Monitoring Team, propose for the Court's approval a specific schedule for the submission of regular written reports to be filed on the public docket.</u> <u>ii. The Nunez Remediation Manager may also file additional reports with the Court, if necessary, upon notice to the parties and the Monitor.</u> <u>~~i.iii.~~ The information contained in any report by the Nunez Remediation Manager is not an assessment of compliance pursuant to § XX, ¶ 18 of the Consent Judgment. To the extent a report by the Nunez Remediation Manager includes commentary or information with respect to status of compliance with a Benchmark or a Contempt Provision, such commentary and information are advisory and does not displace the authority of the Monitor to assess compliance under this or any other Order of this Court.</u>
Summary of Objections/Proposals: There are two different proposals. Plaintiffs/SDNY propose a revision to the text from the Court's original order. The Monitoring Team proposes a number of revisions to this provision, which the Defendants do not object, but are opposed by the Plaintiffs/SDNY.				

Monitoring Team’s Explanation: The Monitor recommends that a common understanding of what will be included in the RM reports is important to include in the Order, as it has been provided for Defendants and the Monitoring Team. With respect to the content of the reports of the RM order, it is our understanding that Defendants do not oppose. The Monitoring Team has adopted the language proposed by Plaintiffs’/SDNY with the exception that the Monitor’s configuration includes the requirement that compliance must be achieved with the Benchmarks as the Court has drafted in its order. If the Court determines that compliance with the Benchmarks is not necessary, then this language should be revised accordingly. Otherwise, the language as drafted is most appropriate.

With respect to the scheduling of reports, we believe that the concerns raised by the Plaintiffs’/SDNY are addressed with the language we proposed. The process and import of the Monitor Reports (and compliance reports) is set and the RM reports must necessarily be filed in advance of the Monitor Reports. The Monitor expects to be in routine discussion with the RM as it is with Defendants. That does not alter the need for any formal reporting to occur in *advance* of any filing of the Monitor Report. In fact, any other approach would inhibit and possibly delay determinations regarding findings of the Court. As noted by the Court, given the import of returning control of the jails back to Defendants as soon as possible, we think it is necessary the RM reports occur before the Monitor Reports and necessary latitude is provided to determine that timing.

With respect to (iv), Defendants proposed and the Monitor adopted language to clarify the distinction between reports from the RM and the Monitor. We believe such clarity benefits the process and does not cause confusion, but in fact supports clarity between roles.

Defendants’ Position: Defendants do not object to this proposal.

Plaintiffs’/SDNY’s Position: We think the Court’s original language for this provision was clear and would oppose changing it.

We object to changing the Court’s original language regarding scheduling the Remediation Manager’s Reports. The Court’s Proposed Order which has the Remediation Manager propose a schedule after consulting with the Monitor, allows the Remediation Manager as a professional to discuss with the Monitoring Team what the advisable structure should be and propose such a structure for the Court’s approval. All of these concerns can and should be aired during that process. The Court’s language in this and other provisions rightfully allows for the possibility that the Remediation Manager could have helpful thoughts about how to structure processes, and indeed should be a partner in creating them.

Regarding the language in the second sentence, we think the description of what is to be contained in the Remediation Manager reports should be clearly distinguishable from the information to be contained in the Monitor reports, given the distinct roles. If the Order here is more detailed, we suggest: “a description of the actions that the Nunez Remediation Manager has taken during the Reporting Period to implement the Remediation Action Plan, meet the benchmarks, and achieve Substantial Compliance with the Contempt Provisions.” The language the Monitor proposes indicates that the Remediation Manager is attempting to achieve Substantial Compliance with benchmarks, which, as we noted elsewhere, we think should not be rated in the same way that Contempt Provisions are.

With respect to the Monitoring Team’s legitimate concerns about having necessary information to prepare its reports, we expect the Remediation Manager and the Monitoring Team will be conferring and exchanging information on a regular basis outside of the public reporting process.

With respect to (ii), we object. The Remediation Manager may of course file reports with the Court whenever they deem it necessary and this Order need not specifically say so—indeed, the Consent Judgment has no such provision for the Monitor, and rightfully so. The Monitor and the Remediation Manager are both agents of the Court and may exercise their judgment on when a public filing outside of the reporting schedule is appropriate. Second, the Remediation Manager need not be ordered to advise the parties or the Monitor before filing a report. The Monitor is likewise under no such obligation.

With respect to (iii), we object. Again, we do not think this additional language is necessary and are concerned it will lead to confusion. We do not agree that the Remediation Manager's report is necessarily “advisory.” The Remediation Manager is tasked with running functions of an agency, and their report carries whatever weight the Court determines it does, as does the Monitor's. We understand that the Monitor may be concerned about clarity regarding who assesses compliance, but the Court's Order is already clear on that point: that the Monitor's role remains unchanged, and that the Monitor's reports assess compliance with the Contempt Provisions.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § V Reporting by the <u>Nunez</u> Remediation Manager				<u>The Remediation Manger’s Reports shall be written with due regard for the privacy interests of individuals in custody and Staff Members; federal, state, and local laws regarding the privacy of such information; and the interests of the Department in protecting against the disclosure of non-public or privileged information. Consistent with such interests and laws, the Nunez Remediation Manager shall redact individual-identifying information from the Remediation Manager’s Reports and any documents submitted with those Reports, and shall give due consideration to the Department’s requests to redact any other information. To the extent the Nunez Remediation Manager declines to make redactions requested by the Department, the Remediation Manager’s Report and any documents submitted with that report shall be submitted to the Court under seal for the Court to consider the Department’s proposed redactions before making the Remediation Manager’s Report public.</u>

Summary of Objections/Proposals: There is consent/no objection to this new provision.				
Monitoring Team’s Explanation: This language is modeled off Consent Judgment, § XX, ¶ 17 regarding the Monitor’s Reports. These are sensible considerations for public filings and should apply to the RM Reports.				
Defendants’ Position: Defendants consent.				
Plaintiffs’/SDNY’s Position: We do not oppose.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § V Reporting by the <u>Nunez</u> Remediation Manager				<u>The Remediation Manager Reports shall not be admissible against Defendants in any proceeding other than a proceeding relating to the enforcement of the Nunez Orders.</u>

Summary of Objections/Proposals: Defendants consent to the Monitor’s proposal, which is opposed by the Plaintiffs’/SDNY.				
Monitoring Team’s Explanation: This provision is consistent with Consent Judgment § XIX, ¶ 3 and § XX, ¶ 21, which preclude the admissibility of the Department’s compliance reports and the Monitor’s reports in cases outside of <i>Nunez</i> . For the same reasons the Department’s compliance report and the Monitor’s reports are not admissible in other proceedings, the same should apply to the RM’s reports. It is unclear how or why the RM reports can or should be treated differently then the other reports in this case. There are legitimate reasons the other reports in this case cannot be used in matters outside of Nunez that equally apply to the RM’s work. There does not appear to be a basis to suggest that the work of the RM, which is intended to advance compliance with the Court’s Orders, should be treated any differently from Defendants’ compliance reports in this case. We don’t disagree with Plaintiffs’/SDNY that the RM and Monitor serve different functions, but we don’t think that because the Monitor and RM serve different functions that the RM reports may be used in cases outside of <i>Nunez</i> . In fact, we think any other construction undermines the Court’s efforts to increase and encourage collaboration between Defendants and the RM (and their team) as it can inherently create skepticism and other disputes. The fact that the reports may be used in the context outside of this case may also impact the RM’s work and what the RM may elect to report on. The goal is to limit outside influence and allowing for the possibility that these reports may have broader impact beyond this case may in turn place pressures on the RM <i>outside</i> of this case. Further, we note the importance of ensuring that the RM is focused on the work of <i>Nunez</i> and is not distracted. This proposal helps to limit the possibility of distraction of matters outside the scope of <i>Nunez</i> , limits outside influence over the work of the RM, and reduces the possibility of additional costs that may be needed to address matters outside the scope of this case.				
Defendants’ Position: Defendants consent to this language.				
Plaintiffs’/SDNY’s Position: We oppose. The judge in the action where such evidence is being submitted should decide admissibility, not this Court, subject to the applicable rules of evidence. The Remediation Manager has different responsibilities than the Monitor, and there may be significant reasons for a court to treat their reports differently.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ V, C Reporting by the <u>Nunez</u> Remediation Manager	The <u>Nunez</u> Remediation Manager shall remain in contact with the Court throughout the <u>Nunez</u> Remediation Manager’s tenure on an informal, as needed, basis.			

No proposed revisions or objections.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § V Reporting by the <u>Nunez</u> Remediation Manager				<u>The Remediation Manager Team shall cooperate fully with the Monitor and shall share information that the Monitor needs to fulfill his role and responsibilities.</u>

Summary of Objections/Proposals: There is consent/no objection by the Parties and Monitoring Team to this new provision. Plaintiffs/SDNY note that this language is included in the subsequent provision.				
Monitoring Team’s Explanation: Cooperation with the Monitor is critical and the Monitor’s access to information from the RM is critical to this cooperation. The order is otherwise silent as to this matter, so we recommend this language to eliminate any ambiguity as to the Monitor’s access to information from the RM.				
Defendants’ Position: Defendants agree.				

Plaintiffs’/SDNY’s Position: We consent. Note, Plaintiffs propose that this provision is included with the provision regarding consultation and cooperation with the Monitor.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § V [Previously in § VI, C Role of the Monitor]	The <u>Nunez</u> Remediation Manager shall regularly consult with the Monitoring Team in the same manner as the Defendants are required to consult with the Monitoring Team under the <u>Nunez</u> Orders. Such consultation shall also include consultation on progress that has been made in fulfilling the Remediation Action Plan and how to address potential obstacles to achieving compliance, as well as the strategies to achieve Substantial Compliance with the Contempt Provisions.			The ~~Nunez~~ Remediation Manager <u>Team</u> shall regularly ~~communicate and~~ consult with the Monitoring Team in the same manner as the Defendants are required to consult with the Monitoring Team under the <u>Nunez</u> Orders ~~(including, but not limited to June 13, 2025 Order § I, ¶ 5)~~. Such consultation shall also include ~~pro-active~~ consultation on progress that has been made in fulfilling the Remediation Action Plan, ~~and~~ how to address ~~potential~~ obstacles to achieving compliance, as well as the strategies to achieve Substantial Compliance with the <u>Benchmarks and</u> Contempt Provisions. <u>The Remediation Manager Team may also seek information or technical assistance from the Monitoring Team in the same manner as Defendants under the Nunez Court Orders (including, but not limited to Consent Judgment, § XX, ¶¶ 24 and 25).</u>
Summary of Objections/Proposals: There is consent/no objection to the Monitor’s proposal in these revisions <i>except</i>: (1) Plaintiffs’/SDNY oppose the inclusion of the text in parentheses in the first and second paragraph. Defendants agree to the Monitor’s proposal for the text in parentheses, (2) Plaintiffs’ oppose the inclusion of the phrase “pro-active” and Defendants’ agree, and (3) Plaintiffs oppose the inclusion of “Benchmarks and” in the second sentence of the first paragraph, and (4) the final provision is proposed by the Monitoring Team and Defendants agree. Plaintiffs report they do not object, but would propose different language for the text in the parenthetical. Finally, Plaintiffs’ propose the text regarding the RM’s obligation to cooperate with the Monitor is included in this provision. The Monitoring Team and Defendants propose it is a standalone paragraph. Monitoring Team’s Explanation: The Monitor recommends this provision is moved to this section because it relates to the work of the RM versus the role of the Monitor, so it is better suited for this provision. The first set of edits are just to clarify that this provision applies equally to the RM Team (versus just the RM). Given the breadth of <i>Nunez</i> Court Orders, we believe providing a cross reference to specific provisions is useful, in particular since some of these have been subject to multiple contempt proceedings. We note the inclusion of “pro-active” is consistent with the Court’s orders and believe it provides consistency with the consultation requirements. We have also included a reference to the Benchmarks as we believe that this was intended and likely inadvertently excluded. With respect to the additional language proposed at the end of the provision, we believe clarity about how the RM may engage the Monitoring Team for information is also necessary to reaffirm the RM may seek information or technical assistance like Defendants are able to seek. Defendants’ Position: Defendants agree with the changes. Plaintiffs’/SDNY’s Position: We object to the addition of “Benchmarks and” in the first paragraph for the reasons we have stated in our comments on other provisions—that benchmarks should not be rated, only Contempt Provisions. We consent to the revisions to the first sentence but for the added parenthetical, which we believe unnecessary. We also object to adding “proactive,” because we think that is unnecessary and implied in the requirement to consult. We see no reason to depart from the language used in other requirements to consult, which does not include that word, and think it would be confusing to do so here. Regarding the second paragraph, we believe it unnecessary but if the Court determines the addition is helpful, we do not object. We note that we think the parenthetical in the second paragraph is confusing, and think it should read “in the same manner as Defendants may under Consent Judgment, § XX, ¶¶ 24 and 25.”				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § V [Previously in § VI Role of the Monitor]	The <u>Nunez</u> Remediation Manager shall obtain the Monitor’s approval to the extent it is required by the Contempt Provisions in the <u>Nunez</u> Orders.		~~The <u>Nunez</u> Remediation Manager shall obtain the Monitor’s approval to the extent it is required by the Contempt Provisions in the <u>Nunez</u> Orders.~~	The <u>Nunez</u> Remediation Manager shall obtain the Monitor’s approval ~~(governed by Consent Judgment § XX, ¶ 26)~~ to the extent it is required by ~~the Contempt Provisions in~~ the <u>Nunez</u> Orders. <u>To the extent that the Monitor does not provide such approval, the Nunez Remediation Manager may raise the matter with the Court and must provide the good faith basis for why approval should be granted</u>

				despite the Monitor’s decision not to do so. The Nunez Remediation Manager shall provide reasonable notice to the Monitor and the parties before making any such application to the Court and the parties and the Monitor shall have an opportunity to be heard on any such application. [Defendants’ Proposal: The parties shall have at least 20 business days to respond to the Nunez Remediation Manager’s application pursuant to this provision, prior to the Court entering any Order in response to the application.]
Summary of Objections/Proposals: The Defendants consent to the Monitoring Team’s proposal with one addition. Plaintiffs’/SDNY oppose the Monitoring Team’s position. The Defendants and Monitoring Team oppose the Plaintiffs’ proposal. The Monitor proposes an alternative to its proposal in the comments below in response to the Plaintiffs’/SDNY feedback (also discussed below). Defendants oppose the Monitor’s alternative approach described in the comments. Monitoring Team’s Explanation: Approval of the Monitor is required explicitly in two Contempt Provisions - Consent Judgment, § IV, ¶ 1 and First Remedial Order, § A, ¶ 4. The Monitoring Team believes that seeking approval of the Monitor is necessary and consistent with the Court’s May 13th Order, which repeatedly reinforces the need and importance of addressing recommendations from the Monitor. As background, we propose inclusion of the cross reference to the Consent Judgment provision governing the Monitor’s approval. As required by the Consent Judgment, approval may not be “unreasonably withheld” and “may only be withheld when the Monitor reasonably believes that the Department’s proposal is not consistent with the terms of the Agreement or the purpose of the relevant provision(s) and the requirements set forth in such provision(s).” With respect to the second proposed edit to remove the clause “the Contempt Provisions in”, this edit is recommended because the clause appears to create some ambiguity since there are certain Contempt Provisions which are related to Non-Contempt Provisions for which the Monitor’s approval is required. Finally, with respect to the proposed language at the end of the provision, the Monitoring Team believes that the standard upon which the Monitor’s approval may be withheld is clear and should not result in any disputes with the Remediation Manager. However, given the unique role of the Remediation Manager, we propose a process to address any potential disputes regarding the Monitor’s inability to provide approval should the situation arise. We believe that in the main, this provision reinforces the need for the RM to collaborate with the Monitor. The Monitor expects a rare circumstance in which approval is withheld, but, as required by the Order, if it is, it would be for very important reasons. The Monitoring Team strongly objects to the Plaintiffs’/SDNY current proposal which proposes removal of the Court’s explicit requirement that the RM seek approval of the Monitor and suggests that the Order stay silent as to whether the RM must seek approval from the Monitor even though it is explicitly required in two of the Contempt Provisions. While we don’t believe it was intended, the Plaintiffs’/SDNY proposal appears to implicitly suggest that the RM should ignore the explicit requirement of two of the Contempt Provisions which require approval of the Monitor or somehow otherwise read a different provision of the Order to suggest that certain explicit portions of the Contempt Provisions do not apply to the RM. We do not think that there should be any circumstance in this case in which an explicit provision of an already-existing order should simply be ignored or require reading multiple provisions together to determine its meaning. If the Court determines that the RM does not need to seek approval of the Monitor, then the Order must be explicitly state that approval of the Monitor is not required and the processes in place in such cases. Silence on such matters (or apparently suggesting that separate provisions of this order read in conjunction with the Contempt Provisions alter the plain meaning of the Contempt Provisions) sets an untenable and troubling precedent that explicit requirements of the Nunez Order do not need to be followed by the RM and, by extension, such logic could apply to other stakeholders and the parties. The Plaintiffs’/SDNY appear to suggest that the RM should attempt to seek agreement with the Monitor even if approval of the Monitor is not required and that a process be put is put in place if the RM and Monitor cannot agree. However, Plaintiffs’/SDNY do not propose how this disagreement is addressed, which triggers the concern noted above regarding the need to address explicit requirements in the Contempt Provisions. While the Monitor believes the Court correctly requires the RM to seek approval of the Monitor, the Monitor proposes the following alternative language should the Court determine approval of the Monitor by the RM is not necessary: “The <u>Nunez</u> Remediation Manager does not need to obtain the Monitor’s approval for those Contempt Provisions that require Monitor approval. However, the <u>Nunez</u> Remediation Manager shall take all reasonable steps to achieve consensus with the Monitor regarding matters that would otherwise require the Monitor’s approval. To the extent necessary, the Remediation Manager or the Monitor may raise the matter with the Court and provide the good-faith basis for why the Department should proceed despite the fact that consensus with the Monitor could not be achieved. The Remediation Manager shall provide reasonable notice to the Monitor and the Parties before making any such application to the Court, and the Parties and the Monitor shall have an opportunity to be heard on any such application.” Defendants’ Position: Defendants consent to the revisions proposed by the Monitor. Defendants oppose the alternative language proposed by the Monitoring Team in response to Plaintiffs’/SDNY objections. It is not necessary for the Court to alter the Monitor’s well settled authority in this matter under prior orders, because there is no basis for a finding that a change is necessary in order to remedy a constitutional violation, or that the Monitor has not properly exercised its authority. The Remediation Manager is not intended to replace the Monitoring Team, but rather to step into the shoes of the Commissioner as the chief executive of the DOC within the limited ambit of the Contempt Provisions. Those shoes include the requirement of Monitor approval, which is a useful check upon any ill founded actions by the Remediation Manager, who would necessarily be less familiar with the conditions and history of DOC than the Monitoring Team. <i>See</i> Defs. Supp. Objs., at 10. Plaintiffs’/SDNY’s Position: The Court’s Order rightfully requires in § V, E that the Remediation Manager and the Monitor are “independent positions that each report to the Court and are not answerable to each other,” and our proposed deletion here is intended to implement that requirement. The Remediation Manager is required by this Order to consult with the Monitor and is expected to work closely with the Monitoring Team. However, because the Remediation Manager is an agent of the court rather than a defendant, it is inconsistent to require the Remediation Manager to obtain the Monitor’s approval before taking an action within the scope of the Receiver Manager’s authority. We do not suggest that the Remediation Manager “ignore” provisions of Contempt Orders—those orders required <i>recalcitrant defendants</i> to obtain Monitor approval for good reason. But the Remediation Manager is not a defendant. What would be more appropriate is not requiring Monitor approval but, rather, setting forth a process by which the Remediation Manager and Monitor can come to the Court in the hopefully unlikely event that these two agents of the court disagree. Should the Court think it important to include such a process in this order, we suggest: “The <u>Nunez</u> Remediation Manager does not need to obtain the Monitor’s approval for those Contempt Provisions that require Monitor approval. However, the Nunez Remediation Manager shall take all reasonable steps to achieve consensus with the Monitor regarding matters that would otherwise require the Monitor’s approval. To the extent necessary, the Remediation Manager or Monitor may raise the matter with the Court, on notice to the parties, and provide the basis for why consensus could not be achieved.”				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations

New Provision in § V		<u>Confidentiality. The Remediation Manager Team shall hold any information that they obtain from the Department or its employees Confidential (as that term is defined herein), except to the extent that it is necessary to include such information in confidential communications with the Monitoring Team, the parties or the Court, or it is necessary to include such information in reports of the Nunez Remediation Manager filed with the Court. “Confidential” for the purpose of this Order means that such information shall not be used by the Remediation Manager Team for any purpose other than compliance with this Order or the Remediation Action Plan, and may not be shared by the Remediation Manager Team with any person except as necessary to pursue compliance with this Order or the Remediation Action Plan.</u>		<u>The Remediation Manager Team may not disclose information provided to the Remediation Manager Team pursuant to the Nunez Orders, except as authorized by this Order, the Court, or by joint stipulation of the parties.</u>

Summary of Objections/Proposals: Defendants make one proposal, which Plaintiffs’/SDNY oppose and the Monitoring Team takes no position. The Monitoring Team proposes an alternative provision modeled on the Hinds County Order, which the Defendants consent to in addition to the language proposed by Defendants. The Plaintiffs’/SDNY oppose the Monitor’s proposal.

Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the Parties with respect to Defendants’ proposal. The Monitoring Team recommends the Court consider whether limitations on disclosure may be appropriate. We share language modeled directly from *U.S. v. Hinds Cnty., et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2, § IV, ¶ 3. As with the inclusion in the Hinds County Order, the Monitoring Team doesn’t believe that such disclosure limitations will inherently inhibit the RM’s work as we don’t understand it to be the case in Hinds County either. We believe this approach is consistent with the Court’s requirements related to public disclosures by the RM to the press. We think the Court has struck the appropriate balance in this case.

Defendants’ Position: *See* Defs. Objs. SECTION IV: Powers of the Remediation Manager on pgs. 6-8; Defs. Supp. Objs. at 7-9. Defendants’ consent to the Monitor’s proposal, as an addition to the more specific limitations proposed by defendants.

Plaintiffs’/SDNY’s Position: We do not agree to the provision proposed by Defendants. First, it is inconsistent with the Remediation Manager’s public-facing duties. Second, the Commissioner and other City agents are not similarly bound, rightfully so to allow them to perform necessary functions. And nor do we think this provision is practical or workable. Given the Remediation Manager’s operational role, they will need to communicate on a daily basis with third parties and stakeholders in order to effectively fulfill their duties. The definition of “confidential” Defendants propose is far too ambiguous. It will likely chill the Remediation Manager’s ability to communicate effectively, as they will be worried about violating a Court Order when they engage in discussions regarding operational issues or seek the advice or input from others. It further is not clear how DOC staff would keep these communications confidential.

With respect to the Monitor’s recommendation, we do not consent to this addition because this provision would effectively bar the Remediation Manager from speaking with not only the public but many non-Party stakeholders about important issues. As we explain in our objection to the Order’s proposed bar on public statements by the Remediation Manager, we believe that allowing the Remediation Manager, at their discretion, to give public statements, which could include speaking to the public or having informal meetings with relevant stakeholders, serves an important purpose. In order to be successful, the Remediation Manager will need to gain public support for their actions from line staff, the public, and other stakeholders. Silence – particularly in the face of a public discourse that may otherwise be dominated by those who are at best unaware of the Remediation Manager’s work and at worst in opposition to change – is unlikely to serve the Remediation Manager well as they seek buy-in across the City. Indeed, the inability to publicly explain their rationale for taking certain actions may undermine the Remediation Manager’s efforts and credibility. The Commissioner is not bound by a similar requirement to keep all information confidential, and nor could they be, because it could significantly undermine their ability to engage with external stakeholders to accomplish initiatives important for the agency.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § V				<u>The reports and other communications of the Remediation Manager Team submitted to the Court, whether <i>in camera</i>, <i>ex parte</i> or on the public docket, shall not be admissible as evidence in any proceeding except this action.</u>

Summary of Objections/Proposals: Defendants proposal is opposed by Plaintiffs’/SDNY. The Monitoring Team supports the approach.

Monitoring Team’s Explanation: This provision as it relates to reports filed by the RM is consistent with Consent Judgment § XIX, ¶ 3 and § XX, ¶ 21 (which is also discussed above) and therefore appears reasonable with respect to the reports and other filings by the RM. This provision also is made in line with the other provisions in this Order. The Order contemplates that the RM will engage with the Court on an informal, as needed basis, and can do so *ex parte* **and** confidentially. This provision is consistent with that approach as it relates to communications **to the Court**. It remains unclear how or why communications between the RM and the Judge (which are already confidential) could be subject to litigation in other, non-related cases. Most importantly, the fact that such communications could be subject to litigation outside of this case will necessarily have a chilling effect on the RM and the Court. This by extension may also impact the Monitoring Team and its interactions with the RM and the Court. The Court and the RM should be able to communicate freely with one another without concern that such discussions may be subject to litigation outside of this case. The Monitoring Team cannot conceive of any necessity that advances compliance with the Contempt Provision that would require the reports or other communications from the RM to the Court to be subject to litigation *outside* of this case. In fact, we think the possibility that these communications may be admissible in unrelated cases will only hinder and distract the RM and further delay compliance in this case. Such litigation could be all consuming and a major distraction. The litigation burden in this case is already significant on its own. We strongly support the inclusion of this provision as we believe it supports the overall aims of advancing the reform effort in *Nunez* as quickly as possible.

Defendants’ Position: Defendants agree with the Monitor’s proposal.

Plaintiffs’/SDNY’s Position: We oppose this new provision proposed by the Monitor. The judge in the action where such evidence is being submitted should decide admissibility pursuant to the applicable rules of evidence. The Remediation Manager serves a very different role than the Monitor, and their public statements or communications should not necessarily be treated the same as the Monitor’s. We cannot in this Order anticipate every potential state and federal lawsuit in which a party may seek to introduce a statement, document or email by the Remediation Manager, and whether that particular statement, based on those particular claims, is admissible for that particular purpose in that Court. We believe leaving admissibility to judicial discretion, sensitive to the facts in each case, is appropriate.

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § V		<u>To the extent that Plaintiffs’ Counsel obtains information from the Remediation Manager Team, the information shall be subject to the same restrictions set forth regarding such information in § XX., ¶ 11 of the Consent Judgment as if the Monitor had provided such information to Plaintiffs’ Counsel; shall be subject to the Protective Orders entered in this case (e.g. dks. 89 and 293); and shall be designated “Confidential” for the purposes of those Protective Orders. Information protected by other protective order or confidentiality agreements entered into this case (dks. 290 and 304) and shall remain so protected even if disclosed by the Remediation Manager to the Plaintiffs’ Counsel.</u>		<u>[Provision regarding potential confidentiality of information obtained from RM]</u>

Summary of Issue to the Court: Defendants’ have proposed language in this case. Plaintiffs note that additional time to confer on this matter is necessary. The Monitoring Team recommends that the Court permit the Parties and the Monitoring Team to confer and advise the Court no later than September 24 on the outcome of those discussions.

Monitoring Team’s Explanation: The Parties have been working to reach resolution on a potential provision regarding the confidentiality and resulting treatment of information that the parties may receive from the Remediation Manager. Further discussion to either reach resolution or to refine the scope of the dispute is needed. Accordingly, the Monitoring Team recommends that the Court direct the parties to either reach agreement on a proposal or provide competing proposals no later than September 24, 2025. The Monitoring Team strongly recommends that this issue is resolved in the near term versus waiting for a later date.

Defendants’ Position: The Remediation Manager will have unprecedented access to confidential agency communications and should not become a conduit for the release of such information without appropriate protections. Therefore, all information that may be provided to the Plaintiffs by the Remediation Manager, which may occur incidentally to their meet and confer obligations, should remain Confidential under the Protective Order in this case. *See* Defs. Objs.at 8 and Defs. Supp. Objs. at 8-9.

Plaintiffs’/SDNY’s Position: While Plaintiffs’ Counsel are amenable to reasonable confidentiality restrictions around certain information received from the Remediation Manager, we oppose Defendants’ proposal because we think it is ambiguous as to what Plaintiffs’ confidentiality obligations would be and it appears to be overbroad. The Orders referenced in Defendants’ proposed language relate to the disclosure of specific categories of information and documents which will likely differ from the type information we might receive from the Remediation Manager. For example, Docket Numbers 290 and 304 specifically govern information included in: i) draft Monitor’s reports and ii) DOC’s compliance reports. The proposal also appears to preemptively designate any information we ever receive from the Remediation Manager as “Confidential,” regardless of its substance, which is overbroad.

Plaintiffs’ Counsel have no intention of unreasonably disclosing any information and simply want to ensure our confidentiality obligations are unambiguous and reasonable. We are amenable to conferring with Defendants and the Monitor regarding reasonable confidentiality restrictions on information received from the Remediation Manager, and agree with the Monitor that conferral regarding this topic can likely be completed by September 24. However, in order to avoid any delay in the Court’s finalization of the order appointing the Remediation Manager, we respectfully suggest that these confidentiality requirements can be set forth in a separate order.

Section VI: Role of the Monitor

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ VI, A Role of the Monitor	Consistent with Section IV(B), this order does not alter the role or responsibilities of the Monitor as described in the <u>Nunez</u> Orders, including, but not limited to obligations to assess compliance, provide technical assistance, and regularly report to the Court in accordance with his past practices.			~~Consistent with Section IV(B), this~~ <u>This</u> order does not alter the role or responsibilities of the Monitor as described in the <u>Nunez</u> Orders, including, but not limited to obligations to assess compliance, provide technical assistance, and <u>to</u> regularly report to the Court in accordance with his past practices.
Summary of Objections/Proposals: There is consent/no objection by the Parties and Monitoring Team to this revision. Monitoring Team's Explanation: This citation appears to be in error. We suggest this is just an affirmative statement. Defendants' Position: Consent to the changes. Plaintiffs'/SDNY's Position: We consent to the changes.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ VI, B Role of the Monitor	Beginning with the 20th Reporting Period (January to June 2025), the Monitor's Reports shall include an assessment of compliance (pursuant to § XX, ¶ 18 of the Consent Judgment) with the select group of provisions (as defined by the Action Plan § G, ¶ 5(b)), the Contempt Provisions, and the benchmarks of the Remediation Action Plan (once approved by the Court). The assignment of compliance ratings to all other provisions of the <u>Nunez</u> Orders is suspended through December 31, 2025.			~~Beginning with the 20th Reporting Period (January to June 2025), the Monitor's Reports shall include an assessment of compliance (pursuant to § XX, ¶ 18 of the Consent Judgment) with the select group of provisions (as defined by the Action Plan § G, ¶ 5(b)), the Contempt Provisions, and the benchmarks of the Remediation Action Plan (once approved by the Court). The assignment of compliance ratings to all other provisions of the <u>Nunez</u> Orders is suspended through December 31, 2025.~~
Summary of Objections/Proposals: There is consent/no objection by the Parties and Monitoring Team to removal of this provision. Monitoring Team's Explanation: Given the Court's July 10, 2025 Order (dkt. 879), the proposed text is deleted because it is no longer necessary. Defendants' Position: Consent to this change. Plaintiffs'/SDNY's Position: We consent to this change.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ VI, B Role of the Monitor	[Note Originally in § III] The Monitor shall file a report within 130 days following each Reporting Period ⁴ describing the efforts the Department and the Remediation Manager have taken to implement the requirements of the Remediation Action Plan and evaluating the extent to which the Department and Remediation Manager have complied with the benchmarks of the Remediation Action Plan and each of the Contempt Provisions.	<u>Upon approval of the Remediation Action Plan, following the Court's approval of the Remediation Action Plan, the Monitor's Reports that include assessment of compliance pursuant to § XX, ¶ 18 of the Consent Judgment, as amended, shall include the Monitor's assessment as to whether the Remediation Action Plan has resulted in: (a) substantial and demonstrable progress in achieving Substantial Compliance with the Contempt Provisions; (b) whether such efforts have resulted in a substantial reduction in the risk of harm currently facing incarcerated</u>	<u>After the Remediation Action Plan has been approved by the Court, the bi-annual Monitor's Report for each Reporting Period⁵ describing the shall also include a description of the efforts the Department and the Nunez Remediation Manager have taken to implement the requirements of the Remediation Action Plan and evaluating an evaluation of the extent to which the Department and Remediation Manager Defendants have complied with the benchmarks of the Remediation Action Plan and each of the Contempt Provisions. Upon a finding</u>	<u>Upon approval of the Remediation Action Plan, the bi-annual Monitor's Reports for each Reporting Period⁶ shall also: (a) describe the efforts the Department and the Remediation Manager Team have taken to implement the requirements of the Remediation Action Plan, (b) include a compliance assessment for each of the Benchmarks in the Remediation Action Plan and (c) address the overall extent to which the work under the RAP is advancing compliance with the Contempt Provisions.</u>

⁴ The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.
⁵ The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.
⁶ The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.

		<u>individuals and DOC; and (c) whether DOC has achieved any of the Benchmarks in the Remediation Action Plan.</u>	<u>by The reports should also describe the Monitoring Team that one or more of extent to which the Defendants have met the benchmarks of the Remediation Action Plan or the Contempt Provisions is set forth in the Remediation Action Plan.</u>	
Summary of Objections/Proposals: There are three different proposals regarding the content of the Monitor’s Report. Note, Plaintiffs’/SDNY propose that this language is included in the Section III above, but it is included here so the different proposals about the content of the Monitor’s Report can be more easily compared. Monitoring Team’s Explanation: <i>Monitor’s Proposal:</i> For clarity, we propose the reporting on the efforts of the RAP should begin after it is approved by the Court. We recommend we then identify the three additions to the Monitor’s reports that are not otherwise required by the <i>Nunez</i> Court order already. We also propose that an overarching assessment of the RAP is both useful and necessary to the Court and the Parties. Of course, all hope it will provide the appropriate pathway, but such routine assessments are necessary to see if it is achieving the goal or not. If not, it is critical for all stakeholders to consider what additional steps, if any, may be necessary. <i>Defendants’ Proposal:</i> We object to the inclusion regarding compliance ratings. First, this language appears to set a different standard for compliance which we think is confusing and not necessary. Second, the Monitor’s obligation to assess compliance is addressed by other <i>Nunez</i> Court Orders and occurs outside the scope of the RAP. The Order already explains the Monitor’s reporting remains consistent with past practices. <i>See</i> § V ¶ A of this Order. It is both duplicative and confusing to address the fact that the Monitor must assess compliance with the contempt provisions because that is already governed by the Consent Judgment and could suggest different standards, when, in fact, they are the same. <i>Plaintiffs’ Proposal:</i> The Court’s Order currently contemplates that compliance with the Benchmarks must be achieved. If the Court determines that compliance with the Benchmarks is no longer required, then the Monitoring Team agrees with the formulation by Plaintiffs’/SDNY regarding Benchmarks. The Monitoring Team does recommend that part (c) of its proposal is included with Plaintiffs’/SDNY language should the Court adopt Plaintiffs’/SDNY proposal. With respect to Plaintiff’s Class/SDNY’s position that the Monitor may not address the conduct of the RM, the Monitor does not believe there is any basis for the suggestion that the Monitor should be limited in any way on what it may report regarding the work of the RM, the <i>Nunez</i> Court Orders, and corresponding compliance. Further, for clarity, the fact that the Monitor may report on matters does not create a relationship in which the individual or entity of which the Monitor reports then “answers” to the Monitor. The Monitor has reported on the Department for over a decade, and the Department does not “answer” to the Monitor so the same applies to any reporting the Monitor may do related to the RM and the forthcoming RAP. The Monitoring Team strongly opposes any proposals or commentary from the parties that suggest the Monitor may be limited in what it can report to the Court as it inherently impedes transparency and the very important role the Monitor plays in this case in ensuring that the Parties have a neutral and independent assessment of what is occurring in the jails regardless of whether the conduct is directed by the Commissioner or the RM. Defendants’ Position: <i>See</i> Defs. Objs. SECTION III: Notice and Opportunity Comment on Reports on pgs. 5-6. Plaintiffs’/SDNY’s Position: <i>Plaintiffs’/SDNY Proposal:</i> While the Remediation Manager will benefit from the Monitor’s input on plans and priorities and feedback on progress, the Monitor’s role is not to evaluate the conduct of the Remediation Manager (who is an agent of the court and, as the Court’s proposed Order notes, does not answer to the Monitor), but rather to assess the extent to which Defendants have complied with the orders of this Court. As we explained in our comments to proposals in Section III, Plaintiffs and the Government recognize the utility of benchmarks as guideposts for the work under the Remediation Action Plan and as potential indicators of Defendants’ progress towards compliance. However, meeting to-be-determined benchmarks is not the same as achieving substantial compliance with the Contempt Provisions. While the Monitor should evaluate and describe the extent to which Defendants have met the benchmarks set forth in the Remediation Action Plan, the Monitor’s compliance assessments should be limited to assessing compliance with the Contempt Provisions. Compliance ratings should be reserved for the Contempt Provisions. We do not believe this provision limits what the Monitor may choose to write about in his reports in any way, but rather describes more accurately the role of the Remediation Manager (i.e., not a Defendant) and the Benchmarks (i.e., in Plaintiffs’ view, goals for Defendants to meet as they make progress rather than standards to be “complied” with that could lead to termination of the Remediation Manager’s authority). <i>Monitor’s Proposal:</i> We do not consent to (b), as we do not think it appropriate to give compliance assessments on benchmarks—only Contempt Provisions. The nature of benchmarks as limited, discrete, intermediate steps do not lend themselves to the same compliance assessments as do the Contempt Provisions. They should not be rated in the same way. We also oppose the language in (c), because we do not understand the function of the Monitor’s reports to be assessing the RAP, but rather overall progress toward Substantial Compliance with the Contempt Provisions. We think our formulation, set forth in proposed revisions to VI(B), is more appropriate. <i>Defendants’ Proposal:</i> We oppose. We disagree for reasons stated above regarding conflation of Benchmarks and Substantial Compliance with Contempt Provisions, and for the reasons given with regard to our own proposed revisions to this section of the Order. Defendants’ proposed new language requires the Monitor’s reports to apply multiple different standards instead of just reporting on whether Defendants have complied with Contempt Provisions. These additional standards and assessments will only lead to confusion.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ VI, B, i Role of the Monitor	Within 90 days after the Court’s approval of the Remediation Action Plan, the Monitoring Team shall develop recommendations regarding streamlining and compliance assessment of the <u>Nunez</u> Orders that are not subject to the Remediation Action Plan. The Monitoring Team shall provide these recommendations to the parties for consideration and comment before submitting the recommendations to the Court.			Within 90 days after the Court’s approval of the Remediation Action Plan, the Monitoring Team shall develop recommendations regarding streamlining and <u>assessing</u> compliance <u>assessment</u> <u>with the provisions</u> of the <u>Nunez</u> Orders <u>that are not subject to the Remediation Action Plan</u> <u>except for the Contempt Provisions</u> . The Monitoring Team shall provide these recommendations to the parties for

				consideration and comment before submitting the recommendations to the Court.
Summary of Objections/Proposals: There is consent/no objection by the Parties and Monitoring Team to the proposed revisions.				
Monitoring Team’s Explanation: These revisions were made for clarity.				
Defendants’ Position: Defendants agree to this change.				
Plaintiffs’/SDNY’s Position: We consent to this revision.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ VI, D Role of the Monitor	The <u>Nunez</u> Remediation Manager and the Monitor are independent positions that each report to the Court and are not answerable to each other.	The <u>Nunez</u> Remediation Manager and the Monitor are independent positions that each report to the Court and are not answerable to each other, <u>except to the extent that approval of actions by the Monitor is otherwise required consistent with this Order.</u>		
Summary of Objections/Proposals: Plaintiffs oppose the addition by Defendants. The Monitor takes no position.				
Monitoring Team’s Explanation: The Monitor defers to the Court and the Parties on this revision, subject to the Monitoring Team’s overall position on approval stated in this document.				
Defendants’ Position: <i>See</i> Defs. Objs., SECTION VI: Monitor’s Authority on pg. 9.				
Plaintiffs’/SDNY’s Position: We oppose for the reasons stated above regarding why the Remediation Manager should not be required to obtain the Monitor’s approval.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § VI Role of the Monitor		<u>As part of the parties’ review of the draft Monitor’s Report, as provided for by Consent Judgment § XX, ¶¶ 17,18 (as amended at ECF No. 888), the parties may request that the Monitor reconsider the proposed compliance rating for any Contempt Provision. Such a request must include the basis for the request and any relevant facts or documents. If the Monitor elects not to adjust the proposed compliance rating as requested, the Monitor shall provide the basis for his decision in the final report filed with the Court.</u>		
Summary of Objections/Proposals: Defendants proposal is opposed by Plaintiffs’/SDNY. The Monitoring Team takes no position, but provides a suggestion for a compromise position in the comments below.				
Monitoring Team’s Explanation: The Monitor defers to the Court and the Parties on this provision. However, the Monitor notes the Parties can make such a request during the comment period as permitted under the Consent Judgment, § XX, ¶ 17. To address the Plaintiffs’/SDNY objections, an alternative to the Defendants’ proposal is that the Order could incorporate the first sentence proposed by Defendants, but last sentence (If the Monitor elects) is removed. This permits the parties to make the request, and the Monitor can consider such requests (as it is already required to do under the Consent Judgment), but does not impose an affirmative obligation on the Monitor that could potentially implicate the requirement that no party have authority over the Monitor’s work (<i>see</i> Consent Judgment § XX, ¶ 23). The Monitoring Team has a long demonstrated track record of thoughtfully considering feedback from the parties.				
Defendants’ Position: <i>See</i> Defs. Objs. SECTION III: Notice and Opportunity Comment on Reports on pgs. 5-6.				
Plaintiffs’/SDNY’s Position: We oppose. It is unnecessary to add this provision. During the comment period, the parties are free to ask the Monitor to reconsider a proposed compliance rating and it is not necessary to explicitly state this in this Order (this has always been the case when the Monitor provided draft reports to the parties before filing). We also do not think it is appropriate to require the Monitor to provide the basis for not accepting every request to change a rating. The Monitor’s reports have always provided extensive detail regarding the basis for the compliance rating and adding this new requirement and process now will only create more work for the Monitor and lead to even lengthier reports.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § VI		<u>A party’s failure to comment on a draft report or a portion of a draft report is not waiver of any legal objection or</u>		

Role of the Monitor		<u>argument with respect to any action of the Remediation Manager or Court ruling.</u>		
<u>Summary of Objections/Proposals:</u> Defendants proposal is opposed by Plaintiffs’/SDNY. The Monitoring Team takes no position, Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the Parties. Defendants’ Position: <i>See</i> Defs. Objs. SECTION III: Notice and Opportunity Comment on Reports on pgs. 5-6. Plaintiffs’/SDNY’s Position: We oppose. We don’t disagree with the substance of this sentence, but disagree with including it here because we believe it is unnecessary and that this Order need not address Monitor’s reports beyond what the Court has already required.				

Section VII: Immunity and Indemnity

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ VII, A Immunity and Indemnity	The <u>Nunez</u> Remediation Manager and the <u>Nunez</u> Remediation Manager’s staff shall have the status of officers and agents of the Court, and as such shall be vested with the same immunities as vest with the Court.	The <u>Nunez</u> Remediation Manager and the <u>Nunez</u> Remediation ~~Manager’s staff~~ <u>Manager Team</u> shall have the status of officers and agents of the Court, ~~and as such shall be vested with the same immunities as vest with the Court.~~		The ~~Nunez~~ Remediation Manager ~~and the Nunez Remediation Manager’s staff~~ <u>Team</u> shall have the status of officers and agents of the Court, and as such shall be vested with the same immunities as vest with the Court.
Summary of Objections/Proposals: The revisions to conform the language to apply to the Remediation Manager Team are on consent/no objection. Defendants propose removal of the text starting with “and as such” is opposed by Plaintiffs’/SDNY and the Monitoring Team takes no position. Monitoring Team’s Explanation: This revision is made for consistency about the applicability of the provision to the Remediation Manager Team. The Monitoring Team does not take a position with respect to the issue of the applicability of immunities. Defendants’ Position: <i>See</i> Defs. Obs., SECTION VII: Representation and Indemnification of the Remediation Manager on pgs. 9-13. Plaintiffs’/SDNY’s Position: We oppose Defendants’ proposal. It’s critical that the Remediation Manager, as an agent of the court, be granted appropriate immunity so as to secure qualified candidates and ensure the Remediation Manager can effectively discharge their duties. We also note that the issue of immunity was already briefed to the Court and the Court rightfully decided immunity was appropriate. We consent to the revisions proposed by the Monitor.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ VII, B Immunity and Indemnity	The Defendants shall indemnify the <u>Nunez</u> Remediation Manager and their staff in any litigation brought against the <u>Nunez</u> Remediation Manager or their staff regarding activities conducted in the course of the <u>Nunez</u> Remediation Manager’s official duties.	~~The Defendants shall indemnify the Nunez Remediation Manager and their staff in any litigation brought against the Nunez Remediation Manager or their staff regarding activities conducted in the course of the Nunez Remediation Manager’s official duties.~~		The Defendants shall indemnify ~~the Nunez~~ <u>any</u> Remediation Manager ~~and their staff~~ <u>Team member</u> in any litigation brought against ~~the Nuneza~~ Remediation Manager ~~or their staff~~ <u>Team member</u> regarding activities conducted in the course of ~~the Nunez Remediation Manager’s~~ <u>their</u> official duties.
Summary of Objections/Proposals: The revisions to conform the language for the provision to apply to the Remediation Manager Team are on consent/no objection (if the Court elects to maintain the provision). Defendants propose the provision is deleted and the deletion of the paragraph is opposed by Plaintiffs’/SDNY. The Monitoring Team takes no position. Monitoring Team’s Explanation: This revision is made for consistency about the applicability of the provision to the Remediation Manager Team. The Monitoring Team does not take a position with respect to the issue of the applicability of immunities. Defendants’ Position: <i>See</i> Defs. Obs., SECTION VII: Representation and Indemnification of the Remediation Manager on pgs. 9-13. Plaintiffs’/SDNY’s Position: We oppose Defendants’ proposal to delete this provision. This provision is necessary to ensure that the Remediation Manager is protected from the risk of personal liability. We note that the issue of indemnification was already briefed to the Court and the Court rightfully decided that Defendants should indemnify the Remediation Manager. Again, removing this indemnification provision would make it quite difficult to secure qualified candidates for this Remediation Manager position.				

Section VIII: Compensation and Responsibility for Payment

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ VIII, A Compensation and Responsibility for Payment	The City of New York shall bear all reasonable fees, costs, and expenses of the <u>Nunez</u> Remediation Manager, including payments to the <u>Nunez</u> Remediation Manager’s staff. Such fees, costs, and expenses shall be sufficient to allow the <u>Nunez</u> Remediation Manager to fulfill their duties pursuant to this Order in a reasonable and efficient manner. The <u>Nunez</u> Remediation Manager may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort. The <u>Nunez</u> Remediation Manager shall submit an invoice for their services, and the services of their consultants and staff, to the City on a monthly basis. Those invoices will include charges for fees, costs, and expenses. Payment on such invoices shall be made within 60 days of receipt. If the City objects to any fees, costs, or expenses as unreasonable, unnecessary, or duplicative, the City shall submit the invoice to the Court for a determination of reasonable fees, costs, and expenses.	The City of New York shall bear all reasonable fees, costs, and expenses of the <u>Nunez</u> Remediation Manager, including payments to the ~~<u>Nunez Remediation Manager’s staff</u>~~<u>Remediation Manager Team, consistent with the Schedule of Expected Fees and Expenses previously approved by the Court, set forth in Appendix A.</u> Such fees, costs, and expenses shall be sufficient to allow the <u>Nunez</u> Remediation Manager to fulfill their duties pursuant to this Order in a reasonable and efficient manner. The <u>Nunez</u> Remediation Manager may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort: <u>after notice and opportunity to the parties and approval of the Court.</u> The <u>Nunez</u> Remediation Manager shall submit an invoice for their services, and the services of their consultants and staff, <u>consistent with Appendix A,</u> to the City on a monthly basis. Those invoices will include charges for fees, costs, and expenses. Payment on ~~sue~~<u>approved</u> invoices shall be made within 60 days of receipt. If the City objects to any fees, costs, or expenses as <u>contrary to the Court’s prior orders or other law,</u> unreasonable, unnecessary, or duplicative, the City shall submit the invoice to the Court for a determination of reasonable fees, costs, and expenses.	The City of New York shall bear all reasonable fees, costs, and expenses of the <u>Nunez</u> Remediation Manager, including payments to the ~~<u>Nunez</u>~~<u>Nunez</u>-Remediation ~~Manager’s staff~~<u>Manager Team.</u> Such fees, costs, and expenses shall be sufficient to allow the <u>Nunez</u> Remediation Manager to fulfill their duties pursuant to this Order in a reasonable and efficient manner. The <u>Nunez</u> Remediation Manager may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort. The <u>Nunez</u> Remediation Manager shall submit an invoice for their services, and the services of their consultants and staff, to the City on a monthly basis. Those invoices will include charges for fees, costs, and expenses. Payment on such invoices shall be made within 60 days of receipt. If the City objects to any fees, costs, or expenses as unreasonable, unnecessary, or duplicative, the City shall submit the invoice to the Court for a determination of reasonable fees, costs, and expenses.	The City of New York shall bear all reasonable fees, costs, and expenses of the <u>Nunez</u> Remediation Manager, including payments to the <u>Nunez</u> Remediation ~~Manager’s staff~~<u>Manager Team.</u> Such fees, costs, and expenses shall be sufficient to allow the <u>Nunez</u> Remediation Manager to fulfill their duties pursuant to this Order in a reasonable and efficient manner. ~~The <u>Nunez</u> Remediation Manager may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort.~~ i. The <u>Nunez</u> Remediation Manager shall submit an invoice for their services, and the services of their consultants and staff, to the City on a monthly basis. Those invoices will include charges for fees, costs, and expenses. Payment on such invoices shall be made within 60 days of receipt. ii. If the City objects to any fees, costs, or expenses as unreasonable, unnecessary, or duplicative, the City shall submit the invoice to the Court for a determination of reasonable fees, costs, and expenses.
Summary of Objections/Proposals: There are three different proposals. Defendants propose one set of revisions, opposed by Plaintiffs’/SDNY. The Monitoring Team takes no position with respect to the proposals by Defendants except that the Monitoring Team opposes the timing that contemplate approval of fees in advance of appointment of the RM. The Monitoring Team proposes a different set of revisions, which Defendants will consent to if the Court does not adopt Defendants’ proposal. Plaintiffs’/SDNY oppose the Monitor’s revisions. The Plaintiffs’/SDNY propose no changes are necessary except to conform the language to the definition of Remediation Manager team. The Plaintiffs’/SDNY take no position with respect to the formatting proposal by the Monitoring Team. Monitoring Team’s Explanation: The Monitoring Team recommends these minor recommendations and divisions of provision so that it is easy to follow and review. The Monitor recommends the removal of the deleted language because it is addressed in § IV, B, vi and is not entirely consistent with that provision. The order should only address the concept once and should also address the Court’s May 13, 2025 Order, particularly the Court’s five enumerated Receivership Goals identified on page 19 of that Order. To the extent that § IV, B, vi does not capture all individuals that the RM may hire, the Monitoring Team has resolved that issue with its proposed revisions that captures all potential hires. We believe it is confusing and creates ambiguity to have two different provisions that are similar, but slightly different, regarding the composition of the RM Team. As noted in the revisions to § IV, B, vi appropriate guidelines regarding the composition of the RM Team are critical to achieving the Court’s stated goals for this process. We recognize the Defendants included additional revisions to these paragraphs and we defer to Court and the parties on inclusion of those additional items. For reasons noted elsewhere, the Monitoring Team opposes the approach in which fess are approved in advance of appointment of the RM (see the next provision). Defendants’ Position: Defendants’ do not oppose the recommendations by the Monitoring Team, but believe Defendants’ construction of the order is necessary, especially the requirement that a statement of expected reasonable costs and expenses be approved in advance of the final appointment of the Remediation Manger. <i>See</i> Defs. Objs., SECTION VIII: Remediation Manager Compensation and Expenses on pg. 13; Defs. Supp. Objs.,at 11. Note that the language of the defendants’ proposal has been changed to include legal fees within compensable expenses. Plaintiffs’/SDNY’s Position: We understand that the only substantive change the Monitor has proposed here is the deletion of the following sentence: “The Nunez Remediation Manager may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort.” We oppose the deletion of this sentence because we do not agree it is entirely redundant with Section IV.B.vi. As we read it, Section IV.B.vi is limited in its discussion to consultants or technical assistants, whereas this provision explicitly authorizes the Remediation Manager to hire staff members for his Team, such as a subject matter expert, if necessary. It is not clear that such a hire is contemplated by Section IV.B.vi. Plaintiffs’/SDNY have no position on the question of formatting of this section. <i>With respect to Defendants’ proposal:</i> We oppose. The City is the appropriate entity to bear the Remediation Manager’s legal fees and expenses, because this remedy is only necessary because of the City’s contempt. We also reiterate our objection (see our response Defendants' proposed edits to § IV, B, vi) to requiring the Remediation Manager to provide notice to the parties and seek Court approval before retaining staff to assist in fulfilling their duties. We also disagree, as noted below, with referrals to Appendix A because we do not agree that there should be a separate order regarding fees and expenses before the RM is appointed.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ VIII, B Compensation and Responsibility for Payment	Within 30 days of the date of Acceptance Effective Date, the Nunez Remediation Manager shall submit to the Court and the City an initial statement of rates and proposed fees and expenses, which the Nunez Remediation Manager may modify from time to time as appropriate. If the City raises any objection to the statement, the City and the Nunez Remediation Manager shall promptly meet and confer, and any unresolved objections shall jointly be submitted to the Court for resolution.	~~Within 30 days of the date of Acceptance Effective Date, the Nunez Remediation Manager shall submit to the Court and the City an initial statement of rates and proposed fees and expenses, which the Nunez Remediation Manager may modify from time to time as appropriate. If the City raises any objection to the statement, the City and the Nunez Remediation Manager shall promptly meet and confer, and any unresolved objections shall jointly be submitted to the Court for resolution.~~		B. ~~Within 30 days of the date of Acceptance Effective Date, the~~ The Nunez Remediation Manager shall submit to the Court and the City ~~an initial statement of rates and proposed fees and expenses, which a proposed Schedule of Fees and Expenses for the Remediation Manager Team within 30 days of~~ <u>appointment</u>. This Schedule shall include an estimate of the title and duties of each member of the Remediation Manager Team that the Nunez Remediation Manager ~~may modify from time to time as appropriate. If the City raises any objection to the statement, the City and~~ believes will be required to <u>exercise the duties of the Nunez Remediation Manager shall promptly meet pursuant to the Court order and a statement of the proposed fees and expenses.</u> i. ~~The Nunez Remediation Manager and the City shall confer, in good faith regarding the proposal for fees and any unresolved objections shall jointly be submitted~~ expenses and to the extent that the City and Nunez Remediation Manager agree they shall make a joint proposal for approval of the statement of fees and expenses. ii. ~~To the extent that the City and the Nunez Remediation Manager disagree regarding the Schedule of Fees and Expenses, they shall make separate submissions to the Court for resolution~~ stating the basis for the disagreement. iii. ~~The Court shall approve or modify the proposed Schedule of Fees and Expenses.~~ [Defendants Proposal for additional language in this paragraph: In approving proposed fees the Court will consider whether the compensation to be paid to the Nunez Remediation Manager and each of their staff is commensurate with the salary earned by employees of the City of New York serving in comparable roles and providing comparable services.] ~~iv.~~ The Nunez Remediation Manager may modify rates and proposed fees and expenses from time to time as appropriate upon approval of the Court. The Nunez Remediation

				<u>Manager shall confer with the City in advance of any future applications to the Court regarding fees in an attempt to reach agreement. If agreement cannot be reached, the Nunez Remediation Manager and the City shall make separate submissions to the Court stating the basis for the disagreement.</u>
Summary of Objections/Proposals: There are three different positions. Defendants propose elimination of this provision given its other proposals. Plaintiffs’/SDNY and the Monitoring Team oppose the elimination. The Monitoring Team proposes certain revisions, which Defendants will consent to <i>if</i> the Court does not adopt Defendants’ proposal and the Court also includes the text proposed in brackets and yellow highlights. The Monitor takes no position on the language proposed by Defendants in yellow highlight. Plaintiffs’/SDNY oppose the Monitor’s revisions. The Plaintiffs’/SDNY propose no changes are necessary. Monitoring Team’s Explanation: The Monitoring Team believes any selection of the RM necessarily requires an understanding of cost estimates <i>before</i> the selection of the RM, which is why the Monitoring Team recommended the process for selection of the RM include consideration of fees and expenses. With respect to a submission to the Court regarding fees, we recommend that any submission is discussed with the City before it is provided to the Court. The timing proposed by the Monitoring Team is intended to mirror the timing considered by the Court. As noted in other sections of this Order, the Monitoring Team has recommended the Court discuss the appropriate start date with the RM and so the definition of what that may be may change. We recommend that any submission to the City conforms with the timing of when the RM is set to start, which is why “appointment” is bracketed and highlighted in yellow so it may be updated as the Court determines the timing after consultation with the selected RM. Overall, the changes made here support the need for the RM to engage the City <i>first</i> and <i>directly</i> and for judicial economy such that any submissions to the Court regarding fees will either be on consent or specifically identify the matters or disputes that require Court determination. The language in brackets and yellow highlight was proposed by Defendants, and the Monitoring Team takes no position, but includes it for the Court’s consideration. Defendants’ Position: City maintains its request that this process occur before the final appointment of the RM, but if the Court will not order that sequence the City joins in the Monitor’s proposal in the alternative (including the language in highlight which the Monitor reports it takes no position on). <i>See</i> Defs. Objs., SECTION VIII: Remediation Manager Compensation and Expenses on pg. 13; Def. Supp. Objs. at 11. Plaintiffs’/SDNY’s Position: We believe the Court’s original language is appropriate, and oppose the revisions proposed by Defendants and the Monitor. It is not feasible for the Remediation Manager to estimate all expenses before beginning work and making an initial assessment of resources needed (i.e. particular technical or subject matter experts, etc.). The Remediation Manager should, at the 30-day point the Court proposes, have a more robust sense of what fees and expenses the role requires. We expect that the parties, the Monitor, and the Court will have discussions with Remediation Manager candidates regarding estimated fees and costs as part of the selection process. However, we do not think it is reasonable to ask the individual to provide a detailed description of their budget prior to their appointment. The original language in the Court’s order still allows the City an opportunity to object to the Remediation Manager’s proposed rates, costs, and expenses. Nor do we believe the proposal that fees be “comparable to” City salaries is appropriate, as few such comparisons are available, and the protections of a City civil service job and its pension and other benefits render comparisons difficult at best. The Monitor does not provide any examples of what he would consider to be a comparable “position.” In addition, this ambiguous salary cap may impede the Remediation Manager from adding the most qualified individuals to their limited team. We also do not understand such terms to have been applied to the Monitor’s compensation or the compensation of his staff, and do not think it would be appropriate here. The Monitor’s proposal introduces an entire month of potential delay during a conferral process that will inevitably still wind up in Court. Plaintiffs will also need an opportunity to be heard on any dispute to ensure that the Plaintiff Class’ interests in relief are protected. We believe that the Court is well positioned to manage this process under the terms of its initial order.				

Section IX: Duration of the Nunez Remediation Manager’s Tenure

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IX, A Duration of the <u>Nunez</u> Remediation Manager’s Tenure	The <u>Nunez</u> Remediation Manager’s authority will continue until the Court determines that Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with all of the Contempt Provisions has been achieved and sustained for a period of 12 months consistent with Section III.	The <u>Nunez</u> Remediation Manager’s authority will continue, <u>subject to reductions in that authority pursuant to Section III above</u> , until the ~~Court determines that Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment)~~ <u>Nunez Remediation Manager’s authority is removed pursuant to Section II above</u> with <u>respect to all of the</u> Contempt Provisions ~~has been achieved and sustained for a period of 12 months consistent with Section III, at which time this Order will~~ <u>terminate</u> .	The <u>Nunez</u> Remediation ~~Manager’s authority~~ <u>Manager</u> will ~~continue~~ <u>remain in place</u> until the Court determines that Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with all of the Contempt Provisions has been achieved and sustained for ~~a period of 12~~ <u>three successive Reporting Periods (i.e., 18 months consistent with Section III.)</u> .	
Summary of Objections/Proposals: There are two different proposals. One is proposed by Defendants and consented by the Monitoring Team and opposed by Plaintiffs’/SDNY. The Plaintiffs’/SDNY proposal is opposed by Defendants. Monitoring Team’s Explanation: The Monitoring Team believes the original language as drafted conflicts with § III of this Order and pages 44 to 45 of the Court’s May 13, 2025 Order. The Court explained it will assess and terminate authority of the RM upon individual assessments of compliance with Benchmarks and Contempt Provisions. However, the language as originally drafted suggests that the authority of the RM will not be terminated until Substantial Compliance with <u>all</u> the Contempt Provisions has been achieved. We believe the proposal by Defendants resolves those issues. Defendants’ Position: <i>See</i> Defs. Objs., SECTION III: Notice and Opportunity Comment on Reports on pgs. 5-6. Plaintiffs’/SDNY’s Position: <i>Plaintiffs’/SDNY Proposal:</i> The edit in the last sentence is proposed for clarity. It is our understanding that the Court intended the Remediation Manager’s authority to terminate only once the Court has determined that Substantial Compliance has been achieved for three consecutive reporting periods, which we believe is necessary and prudent given the history of this case. To respond to the Monitoring Team's concern about drafting, we propose amending this provision to read "The <u>Nunez</u> Remediation Manager will <u>remain in place</u> until the Court determines that..." to make it consistent with the other provisions in the order that allow elements of the Remediation Manager's authority to terminate on findings of sustained Substantial Compliance in areas relating to those particular Contempt Provisions. <i>See</i> Section III. We think that edit makes clear that the Remediation Manager will remain until all Contempt Provisions have been brought into sustained Substantial Compliance, which we think was the Court's intent and which we strongly support as necessary. <i>Defendants’ Proposal:</i> We strongly oppose these revisions. First, we think this provision is intended to cover the Remediation Manager’s authority globally—and in our view, these revisions could be read as terminating the Remediation Manager’s authority globally after <i>one</i> Contempt Provision has been found to be in Substantial Compliance (an unintended reading, as we understand, and one inconsistent with the requirements of Section III). Second, we strongly oppose tying termination of authority to completion of benchmarks, which we explain further in our comments above. Finally, we think it is very confusing to define how long the Remediation Manager will be in place (a very important term of this Order) through references to another Section of the Order. This provision must be totally clear, and our proposed language is.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ IX, B Duration of the <u>Nunez</u> Remediation Manager’s Tenure	Nothing in this Order affects the terms of the Consent Judgment or other <u>Nunez</u> Orders, which remain in full force and effect. In the event the <u>Nunez</u> Remediation Manager’s tenure terminates, the Consent Judgment and other <u>Nunez</u> Orders will remain in full force and effect until the Court makes a finding that the Defendants have achieved Substantial Compliance with the provisions of the Consent Judgment and have maintained Substantial Compliance for a period of twenty-four (24) months, as set forth in Section XXI, ¶ 5 of the Consent Judgment.			
No proposed revisions or objections.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations

New Provision in § IX Duration of the <u>Nunez</u> Remediation Manager’s Tenure		<u>Notwithstanding the provisions of Section IX-A, the employment of the Nunez Remediation Manager shall terminate four years after the date of this Order, and upon notice and opportunity to be heard by the parties the Court may extend the employment of the Nunez Remediation Manager, appoint a new Nunez Remediation Manager, or terminate or modify this Order.</u>		
<u>Summary of Objections/Proposals:</u> Defendant’s proposal is opposed by Plaintiffs’/SDNY. The Monitoring Team proposes an alternative consideration should the Court determine a more routine interval of RM’s duties should be evaluated. Monitoring Team’s Explanation: The Monitoring Team appreciates the goal of this proposal to ensure there is accountability for the RM to conduct work as timely and efficiently as possible and to incentivize progress so the RM is not engaged longer than needed. As noted in the Monitoring Team’s comments to Section III, the Monitor recommends that there may be a useful model in Hinds County Order. In that Order it notes that, “Each year, the Receiver shall schedule a formal assessment with the Court, during which the Court will regularly assess progress under the Receivership and determine whether the Receiver’s duties should be modified or eliminated.” A similar type of assessment by the Court may be appropriate here following the filing of the Monitor’s Reports (note, in Hinds County there will be no Monitor Reports during the receivership). <i>See, U.S. v. Hinds Cnty., et al.</i>, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2, § V. The Monitor does not take a position on the Defendants’ proposal. Defendants’ Position: <i>See</i> Defs. Objs., SECTION X: Term of Remediation Manager/Objections to Requests on pgs. 13-14. Plaintiffs’/SDNY’s Position: We oppose. The Court has set a clear standard for termination of the Remediation Manager’s authority, and it is necessarily tied to compliance, not an arbitrary time limit—which only encourages those opposed to reform to “wait out” the Remediation Manager. The Court has ordered the appointment of a Remediation Manager as a remedy for contempt, and as such it should only terminate when compliance has been achieved. We oppose the Monitor’s suggestion that this order prescribe formal assessments of the Remediation Manager’s process, with a potential modification or elimination of duties that may require briefing and/or a hearing, every six months after each Monitor report is filed. As we noted in our comments to the “new paragraph” proposed by Defendants to follow § III, ¶ C, we think it unnecessary and burdensome to create a formal, intermittent judicial review process. The Court may, of course, intervene at any point based on the copious amount of information the Court will receive from the Remediation Manager and the Monitor.				

Section X: Cooperation

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ X, A Cooperation	The Defendants, and all agents or persons within the employ of the Defendants (including contract employees), and all persons in concert and in participation with them, the Monitor, and all counsel in this action, shall fully cooperate with the Nunez Remediation Manager in the discharge of the Nunez Remediation Manager’s duties under this Order, and shall promptly respond to all inquiries and requests related to compliance with the Nunez Orders.	The ~~Defendants~~ parties, and all agents or persons within the employ of ~~the Defendants (including contract employees), and~~ all persons in concert and in participation with ~~them~~ the parties and, the Monitor, ~~and all counsel in this action,~~ shall fully cooperate with the Nunez Remediation Manager Team in the discharge of the Nunez Remediation Manager’s duties under this Order. The parties, and shall promptly respond to all inquiries and requests related to compliance with the Nunez Orders in a reasonable period of time. To the extent that a party asserts that information requested by the Remediation Manager Team is privileged, or is unrelated to the proper duties of the Nunez Remediation Manager, they may assert such objections to the Nunez Remediation Manager. To the extent necessary to resolve such objections, the Nunez Remediation Manager may seek appropriate relief from the Court.		The Defendants, and all agents or persons within the employ of the Defendants (including contract employees), and all persons in concert and in participation with them, the Monitor, and all counsel in this action, shall fully cooperate with the Nunez Remediation Manager in the discharge of the Nunez Remediation Manager’s duties under this Order. ~~and Defendants~~ shall promptly respond to all inquiries and requests from the Remediation Manager Team related to compliance with the Nunez Orders. To the extent that a party asserts that information requested by the Remediation Manager Team is privileged, or is unrelated to the proper duties of the Nunez Remediation Manager, they may assert such objections to the Nunez Remediation Manager. To the extent necessary to resolve such objections, the Nunez Remediation Manager may seek appropriate relief from the Court.
Summary of Objections/Proposals: There is consent/no objection to the change to split the first sentence into two sentences with a period after “duties under this Order”. There is also consent/no objection to the last two sentences of this paragraph. However, there are two different proposals about who this provision applies to. Defendants propose this provision apply to all parties, that the provision does not apply to the parties’ counsel, and that the provision for information requests by the RM apply to all parties versus just Defendants. Plaintiffs’/SDNY oppose the changes by Defendants’ and the Monitoring Team takes no position. Monitoring Team’s Explanation: The Monitoring Team has proposed two revisions. The first revision is made for clarity by creating two separate sentences. Two separate sentences are needed because these are two different obligations and so we believe that the text should be separated. The final sentence (starting with “To the extent”...) was added at the recommendation of Defendants and we understand that Plaintiffs’/SDNY do not object to the addition. We note that Defendants have made further revisions to this language, and we defer to the Court and the Parties as to whether the additional objections to requests from the RM be included. Defendants’ Position: Defendants propose different languages for the first sentence. Defendants consent to the last two sentences included in the Monitor’s proposal (which also appear in the Defendants’ proposal). Defendants object to counsel being required to cooperate with the Remediation Manager because counsel have an overarching obligation of loyalty to their clients and they do not represent the Remediation Manager. Therefore, it would present a conflict of interest to require counsel for the parties to cooperate with the Remediation Manager. Nevertheless, counsel for defendants fully intend to be of assistance to the Remediation Manager as much as is reasonably possible, and so long as that assistance does not conflict with their obligations to DOC and the City. See Defs. Supp. Objs. at 11-12. Plaintiffs’/SDNY’s Position: We would consent to the Monitor’s revisions. With respect to Defendants’ proposal, we oppose these edits to the Court’s language. Defendants are under an obligation to cooperate with the Remediation Manager as part of the Remediation Manager’s exercise of authority within Defendants’ agency, and are therefore differently situated than Plaintiffs and the Government. This section should remain focused on Defendants. We do not believe Defendants’ proposal to remove references to counsel in this paragraph is necessary. Any conflict of interest that may hypothetically arise (in our view, an unlikely scenario) can be dealt with based on the specifics of that theoretical conflict. Regarding the sentences that begin “To the extent,” we agree.				

Section XI: Other Terms

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ XI, C Other Terms	The <u>Nunez</u> Remediation Manager and their staff shall have the authority to communicate ex parte and confidentially with each party and each party's legal representatives, as well as with the Court and the Monitoring Team.			~~The <u>Nunez</u> Remediation Manager and their staff~~ <u>Team</u> shall have the authority to communicate ex parte and confidentially with each party and each party's legal representatives, as well as with the Court and the Monitoring Team. <u>Plaintiffs' Counsel access to information and other materials remains governed by Consent Judgment § XX, ¶ 10.</u>
Summary of Objections/Proposals: Consent/no objection to the change to Remediation Manager Team. Defendants consent to the additional language proposal at the end of the paragraph by the Monitoring Team, but it is opposed by Plaintiffs'/SDNY. The Monitoring Team provides considerations for the Court should it determine that a different process for Plaintiffs/SDNY access to information is necessary upon the appointment of the RM. Monitoring Team's Explanation: We recommend this additional language is added at the end of the paragraph to ensure applicability to the RM Team. The sentence added at the end reinforces that access to information remains unchanged. To the extent that Plaintiffs'/SDNY believe that their access to information should be altered in light of the appointment of the RM, then a process for sharing of that information must be devised and developed. As noted elsewhere in our comments, assuming that explicit provisions of the Nunez Court Order simply don't apply because of the appointment of the RM is not workable. While the Monitoring Team believes the access to information clause from the Consent Judgment remains most appropriate in this case, if the Court determines that Plaintiffs/SDNY may now have access to information via a different avenue than what is prescribed under Consent Judgment § XX, ¶ 10, then a specific process for the provision of information is needed. In particular such process must include, (a) to the extent that the RM may provide information to the parties that the Monitor does not have, then the Monitor must necessarily be provided that information; (b) privileged information shall not be shared with Plaintiffs' Counsel absent Defendants' consent and (c) the provision of information shall not interfere with the Monitor's ability to effectively monitor this Agreement. These three requirements are necessary, and we don't see the appointment of the RM creating a basis for the Parties having access to information that does not meet these three requirements. Defendants' Position: Defendants consent to the Monitor's proposed revision by the Monitor with the following clarifying changes to the last sentence. Plaintiffs' Counsel access to information and other materials remains governed by Consent Judgment § XX, ¶ 10, and those provisions shall apply to information that may be provided to the plaintiffs by the Remediation Manager to the same degree as it applies to information provided by the Monitor. This provisions is not intended to grant the Remediation Manger any obligation to provide the plaintiffs with information. See Defs. Supp. Objs. at 9 n. 8. Plaintiffs'/SDNY's Position: We oppose the proposed last sentence because we feel this reference to this particular provision of the Consent Judgment introduces ambiguity—it could be read to imply that we cannot get information directly from the Remediation Manager, but would have to go through the Monitor.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ XI, A Other Terms	If at any point the <u>Nunez</u> Remediation Manager determines that they need additional funding to fulfill the Remediation Action Plan that is not budgeted for that fiscal year, the <u>Nunez</u> Remediation Manager shall immediately consult the Commissioner before notifying the City Council's Finance Division and the Mayor's Office of Management and Budget of the specific purpose and the amount of funds needed. If the issue is not timely resolved, the <u>Nunez</u> Remediation Manager or any party may request a hearing before the Court.			If at any point the <u>Nunez</u> Remediation Manager determines that ~~they need~~ <u>the Department needs</u> additional funding to fulfill the Remediation Action Plan that is not budgeted for that fiscal year, the <u>Nunez</u> Remediation Manager shall immediately consult the Commissioner before notifying the City Council's Finance Division and the Mayor's Office of Management and Budget of the specific purpose and the amount of funds needed. If the issue is not timely resolved, the <u>Nunez</u> Remediation Manager or any party may request a hearing before the Court.
Summary of Objections/Proposals: There is consent/no objection by the Parties and Monitoring Team to these revisions. Monitoring Team's Explanation: Revisions made for clarity. Defendants' Position: We consent. Plaintiffs'/SDNY's Position: We consent.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations

§ XI, D Other Terms	Absent leave of the Court, the <u>Nunez</u> Remediation Manager and their staff may not testify in any litigation or proceeding other than this case, including public hearings or other proceedings before the New York City Council, the Board of Correction, or the New York State legislature, with regard to any act or omission of the DOC or any of the DOC’s agents, representatives, or employees related to the <u>Nunez</u> Orders. The <u>Nunez</u> Remediation Manager and their staff may not give interviews or make public statements regarding their work under the <u>Nunez</u> Orders, other than reports filed on the docket, without the permission of the Court.		Absent leave of the Court, the ~~<u>Nunez</u>~~ Remediation Manager ~~Team and their staff~~ may not testify in any litigation or proceeding other than this case, including public hearings or other proceedings before the New York City Council, the Board of Correction, or the New York State legislature, with regard to any act or omission of the DOC or any of the DOC’s agents, representatives, or employees related to the <u>Nunez</u> Orders. ~~The <u>Nunez</u> Remediation Manager and their staff may not give interviews or make public statements regarding their work under the <u>Nunez</u> Orders, other than reports filed on the docket, without the permission of the Court.~~	Absent leave of the Court, the ~~<u>Nunez</u>~~ Remediation Manager ~~and their staff~~ <u>Team</u> may not testify in any litigation or proceeding other than this case, including public hearings or other proceedings before the New York City Council, the Board of Correction, or the New York State legislature, with regard to any act or omission of the DOC or any of the DOC’s agents, representatives, or employees related to the <u>Nunez</u> Orders. The ~~<u>Nunez</u>~~ Remediation Manager ~~and their staff~~ <u>Team</u> may not give interviews or make public statements regarding their work under the <u>Nunez</u> Orders, other than reports filed on the docket, without the permission of the Court.
Summary of Objections/Proposals: There is consent/no objection to the alterations that this provision applies to the Remediation Manager Team (including consultants) and not just the Remediation Manager and their staff. The Plaintiffs’/SDNY propose deletion of the last clause which the Defendants and Monitoring Team oppose. Monitoring Team’s Explanation: The Monitoring Team has proposed a slight revision to ensure the entire Remediation Manager’s Team (staff and consultants) is included. With respect to Plaintiffs’/SDNY proposed revision, the Order does not preclude the RM from making public statements but simply requires the Court’s permission before the RM (or the RM’s staff) may speak with the press. The Court’s guidance is invaluable, and the Monitoring Team believes that the language as drafted by the Court supports an efficient and appropriate administration of the RM’s work and therefore should remain as drafted. We note that the Hinds County Order doesn’t even permit the Receiver to speak with the press. This provision provides necessary latitude with appropriate need for consultation and guidance with the Court. Defendants’ Position: Defendants’ consent to the changes proposed by the Monitor. Defendants object to the proposed change and agree with the Monitor’s comments. The RM is an agent of the Court and it is inappropriate for a judicial agent to engage in unrestricted public statements for the same reasons that it would be inappropriate for the Judge to do so. See <i>Ligon v. City of N.Y.</i>, 538 F. App’x 101, 102-03 (2d Cir. 2013), explained and superseded by, <i>Ligon v. City of N.Y. (In re Reassignment of Cases)</i>, 736 F.3d 118, 127 (2d Cir. 2013) (recusing District Judge in part because of statements to the media suggesting bias). Def. maintain this objection. The Hinds County final order contains a similar provision prohibiting public statements by the RM, absent Court approval. The Hinds order states: “The Receiver and their personnel may not make any public statements (at a press conference or otherwise) with regard to any act or omission of the County, or disclose information provided to the Receiver pursuant to this Receivership, except as authorized by this Order, the Court, or by joint stipulation of the parties.” The Proposed Order should adopt this language. See Defs. Supp. Objs. at 8-9. Plaintiffs’/SDNY’s Position: We agree that it is important to protect the Remediation Manger from being compelled to testify and so do not object to the first sentence of this paragraph. However, allowing the Remediation Manager, at their discretion, to give “public” statements—which could include speaking to the press or something as minor as having informal meetings with relevant stakeholders like the unions—serves an important purpose. In order to be successful, the Remediation Manager will need to gain public support for their actions from line staff, the public, and other stakeholders. Silence—particularly in the face of a public discourse that may otherwise be dominated by those who are at best unaware of the Remediation Manager's work and at worst in opposition to change—is unlikely to serve the Remediation Manager well as they seek buy-in across the City. Indeed, the inability to publicly explain their rationale for taking certain actions may undermine the Remediation Manager’s efforts and credibility. Moreover, while the Remediation Manager is a judicial agent, they are not positioned the same as a judge, so <i>Ligon</i> is inapposite. For example, the Remediation Manager will not be responding to adversarial submissions but will instead be engaging in frequent, generally "ex parte" conversations.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ XI, E Other Terms	Unless such conflict is waived in writing by the Parties, the <u>Nunez</u> Remediation Manager and their staff may not accept employment or provide consulting services that present a conflict of interest with their responsibilities under this Order, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant’s or claimant’s attorney, in connection with a claim or suit against the DOC or the DOC’s agents, representatives, or employees.			Unless such conflict is waived in writing by the ~~Parties; parties, no member of~~ the <u>Nunez</u> Remediation Manager ~~and their staff~~ <u>Team</u> may ~~not~~ accept employment or provide consulting services that present a conflict of interest with their responsibilities under this Order, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant’s or claimant’s attorney, in connection with a claim or suit against the DOC or the DOC’s agents, representatives, or employees.
Summary of Objections/Proposals: There is consent/no objection by the Parties and Monitoring Team to the proposed revisions. Monitoring Team’s Explanation: This additional language is added for clarity and to ensure it applies to all members of the RM’s team. Defendants’ Position: Defendants agree. Plaintiffs’/SDNY’s Position: We do not object to this revision.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ XI, F Other Terms	The <u>Nunez</u> Remediation Manager is an agent of the Court and is not a federal, State, or local agency or an agent thereof.	~~The <u>Nunez</u> Remediation Manager is an agent of the Court and is not a federal, State, or local agency or an agent thereof.~~		
Summary of Objections/Proposals: Plaintiffs object to Defendants proposal. The Monitoring Team takes no position. Monitoring Team's Explanation: The Monitoring Team defers to the Court and the parties on this provision. Defendants' Position: <i>See</i> Defendants' Memorandum of Law SECTION XI: Miscellaneous on pg. 14. Plaintiffs'/SDNY's Position: We oppose. We think this provision is necessary. To the extent Defendants contend that the Court's language is inaccurate because the RM is an agent of the Court, Defendants are incorrect. The Court is not a "federal" agency, and so the Remediation Manger is not an agent of a federal agency.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ XI, G Other Terms	If at any time the <u>Nunez</u> Remediation Manager position becomes vacant, the parties and the Monitor shall confer on potential replacements and the parties shall meet and confer and endeavor to jointly provide the court with no more than four candidates to replace the <u>Nunez</u> Remediation Manager. The parties shall submit their recommendations, with supporting materials, to the Court confidentially. Once the Court has received the parties' recommendations, the Court shall review the proposed candidates, and any further candidates the Court, in its discretion, may deem appropriate for consideration, and select the new <u>Nunez</u> Remediation Manager.			
No proposed revisions or objections.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § XI Other Terms		<u>Nothing in this Order shall limit the effect of Prison Litigation Reform Act, 18 U.S.C. § 3626(b).</u>		
Summary of Objections/Proposals: Defendants proposal is opposed by Plaintiffs'/SDNY. The Monitoring Team takes no position. Monitoring Team's Explanation: The Monitoring Team defers to the Court and the Parties with respect to this revision. Defendants' Position: <i>See</i> Defs. Obs., SECTION IX: Motion for Termination on pg. 13. Plaintiffs'/SDNY's Position: We oppose. This additional paragraph proposed by Defendants is unnecessary and superfluous.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § XI		<u>The parties shall have at least 20 business days to respond to any petition by the Nunez Remediation Manager</u>		

Other Terms		<u>pursuant to this provision, prior to the Court entering any Order in response to the petition.</u>		
Summary of Objections/Proposals: Defendants proposal is opposed by Plaintiffs’/SDNY. The Monitoring Team takes no position. Monitoring Team’s Explanation: We defer to the Court and the Parties on this provision. Defendants’ Position: <i>See</i> Defs, Objs., SECTION XI: Miscellaneous on pg. 14. Plaintiffs’/SDNY’s Position: We oppose. The Court will set a briefing schedule depending on what the issue is, and we should not predetermine the briefing schedule on issues of unknown substance and complexity, particularly one that is longer than the local rules.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § XI Other Terms		<u>To the extent that the Nunez Remediation Manager petitions to alter the terms of any Collective Bargaining Agreement, or any laws, rules or regulations governing the employment of any person by the City, the unions representing the affected employees shall be provided the same notice and opportunity to be heard as the parties.</u>		
Summary of Objections/Proposals: Defendants proposal is opposed by Plaintiffs’/SDNY. The Monitoring Team takes no position. Monitoring Team’s Explanation: We defer to the Court and the Parties on this provision. Defendants’ Position: <i>See</i> Defs. Objs., SECTION XI: Miscellaneous on pg. 14. Plaintiffs’/SDNY’s Position: We oppose. The unions can certainly make a motion to intervene and the court can resolve it in the normal course of such proceedings. This language essentially permits the union to intervene without making the appropriate motion which is inappropriate.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § XI Other Terms		<u>Other Rights Preserved. Nothing in this Order shall prevent any party or intervener from seeking modification or termination of this Order before the relief is otherwise terminable pursuant to the terms of this Order, to the extent that modification or termination would otherwise be legally permissible under Fed. R. Civ. P. 60 or other law.</u>		
Summary of Objections/Proposals: Plaintiffs object to Defendants proposal. The Monitoring Team takes no position. Monitoring Team’s Explanation: The Monitoring Team defers to the Court and the parties on this provision. Defendants’ Position: <i>See</i> Defs. Objs., SECTION X: Term of Remediation Manager/Objections to Requests on pgs. 13-14. Plaintiffs’/SDNY’s Position: We oppose. Again, we object to including language from statutes or rules that this Court’s order does not disturb. It is unnecessary and confusing.				

Section XII: Effective Date

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
§ XII, A Effective Date	This Order Appointing the <u>Nunez</u> Remediation Manager shall become effective following the appointed <u>Nunez</u> Remediation Manager’s confirmation of their Acceptance of the powers, responsibilities and duties imposed by this Order by signing a copy of this Order below and returning the countersigned copy to the Court by email addressed to <u>SwainNYSDCorresp@nysd.uscourts.gov</u> . The Order shall be effective on the Acceptance Effective Date.			
No proposed revisions or objections.				

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants’ Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision in § § XII Effective Date es		<u>The Nunez Remediation Manager shall begin their transition into the role by [DATE] by planning and engaging in the logistics for the role. To effectuate a smooth transition, the powers of the Nunez Remediation Manager’s shall take effect 90 days from the date of this Order.</u>		<u>The Nunez Remediation Manager shall begin [his/her] transition into the role by Month Day, Year by planning and engaging in the logistics for the role. To effectuate a smooth transition, the powers of the Nunez Remediation Manager’s shall take effect on [Month Day, Year]. [We recommend that definitions of Particularized Dates should be included in this paragraph and the subsequently referenced in document (e.g. as it relates to the creation of the RAP) once this provision has been finalized by the Court (following consultation with the RM and any other relevant stakeholders)]</u>

Summary of Objections/Proposals: The Monitor provides a model for the Court’s consideration regarding the start date for the RM different from the appointment date and consideration for of timing for conferral of authority. Defendants propose a slightly different construction. Plaintiffs’/SDNY oppose.

Monitoring Team’s Explanation: The Monitor proposes this language for the Court’s consideration to be finalized after discussion with the RM and the logistics of the initiation of the RM’s work. Currently the order contemplates that acceptance of the role and the initiation of the role will occur on the same day. As with any new job, an individual will accept a position and begin the work some time *after* acceptance. In this case, this is particularly important as the Parties will only learn of the appointment of the RM at the time of acceptance (and issuance of the Order), so not only will the RM need time to prepare for the role, but any planning by the Parties (in particular by Defendants) may be needed. The language proposed is from *U.S. v. Hinds Cnty., et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-4. We believe it provides a useful model to permit a smooth transition. While the dual track utilized in Hinds County (the Court first set a date on which the Receiver will begin to develop a Plan, followed by a date at least three months later when the Receiver’s control will begin in order to support a smooth and informed transition of authority to the Receiver) may not be necessary, the overall concept we think may be of use. We appreciate that in other Receivership cases the appointment and conferral on authority occurred on the same day, but, in at least one of those cases (Miami), that is because the individual appointed was already working with the agency and the order was entered upon consent. We recommend the Court set the timing based on discussions with the RM to ensure a smooth transition based on the needs of this case and the RM.

Defendants’ Position: Defendants do not object to the proposed change, but add that the transition period should be equivalent to the target date for the completion of the RAP.

Plaintiffs’/SDNY’s Position: We believe there is no need to define separate “Acceptance Effective Dates” and “Start Dates.” It is entirely possible to manage this process with the two being the same. But in any event, we strongly oppose delaying the conferral of authority on the Remediation Manager beyond the date they accept their appointment and start working on this matter. There is no doubt much to learn, but the person appointed will be a professional who has taken on complex roles before, and the Monitor and Defendants’ proposals unnecessarily cabin such a professional. There may be specific actions that it is prudent or necessary for the Remediation Manager to take swiftly to effectuate change, and the Court may trust the judgment of its agent in this regard. Completely tying the hands of the Remediation Manager for an arbitrary time period unnecessarily builds in yet more delay in a process toward relief that has already been prolonged, in the midst of an ongoing crisis. We think the immediate conferral of authority is consistent with Court’s reasoning in the May 13, 2025 Opinion and Order on p.44, rightfully clarifying that development of the RAP is not cause to delay granting the Remediation Manager power: “To be clear, the responsibilities and authority of the Nunez Remediation Manager shall not be constrained by the particular stages of the Remediation Action Plan, nor are the powers granted to the Nunez Remediation Manager limited during the time period in which the Remediation Action Plan is being developed.” Other courts have acted in line with this Court’s reasoning, conferring authority to receivers immediately on appointment. *See Plata v. Schwarzenegger*, No. C01-1351, Order Appointing Receiver at 4 (N.D. Cal. Feb. 14, 2006) (Dkt. 473); *United States v. Miami-Dade Cnty.*, No. 13-cv-21570, Stipulated Order Regarding Appointment of Independent Jail Compliance Director (S.D. Fla. Feb. 16, 2023) (Dkt. 260).

RM Order Citation & Section Name	Text of Proposed RM Order	Defendants' Proposed Revisions	Plaintiff Class/SDNY Proposed Revisions	Monitor Recommendations
New Provision/Proposed Order		<u>SEPARATE PROPOSED ORDER REGARDING FEE AND EXPENSE SCHEDULE</u> <u>1. Prior to final appointment of a Remediation Manager, a prospective Nunez Remediation Manager shall submit to the City a proposed Schedule of Fees and Expenses. This Schedule shall include an estimate of the title and duties of each staff member that the Remediation Manager believes will be required to exercise the duties of the Remediation Manager pursuant to the Court order and a statement of the proposed fixed weekly fee for the Remediation Manager and each expected member of their staff.</u> <u>2. In approving proposed fees the Court will consider whether the compensation to be paid to the Remediation Manager and each of their staff is commensurate with the salary earned by employees of the City of New York serving in comparable roles and providing comparable services.</u> <u>3. The Remediation Manager and the City shall confer in good faith regarding the proposal for fees and expenses and to the extent that the City and Remediation Manager agree they shall make a joint proposal for approval of the statement of fees and expenses, to be included as Appendix A to the order appointing the Remediation Manager.</u> <u>4. To the extent that the City and the prospective Remediation Manager disagree regarding the Schedule of Fees and Expenses, they shall make separate submissions to the Court stating the basis for the disagreement.</u> <u>5. The Court shall approve or modify the proposed Schedule of Fees and Expenses, which shall then be included as Appendix A to the order appointing the Remediation Manager.</u>		
Summary of Objections/Proposals: Defendants' proposal is opposed by Plaintiffs'/SDNY. The Monitoring Team proposes a different construction of the City's proposal that adopts some, but not all of this proposal and it is discussed above. Monitoring Team's Explanation: The Monitoring Team supports the need for transparency regarding cost estimates <i>before</i> the selection of the RM. With respect to the proposed language, the Monitoring Team is not sure how this process would work in practice as it appears to contemplate that there may be some interim order of appointment, then a fees order, then this order. That seems confusing and inefficient. The Monitoring Team strongly encourages that discussions about costs and fees must occur <i>before</i> selection by the parties, Monitoring Team and the Court. It is a necessary consideration for selection. Further, we recommend the RM must discuss costs with the City before making a submission to the Court. These concepts have been addressed via the Monitor's recommendations above. Defendants' Position: <i>See</i> Defs, Objs., SECTION VIII: Remediation Manager Compensation and Expenses on pg. 13. Plaintiffs'/SDNY's Position: As noted above, we expect that the parties, the Monitor, and the Court will have discussions with Remediation Manager candidates regarding estimated fees and costs as part of the selection process. However, we do not think it is reasonable to ask individual candidates to provide a detailed description of their budget and staffing prior to their appointment. The original language in the Court's order requires the Remediation Manager to submit proposed rates, fees, and expenses within 30 days of their appointment, when they will have more information about exactly what consultants or other team member may be necessary and their roles. The original language allows the City an opportunity to object to these proposed rates, costs, and expenses with the Court ultimately resolving any disputes. The City's proposal sets up the possibility of prolonged litigation about the Remediation Member's team and costs before the Remediation Manager begins work, which will further delay what has already been a prolonged period to implement necessary relief to cure Defendants' contempt. Once again, Defendants' proposed additional language is designed to further delay the implementation of the contemplated remedial structure for their widespread contempt. In addition, as noted above, we disagree with setting compensation "commensurate with the salary earned by employees" of NYC, as these positions are not easily comparable, nor are the benefits afforded them (i.e. pension) comparable as neither the Remediation Manager nor his staff will be employees of NYC. Further, Defendants do not provide any indication of which City employees they believe are "serving in comparable roles and providing comparable services" to the RM and their staff so it is unclear what fee ranges they believe are appropriate.				

CLEAN VERSION OF PROPOSAL FROM MONITORING TEAM

APPENDIX B: ORDER APPOINTING NUNEZ REMEDIATION MANAGER

The Court intends to enter an order in substantially the following form upon the selection of the Nunez Remediation Manager. Any objections to the language of the order must be discussed with the Monitoring Team and filed in writing by 12:00 p.m. on June 27, 2025.

WHEREAS, on October 22, 2015, this Court entered the Consent Judgment (docket entry no. 249) in this matter to correct the violation of the constitutional rights of people incarcerated in jails operated by the New York City Department of Correction (“DOC” or “the Department”)¹;

WHEREAS, the Consent Judgment required the Defendants to take specific actions to remedy a pattern and practice of violence by staff against incarcerated individuals, and to develop and implement new practices, policies, and procedures to reduce violence in the jails and ensure the safety and well-being of incarcerated individuals;

WHEREAS, Section XXII, ¶ 1 of the Consent Judgment provides: “The Parties stipulate and agree, and the Court finds, that this Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a). The Parties further stipulate and agree, and the Court finds, that the prospective relief in this Agreement is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the Parties agree and represent that the Agreement complies with the provisions of 18 U.S.C. § 3626(a)”;

¹ The Plaintiff Class is defined as “all present and future inmates confined in jails operated by the Department, except for the Elmhurst and Bellevue Prison Wards.” (Docket entry no. 249 ¶ II.2.)

WHEREAS, on August 14, 2020, the Court entered a Remedial Consent Order Addressing Non-Compliance (the “First Remedial Order,” docket entry no. 350) that included several remedial measures designed to address the repeated findings of the Nunez Independent Monitor (the “Monitor” or “Monitoring Team,” which shall each refer to the Monitor and the members of the Monitoring Team) that the Defendants were in non-compliance with core provisions of the Consent Judgment, including with Section IV, ¶ 1 (Implementation of Use of Force Directive); Section VII, ¶ 1 (Thorough, Timely, Objective Investigations); Section VII, ¶ 7 (Timeliness of Preliminary Reviews); Section VII, ¶ 9 (a) (Timeliness of Full ID Investigations); Section VIII, ¶ 1 (Appropriate and Meaningful Staff Discipline); Section XV, ¶ 1 (Inmates Under the Age of 19, Protection from Harm); and Section XV, ¶ 12 (Inmates Under the Age of 19, Direct Supervision);

WHEREAS, in his Eleventh Report filed on May 11, 2021 (docket entry no. 368), the Monitor reported that the Defendants were not in compliance with numerous provisions of the First Remedial Order, including Section A, ¶ 2 (Facility Leadership Responsibilities), Section A, ¶ 3 (Revised De-escalation Protocol), Section A, ¶ 6 (Facility Emergency Response Teams), Section D, ¶ 1 (Consistent Staffing), Section D, ¶ 2 (ii) (Tracking of Incentives and Consequences), and Section D, ¶ 3 (Direct Supervision);

WHEREAS, the Court entered a Second Remedial Order on September 29, 2021 (docket entry no. 398), and a Third Remedial Order on November 22, 2021 (docket entry no. 424);

WHEREAS, after the three Remedial Orders failed to result in meaningful improvements, the Defendants developed an Action Plan, supported by the Monitor, that was designed to address Defendants’ overall lack of progress toward compliance by focusing on four foundational areas without which reform could not proceed—security practices, supervision and

leadership, staffing practices, and accountability—and the Court entered and So Ordered the Action Plan on June 14, 2022 (docket entry no. 465);

WHEREAS, the Court found that the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each compliant with the provisions of 18 U.S.C. § 3626(a) and were necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class;

WHEREAS, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each entered to address the ongoing non-compliance with the Consent Judgment and to achieve its primary goal: to protect the constitutional rights of incarcerated people and substantially reduce the level of violence in the jails;

WHEREAS, the Consent Judgment, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan are hereafter collectively referred to as “the Nunez Orders”;

WHEREAS, more than a year after the Action Plan was entered, the Monitor found in his July 10, 2023 Special Report (docket entry no. 557) that the Defendants had not made substantial and demonstrable progress in implementing the reforms, initiatives, plans, systems, and practices outlined in the Action Plan, and that there had not been a substantial reduction in the risk of harm facing incarcerated individuals and DOC staff;

WHEREAS, on November 17, 2023, the Plaintiff Class and the United States filed a Motion for Contempt and Appointment of Receiver;

WHEREAS, on November 27, 2024, this Court issued its factual findings and decision granting Plaintiffs’ Motion for Contempt and found that Defendants (i) are in contempt of eighteen core provisions of the Nunez Orders (the “Contempt Provisions”) “that have gone

unheeded for years and have highlighted failures inextricably linked to the Department's historic pattern of excessive use of force against persons in custody" (docket entry no. 803, at 52);

(ii) "have not demonstrated diligent attempts to comply with the Contempt Provisions in a reasonable manner" (docket entry no. 803, at 52); and (iii) have repeatedly and consistently failed to remediate the violations of the federal rights of incarcerated people that necessitated entry of the Consent Judgment (docket entry no. 803, at 52, 54-56);

WHEREAS, this Court found that the "use of force rate and other rates of violence, self-harm, and deaths in custody are demonstrably worse than when the Consent Judgment went into effect in 2015" and the "unsafe and dangerous conditions in the jails...have become normalized despite the fact that they are clearly abnormal and unacceptable" (docket entry no. 803, at 11);

WHEREAS, this Court found that "for nine years, Defendants made only half-hearted, inconsistent efforts to comply with Court orders" (docket entry no. 803, at 50);

WHEREAS, this Court found that "[t]he record in this case makes clear that those who live and work in the jails on Rikers Island are faced with grave and immediate threats of danger, as well as actual harm, on a daily basis as a direct result of Defendants' lack of diligence, and that the remedial efforts thus far undertaken by the Court, the Monitoring Team, and the parties have not been effective to alleviate this danger" (docket entry no. 803, at 55);

WHEREAS, this Court found that "Defendants' ongoing failure to comply" requires a remedy that addresses the "insufficiently resourced leadership; a lack of continuity in management; failures of supervision and cooperation between supervisors and line officers; a lack of skill or imagination to create and implement transformative plans; and an unwillingness or inability to cooperate with the Monitoring Team recommendations to accomplish the changes necessary" (docket entry no. 803, at 54);

WHEREAS, this Court found that “[t]he last nine years also leave no doubt that continued insistence on compliance with the Court’s orders by persons answerable principally to political authorities would lead only to confrontation and delay; that the current management structure and staffing are insufficient to turn the tide within a reasonable period; that Defendants have consistently fallen short of the requisite compliance with Court orders for years, at times under circumstances that suggest bad faith; and that enormous resources—that the City devotes to a system that is at the same time overstaffed and underserved—are not being deployed effectively” (docket entry no. 803, at 55-56); and

WHEREAS, as required by 18 U.S.C. § 3626(a), the prospective relief in this Order is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the Plaintiff Class and the United States, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. Appointment of Nunez Remediation Manager and Nunez Remediation Manager’s Duties

- A. [NAME] is hereby appointed to serve in this case as Nunez Remediation Manager, with the responsibility and authority to take all necessary steps to promptly achieve Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with the Contempt Provisions.
- B. The Nunez Remediation Manager’s work shall be guided by the “Remediation Action Plan,” a work plan that includes specific and concrete steps and milestones

designed to achieve Substantial Compliance with the Contempt Provisions. The Remediation Action Plan is detailed in Section II.A.

- C. The Nunez Remediation Manager shall provide leadership and executive management with respect to achieving Substantial Compliance with the Contempt Provisions with the goal of developing and implementing a sustainable system that protects the constitutional rights of incarcerated people.
- D. The Nunez Remediation Manager shall be answerable only to the Court.
- E. The Nunez Remediation Manager shall maintain an office within Department headquarters or on Rikers Island and shall be onsite with sufficient frequency, regularity, and duration to carry out their duties.

II. Development and Implementation of the Remediation Action Plan

- A. The Nunez Remediation Manager, in consultation with the Commissioner and the Monitoring Team, shall develop a Remediation Action Plan [*Competing proposals*] **[Defendants' Proposal: to complete within two-years after]** OR **[Plaintiffs'/SDNY Proposal: to be executed within the initial two-year period following]** the Court's approval of the Remediation Action Plan. Nothing in this provision relates to the tenure of the Nunez Remediation Manager, or the duration of their authority with respect to a specific Contempt Provision, which is governed exclusively by Sections III and IX.

- i. The Remediation Action Plan shall:
 - 1. include specific and concrete steps that are necessary to achieve Substantial Compliance with the Contempt Provisions ("Benchmarks"). The Benchmarks shall be organized into

priorities with specified milestones to be achieved within 12-month periods, beginning with the safety-related areas and actions that are most urgently in need of attention;

2. include transformative and sustainable initiatives which shall include any positive initiatives currently underway that must be sustained or enhanced; and
 3. address recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions.
- ii. The Remediation Action Plan shall be provided to the parties in draft form for comment within 90 days of the date of the [the Nunez Remediation Manager's Acceptance of this appointment on the public docket for this case ("Acceptance Effective Date")]. The parties shall provide the Nunez Remediation Manager, the Monitoring Team, and the other parties with their comments on the Remediation Action Plan, if any, within 30 days of receipt. The Nunez Remediation Manager, in consultation with the Commissioner and Monitoring Team, shall consider the comments from the parties and make any changes deemed necessary before filing the final proposed Remediation Action Plan with the Court. The final Remediation Action Plan shall be filed with the Court for approval within 21 days of receipt of comments from the parties.
- iii. The Nunez Remediation Manager may thereafter seek to modify or amend the Remediation Action Plan, including changing the timing of the target period for any particular element of the Remediation Action Plan, upon

application to the Court. The Nunez Remediation Manager shall consult with the Commissioner and the Monitoring Team on any modifications. The Nunez Remediation Manager shall then provide the Remediation Action Plan to the parties for comment before making any such application to the Court and any such application shall be made on notice to the parties and the Monitoring Team.

- B. Implementation of the Remediation Action Plan must begin immediately upon its approval by the Court. This work shall be undertaken in collaboration with the Commissioner to the greatest extent consistent with efficiency, effectuation of change, and the fostering of a respectful, sustainably safety-oriented approach to management.
- C. Within 30 days following Court approval of the Remediation Action Plan, the Nunez Remediation Manager, the Monitoring Team, and the Commissioner shall jointly develop an updated DOC organizational chart that includes delineation of the reporting lines of divisions, operational functions, and personnel that are subject to the direct authority of the Nunez Remediation Manager and the Commissioner, respectively, and those where both exercise direct authority over aspects of the divisions, operations, and personnel. In the event of conflict regarding divisions of labor, the Nunez Remediation Manager has ultimate authority.

III. Assessment of Compliance & Transition Back to DOC Control

- A. Upon a finding by the Monitoring Team that one or more of the benchmarks of the Remediation Action Plan or the Contempt Provisions is in Partial or

Substantial Compliance, the Nunez Remediation Manager shall begin working with the Commissioner to prepare a Transition Plan that shifts responsibility for all functions related to the relevant Benchmark or Contempt Provision back to the Department.

- B. The Transition Plan shall include: (1) how to sustain the progress achieved, (2) the steps the Nunez Remediation Manager will take to prepare the Department to operate independently in the relevant area, and (3) the actions the Department will take to maintain the required performance level and sustain compliance. The Transition Plan shall prepare for the termination of the Nunez Remediation Manager's authority within 1 year of the end of the Monitoring Period in which the Monitor finds the relevant benchmark or Contempt Provision in Substantial Compliance. The Monitor shall be consulted on the Transition Plan.
- C. Within 30 days of the issuance of the Monitor's Report finding that one or more of the benchmarks of the Remediation Action Plan or one or more of the Contempt Provisions is in Substantial Compliance, the Transition Plan shall be finalized, implemented, and submitted to the Court by the Nunez Remediation Manager.
- D. Upon receipt of the Transition Plan, the Court shall determine whether Substantial Compliance with the relevant benchmark(s) and/or Contempt Provision(s) has been achieved and shall approve the Transition Plan, with any modifications the Court deems necessary.
- E. The Nunez Remediation Manager's authority over the relevant benchmark of the Remediation Action Plan or Contempt Provision shall be terminated within 1 year

of the Monitoring Period in which the Monitor finds the relevant benchmark or Contempt Provision in Substantial Compliance. This date may be modified by the Court as necessary.

IV. Powers of the Nunez Remediation Manager. The Nunez Remediation Manager shall have the following powers:

- A. **General Powers:** The Nunez Remediation Manager shall have the authority to exercise all powers vested by law in the Commissioner to the extent necessary to achieve Substantial Compliance with the Contempt Provisions. The Nunez Remediation Manager shall have such powers to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contracting, legal, and other operational functions of the DOC to the extent necessary to achieve compliance with the Contempt Provisions.
- B. **Specific Powers:** Without in any way limiting the Nunez Remediation Manager's general powers detailed in Paragraph A above, the Nunez Remediation Manager shall have the authority to exercise the following specific powers to the extent that they: (a) are necessary to achieve compliance with the Contempt Provisions, and (b) are vested by City and State law in the Commissioner:
 - i. The Nunez Remediation Manager shall have the authority to enact or change DOC policies, procedures, protocols, systems, and practices.
 - ii. The Nunez Remediation Manager shall have the authority to establish personnel policies and direct personnel actions. The Nunez Remediation Manager shall have the power to create, modify, abolish, or transfer employee and contractor positions, as well as to recruit, hire, train,

terminate, promote, demote, transfer, and evaluate employees and contractors. The Nunez Remediation Manager shall have the authority to assign and deploy DOC staff.

- iii. The Nunez Remediation Manager shall have the authority to determine the DOC's needs and positions with respect to contract provisions relevant to remediation of the Contempt Provisions.
- iv. The Nunez Remediation Manager shall have the authority to procure and contract for supplies, equipment, tangible goods, and services.
- v. The Nunez Remediation Manager shall have the authority to review, investigate, and take disciplinary or other corrective or remedial actions with respect to any violation of DOC policies, procedures, and protocols.
- vi. In exercising the powers conferred by this Order, the Nunez Remediation Manager shall use reasonable best efforts to consult and work collaboratively with the Commissioner.
- vii. The Nunez Remediation Manager shall have the authority to delegate any of these powers to the Commissioner and to retract or constrict such delegations as the Nunez Remediation Manager, in the Nunez Remediation Manager's discretion, deems necessary.

C. **Commissioner's Role:** *[Plaintiffs' /SDNY and Defendants have submitted competing proposals related to the following sentence (see proposals) - The Commissioner shall retain all of Commissioner's authority in areas not implicated by the Contempt Provisions]*. The Commissioner and the Nunez Remediation Manager are urged and expected to work collaboratively in aid of the goals of

compliance with the Nunez Orders and the safe, sustainable management of the jails. The Nunez Remediation Manager shall have the authority to direct the Commissioner to take any steps that the Nunez Remediation Manager deems necessary to comply with the requirements of the Contempt Provisions. It is expected that Defendants, and the Commissioner and DOC leadership, will work closely with the Nunez Remediation Manager to facilitate the Nunez Remediation Manager's ability to perform their duties under this Order. Nothing in this Order shall authorize the Nunez Remediation Manager to take any employment action with respect to the Commissioner.

D. Additional Powers:

- i. The Nunez Remediation Manager may, after consultation with the Commissioner, the Monitoring Team, and the parties, petition the Court on notice to the parties and the Monitoring Team for such additional powers as are necessary to achieve compliance with the Contempt Provisions consistent with Section II. The Nunez Remediation Manager shall provide the position (which may include a request to be heard) of the parties and the Monitoring Team in any application to the Court.
- ii. The Nunez Remediation Manager shall make reasonable efforts to exercise their authority in a manner consistent with applicable state and local laws, regulations, and contracts. However, in the event the Nunez Remediation Manager determines that those laws, regulations, or contracts impede the Nunez Remediation Manager from carrying out their duties under this Order and achieving compliance with the Contempt Provisions,

the Nunez Remediation Manager may, after consultation with the Commissioner the Monitoring Team, and the parties, petition the Court on notice to the parties and the Monitoring Team, to waive any legal or contractual requirement that is causing the impediment or seek other appropriate relief on notice to the parties and the Monitoring Team. The Nunez Remediation Manager shall provide the position (which may include a request to be heard) of the parties and the Monitoring Team in any application to the Court.

- E. **Authority to Hire Staff and Consultants:** The Nunez Remediation Manager shall have the authority to hire additional qualified staff, consultants, or obtain technical assistance, as is reasonably necessary to fulfill the Nunez Remediation Manager duties under this Order without duplication of effort. The Nunez Remediation Manager shall reasonably utilize the Department assets and resources it already possesses. The Nunez Remediation Manager shall take all necessary steps to minimize redundancy and the creation of additional bureaucracy with the goal of creating systems that support the sustainable transition back to the Defendants' control.
- F. **Access:** The Nunez Remediation Manager, including all of their staff and consultants, (collectively referred to as the "Remediation Manager Team") shall have unlimited access to all records and files (paper or electronic) maintained by the DOC and shall have unlimited access to all DOC facilities, incarcerated people, and DOC staff. This access includes the authority to conduct confidential interviews with DOC staff and incarcerated people. The Remediation Manager

Team's ability to interview DOC staff shall be subject to the employee's right to representation under certain circumstances as set forth in Section 75 of the New York Civil Service Law and MEO-16. Access to records should not include access to communications between and among DOC personnel and the New York City Law Department that are protected by the attorney-client or work-product privileges.

V. Reporting by the Nunez Remediation Manager.

- A. The Nunez Remediation Manager shall regularly report to and meet with the Court to update the Court regarding the status of efforts to comply with Contempt Provisions, and any specific obstacles or impediments encountered by the Nunez Remediation Manager.
- B. The Nunez Remediation Manager shall file bi-annual reports on the Court's docket ("RM Reports"). The RM reports shall include a description of the actions that the Remediation Manager Team has taken during the Reporting Period to implement the Remediation Action Plan, including achieving Substantial Compliance with the Benchmarks and Contempt Provisions.
 - i. The RM Reports shall be filed in advance of the Monitor's Report with the respective compliance assessment for a particular Reporting Period. The Nunez Remediation Manager shall, in consultation with the Monitoring Team, propose for the Court's approval a specific schedule for the submission of regular written reports to be filed on the public docket.
 - ii. The Nunez Remediation Manager may also file additional reports with the Court, if necessary, upon notice to the parties and the Monitor.

- iii. The information contained in any report by the Nunez Remediation Manager is not an assessment of compliance pursuant to § XX, ¶ 18 of the Consent Judgment. To the extent a report by the Nunez Remediation Manager includes commentary or information with respect to status of compliance with a Benchmark or a Contempt Provision, such commentary and information are advisory and does not displace the authority of the Monitor to assess compliance under this or any other Order of this Court.
- iv. The Remediation Manager's Reports shall be written with due regard for the privacy interests of individuals in custody and Staff Members; federal, state, and local laws regarding the privacy of such information; and the interests of the Department in protecting against the disclosure of non-public or privileged information. Consistent with such interests and laws, the Nunez Remediation Manager shall redact individual-identifying information from the Remediation Manager's Reports and any documents submitted with those Reports, and shall give due consideration to the Department's requests to redact any other information. To the extent the Nunez Remediation Manager declines to make redactions requested by the Department, the Remediation Manager's Report and any documents submitted with that report shall be submitted to the Court under seal for the Court to consider the Department's proposed redactions before making the Remediation Manager's Report public.

v. The Remediation Manager Reports shall not be admissible against Defendants in any proceeding other than a proceeding relating to the enforcement of the Nunez Orders.

- C. The Nunez Remediation Manager shall remain in contact with the Court throughout the Nunez Remediation Manager's tenure on an informal, as needed, basis.
- D. The Remediation Manager Team shall cooperate fully with the Monitor and shall share information that the Monitor needs to fulfill his role and responsibilities.
- E. The Remediation Manager Team shall regularly communicate and consult with the Monitoring Team in the same manner as the Defendants are required to consult with the Monitoring Team under the Nunez Orders (including, but not limited to June 13, 2025 Order § I, ¶ 5). Such consultation shall also include proactive consultation on progress that has been made in fulfilling the Remediation Action Plan, how to address obstacles to achieving compliance, as well as the strategies to achieve Substantial Compliance with the Benchmarks and Contempt Provisions.
- F. The Remediation Manager Team may also seek information or technical assistance from the Monitoring Team in the same manner as Defendants under the Nunez Court Orders (including, but not limited to Consent Judgment, § XX, ¶¶ 24 and 25).
- G. The Nunez Remediation Manager shall obtain the Monitor's approval (governed by Consent Judgment § XX, ¶ 26) to the extent it is required by the Nunez Orders. To the extent that the Monitor does not provide such approval, the Nunez

Remediation Manager may raise the matter with the Court and must provide the good faith basis for why approval should be granted despite the Monitor's decision not to do so. The Nunez Remediation Manager shall provide reasonable notice to the Monitor and the parties before making any such application to the Court and the parties and the Monitor shall have an opportunity to be heard on any such application.

- H. The Remediation Manager Team may not disclose information provided to the Remediation Manager Team pursuant to the Nunez Orders, except as authorized by this Order, the Court, or by joint stipulation of the parties.
- I. The reports and other communications of the Remediation Manager Team submitted to the Court, whether *in camera*, *ex parte* or on the public docket, shall not be admissible as evidence in any proceeding except this action.
- J. [Provision regarding the treatment of information provided by the RM – still under negotiation.]

VI. Role of the Monitor.

- A. This order does not alter the role or responsibilities of the Monitor as described in the Nunez Orders, including, but not limited to obligations to assess compliance, provide technical assistance, and to regularly report to the Court in accordance with his past practices.
- B. Upon approval of the Remediation Action Plan, the bi-annual Monitor's Reports for each Reporting Period² shall also: (a) describe the efforts the Department and the Remediation Manager Team have taken to implement the requirements of the

² The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.

Remediation Action Plan, (b) include a compliance assessment for each of the Benchmarks in the Remediation Action Plan and (c) address the overall extent to which the work under the RAP is advancing compliance with the Contempt Provisions.

- C. Within 90 days after the Court's approval of the Remediation Action Plan, the Monitoring Team shall develop recommendations regarding streamlining and assessing compliance with the provisions of the Nunez Orders except for the Contempt Provisions. The Monitoring Team shall provide these recommendations to the parties for consideration and comment before submitting the recommendations to the Court.
- D. The Nunez Remediation Manager and the Monitor are independent positions that each report to the Court and are not answerable to each other.

VII. Immunity and Indemnity.

- A. The Remediation Manager Team shall have the status of officers and agents of the Court, and as such shall be vested with the same immunities as vest with the Court.
- B. The Defendants shall indemnify any Remediation Manager Team member in any litigation brought against a Remediation Manager Team member regarding activities conducted in the course of their official duties.

VIII. Compensation and Responsibility for Payment.

- A. The City of New York shall bear all reasonable fees, costs, and expenses of the Nunez Remediation Manager, including payments to the Remediation Manager Team. Such fees, costs, and expenses shall be sufficient to allow the Nunez

Remediation Manager to fulfill their duties pursuant to this Order in a reasonable and efficient manner.

- i. The Nunez Remediation Manager shall submit an invoice for their services, and the services of their consultants and staff, to the City on a monthly basis. Those invoices will include charges for fees, costs, and expenses. Payment on such invoices shall be made within 60 days of receipt.
- ii. If the City objects to any fees, costs, or expenses as unreasonable, unnecessary, or duplicative, the City shall submit the invoice to the Court for a determination of reasonable fees, costs, and expenses.

B. The Nunez Remediation Manager shall submit to the City a proposed Schedule of Fees and Expenses for the Remediation Manager Team within 30 days of appointment. This Schedule shall include an estimate of the title and duties of each member of the Remediation Manager Team that the Nunez Remediation Manager believes will be required to exercise the duties of the Nunez Remediation Manager pursuant to the Court order and a statement of the proposed fees and expenses.

- i. The Nunez Remediation Manager and the City shall confer in good faith regarding the proposal for fees and expenses and to the extent that the City and Nunez Remediation Manager agree they shall make a joint proposal for approval of the statement of fees and expenses.

- ii. To the extent that the City and the Nunez Remediation Manager disagree regarding the Schedule of Fees and Expenses, they shall make separate submissions to the Court stating the basis for the disagreement.
- iii. The Court shall approve or modify the proposed Schedule of Fees and Expenses. [In approving proposed fees the Court will consider whether the compensation to be paid to the Nunez Remediation Manager and each of their staff is commensurate with the salary earned by employees of the City of New York serving in comparable roles and providing comparable services.]
- iv. The Nunez Remediation Manager may modify rates and proposed fees and expenses from time to time as appropriate upon approval of the Court. The Nunez Remediation Manager shall confer with the City in advance of any future applications to the Court regarding fees in an attempt to reach agreement. If agreement cannot be reached, the Nunez Remediation Manager and the City shall make separate submissions to the Court stating the basis for the disagreement.

IX. Duration of the Nunez Remediation Manager's Tenure.

- A. The Nunez Remediation Manager's authority will continue, subject to reductions in that authority pursuant to Section II above, until the Nunez Remediation Manager's authority is removed pursuant to Section II above with respect to all Contempt Provisions, at which time this Order will terminate.
- B. [Monitor proposed consideration of *Hinds* County provision for Court of potential alternative to Defendants' proposal for potential routine review of RM's authority]

C. Nothing in this Order affects the terms of the Consent Judgment or other Nunez Orders, which remain in full force and effect. In the event the Nunez Remediation Manager's tenure terminates, the Consent Judgment and other Nunez Orders will remain in full force and effect until the Court makes a finding that the Defendants have achieved Substantial Compliance with the provisions of the Consent Judgment and have maintained Substantial Compliance for a period of twenty-four (24) months, as set forth in Section XXI, ¶ 5 of the Consent Judgment.

X. Cooperation.

A. The Defendants, and all agents or persons within the employ of the Defendants (including contract employees), and all persons in concert and in participation with them, the Monitoring Team, and all counsel in this action, shall fully cooperate with the Remediation Manager Team in the discharge of the Nunez Remediation Manager's duties under this Order. Defendants shall promptly respond to all inquiries and requests from the Remediation Manager Team related to compliance with the Nunez Orders. To the extent that a party asserts that information requested by the Remediation Manager Team is privileged, or is unrelated to the proper duties of the Nunez Remediation Manager, they may assert such objections to the Nunez Remediation Manager. To the extent necessary to resolve such objections, the Nunez Remediation Manager may seek appropriate relief from the Court.

XI. Other Terms.

A. The Remediation Manager Team shall have the authority to communicate ex parte and confidentially with each party and each party's legal representatives, as well

as with the Court and the Monitoring Team. Plaintiffs' Counsel access to information and other materials remains governed by Consent Judgment § XX, ¶ 10.

- B. If at any point the Nunez Remediation Manager determines that the Department needs additional funding to fulfill the Remediation Action Plan that is not budgeted for that fiscal year, the Nunez Remediation Manager shall immediately consult the Commissioner before notifying the City Council's Finance Division and the Mayor's Office of Management and Budget of the specific purpose and the amount of funds needed. If the issue is not timely resolved, the Nunez Remediation Manager or any party may request a hearing before the Court.
- C. Absent leave of the Court, the Remediation Manager Team may not testify in any litigation or proceeding other than this case, including public hearings or other proceedings before the New York City Council, the Board of Correction, or the New York State legislature, with regard to any act or omission of the DOC or any of the DOC's agents, representatives, or employees related to the Nunez Orders. The Remediation Manager Team may not give interviews or make public statements regarding their work under the Nunez Orders, other than reports filed on the docket, without the permission of the Court.
- D. Unless such conflict is waived in writing by the parties, no member of the Remediation Manager Team may accept employment or provide consulting services that present a conflict of interest with their responsibilities under this Order, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection

with a claim or suit against the DOC or the DOC's agents, representatives, or employees.

- E. The Nunez Remediation Manager is an agent of the Court and is not a federal, State, or local agency or an agent thereof.
- F. If at any time the Nunez Remediation Manager position becomes vacant, the parties and the Monitor shall confer on potential replacements and the parties shall meet and confer and endeavor to jointly provide the court with no more than four candidates to replace the Nunez Remediation Manager. The parties shall submit their recommendations, with supporting materials, to the Court confidentially. Once the Court has received the parties' recommendations, the Court shall review the proposed candidates, and any further candidates the Court, in its discretion, may deem appropriate for consideration, and select the new Nunez Remediation Manager.

XII. Effective Date.

- A. This Order Appointing the Nunez Remediation Manager shall become effective following the appointed Nunez Remediation Manager's confirmation of their Acceptance of the powers, responsibilities and duties imposed by this Order by signing a copy of this Order below and returning the countersigned copy to the Court by email addressed to SwainNYSDCorresp@nysd.uscourts.gov. The Order shall be effective on the Acceptance Effective Date.
- B. The Nunez Remediation Manager shall begin [his/her] transition into the role by **Month Day, Year** by planning and engaging in the logistics for the role. To effectuate a smooth transition, the powers of the Nunez Remediation Manager's shall take effect on [**Month Day, Year**]. [*We recommend that definitions of*

Particularized Dates should be included in this paragraph and the subsequently referenced in document (e.g. as it relates to the creation of the RAP) once this provision has been finalized by the Court (following consultation with the RM and any other relevant stakeholders)]

SO ORDERED this _____ day of _____, 2025

LAURA TAYLOR SWAIN
CHIEF UNITED STATES DISTRICT JUDGE

ACCEPTED

(Signature)

(Typed or printed name)

Date: _____

APPENDIX B

Index No. 11-CV-05845

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK NUNEZ, et al.

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF
CORRECTION, et al.

Defendant.

**DEFENDANTS' MEMORANDUM IN SUPPORT OF
PROPOSED CHANGES TO REMEDIATION
MANAGER PROPOSED ORDER**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	II
PRELIMINARY STATEMENT.....	1
LEGAL STANDARD.....	1
SUMMARY OF SPECIFIC OBJECTIONS AND PROPOSED CHANGES.....	3
1. SECTIONS I & II: Remediation Action Plan and Benchmarks	3
2. SECTION I, E-G: Full-Time and On-Site Requirements	4
3. SECTION III: Notice and Opportunity Comment on Reports	5
4. SECTION IV: Powers of the Remediation Manager.....	6
5. SECTION V: Reports by the Remediation Manger.....	8
6. SECTION VI: Monitor’s Authority	9
7. SECTION VII: Representation and Indemnification of the Remediation Manager.....	9
8. SECTION VII: Remediation Manager Compensation and Expenses	13
9. PART IX: Motion for Termination.....	13
10. PART X: Term of Remediation Manager / Objections to Requests.....	13
11. PART XI: Miscellaneous	14

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<i>Anderson v. Dunn</i> , 19 U.S. 204, 6 Wheat. 204, 231, 5 L. Ed. 242 (1821)	2
<i>Brown v. Plata</i> , 563 U.S. 493 (2011)	2, 11
<i>Collins v. City of New York</i> , 923 F. Supp. 2d 462 (E.D.N.Y. 2013)	4
<i>Dixon v. Barry</i> , 967 F. Supp. 535 (1997)	9
<i>Fraser v. City of New York</i> , No. 20-cv-04926 (CM), 2021 U.S. Dist. LEXIS 69324 (S.D.N.Y. Apr. 9, 2021)	11
<i>Goodwin v Comcast Corp.</i> , 42 A.D.3d 322 (1st Dep’t 2007)	10
<i>Greene v. City of New York</i> , 725 F. Supp. 3d 400 (S.D.N.Y. 2024)	4
<i>Jones v. City of New York</i> , 988 F. Supp. 2d 305 (E.D.N.Y. 2013)	10
<i>LaShawn v. Barry</i> , No. 8[9]-1754, 1995 WL 520763 (D.D.C. Aug. 24, 1995), <i>reversed in part, LaShawn A. by Moore v. Barry</i> , 330 U.S. App. D.C. 204, 144 F.3d 847 (1998)	2, 9
<i>Maroney v. Village of Norwood</i> , No. 19-CV-1404, 2020 U.S. Dist. LEXIS 132301, 2020 WL 4284133 (N.D.N.Y. July 27, 2020)	4
<i>McMillian v. Monroe County</i> , 520 U.S. 781, 117 S. Ct. 1734 (1997)	10
<i>Scotto v. Almenas</i> , 143 F.3d 105 (2d Cir. 1998)	12
<i>Spallone v. United States</i> , 493 U.S. 265 (1990)	2

<u>Cases</u>	<u>Pages</u>
<i>Tieman v. City of Newburgh</i> , 13-cv-4178 (KMK), 2015 U.S. Dist. LEXIS 38703 (S.D.N.Y. Mar. 26, 2015)	4
<i>United States v. Hinds County Bd. of Supervisors</i> , 128 F.4th 616 (5th Cir. 2024)	2
<i>Van Horn v. Hornbeak</i> , No. CV F 08-1622 LJO DLB, 2009 U.S. Dist. LEXIS 134089 (E.D. Cal. Feb. 19, 2009)	11
 <u>Statutes</u>	
18 U.S.C. § 3626.....	7
18 U.S.C. § 3626(a)(1)(B)(iii)	2
18 U.S.C. § 3626(b)	13
42 U.S.C. § 1983.....	10, 11
N.Y. Gen. Mun. Law § 50-k.....	10

PRELIMINARY STATEMENT

Defendants submit this Memorandum of Objections to the language of the Court's Proposed Order of May 13, 2025, and the attached markup of the Proposed Order, in response to the Court's Opinion and Order of May 13, 2025, Regarding Appointment of a Nunez Remediation Manager (ECF No. 846). Defendants maintain their objections to the appointment of a Remediation Manager and to the Proposed Order in its entirety, for the reasons previously stated in the Defendants' Memorandum in Support of their Proposal for a Court Appointed Compliance Director (ECF No. 811-12) ("First Comp. Dir. Mem."), Defendants' Responsive Memorandum in Support of Their Compliance Director Proposal (ECF No. 821) ("Second Compl. Dire. Mem."), and Defendants' Memorandum in Support of Their Motion for Modification of June 27, 2025 (ECF No. 866) (the "Modification Memorandum").

Defendants do not restate herein all of the objections or proposed changes set forth in their Modification Memorandum. Rather, the appended specific objections and changes reflected in the appended markup of the Proposed Order are offered to the extent that the Court imposes the Remediation Manager notwithstanding defendants' motion, and the objections and proposed changes are made in addition to the changes proposed in the Modification Memorandum. Nothing in this Memorandum or the appended proposed changes is intended to waive any objections to the Proposed Order and a failure to object to particular language in the Proposed Order, or to propose changes to particular language in the Proposed Order, is not a waiver of an objection to any part of the Proposed Order.

LEGAL STANDARD

The legal standard for relief under the Prison Litigation Reform Act ("PLRA") was most recently set forth in Defendant's Modification Memorandum, at 6-8. That standard requires that each specific provision of the Proposed Order be narrowly tailored to, and necessary for, the

remedy of a constitutional violation. As the Fifth Circuit recently held, when directing a District Court to reconsider the provisions of an order appointing a receiver: “The Supreme Court ‘has rejected remedial orders that unnecessarily reach out to improve prison conditions other than those that violate the Constitution.’ The PLRA requires that ‘the scope of the order must be determined with reference to the constitutional violations established by the specific plaintiffs before the court.’” *United States v. Hinds Cty. Bd. of Supervisors*, 128 F.4th 616, 639 (5th Cir. 2024) (quoting *Brown v. Plata*, 563 U.S. 493, 531 (2011)); see also *LaShawn A. by Moore v. Barry*, 330 U.S. App. D.C. 204, 144 F.3d 847, 854 (1998) (reversing in part order authorizing receiver over child welfare system the power to violate local law, noting that “considerable tension exists between its order and the Supreme Court's admonition that in employing their broad equitable powers, federal courts must ‘exercise “the least possible power adequate to the end proposed.”’ *Spallone v. United States*, 493 U.S. 265, 280 (1990) (quoting *Anderson v. Dunn*, 19 U.S. 204, 6 Wheat. 204, 231, 5 L. Ed. 242 (1821))”).

Every provision of the Proposed Order is in derogation of state and local law because it would transfer the executive authority granted to the Commissioner by state and local law to an agent of a federal Court, each provision of the Order must meet the PLRA’s most exacting requirement: that “*no other relief will correct the violation of the Federal right.*” 18 U.S.C. § 3626(a)(1)(B)(iii): Modification Memorandum at 7. Defendants maintain that the Proposed Order fails to meet that standard in its entirety, but the specific objections and changes are offered in the alternative to make the Proposed Order more narrowly tailored to the need for constitutional compliance.

SUMMARY OF SPECIFIC OBJECTIONS AND PROPOSED CHANGES**1. SECTIONS I & II: Remediation Action Plan and Benchmarks**

The target period for substantial compliance is reduced from three years to two years because Defendants believe that two years should be sufficient to achieve substantial compliance with the Nunez Orders and the constitution with respect to the Contempt Provisions. As set forth in the Modification Memorandum, Defendants are already in Partial Compliance with a majority of the Contempt Provisions. Defendants reasonably expect that they will be in Substantial Compliance with all Contempt Provisions within two years. Therefore, a remedy that is not intended to achieve Substantial Compliance within two years is not only unnecessary, but would delay compliance rather than accelerate it. Because the PLRA requires that the remedy be absolutely necessary to achieve compliance, it does not countenance perpetual receiverships which merely preside over non-compliance rather than remedy it, or which are not expected to achieve compliance over a reasonably defined time period.

For the similar reasons, Defendants object to any Benchmarks for ultimate success that are not objectively verifiable metrics for constitutional compliance that can be used to verify whether or not the remedy remains necessary to correct a constitutional violation. The Benchmarks should be defined to establish reasonable objective metrics for the continued necessity of the Remediation Manager's authority over a specific area, which should end once the final Benchmark for constitutional compliance in that area is achieved.¹

¹ Defendants do not object to interim Benchmarks being established, so long as the final Benchmarks for completion of the Remediation Manager's mission are clear.

The changes also require that Benchmarks be kept to a minimum to avoid the proliferation of new requirements while the parties and the Monitor are seeking to simplify the requirements of the *Nunez* orders.

The Benchmarks should also be fashioned to not require perfection – i.e., the complete absence of adverse outcomes for people in custody. Perfection is not a permissible standard under the PLRA. The occurrence of some harm – even if some harm is caused by unconstitutional conduct in some cases – does not itself demonstrate a pattern and practice of deliberate indifference to constitutional violations by Defendants, and does not make a Remediation Manager necessary as a last resort to prevent future violations. *See, e.g., Maroney v. Vill. of Norwood*, No. 19-CV-1404, 2020 U.S. Dist. LEXIS 132301, 2020 WL 4284133, at *7 (N.D.N.Y. July 27, 2020) (“It is well established that isolated acts by non-policymaking officials do not ordinarily show a municipal custom or policy.”); *Greene v. City of N.Y.*, 725 F. Supp. 3d 400, 430-31 (S.D.N.Y. 2024) (dismissing *Monell* claim of a *de facto* policy based allegations of 24 lawsuits); *Tieman v. City of Newburgh*, 13-cv-4178 (KMK), 2015 U.S. Dist. LEXIS 38703, at *50 (S.D.N.Y. Mar. 26, 2015) (13 instances of excessive force over four years does not establish a pattern); *Collins v. City of New York*, 923 F. Supp. 2d 462, 479 (E.D.N.Y. 2013) (a “litany of other police-misconduct cases . . . insufficient to make a plausible case for *Monell* liability”).

2. SECTION I, E-G: Full-Time and On-Site Requirements

Defendants add requirements for full time and on-site work because the Remediation Manager would be stepping into the shoes of the Commissioner, a law enforcement executive responsible for the lives and safety and security of approximately 7,000 people in custody and 6,000 staff. The responsible and successful exercise of that authority requires, at a minimum, full time devotion to the task and hands-on management. Because the Remediation Manger, as envisioned by the Court, will be exercising the coercive power of the government and

commanding uniformed law enforcement officers, it would be imprudent to grant such authority to a part-time consultant.

A full-time requirement will also protect against conflicts of interest, which could easily arise, for example, if the Remediation Manager is engaged as an expert witness or consultant in litigation against other prison or jail systems. For example, the Remediation Manager might be retained by an attorney who is handling litigation against the City in other matters, or the Remediation Manager might take a position about correctional practices in other litigation that is adverse to the interests of the City. The full-time requirement obviates any potential disputes about such (or any) conflicts.

On-site work and periodic visits to all housing facilities are also necessary for the Remediation Manager to intimately understand the physical conditions facing the staff and people in custody. DOC uniformed officers are required to enforce facility rules and protect people in custody from each other, while risking their own safety without weapons other than pepper spray and while severely outnumbered, often 20 to 1. Physical presence is required to understand the stressful constraints and dilemmas, under dangerous conditions, faced by DOC staff every day.

Defendants add a three-day a week requirement for on-site work because that is the minimum requirement for most City managers. Face-to-face communication is essential to collaboration. Also, requiring the Remediation Manager to work at DOC headquarters or on Rikers Island will preclude requiring the City to pay for expensive, off-site office space that is unnecessary and counterproductive.

3. SECTION III: Notice and Opportunity Comment on Reports

Defendants propose specific requirements for notice and opportunity to comment on the Monitor's reports because the Monitor will be determining, through its Benchmark and compliance ratings, whether it is necessary for the Remediation Manager's authority to continue

in order to remedy constitutional violations. Stricter provisions than those in the Consent Judgment, requiring the Monitor to explain why it did not adopt defendants' comments on its compliance ratings, will help ensure that the Remediation Manager's authority is not needlessly perpetuated. It will also help create a clear record should it become necessary for the parties to litigate over whether the continuation of the Remediation Manager's authority is warranted under the PLRA.

Defendants also modify the language to make clear that once a final Benchmark for success is met and Substantial Compliance is attained, then the Remediation Manager's authority over that particular area of responsibility where they are no longer required will come to an end.

For reasons explained in their Modification Memorandum at 24-25, Defendants also object to the requirement that Substantial Compliance be maintained for three consecutive six-month periods before the Remediation Manager's authority is terminated. The PLRA requires that the Remediation Manager's authority must end with the end of the unconstitutional conditions that it is intended to remedy. The PLRA does not authorize prophylactic remedies that by definition are not absolutely necessary to remedy current constitutional violations.

The typical standard for purging of a contempt is Substantial Compliance with the underlying order. Given the recent success of the Commissioner towards achieving compliance there is no reason for the Court to presume that an additional period during which the Remediation Manager should supplant local authority is absolutely necessary to ensure continued compliance.

4. SECTION IV: Powers of the Remediation Manager

Defendants modify the language of the Proposed Order to make clear – as intended by the Court – that the Remediation Manager's powers are limited to the authority of the Commissioner, consistent with state and local law, as it pertains to compliance with the Contempt Provisions. Defendants object to any broader powers because, for reasons stated by Defendants

in support of their Compliance Director Proposal, there is no basis in the record to summarily erase the web of rules, regulations and statutes that govern the Commissioner's operation of the DOC. See First Comp. Dir. Mem. at 15-26; Second Comp. Dir. Mem. at 4-8, 33-37.

If the Remediation Manager determines that further abrogation of state law is necessary to remedy a constitutional right, that should be decided by the Court under PLRA standards after notice and opportunity to be heard. Defendants add language to the Proposed Order to protect due process in any application to change local and state law.

The legal restraints on the Commissioner's power affect budget, spending and personnel decisions. Therefore, with respect to hiring consultants and contractors, the language is modified to remove references to financial and accounting matters, which are handled by other agencies, and to make clear that the Remediation Manager must request permission to hire special consultants or contractors who are not otherwise approved as City contractors. But the absence of a specific limitation on the Remediation Manager's power does not imply that Defendants believe that the Commissioner, and therefore the Remediation Manager, would have unfettered authority in that area.

In addition, Defendants add language from the PLRA stating: "Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts." 18 U.S.C. § 3626. Defendants object to any order extending the Remediation Manager's powers beyond that limitation.

Defendants add language setting forth a remedy for individual City employees for violations of law by the Remediation Manager in the exercise of disciplinary or personnel decisions, allowing them to seek equitable relief from the Court. Without this, there is too great a

risk that employee rights may be violated. A heightened risk of such violations would undercut DOC's ability to recruit and retain qualified staff and managerial talent, under conditions of a nationwide correctional worker shortage. Defendants also object to the Remediation Manager having the power to terminate or discipline the Commissioner, because under state and local law that authority lies with the Mayor.

Defendants add a Confidentiality provision to ensure that information about DOC, individuals in custody, and DOC staff, that the Remediation Manager receives in the course of their work, is treated as Confidential and used solely for the purpose of that work, just as it would be treated by a City executive. The provisions allow the Remediation Manager to disclose such information in the course of reports to the Court, subject to objections by Defendants. The Remediation Manager should not be communicating information about DOC operations to the media or other third persons absent permission of the Court. Without these restrictions, the Remediation Manager will become a conduit for information to advocates, litigants, or the media, which is not the purpose of their appointment and could be adverse to compliance goals.

As with the Monitor, language is also added to make clear that Defendants' legal privileges are retained vis-à-vis the Remediation Manager and the Remediation Manager's reports should not be admissible in Court, nor should the Remediation Manager or their staff become witnesses in litigation other than in this matter, absent permission of the Court. Defendants object to any order that does not impose these restrictions, because omitting them would impose burdens on Defendants well beyond the relief necessary to remedy constitutional violations.

5. SECTION V: Reports by the Remediation Manager

Defendants add a requirement for notice and opportunity to be heard by the parties with respect to any report by the Remediation Manager, since such reports will be used by the Court to determine whether continued relief is necessary under PLRA standards.

6. SECTION VI: Monitor's Authority

Defendants add a procedure to allow the parties an opportunity to be heard in resolution of disagreements about the Monitor's approval of actions proposed by the Remediation Manager.

7. SECTION VII: Representation and Indemnification of the Remediation Manager

Defendants object to the requirement in the Proposed Order that the City indemnify the Remediation Manager against all liability. Under the strict limitations of the PLRA, the Court may not impose indemnification of the Remediation Manager because it is a violation of state law that is not necessary to remedy a constitutional violation. *See* First Compl. Dir. Mem.at 23-24 (ECF No. 811-12). Requiring the City to indemnify a federal government official exercising law enforcement authority violates fundamental principles of federalism, as well as other law, without any justification under the PLRA's exacting standards.

Plaintiffs maintain that Court imposed indemnification of federal receivers by local governments is routine, but in fact it is exceedingly rare, and has never been subject to legal challenge or justification. Of the jail or prison receivership orders reviewed by the Monitor, only Hinds County and Cook County contained indemnification provisions.² Those were not the

² The California prison medical system receiver does not manage jails or prisons. In support of indemnification, plaintiffs also cited receivership orders from the District of Columbia, entered under pre-PLRA standards, that do not concern jails or prisons. *See* Plaintiff's Responsive Memorandum in Support of Receivership (ECF No. 820), at 26 (citing *Dixon v. Barry*, 967 F. Supp. 535, 537 (1997) (appointing receiver over D.C. Commission on Mental Health Services to create "community-based mental health system"); *LaShawn v. Barry*, No. 8[9]-1754, 1995 WL 520763 at *3 (D.D.C. Aug. 24, 1995)). The D.C. Circuit Court reversed the receivership order in *LaShawn v. Barry* in part on the grounds that it issued authority to the receiver to violate D.C. law without a finding that such was necessary to remedy a violation of the consent order. *LaShawn A. by Moore v. Barry*, 330 U.S. App. D.C. 204, 144 F.3d 847, 854-55 (1998) (reversing in part order imposing receiver on child welfare system of D.C.) ("As the district court's August 24, 1995 order raises significant separation of powers concerns, we remand with instructions to consider those instances in which desired action by the Receiver conflicts with local law in accordance with the procedures spelled out in this opinion.").

subject of specific objections, explanations or justifications. The Hinds County receivership order was reversed in part by the Fifth Circuit. On remand, Hinds County specifically objected to the indemnification provision in any revised receivership order. *See* United States v. Hinds Cty., 16-CV-489-CWR-BWR, Response to March 12, 2025, Text Only Order (ECF No. 276), at 8 of 13. The District Court has not yet ruled on that objection.

Strict indemnification of the Remediation Manager by the City is contrary to N.Y. Gen. Mun. Law § 50-k³ and the doctrine of *respondeat superior*, both of which apply only to City employees. *See Goodwin v Comcast Corp.*, 42 AD3d 322, 322 (1st Dept 2007) (“As a general rule, a principal is not liable for the acts of an independent contractor because principals ordinarily do not control the manner in which independent contractors, as opposed to employees of the principal, perform their work.”)

Automatic indemnification is also contrary to the *Monell* doctrine of Section 1983, which only holds municipalities liable for the decisions of municipal policy makers over whom the City exercises some control. To impose strict municipal liability in the absence of control by the municipality is contrary to Section 1983. *See McMillian v. Monroe Cty.*, 520 U.S. 781, 791, 117 S. Ct. 1734, 1739 (1997) (Rejecting county *Monell* liability for sheriff’s decisions where “the county commission thus has no direct control over how the sheriff fulfills his law enforcement duty, the governor and the attorney general do have this kind of control.”); *Jones v. City of N.Y.*,

³ N.Y. Gen. Mun. Law § 50-k states: “The city shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained; the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.” The same standard applies to requests for representation.

988 F. Supp. 2d 305, 315-17 (E.D.N.Y. 2013) (rejecting Monell liability for policy decisions of District Attorney on matters relating to whether or not to prosecute because “[t]he effect of treating a district attorney as a City policymaker in these situations is to hold the City or county liable for policies made by a district attorney when no officer or agency of the City, including [*316] the Mayor, exercises any authority to control the decision.”); *Fraser v. City of N.Y.*, No. 20-cv-04926 (CM), 2021 U.S. Dist. LEXIS 69324, at *28 (S.D.N.Y. Apr. 9, 2021) (The Second Circuit allowed municipal liability where “the actions of county prosecutors in New York are generally controlled by municipal policymakers for purposes of *Monell*, with the narrow exception . . . being the decision whether, and on what charges, to prosecute.”)

Plaintiffs contend that the City would be liable for the decisions of the Remediation Manager under *Monell*, but that is not so. The case cited by plaintiffs, *Van Horn v. Hornbeak*, No. CV F 08-1622 LJO DLB, 2009 U.S. Dist. LEXIS 134089, at *14-15 (E.D. Cal. Feb. 19, 2009), holds only that where a receivership leaves to the defendant some authority over the events giving rise to liability, it does not create blanket immunity from *Monell* liability. “[T]he *Plata* order does not relieve the state, and in turn the CDC defendants, of constitutional responsibility for determination of adequate inmate medical care. Moreover, the CDC defendants remain liable for pre-receivership implementation or promulgation of constitutionally deficient policies.” *Id.* Litigation of the City’s liability will require a determination in each case whether a constitutional violation was caused by a decision of the City, or a decision of the Remediation Manager for which the City would not be liable.

While determination of whether a violation was caused by a City policy would be governed by the facts of a particular case, *Monell* makes clear that municipal liability under Section 1983 may not be strict liability, nor extend further than the City’s control. Obviously strict liability

is inconsistent with this law. It would also interfere with the purpose of *Monell*, which is to encourage municipalities to take actions to limit individual violations of civil rights, and be contrary to the purpose of appointing the Remediation Manager, which is to reduce constitutional violations., not insure them. The City – functioning as an insurer without control over the insured party – would be powerless to prevent the constitutional violations for which it would be made ultimately liable. That is contrary to the law or sound policy.

Plaintiffs maintains that the Remediation Manager would be absolutely immune from liability and the Proposed Order so provides. In fact, absolute immunity depends on the nature of the actions for which an official is sued, and a court appointed official performing executive, law enforcement activities more typical of the Second Branch of government may not be protected by absolute immunity. *See, e.g., Scotto v. Almenas*, 143 F.3d 105, 111-12 (2d Cir. 1998) (“the more distant a function is from the judicial process, the less likely absolute [judicial] immunity will attach”) (regarding parole officers’ absolute judicial immunity). Defendants object to any provision of the Order that would create any additional immunity for the Remediation Manager, and therefore removed the language conferring blanket immunity on the Remediation Manager.

But if the United States is correct then the Remediation Manager does not require indemnification. If in fact indemnification is required for some permissible purpose, the United States should provide it. That would be equitable because the Remediation Manager would be an official of a federal court and therefore is an official of the federal government, who should be financially responsible for their wrongdoing.

Defendants also propose that the United States be responsible for representation of the Remediation Manager. That is equitable because the United States is seeking appointment of

the remediation manager, and it would avoid imposition of the unnecessary expense of potentially expensive private counsel to represent a government official. This would also avoid any potential legal conflicts of interest between the Remediation Manager and the City. Defendants object to any requirement that the City provide representation to the Remediation Manager, because it can be provided by the United States.

8. SECTION VII: Remediation Manager Compensation and Expenses

Defendants object to any Remediation Manager being appointed without any prior determination about their compensation or expenses. Defendants' proposed changes create a procedure for the Court to set reasonable compensation and expenses prior to appointment of the Remediation Manager. Without this procedure, the Court would be committed to installing a Remediation Manager without any determination or notice and opportunity to be heard about what that individual would be paid. Deciding compensation after appointment is inequitable to Defendants and will greatly increase the chance that litigation over charges will be needed. A proposed Order relating to fees and expenses to be entered before the Remediation Manager order is appended to the Defendants' draft.

9. PART IX: Motion for Termination

Defendants added language to make clear that 18 U.S.C. § 3626(b) is not being limited by the Order. That section allows for automatic termination of prospective relief upon motion of any party, absent affirmative findings that the relief remains necessary after two years. This provision of the PLRA is mandatory in the context of involuntary relief.

10. PART X: Term of Remediation Manager / Objections to Requests

Defendants object to any appointment of a Remediation that lacks a specified terminate date, and add a provision for automatic termination of the Remediation Manager's employment after four years. The purpose of this provision is to remove any economic incentives

for the Remediation Manager to artificially continue their employment by arguing that Substantial Compliance has not been met. Any effective Remediation Manager ought to be able to achieve Substantial Compliance within four years, at the most, and if they have not then their continued authority is not serving the Court's remedial goals.

As with the Monitor, Defendants add a mechanism for a party to assert objections to demands for information from the Remediation Manager, to the extent the demand is *ultra vires* or calls for privileged information. There is no basis for the Court to invalidate the Defendants' legal privileges in order to facilitate the Remediation Manager's work.

11. PART XI: Miscellaneous

This provides for notice and opportunity to be heard on any application by the Remediation Manager to abrogate state or local law, or contracts, for reasons noted above.

Section F of the Proposed Order states "The Nunez Remediation Manager is an agent of the Court and is not a federal, State, or local agency or an agent thereof." Defendants deleted this language because it is in part redundant to other provisions, and in other respects misstates the law. The Remediation Manager would be an agent of the federal Court and is therefore an agent of the federal government. Defendants object to any statement in the Proposed Order to the contrary.

Dated: New York, New York
July 9, 2025

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Index No. 11-CV-5845 (LTS) (JCF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK NUNEZ, et al.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

**DEFENDANTS' SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF OBJECTIONS AND REQUESTED
CHANGES TO THE PROPOSED ORDER
REGARDING THE REMEDIATION MANAGER**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
PRELIMINARY STATEMENT.....	1
SUPPLEMENTAL ARGUMENT REGARDING PLAINTIFFS’ AND DEFENDANTS’ PROPOSED CHANGES	3
1. SECTIONS I & II: Remediation Action Plan and Benchmarks	3
2. SECTION I, E-G: Full-Time and On-Site Requirements	4
3. SECTION III: Notice and Opportunity Comment on Reports	4
4. SECTION III: Termination of Remediation Manager’s Authority	5
5. SECTION IV: Powers of the Remediation Manager	7
6. SECTION VI: Monitor’s Authority	10
7. SECTION VII: Indemnification of the Remediation Manager.....	10
8. SECTION VII: Remediation Manager Compensation and Expenses	11
9. SECTION IX: Cooperation	11
CONCLUSION.....	12

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<i>Ligon v. City of N.Y.</i> , 538 F. App'x 101 (2d Cir. 2013), 736 F.3d 118 (2d Cir. 2013).....	9
<i>Murphy v. NCAA</i> , 584 U.S. 453 (2018).....	3
<i>United States v. Hinds County, et al.</i> , 16-CV-489-CWR-BWR (June 27, 2025)	5, 6, 10, 11
<i>United States v. Hinds Cty.</i> , No. 3:16-CV-489-CWR-BWR (S.D. Miss. Jan. 30, 2023).....	6
<u>Statutes</u>	
9 RCNY § 1-02, et seq.	8
9 RCNY § 308(a)	8
18 U.S.C. § 3626(a)(1)(A), (B).....	5
18 U.S.C. § 3626(b)(3)	5
CPLR § 327(b).....	8
CPLR § 328.....	8
CPLR § 329(c)	8
CPLR § 394(b).....	8
N.Y. Gen. Mun. L. § 103	8
NY City Charter, § 311(a)	8

PRELIMINARY STATEMENT

Defendants submit this Supplemental Memorandum in Support of Objections and Proposed Changes to the language of the Court's Proposed Order of May 13, 2025, and the attached markup of the Proposed Order, in response to the Court's Opinion and Order of May 13, 2025, Regarding Appointment of a Nunez Remediation Manager (ECF No. 846). Defendants maintain their objections to the appointment of a Remediation Manager and to the Proposed Order in its entirety, for the reasons previously stated in the Defendants' Memorandum in Support of their Proposal for a Court Appointed Compliance Director (ECF No. 811-12) ("First Comp. Dir. Mem."), Defendants' Responsive Memorandum in Support of Their Compliance Director Proposal (ECF No. 821) ("Second Compl. Dire. Mem."), and Defendants' Memorandum in Support of Their Motion for Modification of June 27, 2025 (ECF No. 866) (the "Modification Memorandum").

Defendants' basis for their Objections and requested changes to the Proposed Order are set forth in their Memorandum in Support of Proposed Changes to the Remediation Manager Proposed Order, dated July 9, 2025 ("Def. Objs."). Defendants provide this Supplemental Memorandum to address some of the responses to Defendants' Objections raised by plaintiffs and the Monitoring Team.

The specific objections and changes reflected in the appended markup of the Proposed Order are offered to the extent that the Court imposes a Remediation Manager notwithstanding Defendants' motion, and the objections and proposed changes are made in addition to the changes proposed in the Modification Memorandum. Should Defendants' motion for modification be granted in part, specific changes to the Proposed Order may be required that are not reflected in the changes proposed in this submission. For example, should the Court grant Defendants' request to limit the Remediation Manager's authority to the Contempt Provisions for which DOC has not received a rating of Partial Compliance or Substantial Compliance, then the definition of Contempt

Provisions in the Proposed Order would need to be altered accordingly.¹ In addition, the Remediation Manager's authority over a Contempt Provision should be terminated upon a finding of Partial Compliance that occurs after the Remediation Manager is appointed. *See* Modification Memorandum at 3, 9-11. Some of the changes in the appended Proposed Order are included at the request of the Monitoring Team, to which request Defendants consent. They are included for simplicity of review. For example, the Monitoring Team proposed the section regarding the requirements for the Remediation Manager's Reports, and Defendants consent to that change, with the specific language reflected in Appendix A.² A copy of Defendants' version of the Proposed Order without markup is submitted as Appendix B.

Nothing in this Memorandum or the appended proposed changes is intended to waive any objections to the Proposed Order, and a failure to object to particular language in the Proposed Order, or to propose changes to particular language in the Proposed Order, is not a waiver of an objection to any part of the Proposed Order.

¹ As of the Monitor's May 22, 2025 Report, the Contempt Provisions for which DOC has not received a rating of Partial Compliance or Substantial Compliance are: (1) Consent Judgment, § IV, ¶ 1: Implement New Use of Force Directive; (2) Consent Judgment, § VII, ¶ 1: Thorough, Timely, Objective Investigations; (3) Consent Judgment, § VII, ¶ 9(a): Timeliness of Full ID Investigations; (4) Consent Judgment, § VII, ¶ 11: ID Staffing; (5) Consent Judgment, § VIII, ¶ 1: Appropriate and Meaningful Discipline; (6) Second Remedial Order, ¶1(i)(a): Interim Security Plan; (7) Action Plan, § A, ¶1(d): Improved Routine Tours; (8) Action Plan, § D, ¶ 2(a), (d), (e), and (f): Improved Security Initiatives. *See* May 22nd Report, Appendix A at 237-39; May 13th Order, Appendix A at 51-56. *See* May 22nd Report, Appendix A at 237-39; May 13th Order, Appendix A at 51-56.

² Changes reflected in Appendix A to which Defendants' consent, but do not request, include Sections II, ¶ A (last sentence); II, ¶ B(ii); V, ¶¶ B, F, G, H; X, A (first two sentences).

**SUPPLEMENTAL ARGUMENT REGARDING
PLAINTIFFS' AND DEFENDANTS' PROPOSED CHANGES**

1. SECTIONS I & II: Remediation Action Plan and Benchmarks

Defendants and the Monitoring Team agree that the target period for the Remediation Action Plan (“RAP”) should be two years, not three as in the Court’s Proposed Order. Plaintiffs maintain that the period should be three years.³ Defendants submit that the currently contemplated three-year period would set a low bar for the efficiency and efficacy of reform and encourage the unnecessary extension of the Remediation Manager’s extraordinary powers. Defendants maintain their view that two years is a reasonable goal in light of current circumstances, where DOC is rated in Partial Compliance for a majority of the Contempt Provisions. *See* Def. Objs. at 3.

The purpose of the Remediation Manager is not to subject Defendants to a punitive sentence during which they are subjected to a federal overseer, deprived of the democratic sovereignty that is normally guaranteed by the Constitution to states and their subdivisions in the administration of their own government. *See, e.g., Murphy v. NCAA*, 584 U.S. 453, 470 (2018) (“The Constitution limited but did not abolish the sovereign powers of the States, which retained ‘a residuary and inviolable sovereignty.’”) (quoting *The Federalist* No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison)) (reversing Congressional ban on state approval of sports gambling)). Rather the purpose of the Remediation Manager is to achieve compliance with the Contempt Provisions as rapidly as possible. Setting a low bar for progress at the outset cannot aid that goal. If the two-year goal is not met, then the Order provides that the RM may propose a change to the time-period of the RAP.

³ Defendants have agreed to enlarge the proposed two-year period by at least three months, by beginning the duration at the time of approval of the RAP, not appointment of the Remediation Manager.

2. SECTION I, E-G: Full-Time and On-Site Requirements

Defendants added requirements for full time and on-site work because the Remediation Manager would be stepping into the shoes of the Commissioner as the chief executive of the agency with respect to use of force and security matters. They will be a federal official directing the police powers of the state and City through the DOC, with responsibility for the lives and safety of over 5,700 uniformed officers, over 1,500 civilian staff, and a population of now over 7,000 people in custody.⁴ *See* Def. Obs. at 4-5. Such authority should not be exercised by an “absentee landlord.” Moreover, a full-time commitment to the agency is essential to secure the confidence of DOC staff, whose support is needed to achieve sustained reform. Some candidates for the position have expressed a commitment to work full-time and on-site, but others, unfortunately, have not. Contrary to the Monitor and plaintiffs’ preference to leave the decision of working hours and location to the sole discretion of Remediation Manager, it is imperative that the Court set clear expectations in this regard if the Remediation Manager regime is to succeed in its intended purpose of achieving compliance with the Contempt Provisions.

3. SECTION III: Notice and Opportunity Comment on Reports

Defendants propose specific requirements, in addition to those already set forth in the Consent Judgment, for the Monitor to respond to requests to change the compliance ratings in the reports by explaining the reason for not making the change. As previously stated, this requirement is needed to ensure that the Remediation Manager’s authority is not perpetuated beyond the time when it is necessary to remedy constitutional violations, which would violate PLRA standards.

⁴ *See* <https://nyc-jail-population-tracker.datacollaborativeforjustice.org/> (accessed 8/29/25); <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2024/10/Department-of-Correction-Uniformed-Personnel-Demographics-Report-Quarter-4-1.pdf> (accessed 8/29/25).

The requirement that the Monitor explain his decision will help create a clear record for the Court, and for any appeal.

4. SECTION III: Termination of Remediation Manager's Authority

For reasons previously explained, Defendants object to the requirement that Substantial Compliance be maintained for subsequent compliance periods, after an initial finding of Substantial Compliance, before the Remediation Manager's authority over the relevant Contempt Provisions is terminated. *See* Modification Memorandum at 24-25; Def. Objs. at 6. The PLRA, by its explicit terms, allows prospective relief only when necessary "to correct the violation of the Federal right of a particular plaintiff or plaintiffs," not as a prophylactic measure to prevent hypothetical future violations from occurring. 18 U.S.C. § 3626(a)(1)(A), (B) ("to correct the violation of a Federal right"); (b)(2) (same). The PLRA also provides that after relief has been in place for two years, that any relief will terminate absent a finding that it is necessary "to correct a *current and ongoing violation* of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. § 3626(b)(3) (emphasis added). Therefore, continuing the Remediation Manager's authority in the face of Substantial Compliance would violate the express terms of the PLRA. For the same reasons, Defendants propose language that calls for the Court to determine whether the RM's authority should be reduced in areas where Benchmarks have been achieved (as the Monitor has proposed), or other circumstances, such as where the Monitor has found Partial Compliance with Contempt Provisions. *See* Appendix A, § 3, ¶ D,

In accord with the PLRA, the Court in *Hinds County*, in appointing a receiver after reversal in part and remand of its prior order, correctly provided that the receiver's authority will terminate immediately upon a finding of compliance with the Court's orders, without a probationary period.

See Order on Receiver's Duties, *United States v. Hinds County, et al.*, 16-CV-489-CWR-BWR (June 27, 2025) (ECF No. 282-2) ("Hinds Receivership Order"), stating:

The Receivership shall remain in place *no longer than necessary* to remedy the unconstitutional conditions justifying the appointment. The Receivership will end *as soon as* the Court finds that Defendants have remedied RDC's unconstitutional conditions and achieved substantial compliance with the Court's Orders.

Id., § IV, ¶ 9, at 9 (emphasis added). The Court emphasized this limitation in its needs-narrowness analysis mandated by the Fifth Circuit's remand of its prior order:

Further, the provisions in Section IV specify that the Receivership will remain in place no longer than necessary to remedy the unconstitutional conditions that led to the appointment of the Receiver. The Receivership will conclude once the Court determines that the Defendants have corrected RDC's unconstitutional conditions and made substantial progress in complying with the Court's Orders.

PLRA Analysis, *United States v. Hinds County, et al.*, 16-CV-489-CWR-BWR (June 27, 2025) (ECF No. 282-3), at 6.⁵ The same is true in the Miami-Dade Compliance Director Order, the Cook County, IL receivership order. See Monitor's January 25, 2025 Report, Appendix A, at 36, 41. This Court should follow suit.

⁵ As Defendants previously established, the desperate conditions that the Court found to exist in Hinds County were far worse than any conditions at DOC. See First Comp. Dir. Mem. at 24-25; Second Comp. Dir. Mem. at 36-37. Among other things, the court in *Hinds Cty.* found that "terror reigns" in the county's jail facility, and people in custody had complete control over a housing unit such that "[g]ang committees, not guards" ran that unit. *United States v. Hinds Cty.*, No. 3:16-CV-489-CWR-BWR, at *9, 12 (S.D. Miss. Jan. 30, 2023). The court found Hinds County in contempt of over two-dozen provisions of its orders, without any findings – such as in this case – of partial compliance with any provisions. Accordingly, the Hinds County receivership order was more sweeping than the Proposed Order here, giving the receiver complete control over all aspects of the Hinds County jail. Hinds Receivership Order, at 2. Nevertheless, even in those extreme circumstances, the Hinds County court ruled that the receivership should end when the constitutional violations ended.

5. SECTION IV: Powers of the Remediation Manager

Defendants modify the language of the Proposed Order to make clear – as intended by the Court – that the Remediation Manager’s powers are limited to the authority of the Commissioner, consistent with state and local law, and only as necessary to achieve compliance with the Contempt Provisions. Def. Objs. at 6-7. For clarity, Defendants propose an umbrella limitation setting forth those limitations that would apply without exception to all specific powers of the Remediation Manager. Of course, if the Remediation Manger finds that they need greater powers, they may apply to the Court with notice and opportunity to be heard to the parties, as set forth in other portions of the Proposed Order.⁶

Defendants also propose to remove or limit references to legal, financial or contracting authority that the Commissioner lacks. As set forth in Defendants’ prior submissions, the Commissioner cannot take legal action on behalf of the City; enact the budget of DOC; or determine the City’s position in collective bargaining agreements. *See* Def. Objs. at 6-7; First Comp. Dir. Mem. at 15-26; Second Comp. Dir. Mem. at 4-8, 33-37. Also, the Commissioner’s authority to negotiate service or procurement contracts is circumscribed by several legal requirements for the approval of other agencies, including the Comptroller of the City of New York, the NYC Law Department, the Office of Management and Budget, the Department of Citywide Administrative Services (“DCAS”), and the Mayor’s Office of Contract Services (which administers the City-wide electronic procurement system), and the Procurement Policy Board

⁶ Throughout the Proposed Order, Defendants propose language to set a minimum time period of 20 business days for the parties to respond to an application by the Remediation Manager to alter the Remediation Action Plan or the scope of the RM’s powers. That is appropriate because, except where the parties’ consent to the application, due process requires that the parties be heard on any request for a new or revised remedial Order, and although a longer time-period may be needed to respond. 20 business days is the minimum appropriate time-period in light of the extraordinary nature of the Remediation Manager’s authority.

(“PPB”), which promulgates rules governing City procurement.⁷ Also, the Commissioner’s hiring of DOC staff is circumscribed by the budget process, as Defendants set forth in their prior submissions.. *See* Def. First Comp. Dir. Mem. at 5, 12-13, 27; Def. Second Comp. Dir. Mem. At 4-8.

Defendants add a Confidentiality provision to ensure that information about DOC, individuals in custody, and DOC staff, which the Remediation Manager receives in the course of their work, is treated as Confidential and used solely for the purpose of that work. This provision is consistent with the Hinds County Receivership Order, which provides:

The Receiver and their personnel may not make any public statements (at a press conference or otherwise) with regard to any act or omission of the County, or disclose information provided to the Receiver pursuant to this Receivership, except as authorized by this Order, the Court, or by joint stipulation of the parties.

Id., at § IV, ¶ 3.

In addition, Defendants request provisions to explicitly extend this protection to information provided by the Remediation Manager to the plaintiffs, in the event that the Remediation Manager chooses to share information about DOC operations with the plaintiffs, e.g., as part of the meet and confer process relating to modifications to the Court’s orders. The

⁷ *See, generally*, N.Y. Gen. Mun. L. § 103 (Public Contracts); NY City Charter, § 311(a) (PPB rulemaking authority), 313 (sealed bidding), 318, 322, 327 (Mayoral authority to employ certain procurement procedures); § 327(b), 394(b) (requirement of the Corporation Counsel to approve City contracts), § 328 (requiring registration of contracts with Comptroller), § 329(c) (DCAS must purchase goods for City with limited exceptions); PPB Rules, 9 RCNY § 1-02, et seq. (“Except as otherwise provided by law, these Rules shall apply to the procurement of all goods, services, and construction to be paid for out of the City treasury or out of monies under the control of or assessed or collected by the City.”); *see also* <https://www.nyc.gov/site/mocs/regulations/ppb.page>. (There are limited exceptions to some approval rules for specific circumstances. *See, e.g.*, PPB Rules, 9 RCNY § 308(a)). As Defendants’ proposed language for the Court’s Order indicates, the Commissioner has the authority to determine DOC’s needs with respect to staffing, contracting and procurement, but not to dictate the City’s agreements or negotiating positions (absent express delegation of that authority from other City agencies).

Remediation Manager will have an extraordinary level of access to DOC's confidential information, nearly equivalent to that of the Commissioner. They should not become a conduit for the plaintiffs to publicize confidential information that the plaintiffs otherwise would be unable to disseminate under the Court's previously issued Protective Order. Therefore, Defendants' proposed language designates such shared information as "Confidential" under the Protective Order. In addition, Defendants' proposed language imports from the Consent Judgment the protections that govern information shared with the plaintiffs by the Monitor and applies them to information shared by the Remediation Manager with the plaintiffs.⁸

Plaintiffs also seek to remove the existing restrictions in the Proposed Order on public statements by the Remediation Manager, which are also mirrored in the Hinds County Receiver Order. This too would be error. The Remediation Manager is not a politician or advocate, but rather an agent of the Court. As such, the customary and ethical restraints on public statements that apply to the Court should apply to the Remediation Manager. *See Ligon v. City of N.Y.*, 538 F. App'x 101, 102-03 (2d Cir. 2013), *explained and superseded by*, *Ligon v. City of N.Y.* (In re Reassignment of Cases), 736 F.3d 118, 127 (2d Cir. 2013) (recusing District Judge in part because of statements to the media suggesting bias). Absent unusual circumstances approved by the Court, public statements by the Remediation Manager cannot advance the goal of achieving compliance with the Court's orders, and can only serve to imperil the close working relationship between DOC and City personnel and the Remediation Manager that is necessary to achieve compliance with the Contempt Provisions. Plaintiffs may argue that the Remediation Manager should be permitted to

⁸ Defendants agree with the Monitoring Team's related concern that the plaintiffs should not be granted more rights to obtain information about DOC than they have under the Consent Judgment to request information from the Monitor. *See* Appendix A, Section XI, ¶ F (second sentence). The Remediation Manager should not become a font of confidential data for the plaintiffs that they otherwise would not receive.

appeal to “constituencies” among the public at large to account for their actions, but the Remediation Manager must be accountable to the Court and the parties, not the public.⁹

6. SECTION VI: Monitor’s Authority

Plaintiffs object to the Monitor maintaining their authority under the *Nunez* Orders to approve or direct policies relating to compliance with the Contempt Provisions while the Remediation Manager maintains authority under the Proposed Order. This is error. There is no basis for the Court to find that changing its prior orders to limit the Monitor’s authority is necessary to remedy a constitutional violation, as required by the PLRA. Plaintiffs have not even attempted to show that the Monitor has exercised its authority incorrectly, so as to frustrate compliance with the Court’s orders or constitutional requirements. In fact, the Monitor has many years of experience and familiarity with DOC, and a deep understanding of the issues it faces. There is no reason to believe that the Remediation Manager is better suited than the Monitoring Team to perform the Monitor’s functions, and supplanting the Monitor’s authority would be counter-productive to the goal of compliance.

7. SECTION VII: Indemnification of the Remediation Manager

For reasons previously stated, Defendants object to the requirement in the Proposed Order that the City indemnify the Remediation Manager against all liability. *See* Def. Objs. at 9-12. Although Plaintiffs point to *Hinds County* in support of their objection, in that case, on remand the County objected to the indemnification provision in the Proposed Order, without explanation, but the Court retained the provision unchanged, also without discussion. *See generally*, PLRA

⁹ Plaintiffs may argue that this is unfair because the Commissioner and the City are not bound by confidentiality constraints, but that makes no sense because the information at issue belongs to the City, and the City may decide whether to release its own information.

Analysis. Neither federal nor state law would provide for the City to be liable for the actions of an official of the federal government, of which it has no control, nor is indemnification necessary to remedy a constitutional violation. Accordingly, in this respect the Court should not follow the unexamined decision of the District Court in *Hinds County*, but rather should apply the PLRA and not burden City taxpayers with automatic, categorical indemnification of the Remediation Manager, including for actions that were contrary to the City's policies or objections.

8. SECTION VII: Remediation Manager Compensation and Expenses

Defendants maintain their objection to the Remediation Manager being appointed without a prior Court determination of estimated reasonable fees and expenses. *See* Def. Objs. at 13. The Monitoring Team has proposed alternative language that calls for the Court to determine reasonable fees and expenses after appointment of the Remediation Manager, but before any invoice fees and expenses are submitted for payment. Defendants consider the Monitoring Team's proposal to be inadequate to protect the City from unnecessary disputes, because the Remediation Manager would be retained before they knew their expected compensation. Nevertheless, the Monitoring Team's proposal is an improvement over the original Proposed Order.¹⁰

9. SECTION X: Cooperation.

Defendants object to the language in the Proposed Order that would obligate the parties' counsel to cooperate with the Remediation Manager. Defendants' counsel of course intend to provide reasonable assistance to the Remediation Manager in the execution of their duties, within the confines of their ethical obligations as litigation counsel to Defendants. But the proposed

¹⁰ After conferring with plaintiffs and the Monitoring Team, Defendants have withdrawn a prior objection to the City paying for legal fees incurred by the Remediation Manager. But Defendants refer the Court to their *in camera* submission regarding selection of the Remediation Manager for limitations on legal fees that should be imposed by the Court.

language purporting to impose a court-ordered duty of cooperation could be construed to require Defendants' counsel to take actions at the request of the Remediation Manager that would be contrary to their ethical duty to represent the interests of their clients. Imposing such a duty, if it were ever lawful to do so, is certainly not required in order to remedy a constitutional violation in this case.

CONCLUSION

With respect to other revisions in the Proposed Order, Defendants rely upon their prior explanations in Def. Objs., comments in the Monitor's chart detailing the parties' positions on changes to the Proposed Order, and the revisions themselves, some of which are self-evident clarifications.

For the reasons stated herein and in prior submissions, Defendants respectfully request that if the Court determines to appoint a Remediation Manager notwithstanding Defendants' opposition to that relief, then the Court should adopt the changes to the language of the Proposed Order set forth in the attached Appendix A.

Dated: September 10, 2025
New York, New York

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APPENDIX A

MARKUP SHOWING DEFENDANTS' REQUESTED CHANGES TO PROPOSED ORDER

APPENDIX B: ORDER APPOINTING NUNEZ REMEDIATION MANAGER

The Court intends to enter an order in substantially the following form upon the selection of the Nunez Remediation Manager. Any objections to the language of the order must be discussed with the Monitoring Team and filed in writing by 12:00 p.m. on June 27, 2025.

WHEREAS, on October 22, 2015, this Court entered the Consent Judgment (docket entry no. 249) in this matter to correct the ~~violations~~violation of the constitutional rights of people incarcerated in jails operated by the New York City Department of Correction (“DOC” or “the Department”)¹;

WHEREAS, the Consent Judgment required the Defendants to take specific actions to remedy a pattern and practice of violence by staff against incarcerated individuals, and to develop and implement new practices, policies, and procedures to reduce violence in the jails and ensure the safety and well-being of incarcerated individuals;

WHEREAS, Section XXII, ¶ 1 of the Consent Judgment provides: “The Parties stipulate and agree, and the Court finds, that this Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a). The Parties further stipulate and agree, and the Court finds, that the prospective relief in this Agreement is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the Parties agree and represent that the Agreement complies with the provisions of 18 U.S.C. § 3626(a)”;

WHEREAS, on August 14, 2020, the Court entered a Remedial Consent Order Addressing Non-Compliance (the “First Remedial Order,” docket entry no. 350) that included

¹ The Plaintiff Class is defined as “all present and future inmates confined in jails operated by the Department, except for the Elmhurst and Bellevue Prison Wards.” (Docket entry no. 249 ¶ II.2.)

several remedial measures designed to address the repeated findings of the Nunez Independent Monitor (the “Monitor” or “Monitoring Team,” which shall each refer to the Monitor and the members of the Monitoring Team)) that the Defendants were in non-compliance with core provisions of the Consent Judgment, including with Section IV, ¶ 1 (Implementation of Use of Force Directive); Section VII, ¶ 1 (Thorough, Timely, Objective Investigations); Section VII, ¶ 7 (Timeliness of Preliminary Reviews); Section VII, ¶ 9 (a) (Timeliness of Full ID Investigations); Section VIII, ¶ 1 (Appropriate and Meaningful Staff Discipline); Section XV, ¶ 1 (Inmates Under the Age of 19, Protection from Harm); and Section XV, ¶ 12 (Inmates Under the Age of 19, Direct Supervision);

WHEREAS, in his Eleventh Report filed on May 11, 2021 (docket entry no. 368), the Monitor reported that the Defendants were not in compliance with numerous provisions of the First Remedial Order, including Section A, ¶ 2 (Facility Leadership Responsibilities), Section A, ¶ 3 (Revised De-escalation Protocol), Section A, ¶ 6 (Facility Emergency Response Teams), Section D, ¶ 1 (Consistent Staffing), Section D, ¶ 2 (ii) (Tracking of Incentives and Consequences), and Section D, ¶ 3 (Direct Supervision);

WHEREAS, the Court entered a Second Remedial Order on September 29, 2021 (docket entry no. 398), and a Third Remedial Order on November 22, 2021 (docket entry no. 424);

WHEREAS, after the three Remedial Orders failed to result in meaningful improvements, the Defendants developed an Action Plan, supported by the Monitor, that was designed to address Defendants’ overall lack of progress toward compliance by focusing on four foundational areas without which reform could not proceed—security practices, supervision and leadership, staffing practices, and accountability—and the Court entered and So Ordered the Action Plan on June 14, 2022 (docket entry no. 465);

WHEREAS, the Court found that the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each compliant with the provisions of 18 U.S.C. § 3626(a) and were necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class;

WHEREAS, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each entered to address the ongoing non-compliance with the Consent Judgment and to achieve its primary goal: to protect the constitutional rights of incarcerated people and substantially reduce the level of violence in the jails;

WHEREAS, the Consent Judgment, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan are hereafter collectively referred to as “the Nunez Orders”;

WHEREAS, more than a year after the Action Plan was entered, the Monitor found in his July 10, 2023 Special Report (docket entry no. 557) that the Defendants had not made substantial and demonstrable progress in implementing the reforms, initiatives, plans, systems, and practices outlined in the Action Plan, and that there had not been a substantial reduction in the risk of harm facing incarcerated individuals and DOC staff;

WHEREAS, on November 17, 2023, the Plaintiff Class and the United States filed a Motion for Contempt and Appointment of Receiver;

WHEREAS, on November 27, 2024, this Court issued its factual findings and decision granting Plaintiffs’ Motion for Contempt and found that Defendants (i) are in contempt of eighteen core provisions of the Nunez Orders (the “Contempt Provisions”) “that have gone unheeded for years and have highlighted failures inextricably linked to the Department’s historic pattern of excessive use of force against persons in custody” (docket entry no. 803, at 52);

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(ii) “have not demonstrated diligent attempts to comply with the Contempt Provisions in a reasonable manner” (docket entry no. 803, at 52); and (iii) have repeatedly and consistently failed to remediate the violations of the federal rights of incarcerated people that necessitated entry of the Consent Judgment (docket entry no. 803, at 52, 54-56);

WHEREAS, this Court found that the “use of force rate and other rates of violence, self-harm, and deaths in custody are demonstrably worse than when the Consent Judgment went into effect in 2015” and the “unsafe and dangerous conditions in the jails...have become normalized despite the fact that they are clearly abnormal and unacceptable” (docket entry no. 803, at 11);

WHEREAS, this Court found that “for nine years, Defendants made only half-hearted, inconsistent efforts to comply with Court orders” (docket entry no. 803, at 50);

WHEREAS, this Court found that “[t]he record in this case makes clear that those who live and work in the jails on Rikers Island are faced with grave and immediate threats of danger, as well as actual harm, on a daily basis as a direct result of Defendants’ lack of diligence, and that the remedial efforts thus far undertaken by the Court, the Monitoring Team, and the parties have not been effective to alleviate this danger” (docket entry no. 803, at 55);

WHEREAS, this Court found that “Defendants’ ongoing failure to comply” requires a remedy that addresses the “insufficiently resourced leadership; a lack of continuity in management; failures of supervision and cooperation between supervisors and line officers; a lack of skill or imagination to create and implement transformative plans; and an unwillingness or inability to cooperate with the Monitoring Team recommendations to accomplish the changes necessary” (docket entry no. 803, at 54);

WHEREAS, this Court found that “[t]he last nine years also leave no doubt that continued insistence on compliance with the Court’s orders by persons answerable principally to

political authorities would lead only to confrontation and delay; that the current management structure and staffing are insufficient to turn the tide within a reasonable period; that Defendants have consistently fallen short of the requisite compliance with Court orders for years, at times under circumstances that suggest bad faith; and that enormous resources—that the City devotes to a system that is at the same time overstaffed and underserved—are not being deployed effectively” (docket entry no. 803, at 55-56); and

WHEREAS, as required by 18 U.S.C. § 3626(a), the prospective relief in this Order is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the Plaintiff Class and the United States, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. Appointment of Nunez Remediation Manager and Nunez Remediation Manager’s Duties

A. [NAME] is ~~here by~~hereby appointed to serve in this case as Nunez Remediation Manager, with the responsibility and authority to take all necessary steps to promptly achieve Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with the Contempt Provisions.

B. The Nunez Remediation Manager’s work shall be guided by ~~benchmarks identified in~~the “Remediation Action Plan,” a work plan ~~that includes specific and concrete steps and milestones~~ designed to achieve Substantial Compliance with the Contempt Provisions ~~within three years of the date the Court files the Nunez Remediation Manager’s Acceptance of this appointment on the public~~

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~~docket for this case (“Acceptance Effective Date”), subject to extension of the target period for any particular elements of the plan upon a showing of good cause therefor.~~ The ~~process to determine the substance of the~~ Remediation Action Plan is detailed in Section II.A. ▲

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C. The Nunez Remediation Manager shall provide leadership and executive management with respect to achieving Substantial Compliance with the Contempt Provisions with the goal of developing and implementing a sustainable system that protects the constitutional rights of incarcerated people.

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D. The Nunez Remediation Manager shall be answerable only to the Court. ▲

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E. The Nunez Remediation Manager shall maintain an office within Department headquarters or on Rikers’ Island and shall not work remotely more than two business days per week.

F. The Nunez Remediation Manager shall inspect all Department facilities housing persons in custody at least one per month.

G. The Nunez Remediation Manager shall be employed as the Nunez Remediation Manager on a full time basis, and shall maintain no other employment or contract work except as expressly approved by the Court, after notice and opportunity to be heard by the parties.

H. The Nunez Remediation Manager shall begin their transition into the role by [DATE] by planning and engaging in the logistics for the role. To effectuate a smooth transition, the powers of the Nunez Remediation Manager’s shall take effect 90 days from the date of this Order.

II. Development and Implementation of the Remediation Action Plan

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A. The Nunez Remediation Manager, in consultation with the Commissioner and the Monitoring Team, shall develop a Remediation Action Plan. ~~The, identifying the necessary work to complete within two years of the Court's approval of the Remediation Action Plan. Nothing in this provision relates to the tenure of the Nunez Remediation Manager, or the duration of their authority with respect to a specific Contempt Provision, which is governed exclusively by Sections III and IX.~~

B. The Remediation Action Plan shall identify the:

A.i. include specific and concrete steps that are necessary to achieve ~~substantial compliance~~ Substantial Compliance with the Contempt Provisions ~~within no more than three years of the Nunez Remediation Manager's Acceptance Effective Date. The Remediation Action Plan shall include transformative and sustainable initiatives which shall include, any positive initiatives currently underway that must be sustained or enhanced. Further, the Remediation Action Plan shall address relevant recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions. These actions("Benchmarks").~~ The Benchmarks shall be organized into priorities with specified ~~benchmarks~~ milestones to be achieved within 12-month periods, beginning with the safety-related areas and actions that are most urgently in need of attention.;

i. include transformative and sustainable initiatives which shall include any positive initiatives currently underway that must be sustained or enhanced.

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The initiatives must necessarily be operationally feasible to the Department and include reasonable implementation plans tailored to the Department's operations; and

- ii. address recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions.

C. The Benchmarks set forth in the Remediation Action Plan shall be specific, objectively defined metrics reflecting the minimum requirements for Substantial Compliance with the Contempt Provisions (the "Final Benchmarks") or interim targets for compliance ("Interim Benchmarks"). The Benchmarks shall constitute objective metrics for the satisfaction of constitutional requirements, and shall not require actions, conditions or results that are not required by constitutional standards. The Remediation Action Plan shall have the minimum number of Final Benchmarks intended to reflect Substantial Compliance with the Contempt Provisions, and more than one Contempt Provision may be satisfied by achievement of the same Benchmark. Benchmarks under this Order are not intended to replace the definition of Substantial Compliance under the Consent Judgment, although they should be relevant to that determination.

~~i.D.~~ The Remediation Action Plan shall be provided to ~~counsel for the Plaintiff Class and the United States~~ the parties in draft form for comment within 90 days of the date of of the ["Acceptance Effective Date. Counsel for the Plaintiff Class and the United States"]. The parties shall provide the Nunez Remediation Manager, Commissioner, and the Monitoring Team, and the other parties with their comments on the Remediation Action Plan, if any, within ~~24~~30 days of receipt.

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The Nunez Remediation Manager, in consultation with the Commissioner and Monitoring Team, shall consider the comments from ~~Counsel for the Plaintiff Class and the United States~~the parties and make any changes deemed necessary before filing the final proposed Remediation Action Plan with the Court. The final Remediation Action Plan shall be filed with the Court for approval within 21 days of receipt of comments from the ~~Counsel for the Plaintiff Class and United States~~parties. The parties shall have at least 20 business days to respond to the Nunez Remediation Manager's application pursuant to this provision, prior to the Court entering any Order in response to the application.

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E. The Nunez Remediation Manager may thereafter seek to modify or amend the Remediation Action Plan, including changing timing of the target period for any particular element of the Remediation Action Plan, upon application to the Court. The Nunez Remediation Manager shall consult with the Commissioner and the Monitoring Team ~~in advance of any application on any~~modifications. The Nunez Remediation Manger shall then provide the proposed revised Remediation Action Plan to the parties for comment before making any such application ~~to the Court and any such application, which~~ shall be made ~~upon~~notice and opportunity to be heard by the parties and the Monitoring Team. The parties shall have at least 20 business days to respond to the Nunez Remediation Manager's application pursuant to this provision, prior to the Court entering any Order in response to the application.

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B.F. Implementation of the Remediation Action Plan must begin immediately upon its approval by the Court. This work shall be undertaken in collaboration

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with the Commissioner ~~to the greatest extent consistent with efficiency, effectuation of change, and the fostering of a respectful, sustainably safety-oriented approach to management.~~

C.G. Within 30 days following Court approval of the Remediation Action Plan, the Nunez Remediation Manager, the Monitoring Team, and the Commissioner shall jointly develop an updated DOC organizational chart that includes delineation of the reporting lines of divisions, operational functions, and personnel that are subject to the direct authority of the Nunez Remediation Manager and the Commissioner, respectively, and those where both exercise direct authority over aspects of the divisions, operations, and personnel. In the event of conflict regarding divisions of labor, the Defendants or the Nunez Remediation Manager ~~has ultimate authority~~ may bring the matter to the attention of the Court for resolution, with notice and opportunity to be heard by the parties.

III. Assessment of Compliance & Transition Back to DOC Control

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A. The Monitor shall file a report within 130 days following each Reporting Period² ~~describing the efforts the Department and the Remediation Manager have taken to implement the requirements of the Remediation Action Plan and evaluating the extent to which the Department and Remediation Manager have complied with the benchmarks of the Remediation Action Plan and each of the Contempt Provisions.~~

² ~~The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.~~

~~B.~~ Upon a finding by the Monitoring Team that one or more of the ~~benchmarks~~Benchmarks of the Remediation Action Plan or the Contempt Provisions is in Partial or Substantial Compliance, the ~~Court shall determine whether Substantial Compliance with the relevant benchmark(s) and/or Contempt Provision(s) has been achieved.~~

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~~C.~~A. ~~Within 30 days of the Court's finding, the Nunez Remediation Manager shall be obligated to work~~begin working with the Commissioner ~~onto prepare a~~ Transition Plan that ~~outline~~shifts responsibility for all functions related to the relevant Benchmark or Contempt Provision back to the Department. The Transition Plan shall include: (1) how to sustain the progress achieved, (2) the steps the Nunez Remediation Manager will take to prepare the Department to operate independently in the relevant area, and (3) the actions the Department will take to maintain the required performance level and sustain compliance.

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~~B.~~ The~~Within 30 days of the issuance of the Monitor's Report finding that one or more of the benchmarks of the Remediation Action Plan or one or more of the Contempt Provisions is in Substantial Compliance, the Transition Plan shall be finalized, implemented, and submitted to the Court by the Nunez Remediation Manager.~~

C. Upon receipt of the Transition Plan, the Court shall determine whether Substantial Compliance with the relevant Benchmark(s) and/or Contempt Provision(s) has been achieved and shall approve the Transition Plan, with any modifications the Court deems necessary.

D. The Court shall routinely assess the progress of the Remediation Action Plan

following the issuance of the Monitor's Report. At a minimum, after every Reporting Period, the Court shall determine, after an opportunity to be heard by the parties, whether the Remediation Action Plan has resulted in: (a) substantial and demonstrable progress in achieving Substantial Compliance with the Contempt Provisions or achievement of the Benchmarks; (b) whether such efforts have resulted in a substantial reduction in the risk of harm currently facing incarcerated individuals and DOC staff; and (c) whether Substantial Compliance with the Contempt Provisions or achievement of the Benchmarks, or other factors, warrants a reduction in the authority of the Nunez Remediation Manager.

~~D.E.~~ Upon the Court's finding that the City is in Substantial Compliance with one or more Contempt Provisions or that a reduction in the Nunez Remediation Manager's authority is otherwise warranted pursuant to Section III.D above, the Nunez Remediation Manager's authority over the relevant benchmark of the Remediation Action Plan or Contempt Provision(s) and any related Benchmarks shall be terminated upon the Monitoring Team's filing of the Monitor's Report that reports the benchmark of the Remediation Action Plan or Contempt Provision in Substantial Compliance for the third successive Reporting Period as soon as possible and in no event later than 30 days following the Court's finding.

IV. Powers of the Nunez Remediation Manager. The Nunez Remediation Manager shall have ~~all the following powers necessary to achieve Substantial Compliance with the Contempt~~ Provisions, including but not limited to:

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A. **General Powers:** The Nunez Remediation Manager shall have the authority to exercise all powers vested by law in the Commissioner to the extent necessary to achieve ~~compliance~~Substantial Compliance with the Contempt Provisions. The Nunez Remediation Manager shall have such powers of the Commissioner to control, oversee, supervise, and direct all administrative, personnel, ~~financial,~~ ~~accounting, contracting, legal,~~ and other operational functions of the DOC to the extent necessary to achieve compliance with the Contempt Provisions.

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Notwithstanding any other provision of this Order, such powers as are granted to the Nunez Remediation Manager by this Order shall be limited by the laws, rules and regulations of the City and State of New York, and the contracts and Collective Bargaining Agreements to which the City is a party, to the same extent as the authority of the Commissioner is so limited. The mention of a power or authority in this Order does not imply that the power or authority is necessarily available to the Commissioner or the Nunez Remediation Manager if it is not otherwise available to the Commissioner under state or local law.

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B. **Specific Powers:** Without in any way limiting the Nunez Remediation Manager's general powers detailed in Paragraph A above, the Nunez Remediation Manager shall have the authority to exercise the following specific powers, ~~solely~~ to the extent ~~that they: (a) are~~ necessary to achieve compliance with the Contempt Provisions, and ~~to the extent (b) are~~ vested by City and state law in the Commissioner:-

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- i. The Nunez Remediation Manager shall have the authority to enact or change DOC policies, procedures, protocols, systems, and practices ~~implicated by the Court's contempt findings.~~
- ii. The Nunez Remediation Manager shall have the authority to establish personnel policies and direct personnel actions. The Nunez Remediation Manager shall have the power to create, modify, abolish, or transfer employee and contractor positions, as well as to recruit, hire, train, terminate, promote, demote, transfer, and evaluate employees and contractors. ~~The Nunez Remediation Manager shall have the authority to assign and deploy DOC staff.~~
- iii. ~~The Nunez Remediation Manager shall have the authority to assign and deploy DOC staff as necessary to implement the Remediation Action Plan.~~
- ~~iii-iv.~~ iv. The Nunez Remediation Manager shall have the authority to determine the DOC's needs ~~and positions~~ with respect to contract provisions ~~relevant to remediation of the Contempt Provisions.~~
- ~~iv-v.~~ v. The Nunez Remediation Manager shall have the authority to procure and contract for supplies, equipment, tangible goods, and services.
- ~~v-vi.~~ vi. The Nunez Remediation Manager shall have the authority to review, investigate, and take disciplinary or other corrective or remedial actions with respect to any violation of DOC policies, procedures, and protocols ~~implicated by the Court's contempt findings.~~

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- vi. ~~The Nunez Remediation Manager shall have the authority to hire consultants, or obtain technical assistance, as the Nunez Remediation Manager deems necessary to perform their duties under this Order.~~
- vii. ~~In exercising the powers conferred by this Order, the Nunez Remediation~~ Manager shall use reasonable best efforts to consult and work collaboratively with the Commissioner.
- viii. The Nunez Remediation Manager shall have the authority to delegate any of these powers to the Commissioner, ~~and to retract or constrict such delegations as the Nunez Remediation Manager, in the Nunez Remediation Manager's discretion, deems necessary.~~
- ix. ~~Nothing in this Order shall be construed to authorize the Nunez Remediation Manager to take any action that is beyond the remedial powers of the federal courts, or to authorize the Nunez Remediation Manager or the Court to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.~~

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C. Relief from Unlawful Actions of the Nunez Remediation Manager. The City may seek equitable relief from the Court to the extent that it reasonably believes that the Nunez Remediation Manager has exceeded, or intends to exceed, their authority as set forth by this Order or under other federal, state or local law, or that the Nunez Remediation Manager is or intends to enact a policy or practice or take an action that is unconstitutional or is likely to cause constitutional violations. A present or former employee of the City who has been or will be

harmed by termination of their employment or disciplinary action of the Nunez Remediation Manager may also seek such relief. This remedy shall not be exclusive to other remedies or relief from actions of the Nunez Remediation Manager otherwise available under federal, state or local law.

C.D. Commissioner's Role: The Commissioner shall retain all of Commissioner's authority ~~in areas not implicated by under the supervision and direction of the Nunez Remediation Manger, to the extent such supervision and direction is necessary to implement the Remediation Action Plan or otherwise to achieve compliance with~~ the Contempt Provisions. The Commissioner and the Nunez Remediation Manager are urged and expected to work collaboratively in aid of the goals of compliance with the Nunez Orders and the safe, sustainable management of the jails. The Nunez Remediation Manager shall have the authority to direct the Commissioner to take any steps that the Nunez Remediation Manager deems necessary to comply with the requirements of the Contempt Provisions. It is expected that Defendants, and the Commissioner and DOC leadership, will work closely with the Nunez Remediation Manager to facilitate the Nunez Remediation Manager's ability to perform their duties under this Order. Nothing in this Order shall authorize the Nunez Remediation Manager to take any employment action with respect to the Commissioner.

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E. Additional Powers:

D.i. The Nunez Remediation Manager may, after consultation with the Commissioner ~~and~~ the Monitoring Team, and the parties, petition the Court on notice to the parties and the Monitoring Team for such additional

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powers as are necessary to achieve compliance with the Contempt

Provisions consistent with Section II. The parties and the Monitoring Team shall have at least 20 business days to respond to any petition for additional powers by the Nunez Remediation Manager.

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ii. The Nunez Remediation Manager shall make reasonable efforts to exercise their authority in a manner consistent with applicable state and local laws, regulations, and contracts. However, in the event the Nunez Remediation Manager determines that those laws, regulations, or contracts impede the Nunez Remediation Manager from carrying out their duties under this Order and achieving compliance with the Contempt Provisions, the Nunez Remediation Manager may, after consultation with the Commissioner, the Monitoring Team, and the parties, petition the Court on notice to the parties and the Monitoring Team, to waive any legal or contractual requirement that is causing the impediment or seek other appropriate relief on notice to the parties and the Monitoring Team. The parties and the Monitoring Team shall have at least 20 business days to respond to any petition for additional powers by the Nunez Remediation Manager.

F. Authority to Hire Staff and Consultants: The Nunez Remediation Manager shall have the authority to request the Court's permission to hire additional qualified staff, consultants, or obtain technical assistance for the Remediation Manager Team (as defined below), as is reasonably necessary to fulfill the Nunez Remediation Manager duties under this Order without duplication of effort. The

Nunez Remediation Manager shall reasonably utilize the Department assets and resources it already possesses. The Nunez Remediation Manager shall take all necessary steps to minimize redundancy and the creation of additional bureaucracy with the goal of creating systems that support the sustainable transition back to the Defendants' control.

E.G. Access: The Nunez Remediation Manager, including all of their staff and

~~consultants, shall have unlimited access to all records and files (paper or electronic) maintained by the DOC and (collectively referred to as the~~

"Remediation Manager Team"), shall have unlimited access to all DOC facilities,

incarcerated people, and DOC staff. This access includes the authority to conduct confidential interviews with DOC staff and incarcerated people. The Nunez

~~Remediation Manager's~~ Manager Team's, ability to interview DOC staff shall be

subject to the employee's right to representation under certain circumstances as

set forth in Section 75 of the New York Civil Service Law and MEO-16. Access

to records should not include access to communications between and among DOC

personnel and the New York City Law Department that are protected by the

attorney-client or work-product privileges.

H. Confidentiality. The Remediation Manager Team shall hold any information that

they obtain from the Department or its employees Confidential (as that term is

defined herein), except to the extent that it is necessary to include such

information in confidential communications with the Monitoring Team, the

parties or the Court, or it is necessary to include such information in reports of the

Nunez Remediation Manager filed with the Court. "Confidential" for the purpose

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of this Order means that such information shall not be used by the Remediation Manager Team for any purpose other than compliance with this Order or the Remediation Action Plan, and may not be shared by the Remediation Manager Team with any person except as necessary to pursue compliance with this Order or the Remediation Action Plan.

I. To the extent that Plaintiffs' Counsel obtains information from the Remediation Manager Team, the information shall be subject to the same restrictions set forth regarding such information in § XX., ¶ 11 of the Consent Judgment as if the Monitor had provided such information to Plaintiffs' Counsel; shall be subject to the Protective Orders entered in this case (e.g. dks. 89 and 293); and shall be designated "Confidential" for the purposes of those Protective Orders. Information protected by other protective order or confidentiality agreements entered into this case (dks. 290 and 304) and shall remain so protected even if disclosed by the Remediation Manager to the Plaintiffs' Counsel.

V. Reporting by the Nunez Remediation Manager.

A. The Nunez Remediation Manager shall regularly report to and meet with the Court to update the Court regarding the status of efforts to comply with Contempt Provisions, and any specific obstacles or impediments encountered by the Nunez Remediation Manager.

B. Within 60 days of~~The Nunez Remediation Manager shall file bi-annual reports on~~
the ~~date~~Court's docket ("RM Reports").

i. The RM Reports shall include a description of the~~Acceptance-Effective~~
~~Date,~~actions that the Remediation Manager Team has taken during the

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Reporting Period to implement the Remediation Action Plan, including achieving Substantial Compliance with the Benchmarks and Contempt Provisions.

- ii. The RM Reports shall be filed in advance of the Monitor's Report with the respective compliance assessment for a particular Reporting Period.

The Nunez Remediation Manager shall, in consultation with the

Monitoring Team, propose for the Court's approval a specific schedule for the submission of regular written reports to be filed on the public docket.

- iii. The Nunez Remediation Manager may also file additional reports with the Court, if necessary, upon notice to the parties and the Monitor.

- iv. The information contained in any report by the Nunez Remediation Manager is not an assessment of compliance pursuant to § XX, ¶ 18 of the Consent Judgment. To the extent a report by the Nunez Remediation Manager includes commentary or information with respect to status of compliance with a Benchmark or a Contempt Provision, such commentary and information are advisory and does not displace the authority of the Monitor to assess compliance under this or any other Order of this Court.

C. The Nunez Remediation Manager shall provide the parties and the Monitor with a draft of any report that it intends to file on the public docket at least 30 days prior to such filing, and the parties and the Monitor shall have 15 business days to make any requests for changes to the report or to designate any information in such

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report as Confidential, to be filed under seal. The Nunez Remediation Manager shall respond to any such requests for changes in its report, indicating whether it made the change or, if not, why the change was rejected.

B.D. The Remediation Manger's Reports shall be written with due regard for the privacy interests of individuals in custody and Staff Members; federal, state, and local laws regarding the privacy of such information; and the interests of the Department in protecting against the disclosure of non-public or privileged information. Consistent with such interests and laws, the Nunez Remediation Manager shall redact individual-identifying information from the Remediation Manager's Reports and any documents submitted with those Reports, and shall give due consideration to the Department's requests to redact any other information. To the extent the Nunez Remediation Manager declines to make redactions requested by the Department, the Remediation Manager's Report and any documents submitted with that report shall be submitted to the Court under seal for the Court to consider the Department's proposed redactions before making the Remediation Manager's Report public.

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C.E. The Nunez Remediation Manager shall remain in contact with the Court throughout the Nunez Remediation Manager's tenure on an informal, as needed, basis.

F. The Remediation Manager Team shall cooperate fully with the Monitor and shall share information that the Monitor needs to fulfill his role and responsibilities.

G. The Remediation Manager Team shall regularly communicate and consult with the Monitoring Team in the same manner as the Defendants are required to

consult with the Monitoring Team under the Nunez Orders (including, but not limited to June 13, 2025 Order § I, ¶ 5). Such consultation shall also include proactive consultation on progress that has been made in fulfilling the Remediation Action Plan, how to address obstacles to achieving compliance, as well as the strategies to achieve Substantial Compliance with the Benchmarks and Contempt Provisions.

H. The Remediation Manager Team may also seek information or technical assistance from the Monitoring Team in the same manner as Defendants under the Nunez Court Orders (including, but not limited to Consent Judgment, § XX, ¶¶ 24 and 25).

VI. Role of the Monitor.

A. ~~Consistent with Section IV(B), this~~This order does not alter the role or responsibilities of the Monitor as described in the Nunez Orders, including, but not limited to obligations to assess compliance, provide technical assistance, and regularly report to the Court in accordance with his past practices.

~~B. Beginning with the 20th Reporting Period (January to June 2025), Upon approval of the Remediation Action Plan, following the Court's approval of the Remediation Action Plan,~~ the Monitor's Reports ~~shall that~~ include ~~an~~ assessment of compliance ~~(pursuant to § XX, ¶ 18 of the Consent Judgment) with the select group of provisions (as defined by the Action Plan § G, ¶ 5(b)), the, as amended,~~ shall include the Monitor's assessment as to whether the Remediation Action Plan has resulted in: (a) substantial and demonstrable progress in achieving Substantial Compliance with the Contempt Provisions; (b) whether such efforts have resulted in a substantial reduction in the risk of harm currently facing incarcerated

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individuals and the benchmarks DOC; and (c) whether DOC has achieved any of the Benchmarks in the Remediation Action Plan ~~(once approved,~~

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C. As part of the parties' review of the draft Monitor's Report, as provided for by

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Consent Judgment § XX, ¶¶ 17,18 (as amended at ECF No. 888), the parties may request that the Monitor reconsider the proposed compliance rating for any Contempt Provision. Such a request must include the basis for the request and any relevant facts or documents. If the Monitor elects not to adjust the proposed compliance rating as requested, the Monitor shall provide the basis for his decision in the final report filed with the Court). ~~The assignment of compliance ratings to all other provisions of the Nunez Orders.~~

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~~B.D.~~ A party's failure to comment on a draft report or a portion of a draft report is suspended through December 31, 2025 not waiver of any legal objection or argument with respect to any action of the Remediation Manager or Court ruling.

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~~i.E.~~ Within 90 days after the Court's approval of the Remediation Action Plan, the Monitoring Team shall develop recommendations regarding streamlining and compliance assessment of the Nunez Orders that are not subject to the Remediation Action Plan, except for the Contempt Provisions. The Monitoring Team shall provide these recommendations to the parties for consideration and comment before submitting the recommendations to the Court.

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~~C.~~ The Nunez Remediation Manager shall regularly consult with the Monitoring Team in the same manner as the Defendants are required to consult with the Monitoring Team under the Nunez Orders. Such consultation shall also include

~~consultation on progress that has been made in fulfilling the Remediation Action Plan and how to address potential obstacles to achieving compliance, as well as the strategies to achieve Substantial Compliance with the Contempt Provisions. The Nunez Remediation Manager shall obtain the Monitor's approval to the extent it is required by the Contempt Provisions in the Nunez Orders.~~

F. The Nunez Remediation Manager shall obtain the Monitor's approval (governed by Consent Judgment § XX, ¶ 26) to the extent it is required by the Nunez Orders. To the extent that the Monitor does not provide such approval, the Nunez Remediation Manager may raise the matter with the Court and must provide the good faith basis for why approval should be granted despite the Monitor's decision not to do so. The Nunez Remediation Manager shall provide reasonable notice to the Monitor and the parties before making any such application to the Court and the parties and the Monitor shall have an opportunity to be heard on any such application. The parties shall have at least 20 business days to respond to the Nunez Remediation Manager's application pursuant to this provision, prior to the Court entering any Order in response to the application.

D.G. The Nunez Remediation Manager and the Monitor are independent positions that each report to the Court and are not answerable to each other, except to the extent that approval of actions by the Monitor is otherwise required consistent with this Order.

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VII. Immunity and Indemnity.

A. The Nunez Remediation Manager and the Nunez Remediation Manager's staff/Manager Team shall have the status of officers and agents of the Court, and as such shall be vested with the same immunities as vest with the Court.

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~~B. The Defendants shall indemnify the Nunez Remediation Manager and their staff in any litigation brought against the Nunez Remediation Manager or their staff regarding activities conducted in the course of the Nunez Remediation Manager's official duties.~~

VIII. Compensation and Responsibility for Payment.

~~A.~~ The City of New York shall bear all reasonable fees, costs, and expenses of the Nunez Remediation Manager, including payments to the Nunez Remediation Manager's staff, Remediation Manager Team, consistent with the Schedule of Expected Fees and Expenses previously approved by the Court, set forth in Appendix A. Such fees, costs, and expenses shall be sufficient to allow the Nunez Remediation Manager to fulfill their duties pursuant to this Order in a reasonable and efficient manner. The Nunez Remediation Manager may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort: after notice and opportunity to the parties and approval of the Court. The Nunez Remediation Manager shall submit an invoice for their services, and the services of their consultants and staff, consistent with Appendix A, to the City on a monthly basis. Those invoices will include charges for fees, costs, and expenses. Payment on such approved invoices shall be made within 60 days of receipt. If the City objects to any fees, costs, or expenses as contrary to the Court's prior orders or other law, unreasonable, unnecessary, or duplicative, the City shall submit the invoice to the Court for a determination of reasonable fees, costs, and expenses.

~~B. Within 30 days of the date of Acceptance Effective Date, the Nunez Remediation Manager shall submit to the Court and the City an initial statement of rates and~~

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proposed fees and expenses, which the Nunez Remediation Manager may modify from time to time as appropriate. If the City raises any objection to the statement, the City and the Nunez Remediation Manager shall promptly meet and confer, and any unresolved objections shall jointly be submitted to the Court for resolution.

IX. Duration of the Nunez Remediation Manager's Tenure.

A. The Nunez Remediation Manager's authority will continue, subject to reductions in that authority pursuant to Section III above, until the Court determines that Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) Nunez Remediation Manager's authority is removed pursuant to Section II above, with respect to all of the Contempt Provisions has been achieved and sustained for a period of 12 months consistent with Section III, at which time this Order will terminate.

B. Notwithstanding the provisions of Section IX-A, the employment of the Nunez Remediation Manager shall terminate four years after the date of this Order, and upon notice and opportunity to be heard by the parties the Court may extend the employment of the Nunez Remediation Manager, appoint a new Nunez Remediation Manager, or terminate or modify this Order.

X. Cooperation.

A. The parties, and all agents or persons within their employ, and all persons in concert and in participation with them, and the Monitor shall fully cooperate with the Remediation Manager Team in the discharge of the Nunez Remediation Manager's duties under this Order. The parties shall respond to all inquiries and requests from the Remediation Manager Team related to compliance with the

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Nunez Orders within a reasonable amount of time. To the extent that a party asserts that information requested by the Remediation Manager Team is privileged, or is unrelated to the proper duties of the Nunez Remediation Manager, they may assert such objections to the Nunez Remediation Manager. To the extent necessary to resolve such objections, the Nunez Remediation Manager may seek appropriate relief from the Court.

XI. Other Terms.

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B.A. Nothing in this Order affects the terms of the Consent Judgment or other Nunez Orders, which remain in full force and effect. In the event the Nunez Remediation Manager's tenure terminates, the Consent Judgment and other Nunez Orders will remain in full force and effect until the Court makes a finding that the Defendants have achieved Substantial Compliance with the provisions of the Consent Judgment and have maintained Substantial Compliance for a period of twenty-four (24) months, as set forth in Section XXI, ¶ 5 of the Consent Judgment.

XI. Cooperation.

~~A. The Defendants, and all agents or persons within the employ of the Defendants (including contract employees), and all persons in concert and in participation with them, the Monitor, and all counsel in this action, shall fully cooperate with the Nunez Remediation Manager in the discharge of the Nunez Remediation Manager's duties under this Order, and shall promptly respond to all inquiries and requests related to compliance with the Nunez Orders.~~

XI. Other Terms.

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B. Nothing in this Order shall limit the effect of Prison Litigation Reform Act, 18

U.S.C. § 3626(b).

A.C. If at any point the Nunez Remediation Manager determines that ~~they~~
~~need the Department needs~~ additional funding to fulfill the Remediation Action
 Plan that is not budgeted for that fiscal year, the Nunez Remediation Manager
 shall immediately consult the Commissioner before notifying the City Council's
 Finance Division and the Mayor's Office of Management and Budget of the
 specific purpose and the amount of funds needed. If the issue is not timely
 resolved, the Nunez Remediation Manager or any party may request a hearing
 before the Court.

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D. The parties shall have at least 20 business days to respond to any petition by the
Nunez Remediation Manager pursuant to this provision, prior to the Court
 entering any Order in response to the petition.

E. To the extent that the Nunez Remediation Manager petitions to alter the terms of
 any Collective Bargaining Agreement, or any laws, rules or regulations governing
 the employment of any person by the City, the unions representing the affected
 employees shall be provided the same notice and opportunity to be heard as the
 parties.

~~B. The Remediation Manager Team~~ ~~The Nunez Remediation Manager shall make~~
~~reasonable efforts to exercise their authority in a manner consistent with~~
~~applicable state and local laws, regulations, and contracts. However, in the event~~
~~the Nunez Remediation Manager determines that those laws, regulations, or~~
~~contracts impede the Nunez Remediation Manager from carrying out their duties~~
~~under this Order and achieving compliance with the Contempt Provisions, the~~

~~Nunez Remediation Manager may petition the Court to waive any legal or contractual requirement that is causing the impediment or seek other appropriate relief on notice to the parties and the Monitoring Team.~~

~~C.F.~~ The ~~Nunez Remediation Manager and their staff~~ shall have the authority to communicate *ex parte* and confidentially with each party and each party's legal representatives, as well as with the Court and the Monitoring Team. ~~Plaintiffs' Counsel shall have access to information and other materials only as set forth by Consent Judgment § XX, ¶ 10.~~

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~~D.G.~~ Absent leave of the Court, the ~~Nunez Remediation Manager and their staffTeam~~ may not testify in any litigation or proceeding other than this case, including public hearings or other proceedings before the New York City Council, the Board of Correction, or the New York State legislature, with regard to any act or omission of the DOC or any of the DOC's agents, representatives, or employees related to the ~~Nunez~~ Orders. The ~~Nunez Remediation Manager and their staffTeam~~ may not give interviews or make public statements regarding their work under the ~~Nunez~~ Orders, other than reports filed on the docket, without the permission of the Court.

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~~E.H.~~ Unless such conflict is waived in writing by the ~~Parties, parties, no member of the Nunez Remediation Manager and their staffTeam~~ may ~~not~~ accept employment or provide consulting services that present a conflict of interest with their responsibilities under this Order, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or

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claimant's attorney, in connection with a claim or suit against the DOC or the DOC's agents, representatives, or employees.

~~F.I.~~ The Nunez reports and other communications of the Remediation Manager ~~is an agent of Team submitted to the Court and is, whether in camera, ex parte or on the public docket, shall not a federal, State, or local agency or an agent thereof, be~~ admissible as evidence in any proceeding except this action.

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~~G.J.~~ If at any time the Nunez Remediation Manager position becomes vacant, the parties and the Monitor shall confer on potential replacements and the parties shall meet and confer and endeavor to jointly provide the court with no more than four candidates to replace the Nunez Remediation Manager. The parties shall submit their recommendations, with supporting materials, to the Court confidentially. Once the Court has received the parties' recommendations, the Court shall review the proposed candidates, and any further candidates the Court, in its discretion, may deem appropriate for consideration, and select the new Nunez Remediation Manager.

K. Other Rights Preserved. Nothing in this Order shall prevent any party or intervener from seeking modification or termination of this Order before the relief is otherwise terminable pursuant to the terms of this Order, to the extent that modification or termination would otherwise be legally permissible under Fed. R. Civ. P. 60 or other law.

XII. Effective Date.

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A. This Order Appointing the Nunez Remediation Manager shall become effective following the appointed Nunez Remediation Manager's confirmation of their

Acceptance of the powers, responsibilities and duties imposed by this Order by signing a copy of this Order below and returning the countersigned copy to the Court by email addressed to SwainNYSDCorresp@nysd.uscourts.gov. The Order shall be effective on the Acceptance Effective Date.

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SO ORDERED this ____ day of _____, 2025

LAURA TAYLOR SWAIN
CHIEF UNITED STATES DISTRICT JUDGE

ACCEPTED

(Signature)

(Typed or printed name)

Date: _____

SEPARATE PROPOSED ORDER REGARDING FEE AND EXPENSE SCHEDULE

1. Prior to final appointment of a Remediation Manager, a prospective Nunez Remediation Manager shall submit to the City a proposed Schedule of Fees and Expenses. This Schedule shall include an estimate of the title and duties of each staff member that the Remediation Manager believes will be required to exercise the duties of the Remediation Manager pursuant to the Court order and a statement of the proposed fixed weekly fee for the Remediation Manager and each expected member of their staff.

2. In approving proposed fees the Court will consider whether the compensation to be paid to the Remediation Manager and each of their staff is commensurate with the salary earned by employees of the City of New York serving in comparable roles and providing comparable services.

3. The Remediation Manager and the City shall confer in good faith regarding the proposal for fees and expenses and to the extent that the City and Remediation Manager agree they shall make a joint proposal for approval of the statement of fees and expenses, to be included as Appendix A to the order appointing the Remediation Manager.

4. To the extent that the City and the prospective Remediation Manager disagree regarding the Schedule of Fees and Expenses, they shall make separate submissions to the Court stating the basis for the disagreement.

5. The Court shall approve or modify the proposed Schedule of Fees and Expenses, which shall then be included as Appendix A to the order appointing the Remediation Manager.

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APPENDIX B

DEFENDANTS' PROPOSED ORDER REGARDING REMEDIATION MANAGER (CLEAN COPY)

APPENDIX B: ORDER APPOINTING NUNEZ REMEDIATION MANAGER

The Court intends to enter an order in substantially the following form upon the selection of the Nunez Remediation Manager. Any objections to the language of the order must be discussed with the Monitoring Team and filed in writing by 12:00 p.m. on June 27, 2025.

WHEREAS, on October 22, 2015, this Court entered the Consent Judgment (docket entry no. 249) in this matter to correct the violation of the constitutional rights of people incarcerated in jails operated by the New York City Department of Correction (“DOC” or “the Department”)¹;

WHEREAS, the Consent Judgment required the Defendants to take specific actions to remedy a pattern and practice of violence by staff against incarcerated individuals, and to develop and implement new practices, policies, and procedures to reduce violence in the jails and ensure the safety and well-being of incarcerated individuals;

WHEREAS, Section XXII, ¶ 1 of the Consent Judgment provides: “The Parties stipulate and agree, and the Court finds, that this Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a). The Parties further stipulate and agree, and the Court finds, that the prospective relief in this Agreement is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the Parties agree and represent that the Agreement complies with the provisions of 18 U.S.C. § 3626(a)”;

WHEREAS, on August 14, 2020, the Court entered a Remedial Consent Order Addressing Non-Compliance (the “First Remedial Order,” docket entry no. 350) that included

¹ The Plaintiff Class is defined as “all present and future inmates confined in jails operated by the Department, except for the Elmhurst and Bellevue Prison Wards.” (Docket entry no. 249 ¶ II.2.)

several remedial measures designed to address the repeated findings of the Nunez Independent Monitor (the “Monitor” or “Monitoring Team,” which shall each refer to the Monitor and the members of the Monitoring Team)) that the Defendants were in non-compliance with core provisions of the Consent Judgment, including with Section IV, ¶ 1 (Implementation of Use of Force Directive); Section VII, ¶ 1 (Thorough, Timely, Objective Investigations); Section VII, ¶ 7 (Timeliness of Preliminary Reviews); Section VII, ¶ 9 (a) (Timeliness of Full ID Investigations); Section VIII, ¶ 1 (Appropriate and Meaningful Staff Discipline); Section XV, ¶ 1 (Inmates Under the Age of 19, Protection from Harm); and Section XV, ¶ 12 (Inmates Under the Age of 19, Direct Supervision);

WHEREAS, in his Eleventh Report filed on May 11, 2021 (docket entry no. 368), the Monitor reported that the Defendants were not in compliance with numerous provisions of the First Remedial Order, including Section A, ¶ 2 (Facility Leadership Responsibilities), Section A, ¶ 3 (Revised De-escalation Protocol), Section A, ¶ 6 (Facility Emergency Response Teams), Section D, ¶ 1 (Consistent Staffing), Section D, ¶ 2 (ii) (Tracking of Incentives and Consequences), and Section D, ¶ 3 (Direct Supervision);

WHEREAS, the Court entered a Second Remedial Order on September 29, 2021 (docket entry no. 398), and a Third Remedial Order on November 22, 2021 (docket entry no. 424);

WHEREAS, after the three Remedial Orders failed to result in meaningful improvements, the Defendants developed an Action Plan, supported by the Monitor, that was designed to address Defendants’ overall lack of progress toward compliance by focusing on four foundational areas without which reform could not proceed—security practices, supervision and leadership, staffing practices, and accountability—and the Court entered and So Ordered the Action Plan on June 14, 2022 (docket entry no. 465);

WHEREAS, the Court found that the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each compliant with the provisions of 18 U.S.C. § 3626(a) and were necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class;

WHEREAS, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each entered to address the ongoing non-compliance with the Consent Judgment and to achieve its primary goal: to protect the constitutional rights of incarcerated people and substantially reduce the level of violence in the jails;

WHEREAS, the Consent Judgment, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan are hereafter collectively referred to as “the Nunez Orders”;

WHEREAS, more than a year after the Action Plan was entered, the Monitor found in his July 10, 2023 Special Report (docket entry no. 557) that the Defendants had not made substantial and demonstrable progress in implementing the reforms, initiatives, plans, systems, and practices outlined in the Action Plan, and that there had not been a substantial reduction in the risk of harm facing incarcerated individuals and DOC staff;

WHEREAS, on November 17, 2023, the Plaintiff Class and the United States filed a Motion for Contempt and Appointment of Receiver;

WHEREAS, on November 27, 2024, this Court issued its factual findings and decision granting Plaintiffs’ Motion for Contempt and found that Defendants (i) are in contempt of eighteen core provisions of the Nunez Orders (the “Contempt Provisions”) “that have gone unheeded for years and have highlighted failures inextricably linked to the Department’s historic pattern of excessive use of force against persons in custody” (docket entry no. 803, at 52);

(ii) “have not demonstrated diligent attempts to comply with the Contempt Provisions in a reasonable manner” (docket entry no. 803, at 52); and (iii) have repeatedly and consistently failed to remediate the violations of the federal rights of incarcerated people that necessitated entry of the Consent Judgment (docket entry no. 803, at 52, 54-56);

WHEREAS, this Court found that the “use of force rate and other rates of violence, self-harm, and deaths in custody are demonstrably worse than when the Consent Judgment went into effect in 2015” and the “unsafe and dangerous conditions in the jails...have become normalized despite the fact that they are clearly abnormal and unacceptable” (docket entry no. 803, at 11);

WHEREAS, this Court found that “for nine years, Defendants made only half-hearted, inconsistent efforts to comply with Court orders” (docket entry no. 803, at 50);

WHEREAS, this Court found that “[t]he record in this case makes clear that those who live and work in the jails on Rikers Island are faced with grave and immediate threats of danger, as well as actual harm, on a daily basis as a direct result of Defendants’ lack of diligence, and that the remedial efforts thus far undertaken by the Court, the Monitoring Team, and the parties have not been effective to alleviate this danger” (docket entry no. 803, at 55);

WHEREAS, this Court found that “Defendants’ ongoing failure to comply” requires a remedy that addresses the “insufficiently resourced leadership; a lack of continuity in management; failures of supervision and cooperation between supervisors and line officers; a lack of skill or imagination to create and implement transformative plans; and an unwillingness or inability to cooperate with the Monitoring Team recommendations to accomplish the changes necessary” (docket entry no. 803, at 54);

WHEREAS, this Court found that “[t]he last nine years also leave no doubt that continued insistence on compliance with the Court’s orders by persons answerable principally to

political authorities would lead only to confrontation and delay; that the current management structure and staffing are insufficient to turn the tide within a reasonable period; that Defendants have consistently fallen short of the requisite compliance with Court orders for years, at times under circumstances that suggest bad faith; and that enormous resources—that the City devotes to a system that is at the same time overstaffed and underserved—are not being deployed effectively” (docket entry no. 803, at 55-56); and

WHEREAS, as required by 18 U.S.C. § 3626(a), the prospective relief in this Order is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the Plaintiff Class and the United States, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. Appointment of Nunez Remediation Manager and Nunez Remediation Manager’s Duties

- A. [NAME] is hereby appointed to serve in this case as Nunez Remediation Manager, with the responsibility and authority to take all necessary steps to promptly achieve Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with the Contempt Provisions.
- B. The Nunez Remediation Manager’s work shall be guided by the “Remediation Action Plan,” a work plan that includes specific and concrete steps and milestones designed to achieve Substantial Compliance with the Contempt Provisions. The Remediation Action Plan is detailed in Section II.A.

- C. The Nunez Remediation Manager shall provide leadership and executive management with respect to achieving Substantial Compliance with the Contempt Provisions with the goal of developing and implementing a sustainable system that protects the constitutional rights of incarcerated people.
- D. The Nunez Remediation Manager shall be answerable only to the Court.
- E. The Nunez Remediation Manager shall maintain an office within Department headquarters or on Rikers' Island and shall not work remotely more than two business days per week.
- F. The Nunez Remediation Manager shall inspect all Department facilities housing persons in custody at least one per month.
- G. The Nunez Remediation Manager shall be employed as the Nunez Remediation Manager on a full time basis, and shall maintain no other employment or contract work except as expressly approved by the Court, after notice and opportunity to be heard by the parties.
- H. The Nunez Remediation Manager shall begin their transition into the role by [DATE] by planning and engaging in the logistics for the role. To effectuate a smooth transition, the powers of the Nunez Remediation Manager's shall take effect 90 days from the date of this Order.

II. Development and Implementation of the Remediation Action Plan

- A. The Nunez Remediation Manager, in consultation with the Commissioner and the Monitoring Team, shall develop a Remediation Action Plan, identifying the necessary work to complete within two years of the Court's approval of the Remediation Action Plan. Nothing in this provision relates to the tenure of the

Nunez Remediation Manager, or the duration of their authority with respect to a specific Contempt Provision, which is governed exclusively by Sections III and IX.

B. The Remediation Action Plan shall:

- i. include specific and concrete steps that are necessary to achieve Substantial Compliance with the Contempt Provisions (“Benchmarks”).
The Benchmarks shall be organized into priorities with specified milestones to be achieved within 12-month periods, beginning with the safety-related areas and actions that are most urgently in need of attention;
- i. include transformative and sustainable initiatives which shall include any positive initiatives currently underway that must be sustained or enhanced.
The initiatives must necessarily be operationally feasible to the Department and include reasonable implementation plans tailored to the Department’s operations; and
- ii. address recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions.

C. The Benchmarks set forth in the Remediation Action Plan shall be specific, objectively defined metrics reflecting the minimum requirements for Substantial Compliance with the Contempt Provisions (the “Final Benchmarks”) or interim targets for compliance (“Interim Benchmarks”). The Benchmarks shall constitute objective metrics for the satisfaction of constitutional requirements, and shall not require actions, conditions or results that are not required by constitutional standards. The Remediation Action Plan shall have the minimum number of

Final Benchmarks intended to reflect Substantial Compliance with the Contempt Provisions, and more than one Contempt Provision may be satisfied by achievement of the same Benchmark. Benchmarks under this Order are not intended to replace the definition of Substantial Compliance under the Consent Judgment, although they should be relevant to that determination.

- D. The Remediation Action Plan shall be provided to the parties in draft form for comment within 90 days of the date of the [“Acceptance Effective Date”]. The parties shall provide the Nunez Remediation Manager, the Monitoring Team, and the other parties with their comments on the Remediation Action Plan, if any, within 30 days of receipt. The Nunez Remediation Manager, in consultation with the Commissioner and Monitoring Team, shall consider the comments from the parties and make any changes deemed necessary before filing the final proposed Remediation Action Plan with the Court. The final Remediation Action Plan shall be filed with the Court for approval within 21 days of receipt of comments from the parties. The parties shall have at least 20 business days to respond to the Nunez Remediation Manager’s application pursuant to this provision, prior to the Court entering any Order in response to the application.
- E. The Nunez Remediation Manager may thereafter seek to modify or amend the Remediation Action Plan, including changing timing of the target period for any particular element of the Remediation Action Plan, upon application to the Court. The Nunez Remediation Manager shall consult with the Commissioner and the Monitoring Team on any modifications. The Nunez Remediation Manager shall then provide the proposed revised Remediation Action Plan to the parties for

comment before making any such application, which shall be made upon notice and opportunity to be heard by the parties and the Monitoring Team. The parties shall have at least 20 business days to respond to the Nunez Remediation Manager's application pursuant to this provision, prior to the Court entering any Order in response to the application.

F. Implementation of the Remediation Action Plan must begin immediately upon its approval by the Court. This work shall be undertaken in collaboration with the Commissioner.

G. Within 30 days following Court approval of the Remediation Action Plan, the Nunez Remediation Manager, the Monitoring Team, and the Commissioner shall jointly develop an updated DOC organizational chart that includes delineation of the reporting lines of divisions, operational functions, and personnel that are subject to the direct authority of the Nunez Remediation Manager and the Commissioner, respectively, and those where both exercise direct authority over aspects of the divisions, operations, and personnel. In the event of conflict regarding divisions of labor, the Defendants or the Nunez Remediation Manager may bring the matter to the attention of the Court for resolution, with notice and opportunity to be heard by the parties.

III. Assessment of Compliance & Transition Back to DOC Control

A. Upon a finding by the Monitoring Team that one or more of the Benchmarks of the Remediation Action Plan or the Contempt Provisions is in Partial or Substantial Compliance, the Nunez Remediation Manager shall begin working with the Commissioner to prepare a Transition Plan that shifts responsibility for

all functions related to the relevant Benchmark or Contempt Provision back to the Department. The Transition Plan shall include: (1) how to sustain the progress achieved, (2) the steps the Nunez Remediation Manager will take to prepare the Department to operate independently in the relevant area, and (3) the actions the Department will take to maintain the required performance level and sustain compliance.

- B. Within 30 days of the issuance of the Monitor's Report finding that one or more of the benchmarks of the Remediation Action Plan or one or more of the Contempt Provisions is in Substantial Compliance, the Transition Plan shall be finalized, implemented, and submitted to the Court by the Nunez Remediation Manager.
- C. Upon receipt of the Transition Plan, the Court shall determine whether Substantial Compliance with the relevant Benchmark(s) and/or Contempt Provision(s) has been achieved and shall approve the Transition Plan, with any modifications the Court deems necessary.
- D. The Court shall routinely assess the progress of the Remediation Action Plan following the issuance of the Monitor's Report. At a minimum, after every Reporting Period, the Court shall determine, after an opportunity to be heard by the parties, whether the Remediation Action Plan has resulted in: (a) substantial and demonstrable progress in achieving Substantial Compliance with the Contempt Provisions or achievement of the Benchmarks; (b) whether such efforts have resulted in a substantial reduction in the risk of harm currently facing incarcerated individuals and DOC staff; and (c) whether Substantial

Compliance with the Contempt Provisions or achievement of the Benchmarks, or other factors, warrants a reduction in the authority of the Nunez Remediation Manager.

- E. Upon the Court's finding that the City is in Substantial Compliance with one or more Contempt Provisions or that a reduction in the Nunez Remediation Manager's authority is otherwise warranted pursuant to Section III-D above, the Nunez Remediation Manager's authority over the relevant Contempt Provision(s) and any related Benchmarks shall be terminated as soon as possible and in no event later than 30 days following the Court's finding.

IV. Powers of the Nunez Remediation Manager. The Nunez Remediation Manager shall have the following powers:

- A. **General Powers:** The Nunez Remediation Manager shall have the authority to exercise all powers vested by law in the Commissioner to the extent necessary to achieve Substantial Compliance with the Contempt Provisions. The Nunez Remediation Manager shall have such powers of the Commissioner to control, oversee, supervise, and direct all administrative, personnel, and other operational functions of the DOC to the extent necessary to achieve compliance with the Contempt Provisions. Notwithstanding any other provision of this Order, such powers as are granted to the Nunez Remediation Manager by this Order shall be limited by the laws, rules and regulations of the City and State of New York, and the contracts and Collective Bargaining Agreements to which the City is a party, to the same extent as the authority of the Commissioner is so limited. The mention of a power or authority in this Order does not imply that the power or

authority is necessarily available to the Commissioner or the Nunez Remediation Manager if it is not otherwise available to the Commissioner under state or local law.

B. Specific Powers: Without in any way limiting the Nunez Remediation Manager's general powers detailed in Paragraph A above, the Nunez Remediation Manager shall have the authority to exercise the following specific powers, solely to the extent that they: (a) are necessary to achieve compliance with the Contempt Provisions, and (b) are vested by City and state law in the Commissioner.

- i. The Nunez Remediation Manager shall have the authority to enact or change DOC policies, procedures, protocols, systems, and practices.
- ii. The Nunez Remediation Manager shall have the authority to establish personnel policies and direct personnel actions. The Nunez Remediation Manager shall have the power to create, modify, abolish, or transfer employee and contractor positions, as well as to recruit, hire, train, terminate, promote, demote, transfer, and evaluate employees and contractors
- iii. The Nunez Remediation Manager shall have the authority to assign and deploy DOC staff as necessary to implement the Remediation Action Plan.
- iv. The Nunez Remediation Manager shall have the authority to determine the DOC's needs with respect to contract provisions.
- v. The Nunez Remediation Manager shall have the authority to procure and contract for supplies, equipment, tangible goods, and services.

- vi. The Nunez Remediation Manager shall have the authority to review, investigate, and take disciplinary or other corrective or remedial actions with respect to any violation of DOC policies, procedures, and protocols.
- vii. In exercising the powers conferred by this Order, the Nunez Remediation Manager shall use reasonable best efforts to consult and work collaboratively with the Commissioner.
- viii. The Nunez Remediation Manager shall have the authority to delegate any of these powers to the Commissioner, and to retract or constrict such delegations as the Nunez Remediation Manager, in the Nunez Remediation Manager's discretion, deems necessary.
- ix. Nothing in this Order shall be construed to authorize the Nunez Remediation Manager to take any action that is beyond the remedial powers of the federal courts, or to authorize the Nunez Remediation Manager or the Court to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

C. Relief from Unlawful Actions of the Nunez Remediation Manager. The City may seek equitable relief from the Court to the extent that it reasonably believes that the Nunez Remediation Manager has exceeded, or intends to exceed, their authority as set forth by this Order or under other federal, state or local law, or that the Nunez Remediation Manager is or intends to enact a policy or practice or take an action that is unconstitutional or is likely to cause constitutional violations. A present or former employee of the City who has been or will be

harm by termination of their employment or disciplinary action of the Nunez Remediation Manager may also seek such relief. This remedy shall not be exclusive to other remedies or relief from actions of the Nunez Remediation Manager otherwise available under federal, state or local law.

D. Commissioner's Role: The Commissioner shall retain all of Commissioner's authority under the supervision and direction of the Nunez Remediation Manager, to the extent such supervision and direction is necessary to implement the Remediation Action Plan or otherwise to achieve compliance with the Contempt Provisions. The Commissioner and the Nunez Remediation Manager are urged and expected to work collaboratively in aid of the goals of compliance with the Nunez Orders and the safe, sustainable management of the jails. The Nunez Remediation Manager shall have the authority to direct the Commissioner to take any steps that the Nunez Remediation Manager deems necessary to comply with the requirements of the Contempt Provisions. It is expected that Defendants, and the Commissioner and DOC leadership, will work closely with the Nunez Remediation Manager to facilitate the Nunez Remediation Manager's ability to perform their duties under this Order. Nothing in this Order shall authorize the Nunez Remediation Manager to take any employment action with respect to the Commissioner.

E. Additional Powers:

- i. The Nunez Remediation Manager may, after consultation with the Commissioner, the Monitoring Team, and the parties, petition the Court on notice to the parties and the Monitoring Team for such additional

powers as are necessary to achieve compliance with the Contempt Provisions consistent with Section II. The parties and the Monitoring Team shall have at least 20 business days to respond to any petition for additional powers by the Nunez Remediation Manager.

- ii. The Nunez Remediation Manager shall make reasonable efforts to exercise their authority in a manner consistent with applicable state and local laws, regulations, and contracts. However, in the event the Nunez Remediation Manager determines that those laws, regulations, or contracts impede the Nunez Remediation Manager from carrying out their duties under this Order and achieving compliance with the Contempt Provisions, the Nunez Remediation Manager may, after consultation with the Commissioner, the Monitoring Team, and the parties, petition the Court on notice to the parties and the Monitoring Team, to waive any legal or contractual requirement that is causing the impediment or seek other appropriate relief on notice to the parties and the Monitoring Team. The parties and the Monitoring Team shall have at least 20 business days to respond to any petition for additional powers by the Nunez Remediation Manager.

F. Authority to Hire Staff and Consultants: The Nunez Remediation Manager shall have the authority to request the Court's permission to hire additional qualified staff, consultants, or obtain technical assistance for the Remediation Manager Team (as defined below), as is reasonably necessary to fulfill the Nunez Remediation Manager duties under this Order without duplication of effort. The

Nunez Remediation Manager shall reasonably utilize the Department assets and resources it already possesses. The Nunez Remediation Manager shall take all necessary steps to minimize redundancy and the creation of additional bureaucracy with the goal of creating systems that support the sustainable transition back to the Defendants' control.

- G. **Access:** The Nunez Remediation Manager, including all of their staff and consultants, (collectively referred to as the "Remediation Manager Team") shall have unlimited access to all DOC facilities, incarcerated people, and DOC staff. This access includes the authority to conduct confidential interviews with DOC staff and incarcerated people. The Remediation Manager Team's ability to interview DOC staff shall be subject to the employee's right to representation under certain circumstances as set forth in Section 75 of the New York Civil Service Law and MEO-16. Access to records should not include access to communications between and among DOC personnel and the New York City Law Department that are protected by the attorney-client or work-product privileges.
- H. **Confidentiality.** The Remediation Manager Team shall hold any information that they obtain from the Department or its employees Confidential (as that term is defined herein), except to the extent that it is necessary to include such information in confidential communications with the Monitoring Team, the parties or the Court, or it is necessary to include such information in reports of the Nunez Remediation Manager filed with the Court. "Confidential" for the purpose of this Order means that such information shall not be used by the Remediation Manager Team for any purpose other than compliance with this Order or the

Remediation Action Plan, and may not be shared by the Remediation Manager Team with any person except as necessary to pursue compliance with this Order or the Remediation Action Plan.

- I. To the extent that Plaintiffs' Counsel obtains information from the Remediation Manager Team, the information shall be subject to the same restrictions set forth regarding such information in § XX., ¶ 11 of the Consent Judgment as if the Monitor had provided such information to Plaintiffs' Counsel; shall be subject to the Protective Orders entered in this case (e.g. dkts. 89 and 293); and shall be designated "Confidential" for the purposes of those Protective Orders. Information protected by other protective order or confidentiality agreements entered into this case (dkts. 290 and 304) and shall remain so protected even if disclosed by the Remediation Manager to the Plaintiffs' Counsel.

V. Reporting by the Nunez Remediation Manager.

- A. The Nunez Remediation Manager shall regularly report to and meet with the Court to update the Court regarding the status of efforts to comply with Contempt Provisions, and any specific obstacles or impediments encountered by the Nunez Remediation Manager.
- B. The Nunez Remediation Manager shall file bi-annual reports on the Court's docket ("RM Reports").
 - i. The RM Reports shall include a description of the actions that the Remediation Manager Team has taken during the Reporting Period to implement the Remediation Action Plan, including achieving Substantial Compliance with the Benchmarks and Contempt Provisions.

- ii. The RM Reports shall be filed in advance of the Monitor's Report with the respective compliance assessment for a particular Reporting Period. The Nunez Remediation Manager shall, in consultation with the Monitoring Team, propose for the Court's approval a specific schedule for the submission of regular written reports to be filed on the public docket.
 - iii. The Nunez Remediation Manager may also file additional reports with the Court, if necessary, upon notice to the parties and the Monitor.
 - iv. The information contained in any report by the Nunez Remediation Manager is not an assessment of compliance pursuant to § XX, ¶ 18 of the Consent Judgment. To the extent a report by the Nunez Remediation Manager includes commentary or information with respect to status of compliance with a Benchmark or a Contempt Provision, such commentary and information are advisory and does not displace the authority of the Monitor to assess compliance under this or any other Order of this Court.
- C. The Nunez Remediation Manager shall provide the parties and the Monitor with a draft of any report that it intends to file on the public docket at least 30 days prior to such filing, and the parties and the Monitor shall have 15 business days to make any requests for changes to the report or to designate any information in such report as Confidential, to be filed under seal. The Nunez Remediation Manager shall respond to any such requests for changes in its report, indicating whether it made the change or, if not, why the change was rejected.

- D. The Remediation Manager's Reports shall be written with due regard for the privacy interests of individuals in custody and Staff Members; federal, state, and local laws regarding the privacy of such information; and the interests of the Department in protecting against the disclosure of non-public or privileged information. Consistent with such interests and laws, the Nunez Remediation Manager shall redact individual-identifying information from the Remediation Manager's Reports and any documents submitted with those Reports, and shall give due consideration to the Department's requests to redact any other information. To the extent the Nunez Remediation Manager declines to make redactions requested by the Department, the Remediation Manager's Report and any documents submitted with that report shall be submitted to the Court under seal for the Court to consider the Department's proposed redactions before making the Remediation Manager's Report public.
- E. The Nunez Remediation Manager shall remain in contact with the Court throughout the Nunez Remediation Manager's tenure on an informal, as needed, basis.
- F. The Remediation Manager Team shall cooperate fully with the Monitor and shall share information that the Monitor needs to fulfill his role and responsibilities.
- G. The Remediation Manager Team shall regularly communicate and consult with the Monitoring Team in the same manner as the Defendants are required to consult with the Monitoring Team under the Nunez Orders (including, but not limited to June 13, 2025 Order § I, ¶ 5). Such consultation shall also include proactive consultation on progress that has been made in fulfilling the Remediation

Action Plan, how to address obstacles to achieving compliance, as well as the strategies to achieve Substantial Compliance with the Benchmarks and Contempt Provisions.

- H. The Remediation Manager Team may also seek information or technical assistance from the Monitoring Team in the same manner as Defendants under the Nunez Court Orders (including, but not limited to Consent Judgment, § XX, ¶¶ 24 and 25).

VI. Role of the Monitor.

- A. This order does not alter the role or responsibilities of the Monitor as described in the Nunez Orders, including, but not limited to obligations to assess compliance, provide technical assistance, and regularly report to the Court in accordance with his past practices.
- B. Upon approval of the Remediation Action Plan, following the Court's approval of the Remediation Action Plan, the Monitor's Reports that include assessment of compliance pursuant to § XX, ¶ 18 of the Consent Judgment, as amended, shall include the Monitor's assessment as to whether the Remediation Action Plan has resulted in: (a) substantial and demonstrable progress in achieving Substantial Compliance with the Contempt Provisions; (b) whether such efforts have resulted in a substantial reduction in the risk of harm currently facing incarcerated individuals and DOC; and (c) whether DOC has achieved any of the Benchmarks in the Remediation Action Plan.
- C. As part of the parties' review of the draft Monitor's Report, as provided for by Consent Judgment § XX, ¶¶ 17,18 (as amended at ECF No. 888), the parties may request that the Monitor reconsider the proposed compliance rating for any

Contempt Provision. Such a request must include the basis for the request and any relevant facts or documents. If the Monitor elects not to adjust the proposed compliance rating as requested, the Monitor shall provide the basis for his decision in the final report filed with the Court.

- D. A party's failure to comment on a draft report or a portion of a draft report is not waiver of any legal objection or argument with respect to any action of the Remediation Manager or Court ruling.
- E. Within 90 days after the Court's approval of the Remediation Action Plan, the Monitoring Team shall develop recommendations regarding streamlining and compliance assessment of the Nunez Orders, except for the Contempt Provisions. The Monitoring Team shall provide these recommendations to the parties for consideration and comment before submitting the recommendations to the Court.
- F. The Nunez Remediation Manager shall obtain the Monitor's approval (governed by Consent Judgment § XX, ¶ 26) to the extent it is required by the Nunez Orders. To the extent that the Monitor does not provide such approval, the Nunez Remediation Manager may raise the matter with the Court and must provide the good faith basis for why approval should be granted despite the Monitor's decision not to do so. The Nunez Remediation Manager shall provide reasonable notice to the Monitor and the parties before making any such application to the Court and the parties and the Monitor shall have an opportunity to be heard on any such application. The parties shall have at least 20 business days to respond to the Nunez Remediation Manager's application pursuant to this provision, prior to the Court entering any Order in response to the application.

G. The Nunez Remediation Manager and the Monitor are independent positions that each report to the Court and are not answerable to each other, except to the extent that approval of actions by the Monitor is otherwise required consistent with this Order.

VII. Immunity and Indemnity.

A. The Nunez Remediation Manager and the Remediation Manager Team shall have the status of officers and agents of the Court.

VIII. Compensation and Responsibility for Payment.

The City of New York shall bear all reasonable fees, costs, and expenses of the Nunez Remediation Manager, including payments to the Remediation Manager Team, consistent with the Schedule of Expected Fees and Expenses previously approved by the Court, set forth in Appendix A. Such fees, costs, and expenses shall be sufficient to allow the Nunez Remediation Manager to fulfill their duties pursuant to this Order in a reasonable and efficient manner. The Nunez Remediation Manager may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort after notice and opportunity to the parties and approval of the Court. The Nunez Remediation Manager shall submit an invoice for their services, and the services of their consultants and staff, consistent with Appendix A, to the City on a monthly basis. Those invoices will include charges for fees, costs, and expenses. Payment on approved invoices shall be made within 60 days of receipt. If the City objects to any fees, costs, or expenses as contrary to the Court's prior orders or other law, unreasonable, unnecessary, or duplicative, the

City shall submit the invoice to the Court for a determination of reasonable fees, costs, and expenses.

IX. Duration of the Nunez Remediation Manager's Tenure.

- A. The Nunez Remediation Manager's authority will continue, subject to reductions in that authority pursuant to Section III above, until the Nunez Remediation Manager's authority is removed pursuant to Section II above with respect to all Contempt Provisions, at which time this Order will terminate.
- B. Notwithstanding the provisions of Section IX-A, the employment of the Nunez Remediation Manager shall terminate four years after the date of this Order, and upon notice and opportunity to be heard by the parties the Court may extend the employment of the Nunez Remediation Manager, appoint a new Nunez Remediation Manager, or terminate or modify this Order.

X. Cooperation.

- A. The parties, and all agents or persons within their employ, and all persons in concert and in participation with them, and the Monitor shall fully cooperate with the Remediation Manager Team in the discharge of the Nunez Remediation Manager's duties under this Order. The parties shall respond to all inquiries and requests from the Remediation Manager Team related to compliance with the Nunez Orders within a reasonable amount of time. To the extent that a party asserts that information requested by the Remediation Manager Team is privileged, or is unrelated to the proper duties of the Nunez Remediation Manager, they may assert such objections to the Nunez Remediation Manager. To the extent necessary to resolve such objections, the Nunez Remediation Manager may seek appropriate relief from the Court.

XI. Other Terms.

- A. Nothing in this Order affects the terms of the Consent Judgment or other Nunez Orders, which remain in full force and effect. In the event the Nunez Remediation Manager's tenure terminates, the Consent Judgment and other Nunez Orders will remain in full force and effect until the Court makes a finding that the Defendants have achieved Substantial Compliance with the provisions of the Consent Judgment and have maintained Substantial Compliance for a period of twenty-four (24) months, as set forth in Section XXI, ¶ 5 of the Consent Judgment.
- B. Nothing in this Order shall limit the effect of Prison Litigation Reform Act, 18 U.S.C. § 3626(b).
- C. If at any point the Nunez Remediation Manager determines that the Department needs additional funding to fulfill the Remediation Action Plan that is not budgeted for that fiscal year, the Nunez Remediation Manager shall immediately consult the Commissioner before notifying the City Council's Finance Division and the Mayor's Office of Management and Budget of the specific purpose and the amount of funds needed. If the issue is not timely resolved, the Nunez Remediation Manager or any party may request a hearing before the Court.
- D. The parties shall have at least 20 business days to respond to any petition by the Nunez Remediation Manager pursuant to this provision, prior to the Court entering any Order in response to the petition.
- E. To the extent that the Nunez Remediation Manager petitions to alter the terms of any Collective Bargaining Agreement, or any laws, rules or regulations governing the employment of any person by the City, the unions representing the affected

employees shall be provided the same notice and opportunity to be heard as the parties.

- F. The Remediation Manager Team shall have the authority to communicate *ex parte* and confidentially with each party and each party's legal representatives, as well as with the Court and the Monitoring Team. Plaintiffs' Counsel shall have access to information and other materials only as set forth by Consent Judgment § XX, ¶ 10.
- G. Absent leave of the Court, the Remediation Manager Team may not testify in any litigation or proceeding other than this case, including public hearings or other proceedings before the New York City Council, the Board of Correction, or the New York State legislature, with regard to any act or omission of the DOC or any of the DOC's agents, representatives, or employees related to the Nunez Orders. The Remediation Manager Team may not give interviews or make public statements regarding their work under the Nunez Orders, other than reports filed on the docket, without the permission of the Court.
- H. Unless such conflict is waived in writing by the parties, no member of the Remediation Manager Team may accept employment or provide consulting services that present a conflict of interest with their responsibilities under this Order, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the DOC or the DOC's agents, representatives, or employees.

- I. The reports and other communications of the Remediation Manager Team submitted to the Court, whether *in camera*, *ex parte* or on the public docket, shall not be admissible as evidence in any proceeding except this action.
- J. If at any time the Nunez Remediation Manager position becomes vacant, the parties and the Monitor shall confer on potential replacements and the parties shall meet and confer and endeavor to jointly provide the court with no more than four candidates to replace the Nunez Remediation Manager. The parties shall submit their recommendations, with supporting materials, to the Court confidentially. Once the Court has received the parties' recommendations, the Court shall review the proposed candidates, and any further candidates the Court, in its discretion, may deem appropriate for consideration, and select the new Nunez Remediation Manager.
- K. **Other Rights Preserved.** Nothing in this Order shall prevent any party or intervener from seeking modification or termination of this Order before the relief is otherwise terminable pursuant to the terms of this Order, to the extent that modification or termination would otherwise be legally permissible under Fed. R. Civ. P. 60 or other law.

XII. Effective Date.

- A. This Order Appointing the Nunez Remediation Manager shall become effective following the appointed Nunez Remediation Manager's confirmation of their Acceptance of the powers, responsibilities and duties imposed by this Order by signing a copy of this Order below and returning the countersigned copy to the

Court by email addressed to SwainNYSDCorresp@nysd.uscourts.gov. The Order shall be effective on the Acceptance Effective Date.

SO ORDERED this ____ day of _____, 2025

LAURA TAYLOR SWAIN
CHIEF UNITED STATES DISTRICT JUDGE

ACCEPTED

(Signature)

(Typed or printed name)

Date: _____

SEPARATE PROPOSED ORDER REGARDING FEE AND EXPENSE SCHEDULE

1. Prior to final appointment of a Remediation Manager, a prospective Nunez Remediation Manager shall submit to the City a proposed Schedule of Fees and Expenses. This Schedule shall include an estimate of the title and duties of each staff member that the Remediation Manager believes will be required to exercise the duties of the Remediation Manager pursuant to the Court order and a statement of the proposed fixed weekly fee for the Remediation Manager and each expected member of their staff.

2. In approving proposed fees the Court will consider whether the compensation to be paid to the Remediation Manager and each of their staff is commensurate with the salary earned by employees of the City of New York serving in comparable roles and providing comparable services.

3. The Remediation Manager and the City shall confer in good faith regarding the proposal for fees and expenses and to the extent that the City and Remediation Manager agree they shall make a joint proposal for approval of the statement of fees and expenses, to be included as Appendix A to the order appointing the Remediation Manager.

4. To the extent that the City and the prospective Remediation Manager disagree regarding the Schedule of Fees and Expenses, they shall make separate submissions to the Court stating the basis for the disagreement.

5. The Court shall approve or modify the proposed Schedule of Fees and Expenses, which shall then be included as Appendix A to the order appointing the Remediation Manager.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK NUNEZ, et. al.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et. al.,

Defendants.

Case No. 11-cv-5845 (LTS)

**PLAINTIFFS' MEMORANDUM OF LAW CONCERNING PROPOSED CHANGES TO
REMEDATION MANAGER PROPOSED ORDER**

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
PRELIMINARY STATEMENT	1
LEGAL STANDARD.....	4
ARGUMENT	6
I. REMEDIATION ACTION PLAN	6
A. Duration of Remediation Action Plan.....	7
B. Remediation Manager’s Ultimate Authority Over Division of Labor.....	8
C. Confusion and Ambiguity of Introducing an Assessment Process of the RAP	9
II. ASSESSMENTS OF BENCHMARKS	11
III. TERMINATION AND TRANSITION PLAN.....	15
IV. ROLES AND RESPONSIBILITIES OF THE REMEDIATION MANAGER	19
A. Scope and Timing of Remediation Manager’s Authority.....	19
B. Specific Powers of the Remediation Manager.....	22
C. Full Time and On-Site Requirements	23
D. Public Statements and Confidentiality.....	25
E. Reports by the Remediation Manager.....	26
F. Compensation and Expenses.....	28
V. ROLES AND RIGHTS OF NON-PARTIES	29
VI. IMMUNITY AND INDEMNIFICATION	30
A. Immunity and Indemnification Have Precedent in Case Law and Other Receivership Orders.....	30
B. New York General Municipal Law and the Doctrine of Respondeat Superior are Inapplicable.....	33
C. Indemnification and Immunity does not Impose Strict Municipal Liability	33
VII. THE MONITOR’S ROLE	34

VIII. UNNECESSARY LANGUAGE	34
CONCLUSION.....	36

The Plaintiff Class (“Plaintiffs”) submit this memorandum recommending limited modifications to the Court’s Proposed Order of May 13, 2025, Dkt. 846, governing the Court’s appointment of a Remediation Manager (“Ct. Prop. Order”) and explaining the basis for our objections to certain modifications proposed by Defendants and the Monitor. This memorandum is intended to supplement the chart submitted by the Monitor which more fully sets forth our positions and focuses on the most substantive modifications still in dispute. We also respectfully refer the Court to Exhibits A and B to this memorandum, which respectively are a redlined version of the Court’s Proposed Order reflecting the changes we propose, jointly with the United States (“Government”), and a clean version of the order that we respectfully urge the Court to adopt.

PRELIMINARY STATEMENT

The Court has rightfully determined that the appointment of the Remediation Manager is necessary. The Order governing that appointment must ensure that this remedy can accomplish its goals by giving the Remediation Manager the authority and flexibility needed to rectify Defendants’ decades-long non-compliance. The Court has emphasized that the status quo in this matter—monitoring and numerous remedial orders—has not “been enough to activate the transformational change required to bring Defendants into compliance with the Consent Judgment and subsequent remedial orders.” Dkt. 846 at 18. Thus, the Court intended the Remediation Manager to introduce something very different: “a skilled outside professional” who is “empower[ed] by the Court to ameliorate Defendants’ contempt” (Dkt. 846 at 35). The Court made clear that “broad” (*Id.* at 36) authority is necessary, within the scope of matters relevant to curing contempt.

While the Order must provide clarity about the scope of the Remedial Manager’s duties and expectations for success, it is impossible at this juncture to specify precisely *how* this

professional should achieve this transformation. Court orders in similar prison or jail cases do not set out *ex ante* the minutiae of a receivership. Instead, the Court's order must allow for the flexibility and change this individual is expected to bring to a complex but stagnant reform effort. Our proposed edits, and our objections to some of the Monitor's and Defendants' proposals, reflect this concern that an order that is too prescriptive will hinder, rather than promote, swift and effective change.

Plaintiffs' proposed changes are intended to be consistent with the overarching structure and intent of the Court's Proposed Order. They are primarily focused on ensuring the benchmarks of the Remediation Action Plan work to support the Remediation Manager's effectiveness and removing unnecessary impediments to the Remediation Manager's ability to create sustainable change. Defendants' proposed edits, by contrast, principally repackage their fundamental opposition to any court-ordered remedy and attempt to inflict death by a thousand cuts upon the Remediation Manager's independence and power. We do not here (again) refute Defendants' recycled arguments, but rely on the papers we submitted on the contempt motion, receivership proposals, and motion for reconsideration. Dkt. 603; Dkt. 811-11; Dkt. 889.

Instead, we address here specific defense and Monitor proposals which would blunt the Court's order by circumscribing the Remediation Manager's authority to effectuate meaningful change. Defendants' proposals largely ignore the distinction between a Remediation Manager answerable to the Court and an outside consultant to the City or similar agent of the Defendants, and seek to maintain an inappropriate level of control over the Remediation Manager. They further seek to impose additional procedures to delay the Remediation Manager from taking steps necessary to achieve Substantial Compliance with the Contempt Provisions. If adopted, these provisions would essentially gut the impact of the Court's order and provide a remedy in

name only. The Court should reject this collateral attack on its conclusion that a robust remedy is necessary, and craft an order that gives this moment a chance of success.

The persistent stagnation the Remediation Manager must cut through was vividly illustrated just this week when the Department of Correction testified to the Board of Correction, (“BOC” or “the Board”), a City oversight body. In order to combat contraband smuggling, the New York City Department of Investigation (“DOI”) has for seven years recommended that DOC use non-DOC personnel at the front gates “to ensure that front gate staff are free of conflicts of interest and conduct robust searches and screening of DOC staff.”¹ On September 9, the DOC General Counsel informed the Board that DOC had rejected the DOI recommendation, explaining that “for a number of reasons due to provisions in the City Charter as well as collective bargaining,” the recommendation “was not something that we could accept.”² This is exactly the kind of stagnation and delay—where seven years after a law enforcement agency made a recommendation to improve security, DOC rejects it with vague allusions to collective bargaining agreements as obstacles—that has stymied reforms in this case.

Since the Court entered its Order on May 13, 2025, seven more people have died in DOC custody or in the hospital upon release. Mr. James Maldonado died on a DOC bus or at EMTC after being brought off the bus, and Mr. Benjamin Kelly died in a cell in EMTC, both on June 20.³ Mr. Christian Collado died at Bellevue Hospital on July 9, after having been sent there from

¹ See *Contraband Smuggling in the City's Jails and Critical Recommendations for Improved Security Measures*, N.Y.C. DEP'T OF INVESTIGATIONS, 2, 16 (Nov. 2024), <https://www.nyc.gov/assets/doi/reports/pdf/2024/ContrabandRpt.11.20.2024.pdf>.

² NYC Board of Correction, *2025-09-09 - NYC Board of Correction Public Meeting (copy)*, at 1:46:04 (YouTube, Sept. 9, 2025), <https://www.youtube.com/watch?v=cveIoYianGM>.

³ Sam McCann, *11 People Have Died in NYC DOC Custody This Year*, VERA (Sept. 3, 2025), www.vera.org/news/nyc-jail-deaths; Robert Pozarycki, *Rikers Island Sees Two More Inmate Deaths in 78 Minutes-Prompting More Investigations and Outrage*, AMNY, (June 21, 2025), www.amny.com/police-fire/rikers-island-inmate-deaths-06202025/.

DOC custody on June 25.⁴ Mr. Edwin Quispe died on July 22 in an EMTC bathroom.⁵ Mr. Ardit Billa died in the most highly specialized mental health care unit at GRVC, the Program to Accelerate Clinical Effectiveness, on August 23.⁶ Mr. Jimmy Avila died on August 30 at West Facility.⁷ And Mr. Carlos Cruz died in GRVC on September 3, 2025, after having been sentenced and awaiting transfer to state custody.⁸ A Board of Correction member and physician who had reviewed the preliminary findings for systemic failures noted, “it seems like the frequency of DOC tours was a pattern in I think four of these deaths,” and that touring “in some of these cases may have been life-saving.”⁹ The full facts surrounding these deaths, and many others that preceded them, have yet to be revealed. But collectively, they underscore the need for urgent action and profound, immediate change in the jails. These are mortal stakes.

LEGAL STANDARD

This Court possesses broad equitable powers to fashion relief that compels compliance with its orders. *See Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971); *Berger v. Heckler*, 771 F.2d 1556, 1568 (2d Cir. 1985). That equitable power includes the power to appoint a receiver with authority to bring a public entity into compliance with remedial orders. *See* Dkt. 603 at 64–66 (citing cases involving jails, prisons, child welfare agencies, and other public agencies). The Prison Litigation Reform Act (“PLRA”) does not diminish the Court’s equitable authority to appoint a receiver and ensure the receiver can be effective. *See Plata v.*

⁴ McCann, *supra* note 3.

⁵ *See also id.* Anna Young, *Rikers Island Inmate Found Dead in Cell, Marking the 9th Death in Custody at NYC Jail this Year*, N.Y. POST (Aug. 23, 2025), <https://www.nypost.com/2025/08/23/us-news/rikers-island-inmate-found-dead-in-cell-marking-the-9th-death-in-custody-at-nyc-jail-this-year/> www.nypost.com/2025/08/23/us-news/rikers-island-inmate-found-dead-in-cell-marking-the-9th-death-in-custody-at-nyc-jail-this-year/.

⁶ Benjamin Weiser, *Rikers Detainee Becomes Third Person to Die in N.Y.C. Custody in a Week*, N.Y. TIMES (Aug. 31, 2025), www.nytimes.com/2025/08/31/nyregion/rikers-jail-nyc-custody-death.html.

⁷ Weiser, *supra* note 6; McCann, *supra* note 3.

⁸ Maura Grunlund, *Staten Island man, 44, dies at Rikers Island; 3rd death at jail in 2 weeks*, SI LIVE (Sept. 5, 2025), www.silive.com/crime-safety/2025/09/staten-island-man-44-dies-at-rikers-island-3rd-death-at-jail-in-2-weeks.html.

⁹ *See* NYC Board of Correction, *supra* note 2, at 11:04.

Schwarzenegger (Plata I), 603 F.3d 1088, 1093–94 (9th Cir. 2010); accord *Brown v. Plata (Plata III)*, 563 U.S. 493, 526 (2011) (“The PLRA should not be interpreted to place undue restrictions on the authority of federal courts to fashion practical remedies when confronted with complex and intractable constitutional violations.”).

Given the Court’s findings regarding Defendants’ nearly decade-long, inexcusable non-compliance with core areas of relief in this case, it is necessary and appropriate for the Remediation Manager to be granted broad authority to take necessary steps to promptly achieve Substantial Compliance with the Contempt Provisions. And indeed, Courts have granted prison and jail receivers comparable general powers without running afoul of the PLRA. *See* Dkt. 811-11 at 21 (Government and Plaintiff Class Proposal for Receiver); *see also, e.g.*, Agreed Order Appointing a Transitional Administrator at 1, 4, *Doe v. Cook County*, No. 99-cv-03945, (N.D. Ill. Aug. 14, 2007), Dkt. 330 (hereinafter “*Cook County*”) (purpose of order to “appoint a [receiver] with the authority and responsibility to bring [facility] into substantial compliance,” and granting Receiver “all reasonable powers necessary” to achieve substantial compliance); Order Appointing Receiver at 4, *Plata v. Schwarzenegger*, No. C01-1351, (N.D. Cal. Feb. 14, 2006), Dkt. 473 (hereinafter “*Plata Receivership Order*”) (“Receiver shall have all powers necessary to fulfill the above duties under this Order”); Order Appointing Receiver-Nominee at 3 *Coleman v. Newsom*, No. 2:90-cv-00520, (E.D. Cal. Sept. 5, 2025), Dkt. 8765 (hereinafter “*Coleman*”) (“Receiver shall have all powers necessary to fulfill the above duties under this order, including, but not limited to...”). The same principles apply here to rectify Defendants’ non-compliance with the Contempt Provisions.

ARGUMENT

This memorandum addresses specific objections to Defendants’ or the Monitor’s proposals, or describes our proposed revised language, with respect to several discrete parts of the remedial scheme. First, we address the Remediation Action Plan (“RAP”) and describe the basis for our objections to changes that would turn the RAP from an effective blueprint into a litigation maze that would be bogged down in detail, and then summarily end—an unreasonable plan for change. Second, we address how the Order needs to provide clear, workable assessments of progress that harmonize with, rather than complicate, the existing structures for evaluating compliance. Third, we address how and when the Remediation Manager should return control of certain operations back to the City. Fourth, we address the descriptions of the Remediation Manager’s powers and authority, which Defendants seek to limit as a back door method of achieving their goal of having no Remediation Manager at all. Finally, we address the larger ecosystem in which this work will take place, and the Remediation Manager’s relationship to the Monitor, parties and other stakeholders.

I. REMEDIATION ACTION PLAN

Plaintiffs agree that a Remediation Action Plan is an important and necessary part of the remedial structure. Our modifications are intended to balance the equally critical goals of ensuring that the Order establishes clear and reasonable expectations while also allowing the Remediation Manager the necessary flexibility to adjust to evolving circumstances and employ the experience and outside perspective for which the Court has called. We oppose some of Defendants’ proposals that would make the RAP ineffective or would distract from progress by turning the RAP into a focal point of litigation and disputes.

A. Duration of Remediation Action Plan

Plaintiffs propose modifications regarding the duration of the RAP to clarify some timelines and ensure that the purpose of those timelines is clear. We believe that the Court was right to structure the RAP to be executed over a period of three years, but that if the Court elects to shorten the RAP duration to two years, it must be clear that the RAP is not expected to achieve Substantial Compliance with the Contempt Provisions in that time. *See* Section I (B).¹⁰ Defendants seek to change the target period for the RAP from three years to two years, Monitor's Chart Section II(A), which they believe is all that is necessary to achieve Substantial Compliance (despite not having achieved Substantial Compliance themselves for over a decade). Two years is an ambitious goal given the complexity and depth of the Department's dysfunction and the challenge of bringing cultural change to an agency that has resisted reform for decades. Plaintiffs suggest language intended to ensure that the Order does not imply that the RAP is expected to achieve Substantial Compliance with all Contempt Provisions within two years. *See* Monitor's Chart Section II(A).

During our meet and confer process, Defendants expressed concerns regarding perpetual receivership. But the timeline of the RAP should not be confused with the tenure of the Remediation Manager, which is governed exclusively by the Proposed Order Sections III ("Assessment of Compliance & Transition Back to DOC Control") and IX ("Duration of the Nunez Remediation Manager's Tenure"). Rightfully so—this relief is intended to remedy longstanding non-compliance with the Contempt Provisions, and the Remediation Manager's tenure should be tied solely to achieving compliance with those provisions rather than a fixed

¹⁰ The parties mutually agree that the clock should begin to run on the date that the RAP is approved by the Court, rather than the date of the Remediation Manager's appointment, so that unforeseen delays in approval of the RAP do not unintentionally shorten deadlines. Monitor's Chart Section II(A).

and arbitrary time period. Of course, should Defendants meet the compliance standards for termination laid out in Section III(D) of the Court's Proposed Order, the Remediation Manager's authority may be terminated earlier. Plaintiffs' edits seek to clarify that the timeline for the Remediation Action Plan and the tenure of the Remediation Manager are to be treated separately. Monitor's Chart Section II(A).

B. Remediation Manager's Ultimate Authority Over Division of Labor

The Court's Proposed Order recognized that achieving Substantial Compliance will require the Remediation Manager to have authority over significant operational and personnel functions of the agency. While the Court contemplated that the Commissioner and Remediation Manager will work together to delineate lines of reporting within the agency, it rightfully granted the Remediation Manager "ultimate authority" where there is a conflict regarding divisions of labor. Proposed Order Section II (C). Defendants seek to limit this authority by expressly providing that any time there is a conflict between the Remediation Manager and the Commissioner regarding division of labor, Defendants may bring such disputes to the Court for resolution before the Remediation Manager can act. Monitor's Chart Section II(C). Not only would this cause needless delays in achieving compliance and burden Court resources, it also undermines the Remediation Manager's authority. The Remediation Manager, the Monitor, and the Commissioner will work closely together to develop a workable operational plan and develop an updated organizational chart that includes a division of labor. But where there is a conflict about that division, the Remediation Manager must have the authority to ensure that they are not hindered from carrying out the Court's orders.

C. Confusion and Ambiguity of Introducing an Assessment Process of the RAP

Plaintiffs share the goal that the RAP be effective in supporting progress in the reform effort but oppose revisions that have the result of adding yet another “compliance” standard to this proceeding and inviting in unnecessary satellite litigation.

Defendants’ Proposal Regarding Bi-Annual Court Findings. Defendants ask the Court to make findings every six months, after *every* biannual Monitor’s Report, as to whether the RAP has achieved “(a) substantial and demonstrable progress in achieving Substantial Compliance with the Contempt Provisions; and (b) whether such efforts have resulted in a substantial reduction in the risk of harm currently facing incarcerated individuals and DOC staff.” *See* Monitor’s Chart, Section III (New Provision). Under Defendants’ proposal, the parties will have an opportunity to be heard—meaning that every six months, the Court would set motion schedules or hold hearings on issues that would be repeatedly briefed, likely until the close of the next Monitoring Period when the process would begin again. This proposal is burdensome to the Court and would serve as a distraction for the Remediation Manager, Defendants, the Monitoring Team, and everyone else involved in the reform effort.

The Court can and should assess the Remediation Manager’s progress and will surely do so with the regular reports and other communications required from both the Remediation Manager and the Monitor. The Court may also direct changes to the Remediation Manager’s approach at the Court’s discretion. But in our view, compelling the Court to have a different formal assessment process of the RAP—a workplan that is not the ultimate measure of success—is unnecessary, burdensome, and effectively substitutes process for outcomes.

Defendants’ Proposal Regarding Monitor Reports. For these same reasons, Plaintiffs also oppose Defendants’ revisions to Section VI(B) requiring the Monitor to make similar findings about the RAP in his reports. *See* Monitor’s Chart Section VI(B). While of course the Monitor

will describe the Remediation Manager's efforts, there is no need to introduce another, formal standard of review about the Remediation Manager's workplan. The proposed findings are unnecessary and risk distracting from the ultimate standard of success, which is Substantial Compliance with the Contempt Provisions.¹¹

Moreover, the respective reporting structures suggested by Defendants and the Monitor (Monitor's Chart Section VI(B)) are inconsistent with other receiverships where the court-appointed monitor has remained in place following appointment of the receiver, in which the receivership orders provide that the monitors continue to report on compliance but do not create additional standards for, or evaluate a receiver's progress through, their specific action or work plan. *See* Stipulated Order Regarding Appointment of Independent Jail Compliance Director at 11, 13, *United States v. Miami-Dade Cnty.*, No. 13-cv-21570, (S.D. Fla. Feb. 16, 2023) Dkt. 260 (Compliance Director order did not "alter[] the responsibilities and duties of the Monitor" and required Compliance Director to file with Court quarterly "Self-Assessment" reports describing *inter alia* "the progress with each provision of the Compliance Director's Plan of Action" and "any corrective action taken by the Compliance Director to address inadequate progress"); Stipulated Order for Appointment of Independent Jail Compliance Director at 3, 5, 8, *Jones v. Gusman*, 2:12-cv-00859, (E.D. La. June 21, 2016) Dkt. 1082 (Monitors' role remains unchanged while Compliance Director to file bi-monthly status report discussing progress towards implementing Action Plan). The Monitor notes in the Monitor's Chart that the *Hinds* court built in an annual assessment process for the receiver's Plan of Action. *See* Monitor's Chart Section

¹¹ We also oppose the Monitor's formulation of Section VI(B) for the reasons we articulate in the Monitor's Chart, as in our view the focus should be on whether Defendants have achieved Substantial Compliance with the Contempt Provisions and on describing the work undertaken by the Remediation Manager and Defendants pursuant to the RAP—not to evaluate the effectiveness of the RAP, as the Monitor's proposed language requires. We believe our formulation more clearly accomplishes those goals.

III (New Provision). But, as the Monitor acknowledges, there is no monitor issuing reports in that remedial structure—and so it makes sense that the *Hinds* court created a formal process outside of the receiver’s reports, because doing so would not be duplicative as it would be here.

II. ASSESSMENTS OF BENCHMARKS

It is critical that Defendants’ progress—or lack thereof—in complying with the Court Orders be timely and accurately assessed, by consistent and appropriate standards. As a general matter, Plaintiffs’ proposed modifications to the terms regarding assessment of compliance flow from one core principle: that the relevant measure of success is Substantial Compliance with the *Contempt Provisions*, rather than intermediate benchmarks.

Plaintiffs recognize the utility of benchmarks as guideposts for work completed under the Remediation Action Plan and as indicators of Defendants’ progress towards compliance with the Court Orders. However, we believe there must be a meaningful distinction between how such intermediate benchmarks are treated, and how achievements of Substantial Compliance with the Contempt Provisions are treated. Therefore, we oppose many of Defendants’ benchmark-related proposals as described below, and also respectfully recommend changes to the benchmark scheme laid out in the Court’s original Proposed Order.

Inapposite Metrics. First, Defendants seek to define benchmarks using unworkable language regarding “objective metrics” and to require the Remediation Action Plan to have “the minimum number of Final Benchmarks intended to reflect Substantial Compliance.” Monitor’s Chart Section II (New Provision). The latter point is form over substance: the *number* of “benchmarks” is irrelevant; their substantive requirements are all that matter. As to the requirement that benchmarks be “objective metrics,” the Monitor has repeatedly cautioned about the limitations of purely objective metrics to assess compliance. *See, e.g.*, Dkt. 802 at 3 (Monitor’s November 22, 2024 Report) (“Data—whether qualitative or quantitative—cannot be

interpreted in a vacuum to determine whether progress has been made or compliance has been achieved...there is no single metric that can determine whether the Use of Force Policy has been properly implemented”); Dkt. 706 at 38 (Monitor’s April 18, 2024 Report) (“the current conditions in the facilities cannot be viewed in a vacuum of only certain data and metrics.”). While some metrics are valuable, they fail to account for expert judgment on correctional systems, and do not tell a complete story regarding compliance. And objective metrics—especially when tied to substantial compliance—can be problematic. For example, there is no ascertainable constitutionally-acceptable rate of use of force, let alone excessive or unnecessary force. Accordingly, it is unreasonable and practically impossible for the Remediation Manager to define “objective” metrics that satisfy constitutionally-required standards. While the Remediation Plan may include benchmarks that incorporate outcome-based measures or certain metrics designed to assess improvement in different areas, Defendants’ proposed language is unworkable. Monitor’s Chart Section II (New Provision).

Benchmarks Should Not Trigger Termination of Authority. Next, Plaintiffs respectfully urge the Court to reconsider the provisions of its Proposed Order that would tie termination of the Remediation Manager’s authority to the achievement of benchmarks in the Remediation Action Plan, as opposed to Substantial Compliance with the Contempt Provisions. Monitor’s Chart Section III(B). Plaintiffs recognize the value of returning authority to Defendants promptly as progress is made, but believe Substantial Compliance with the Contempt Provisions, rather than benchmarks, is the proper trigger for the necessary incremental return of authority. This is true for several reasons.

First, the Remediation Manager Order’s grant of authority is a remedy to cure longstanding non-compliance with the Contempt Provisions and the scope of powers granted to

the Remediation Manager is derived from what is necessary to achieve compliance with these provisions. It necessarily follows that incremental termination of authority should occur when Substantial Compliance is achieved with those Contempt Provisions the Remediation Manager has been appointed to satisfy, not when secondary benchmarks—which will, by definition, be steps along a path to compliance with the existing Court orders, rather than constituting compliance themselves—have been met.

Additionally, satisfying a benchmark should not trigger the development of a transition plan or the termination of the Remediation Manager’s authorities because those authorities are defined by the scope of the Contempt Provisions. Monitor’s Chart Section III(B). Parsing the Remediation Manager’s termination of authority any further will not be feasible and, in our view, will be a barrier to sustainable reform. Given the interconnectedness of the problems and solutions in this matter, it would be unworkable to terminate the Remediation Manager’s authority over functions related to a particular “benchmark” while maintaining their authority over functions related to other aspects of the same Contempt Provision, which may be highly intertwined or even one and the same. For example, a benchmark for Second Remedial Order § 1(i)(a) might be completion of a security plan prior to implementation of that plan, both of which are required by the Court’s Order. But it is unclear what scope of authority would be then terminated after completion of that benchmark—whether authority to create a security plan was then terminated or, even more troublesome, authority over “all functions related to” the development of the security plan was then terminated—and what such termination would actually mean operationally. In either scenario, the Remediation Manager would be frustrated in their ability to successfully *implement* the plan, which as a matter of course could require further development and refining as the plan becomes operational.

Moreover, benchmarks are often most useful when they constitute interim steps or goal posts. For example, one benchmark might be adequate completion of a defined number of use of force investigations in a defined period; the next benchmark might be adequate completion of a larger number of investigations in a similar time period. But meeting either of those benchmarks is no indicator of whether deficiencies in use of force investigations have been corrected, which is what the relevant Contempt Provision ultimately requires. Achieving benchmarks is progress, but it does not necessarily mean that the contempt has been purged. And once more, it is unclear what “authority” would then return to Defendants and whether it would be workable operationally.

Unworkable Limitations on Benchmarks. Finally, Defendants’ language prohibiting benchmarks from requiring “actions, conditions, or results that are not required by constitutional standards” Monitor’s Chart Section II (New Provision) introduces a completely inapposite analysis to a remedial proceeding and requires the Remediation Manager to make a substantive legal conclusion about every single action required by the benchmarks. The Court has already determined that compliance with the Contempt Provisions is necessary to enforce federal rights. Defendants’ proposed limitation is out of line with other orders which contemplate a receiver’s broad authority to take actions necessary to carry out the Court’s Orders. *See Cook County Order* at 1,4 (purpose of order to “appoint a [receiver] with the authority and responsibility to bring [facility] into substantial compliance,” and granting Receiver “all reasonable powers necessary” to achieve substantial compliance); *Plata Receivership Order* at 4 (“Receiver shall have all powers necessary to fulfill the above duties under this Order”); *Coleman Order* at 3 (“The Receiver shall have all powers necessary to fulfill the above duties under this order, including, but not limited to...”).

III. TERMINATION AND TRANSITION PLAN

The Court's Proposed Order set forth the circumstances under which the Remediation Manager would transfer control of jail functions back to Defendants. Plaintiffs share the Court's goals for sustainable progress, with a return of authority to Defendants as soon as possible. But Defendants and the Monitor have proposed revisions to transition and termination provisions that are unnecessary and, even worse, would undermine the remedial process.

The Monitor's Proposal. Most pointedly, the Monitor's revisions oblige the Remediation Manager to work on a transition plan as soon as the Monitor finds *partial* compliance with a single *benchmark or Contempt Provision*. Monitor's Chart Section III(B). By contrast, Plaintiffs have proposed that the transition planning begin swiftly after one finding by the Monitor that Defendants are in *Substantial Compliance* with a *Contempt Provision*. Monitor's Chart Section III(C).

Triggering transition planning upon a single *partial* compliance rating (of a benchmark or Contempt Provision) is inefficient and does not support sustainable reform. The record in this case is replete with evidence that a partial compliance rating from the Monitor does not indicate that Defendants are on a path toward Substantial Compliance. *See* Dkt. 889 at 9–11 (Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Reconsider). Indeed, under the Consent Judgment, "partial compliance" is a low bar—Defendants are only required to have "achieved compliance on some component" of a provision while "significant work remains" to achieve substantial compliance required by the *Nunez* Orders. Dkt. 249 at 54, n.3. A finding that "significant work remains" is not an appropriate time for transition planning and would instead be a waste of time and resources. As the record in this case indicates, it could be years before enough reliable progress is made to elevate Partial Compliance to Substantial Compliance, where Defendants' performance "does not deviate significantly from the terms of the relevant

provision” as the Consent Judgment requires. Dkt. 249 at 54, n.2. Instead, transition planning should wait until Defendants achieve findings of *Substantial* Compliance with a Contempt Provision (not a benchmark, for the reasons we articulate *supra*, Section II(A)), as required by the *Nunez* Orders.

In addition, the Monitor’s proposed edits call for a transition plan that terminates the Remediation Manager’s authority within one year of the Monitoring Period in which the Monitor finds the relevant benchmark or Contempt Provision in Substantial Compliance. Monitor’s Chart Section III(C); *see also* Monitor’s Chart Section III(D). However, evidence of sustained, Substantial Compliance over three successive Reporting Periods before terminating the Remediation Manager’s authority is essential given Defendants’ history of backsliding. The Court was right to require such evidence of sustained compliance in the original language of Section IX(A) of the Proposed Order. By contrast, the Monitor’s proposal effectively sets a one-year sunset period on the Remediation Manager’s authority over a relevant Contempt Provision regardless of whether Defendants *sustain* the substantial compliance required by the Court’s orders, effectively prioritizing process over results. But constitutional compliance requires *sustained* compliance and other courts have acknowledged this reality in crafting similar receivership orders. *See* Stipulated Order at 13, *United States v. Miami-Dade Cnty.* (S.D. Fla. Feb. 16, 2023) Dkt. 260 (providing for termination “if Defendants reach and maintain substantial compliance for eighteen (18) months, i.e., maintain sustained substantial compliance.”); *Plata* Receivership Order at 7 (ordering the receivership to cease once the Court is satisfied “that Defendants have the will, capacity, and leadership to maintain a system of providing constitutionally adequate medical health care services”); Stipulated Order at 3, *Jones v. Gusman* (E.D. La. June 21, 2016) Dkt. 1082 (“The Compliance Director’s authority will continue until

the Court determines that sustained and sustainable material progress with substantial compliance with the Consent Judgment is achieved”); *Coleman* Order at 7 (“the Receivership...shall cease as soon as the court is satisfied and so finds, in consultation with the Receiver, that defendants have the will, capacity, and leadership to maintain a system of providing constitutionally-adequate mental health care services”).

Defendants are quite right that “it is essential that the [Remediation Manager’s] authority over a specific area be terminated when that authority is no longer needed to remedy an ongoing constitutional violation.” Monitor’s Chart Section III(B). But what is necessary is sustained change. The Consent Judgment, which Defendants agreed was supported by the PLRA, is an instructive example of a remedy appropriately requiring evidence of sustained compliance: under that order, Defendants must maintain Substantial Compliance for twenty-four months before the agreement terminates. Dkt. 249, Section XXI, ¶ 5.

Plaintiffs and the Government’s Proposal. Plaintiffs’ edits to Proposed Order Sections III(B), III(D), and XI(A) seek to clarify that 1) Contempt Provisions, and not benchmarks, are the relevant touchpoints for transition planning or termination of the Remediation Manager’s authority for the reasons we articulated in Section II(A), *supra*, and 2) while the Monitor’s findings of Substantial Compliance with a Contempt Provision are sufficient to trigger the development of a transition plan, the Remediation Manager’s *authority* with respect to that provision should be terminated only once the *Court* finds that Defendants have maintained Substantial Compliance with the Contempt Provision for three successive Reporting Periods. Monitor’s Chart Sections III(B), III(D), IX(A).

These edits are intended to maintain consistency with the Court’s language in Section IX(A), whereby the Remediation Manager’s authority *generally* should only terminate upon the

Court’s finding of Substantial Compliance for multiple, successive Reporting Periods (not just the Monitor’s assessment). We note that as originally drafted, Sections III(D) and IX(A) of the Proposed Order raised a question regarding whether termination of the Remediation Manager’s authority—whether over a specific Contempt Provision (Section III) or generally (Section IX)—should terminate after a Monitor finding of Substantial Compliance, or whether a judicial finding is necessary. We believe the Court was correct to require a judicial finding in Section IX(A) of the Proposed Order, because decisions regarding whether there is sufficient evidence to terminate or alter the scope of the Remediation Manager’s authority carry tremendous weight and are therefore appropriately subject to the scrutiny of the Court. We respectfully suggest that both Sections III and IX require judicial findings for termination of the Remediation Manager’s authority over particular Contempt Provisions and in general.

Finally, as we note in our responses to Defendants’ and the Monitor’s proposals regarding transition planning and termination, we think it is critically important to require evidence of sustained, Substantial Compliance before terminating the Remediation Manager’s authority over individual Contempt Provisions or generally. Monitor’s Chart Sections III(B), III(D), IX(A). Our proposed revisions to Sections III(B) and IX(A) are intended to clarify and reinforce the Court’s original language as we understood it. As the Court acknowledged, “[t]he unacceptably slow pace of reform can be explained, to a significant degree, by an unfortunate cycle of small progress followed by regression on the part of DOC leadership.” Dkt. 846 at 27. To ensure compliance after a Remediation Manager has departed, Defendants must show, during the Remediation Manager’s tenure, steady and sustained change over an extended period.

Defendants’ Proposal. For substantially the same reasons, Plaintiffs object to Defendants’ proposal to automatically terminate the employment of the Remediation Manager

“four years after the date of this Order.” Monitor’s Chart Section IX (New Provision). The purpose of the Remediation Manager is to ensure *compliance with the Court’s Orders*, and relief should be maintained as long as necessary to achieve Substantial Compliance. Setting an arbitrary timeframe for termination would incentivize opponents of reform to simply “wait out” the Remediation Manager’s tenure instead of engaging in the culture shift that is necessary to implement the Contempt Provisions. *See* Dkt. 642 (Amici Curiae Brief) at 8, 15 (noting that the appointment of a receiver offers stability and reduces the incentive to wait out political appointees). The Court’s clear standards for termination of the Remediation Manager’s authority should be met before the Remediation Manager’s authority is terminated.

IV. ROLES AND RESPONSIBILITIES OF THE REMEDIATION MANAGER

The Court set forth a clear and appropriate framing for the scope of the Remediation Manager’s authority in Proposed Order Section IV. In our view, Defendants and the Monitor propose revisions that would introduce confusion, inappropriately curtail the Remediation Manager’s authority, and raise the likelihood of satellite litigation.

A. Scope and Timing of Remediation Manager’s Authority

General Scope of Remediation Manager’s Authority. The Monitor and Defendants propose a construction to the opening provision in Section IV of the Order that is confusing, unnecessary, and out of line with how other courts have structured receivership orders. Monitor’s Chart Section IV. The Court’s original language, granting “all powers necessary to achieve Substantial Compliance with the Contempt Provisions, including but not limited to” the provisions setting forth General and Specific Powers, was a clear and appropriate framing for the basis of the Remediation Manager’s authority in Section IV. In contrast, Defendants and the Monitor propose removing that language and limiting it to simply “the following powers.”

We disagree with the Monitor's legal argument that the Court's original language offends the needs/narrowness/intrusiveness constraints of the PLRA. The Court's grant of all authority *necessary* to achieve compliance with the Contempt Provisions, and provision of a non-exhaustive list of specific powers that reflect that authority, is entirely consistent with the PLRA and with grants of authority in other receivership orders. *See Plata* Receivership Order at 3; *Cook County* Order at 4; *Coleman* Receivership Order at 3. We do not think the provision is reasonably read to confer unlimited powers, as the powers are already constrained throughout the Order. By contrast, the Monitor's proposal will invite satellite litigation over whether actions fall within the specific grants of authority, which will slow the reform effort. The Court's original construction was an appropriate framing for the enumerated powers that follow, and we urge the Court to keep it.

Limiting Remediation Manager's Authority to the Remediation Action Plan. The Court rightfully indicated that the Remediation Manager's authority is derived from what is necessary to bring Defendants into Substantial Compliance with the Contempt Provisions. Proposed Order Section IV. But Defendants seek to limit the Remediation Manager's authority and power to the RAP, which by necessity is preliminary in scope and cannot delineate every responsibility. Specifically, Defendants' proposed edits seek to retain the Commissioner's authority "except to the extent that such authority is contrary to the Remediation Plan or the lawful written directions of the Remediation Manager issued to implement the Remediation Plan." Monitor's Chart Section IV(C). However, the RAP cannot be so thorough as to outline every single action the Remediation Manager must take so Defendants' proposed language would create conflict regarding divisions of authority. Instead, Plaintiffs have proposed edits that reinforce the Court's language setting forth the Commissioner's exclusive authority in areas that do not fall within the

Contempt Provisions. Monitor’s Chart Section IV(C). This language is simple and allows for the flexibility needed for the Remediation Manager to have the clear authority to take the actions needed to achieve compliance while not displacing the Commissioner altogether.

Commencement of Remediation Manager’s Authority. Defendants’ and the Monitor’s proposals to delay commencement of the Remediation Manager’s authority should be rejected. Defendants seek to deny the Remediation Manager any authority to act until 90 days from the date of the Order, and the Monitor seeks a delay of a to-be-determined period. Monitor’s Chart Section XII (New Provision). However, the Remediation Manager’s authority should vest immediately in accordance with the Court’s May 13, 2025 Order. *See* Monitor’s Chart Section IV (“Powers of the Nunez Remediation Manager”); *see also* Dkt. 846 at 44 (“To be clear, the responsibilities and authority of the Nunez Remediation Manager shall not be constrained by the particular stages of the Remediation Action Plan, nor are the powers granted to the Nunez Remediation Manager limited during the time period in which the Remediation Action Plan is being developed. Instead, the Remediation Manager shall at all times possess all of the necessary authority and responsibility to address non-compliance with the Contempt Provisions[.]”).¹² Though of course the Remediation Manager has much to learn, delaying authority to act unnecessarily cabins such a professional. There may be specific actions that it is prudent or necessary for the Remediation Manager to take swiftly to effectuate change, and the Court may trust the judgment of its agent in this regard. Completely tying the hands of the Remediation

¹² Other courts have similarly not delayed or limited a Receiver’s powers pending the development of a work or action plan. *See* Order Appointing Receiver at 3, *Plata v. Schwarzenegger*, (N.D. Cal. Feb. 14, 2006) (Dkt. 473) (ordering that Receiver, upon appointment and pending development of Action Plan, “undertake immediate and/or short-term measures” designed to achieve goals of receivership); Stipulated Order at 11, *United States v. Miami-Dade Cnty.*, (S.D. Fla. Feb. 16, 2023) (Dkt. 260)(same).

Manager for an arbitrary time period unnecessarily brings more delay to a process toward relief that has already been prolonged, in the midst of an ongoing crisis.

Cabining the Ability to Hire Consultants and Obtain Technical Assistance. The Monitor's additional language cabining the Remediation Manager's ability to hire consultants or obtain technical assistance "without duplication of efforts" to "minimize redundancy" is unnecessary and is already covered by other parts of the Proposed Order which permit challenges to unnecessary expenditures. *See* Monitor's Chart Section IV(B)(vi); Proposed Order Section VIII(A). The Remediation Manager's staffing and consultant relationships will be reported to the Court by, at minimum, the Remediation Manager and the Monitor. Should Defendants or any party have concerns that the development of the Remediation Manager's team is unreasonable, the parties may raise the matter with the Court. Most importantly, the Court can at any time seek clarity from or direct the Remediation Manager regarding any concerns.

B. Specific Powers of the Remediation Manager

Defendants seek to limit the Remediation Manager's authority in financial, accounting, contracting, and legal matters because they claim these areas are handled by other agencies and not the Commissioner. Monitor's Chart Section IV(A). But the Commissioner clearly has some role in these functions: indeed, the June 2025 organizational chart the Court ordered Defendants to provide shows that the Commissioner's Office exercises authority over, for example, a General Counsel, Central Office of Procurement, Deputy Commissioner of Finance, and Deputy Commissioner of Programs and Community Partnerships. *See* Exhibit C. It is necessary and appropriate for the Remediation Manager to have similar authorities to the extent such authorities are necessary to achieve compliance with the Contempt Provisions and reduce the bureaucratic and administrative procurement delays that have long impeded Defendants' ability to quickly address issues. This is why other receivership orders have also granted these powers.

See Findings and Order Appointing Receiver at 8, *Inmates of D.C. Jail v. Jackson*, Case No. 1462-71(D.D.C. Jul. 11, 1995) (granting Receiver the power to procure supplies, equipment, or services as are necessary to obtain compliance and hire consultants or obtain technical assistance as necessary to obtain compliance); *Coleman* Order at 3-4 (“The Receiver shall exercise all powers vested by law in the Secretary of the CDCR as they relate to the administration, control, management, operation, and financing of the CDCR Mental Health Services Delivery System” including the power to “acquire, dispose of, modernize, repair, and lease property, equipment, and other tangible goods as necessary”). Defendants’ concerns that the Remediation Manager will assume authority that falls wholly outside the Commissioner’s realm is baseless. Nothing in the Court’s Order suggests that the Remediation Manager will assume authorities granted exclusively to other agencies.

Nor does the Order erase rules, regulations, and statutes that govern the Commissioner’s operation of the DOC, as Defendants claimed during the meet and confer process. Instead, as the Court’s Proposed Order makes clear, the Remediation Manager “shall make reasonable efforts to exercise their authority in a manner consistent with applicable state and local laws, regulations, and contracts.” Proposed Order Section XI(B). And the Remediation Manager must separately “petition the Court to waive any legal or contractual requirements,” if such laws, regulations, or contracts “impede the Nunez Remediation Manager from carrying out their duties under this Order and achieving compliance with the Contempt Provisions[.]” *Id.* Additional revisions to the Proposed Order regarding the limiting effect of relevant laws and rules are unnecessary as the Order does not suspend such laws. See Monitor’s Chart Section IV(A) and (New Provision).

C. Full Time and On-Site Requirements

Defendants seek to define the terms of employment for the Remediation Manager, even though the Remediation Manager is an agent of the Court, not a City employee. Specifically,

Defendants seek to impose rigid on-site work requirements for the Remediation Manager, including prohibiting the Remediation Manager from working remotely more than two days of any week, Monitor's Chart Section I (New Provision), and from maintaining other employment or contract work except as approved by the court "after notice and opportunity to be heard by the parties." Monitor's Chart Section I (New Provision). The Court's Proposed Order already sets forth that the Remediation Manager shall have no other conflicting employment (Proposed Order Section XI(E)), and the parties agree that the Remediation Manager will be required to spend considerable time in the facilities. But Plaintiffs dispute the need to impose inflexible in-office workdays that mirror the rules the City imposes on its own employees¹³ and the need for the parties to litigate the Remediation Manager's other work. To the extent the Court finds additional language on these topics necessary, Plaintiffs and the Monitor suggest that the Order require the Remediation Manager to "maintain an office within Department headquarters or on Rikers Island" and to "be onsite with sufficient frequency, regularity, and duration to carry out their duties." Monitor's Chart Section I (New Provision). This mirrors the language set forth in *Hinds*: "The Receiver's authority and decisions are subject to review by the Court. To exercise these powers, the Receiver shall be onsite at RDC with sufficient frequency, regularity, and duration to carry out the Court's Orders," *United States v. Hinds Cnty.*, No. 3:16-CV-489-CWR-BWR, 2023 WL 1186925 at * 15 (S.D. Miss. Jan. 30, 2023).

Similarly, Plaintiffs dispute the need to be heard by the parties with respect to the Remediation Manager's other work (if it exists). Monitor's Chart at Section I (New Provision). The Court already contemplated the scope of such "other work" and its limitations with respect

¹³ See Mayor Adams, DC 37 Executive Director Garrido Announce Extension of Remote Work Pilot for City Employees (Mar. 18, 2025), <https://www.nyc.gov/mayors-office/news/2025/03/mayor-adams-dc-37-executive-director-garrido-extension-remote-work-pilot-city>.

to conflicts in its Proposed Order. *See* Proposed Order Section XI(E). The parties should not litigate or micromanage the Remediation Manager's work that is otherwise approved by the Court and presents no conflict of interest with their responsibilities under the Order.

D. Public Statements and Confidentiality

Plaintiffs' edits to the Proposed Order allowing the Remediation Manager to give interviews or make public statements without specifically seeking permission from the Court are intended to ensure credibility and public trust in the Remediation Manager. Monitor's Chart Sections V; XI(D). Allowing the Remediation Manager, at their discretion, to give public statements, which could include speaking to the public or having informal meetings with relevant stakeholders, serves an important purpose. In order to be successful, the Remediation Manager will need to gain support for their actions from line staff, the public, and other stakeholders. For example, the Remediation Manager may need to disclose information to union representatives to reach consensus on a contested issue or may need to speak with the press to counter a press statement by the Mayor. Silence—particularly in the face of a public discourse that may otherwise be dominated by those who are at best unaware of the Remediation Manager's work and at worst in opposition to change—is unlikely to serve the reform effort as the Remediation Manager seeks buy-in across the City. Indeed, the inability to publicly explain their rationale for taking certain actions may undermine the Remediation Manager's efforts and credibility.

Defendants seek to designate information learned from the Department or its employees as “confidential” and limit the Remediation Manager and their staff's ability to disclose that information, despite the fact that the Commissioner is not subject to such a broad restriction. Monitor's Chart Section V (New Provision). Moreover, disclosing this information to outside parties may be critical to implement necessary changes, for the reasons set forth above and given the Remediation Manager's operational role and need to communicate on a daily basis with third

parties and stakeholders to carry out their duties. Defendants' language prohibiting the Remediation Manager from sharing information except if "necessary to pursue compliance with this Order or the Remediation Plan" is ambiguous and would chill the Remediation Manager's ability to communicate effectively when discussing operational issues or seek advice or input from correctional colleagues in different systems or others with critical expertise, due to fear of violating a Court Order.

E. Reports by the Remediation Manager

The Remediation Manager's reports serve the important function of updating the parties and the Court of progress and identifying issues and solutions *close in time* to when those issues occur. In this way, the Remediation Manager's reports serve a different function than the Monitor's Reports, which cover long stretches of time and are issued months after the reporting period has elapsed. Because the Monitor's Reports assess compliance, it is important for the parties to weigh in on and provide additional information regarding that assessment. But the Remediation Manager's reports are intended to update the Court on the steps the Remediation Manager is taking towards compliance, making extensive feedback unnecessary. Defendants seek to modify the Court's Proposed Order to allow for a comment period 30 days before the Remediation Manager's report is filed and allow the parties 15 business days to seek changes or designate information as confidential. Monitor's Chart Section V (New Provision). Defendants' proposal would slow the flow of information to the Court, unnecessarily distract from the Remediation Manager's operational duties, and would delay the Remediation Manager's ability to bring urgent matters to the Court's attention. While Plaintiffs are mindful of the need for active consultation with the Remediation Manager, given the unique function served by the Remediation Manager's reports, the risk of harm to the incarcerated individuals, and the time sensitivity of the issues at stake, such a protracted process is unnecessary.

Plaintiffs also object to the Monitor's language regarding scheduling of the Remediation Manager's reports. Monitor's Chart Section V(B). The Court's language, which allows the Remediation Manager to propose a schedule after consulting with the Monitor, allows the Remediation Manager, as a professional, to discuss with the Monitoring Team what the advisable structure should be and propose such a structure for the Court's approval. All of these concerns can and should be aired during that process. The Court's language rightfully allows for the possibility that the Remediation Manager could have helpful thoughts about how to structure processes and should be a partner in creating them. We appreciate the Monitor's concern about sequencing and timing, but the Remediation Manager and the Monitoring Team can engage in regular conferrals and are expected to exchange information on a regular basis to ensure that the Monitoring Team has the necessary information to prepare its reports.

Content of Remediation Manager's Reports. In our view, the Court's Proposed Order appropriately allows the Remediation Manager and the Monitor to discuss not only the timing and sequencing of the Remediation Manager's reports, but what content would be appropriate and useful. Proposed Order Section V(B). Plaintiffs oppose altering the Court's original language. Should the Court think including more detailed requirements of the Remediation Manager's reports is appropriate for this Order, Plaintiffs object to revisions that require the Remediation Manager to include information that mirrors the substance of the Monitor's Reports given the distinct functions served by the Remediation Manager reports and the Monitor's reports. Plaintiffs therefore suggest, in the alternative, language that makes clear that the Remediation Manager's reports will focus on steps taken to implement the Remediation Action Plan, meet the benchmarks, and achieve Substantial Compliance with the Contempt Provisions. Meanwhile, the Monitor's Reports will focus on compliance assessments. Finally, as explained

supra Section II(A), Plaintiffs object to language implying that the Remediation Manager is attempting to achieve Substantial Compliance with benchmarks as Substantial Compliance should only be assessed with regard to the Contempt Provisions.

F. Compensation and Expenses

The Court's Proposed Order requiring payment to the Remediation Manager on a monthly basis upon appointment, see Proposed Order Section VIII(B), would allow the Remediation Manager to hit the ground running to implement this Court's orders. Any further details regarding budget and expenses may be provided as part of the Remediation Action Plan. At that stage, the Remediation Manager would have a more robust sense of what the role requires and would be able to offer a more informed proposal. This approach is more in line with the Court's language which requires the Remediation Manager to submit an initial statement of rates and proposed fees and expenses after appointment which may be modified as appropriate. Proposed Order Section VIII(B).

Defendants' and the Monitor's proposals forcing the Remediation Manager to propose fees and expenses prior to appointment and before beginning work and making an initial assessment, see Monitor's Chart at Section VIII(B), is not feasible and sets an unreasonable expectation for the Remediation Manager to estimate all expenses before they fully understand the resources that will be needed to comply with the Contempt Provisions. While the Court may discuss and consider budget with Remediation Manager candidates during the selection process, requiring the Remediation Manager to detail budget and expenses before appointment would delay compliance because the Remediation Manager would not be appointed until after disputes regarding budget were litigated and resolved by the Court. Instead, the Remediation Manager should submit an initial statement of proposed fees and expenses 30 days after they are appointed. Then, as the Court's proposed Order sets forth in Section VIII(A), upon receipt of the

Remediation Manager’s invoices, Defendants may exercise their opportunity to object and be heard regarding the reasonableness of fees and expenses. The Monitor’s revisions requiring a conferral period introduces an entire month of potential delay that will still require Court intervention to resolve. Monitor’s Chart Section VIII(B). By contrast, the Court’s proposed process is simple and efficient. Proposed Order Section VIII(B).

Moreover, Defendants’ suggestion to set compensation “commensurate with the salary earned by employees of the City of New York” Monitor’s Chart (New Provision/Proposed Order), is not reasonable and will dissuade competent candidates. We are cognizant that the Remediation Manager’s budget must be prudent and commensurate with the task ahead. But the Remediation Manager is not a City employee—they are an agent of the Court. They will not enjoy the benefits of City employment such as the City pension benefits. Compensation for other agents of the Court—such as the Monitoring Team—have not been (and should not be) set based on City employee salaries. Indeed, even the City’s own consultants are not paid commensurate with City employee salaries.¹⁴ This proposal will only narrow, or even obliterate, the field of qualified candidates for these positions.

V. ROLES AND RIGHTS OF NON-PARTIES

Defendants’ proposed edits to provide all City employees—current and former—an opportunity to be heard by this Court if they believe they “ha[ve] been or will be harmed by termination of their employment or disciplinary action of the Nunez Remediation Manager,” Monitor’s Chart Section IV (New Provision), would essentially make this Court the venue of voluminous employment-related disputes involving acts by the Remediation Manager and would

¹⁴ Michael Schwartz, *New York Hires Consultant to Create Rikers Island Reform Plan*, n.y. times (Sept. 8, 2014), <https://www.nytimes.com/2014/09/09/nyregion/new-york-hires-consultant-to-create-rikers-island-reform-plan.html>.

open the flood gates to litigation by granting individuals federal rights of action to object to the Remediation Manager's actions.

Defendants also seek to grant the unions the ability to intervene (without making the appropriate motion) any time the Remediation Manager petitions to alter the terms of a labor agreement or laws, rules, or regulations governing the employment of any person by the City. Monitor's Chart Section XI (New Provision). This runs afoul of standard procedures that already exist to account for situations where third parties such as unions wish to intervene in a federal case. Should the union or any aggrieved employee have a basis to, they may avail themselves of existing processes to participate in the case by filing an amicus motion or making a motion to intervene and the Court would resolve such motions in the normal course. Altering the federal rules of civil procedure in this Order is unnecessary and burdens Court resources.

VI. IMMUNITY AND INDEMNIFICATION

Defendants' proposals to delete provisions for immunity and indemnification of a Remediation Manager should be rejected. See Monitor's Chart Section VII(A) and (B). The Court already considered Defendants' arguments and found, as set forth in its Proposed Order, that immunity and indemnification were necessary measures to ensure a Remediation Manager can achieve compliance.

A. Immunity and Indemnification Have Precedent in Case Law and Other Receivership Orders

Federal Circuit Courts, including the Second Circuit, have routinely upheld immunity for receivers. *Bradford Audio Corp. v. Pious*, 392 F. 2d 67, 73 (2d Cir. 1968) (“[a] court appointed receiver is a quasi-judicial officer within the protection of the immunity.”). *Trinh v. Fineman*, 9 F. 4th 235, 237-38 (3d Cir. 2021) (“the policies underlying judicial immunity similarly support immunity for state court-appointed receivers”); *Mosher v. Saalfed*, 589 F. 2d 438, 442 (9th Cir.

1978); *T&W Inv. Co., Inc. v. Kurtz*, 588 F. 2d 801, 802 (10th Cir. 1978) (“a receiver is a court officer who shares the judge’s immunity, at least if he is carrying out the orders of his appointing judge.”). To attract qualified candidates and ensure that the Remediation Manager can effectively discharge their duties, the Remediation Manager cannot be subject to the risk of personal liability and must be afforded the immunity of a judicial agent.

Indemnification is similarly necessary to attract suitable candidates to take on the Remediation Manager role and is part of the “reasonable fees, costs, and expenses of the Nunez Remediation Manager” for which the City is responsible. Proposed Order, Section VIII(A). While the City bemoans the expense of indemnifying the Remediation Manager, those expenses are not different from the other fees and costs of the Remediation Manager that the City (and not Plaintiffs or the United States) is responsible for, as a remedy for the *City*’s contempt of this Court’s orders.

Accordingly, receivership orders in Hinds County, Cook County, *Coleman*, and *Plata* have included immunity and indemnification provisions. *Hinds*, 2023 WL 1186925, at * 17.; *Plata* Receivership Order at 6; *Coleman* Order at 5; *Cook County* Order at 1. In fact, the *Coleman* Order—amended just this month—includes language that mirrors the proposed immunity and indemnification language here. *See Coleman* Order at 4–5 (“The Receiver and her staff shall have the status of officers and agents of this court, and as such shall be vested with the same immunities as vest with this court. Additionally, defendants shall indemnify the Receiver and members of her staff to the same extent as defendants are obligated to indemnify the Secretary of the CDCR.”).

Defendants attempt to completely dismiss this precedent for baseless reasons. Just this year, after conducting a need-narrowness-intrusiveness inquiry, the *Hinds* District Court

concluded that the provision granting immunity is narrowly drawn, extends no further than necessary, and is the least restrictive means to ensure compliance. Order at 7, *United States v. Hinds Cnty.*, No. 3:16-CV-489-CWR-BWR (S.D. Miss. Jun. 27, 2025) Dkt. 282, 282-1. The district court specifically held that “designating the Receiver and their staff as agents of the Court with judicial immunity is necessary in order to protect against retaliatory litigation and political interference” and held that the measures in Section III (which includes indemnification) were “narrowly drawn, extend no further than necessary, and are the least restrictive means to ensure that the Receiver can achieve compliance with constitutional standards.” *Id.* Dkt. 282-3 at 5.

Through the meet and confer process, Defendants wholly dismissed *Plata*, which granted immunity and indemnification to the receiver because that receiver does not manage jails or prisons. This is nonsensical. The *Plata* receiver handled all aspects of the medical care in California prisons and required many of the same authorities the Court has ordered here. Indeed, *Plata* has become the touchstone for determining the appointment of a receiver under the PLRA and has defined the various authorities necessary to ensure the constitutional rights of incarcerated people. Accordingly, the Court relied extensively on *Plata* to both appoint a Remediation Manager and determine their authorities. *See* Dkt. 846 at 41.

The receivership orders in *Dixon* and *LaShawn* are similarly helpful. Defendants attempt to disregard both cases because they were entered before the PLRA. But both cases are instructive regarding the authorities afforded to receivers and the constitutional rights of vulnerable populations. Moreover, the D.C. Circuit in *LaShawn* did not object to indemnification at all. *LaShawn A. by Moore v. Barry*, 144 F. 3d 847 (D.C. Cir. 1998).

B. New York General Municipal Law and the Doctrine of *Respondeat Superior* are Inapplicable

To the extent that Defendants attempt to relitigate the arguments made in support of their Compliance Director proposal, that indemnification of the Remediation Manager by the City is contrary to N.Y. Gen. Mun. Law § 50-k and the doctrine of *respondeat superior*, Plaintiffs rely upon our brief in support of a receiver, which was already considered by this Court. Dkt. 603; Dkt. 811-11. A Court-appointed Remediation Manager is not a City employee but an agent of the Court, making the New York General Municipal Law and the doctrine of *respondeat superior* inapplicable. *See* Dkt. 811-12 at 23; Dkt. 820 at 25–26. Moreover, nothing in Section 50-k prohibits the City from indemnifying a non-employee, if it so chooses or is otherwise compelled.

C. Indemnification and Immunity does not Impose Strict Municipal Liability

Moreover, to the extent Defendants claim that indemnification and immunity for the Remediation Manager would impose strict municipal liability in the absence of control by the municipality in the Section 1983 context, their concerns are unwarranted. The City’s level of control over actions subject to a § 1983/*Monell* suit and subsequent liability would be determined, as needed, on a case-by-case basis as litigation may arise. *Compare Van Horn v. Hornbeak*, No. CVF 08-1622, 2009 WL 435104 (E.D. Cal. Feb. 19, 2009) (holding that receivership did not relieve the state and facility defendants of Section 1983/*Monell* liability for an incarcerated woman’s claims arising from her prenatal care and death of her son); *with Brass v. Cook County*, No. 09 C 6873, 2011 WL 124251 (N.D. Ill. Jan. 14, 2011) (dismissing Section 1983/*Monell* claims brought by a former facility employee for retaliatory termination because the County did not have control over the Transitional Administrator’s actions.). The exact scope of the Receiver’s and City’s liability for any specific violation is not appropriately determined by the Court now, but rather would be determined by the appropriate court on a case-by-case basis

taking into account the specifics of the claims at issue, as has been done in other receivership cases.

VII. THE MONITOR'S ROLE

Plaintiffs' proposed deletion of Proposed Order Section VI(C), removing language regarding approval from the Monitor, seeks to clarify the respective roles of the Remediation Manager and the Monitor and to ensure that the Remediation Manager, as an agent of the Court, is not required to seek the Monitor's approval before taking an action within the scope of their authority. Monitor's Chart Section V (New Provision). As the Court acknowledged, both the Monitor and the Remediation Manager are "independent positions that each report to the Court and are not answerable to each other." Proposed Order Section VI(E). Accordingly, Plaintiffs' edit removing language regarding approval from the Monitor is proposed to ensure consistency with this intent. The Remediation Manager is required by this Order to consult with the Monitor and is expected to work closely with the Monitoring Team. In the unlikely event that the Monitor and the Remediation Manager disagree on matters where the Contempt Provisions require the Monitor's consent—and if the Court thinks it appropriate to detail a conflict resolution process—Plaintiffs proposed a process by which the Remediation Manager and the Monitor can raise these disputes with the Court. Monitor's Chart Section V (New Provision).

VIII. UNNECESSARY LANGUAGE

Defendants seek to add excess verbiage to the Court's Proposed Order from various statutes that are unnecessary to understand the Remediation Manager's role and are either irrelevant or already addressed by other sections of the Court's Proposed Order. For example, Defendants seek to add language clarifying that failure of a party to comment on the Monitor's draft report does not constitute a waiver of arguments or objections. Monitor's Chart Section VI (New Provision). While Plaintiffs do not disagree, the Court's Proposed Order which primarily

governs the Remediation Manager's authority need not address the Monitor's Report beyond what is already set forth in Section III(A) regarding the timing and content of the reports.

Defendants further propose modifications requiring the Monitor to articulate the basis for not accepting a party's suggestion on compliance ratings in the final report. Monitor's Chart Section VI (New Provision). This is unnecessary and burdensome. The Court's July 25, 2025 Order (Dkt. 888) sets forth a procedure and timeframe for the parties to provide feedback on the Monitor's draft reports. The parties are free to comment on the draft report as we have done in previous reporting periods, and we expect the Monitor to continue to consider this feedback carefully, but the Monitor should not have to respond to each and every comment in writing. There is already a long lag period between the end of a reporting period and the submission of the Monitor's report, and Defendants' added requirement would only create additional delay and burdens on the Monitor.

Defendants further seek to add irrelevant language regarding the Remediation Manager's exercise of authority consistent with collective bargaining agreements and other laws, rules, or regulations. Monitor's Chart Section IV(A). But the Court's Proposed Order does not suspend any relevant laws or agreements and clearly addresses the process that must be followed if the Remediation Manager seeks to waive any legal or contractual requirements that is impeding their ability to carry out their duties and achieving compliance with the Contempt Provisions. *See* Proposed Order Section XI(B). Similarly, Defendants seek to add language limiting the Remediation Manager's ability to "take any action beyond the remedial powers of the federal courts" or "to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts." Monitor's Chart Section IV (New Provision). Defendants also seek to add language stating that nothing in the Order

“shall prevent any party or intervener from seeking modification or termination of this Order” under the Federal Rules of Civil Procedure. Monitor’s Chart Section XI (New Provision). But none of these powers are contemplated in the Court’s Proposed Order and adding extra verbiage regarding authorities that the Court has not granted would create confusion. Nor has the Court disturbed the PLRA or any other statute or federal rule, making language restating these statutes unnecessary and confusing. Monitor’s Chart Section XI (New Provision).

CONCLUSION

For the foregoing reasons, the Court should accept the Parties' mutually agreed upon modifications as well as Plaintiffs' proposed modifications to the Court's Proposed Order, and reject the changes suggested by Defendants and the Monitor to which the Plaintiffs object.

Dated: September 10, 2025
New York, New York

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EXHIBIT A

APPENDIX B: ORDER APPOINTING NUNEZ REMEDIATION MANAGER

The Court intends to enter an order in substantially the following form upon the selection of the Nunez Remediation Manager. Any objections to the language of the order must be discussed with the Monitoring Team and filed in writing by 12:00 p.m. on June 27, 2025.

WHEREAS, on October 22, 2015, this Court entered the Consent Judgment (docket entry no. 249) in this matter to correct the ~~violations~~violation of the constitutional rights of people incarcerated in jails operated by the New York City Department of Correction (“DOC” or “the Department”)¹;

WHEREAS, the Consent Judgment required the Defendants to take specific actions to remedy a pattern and practice of violence by staff against incarcerated individuals, and to develop and implement new practices, policies, and procedures to reduce violence in the jails and ensure the safety and well-being of incarcerated individuals;

WHEREAS, Section XXII, ¶ 1 of the Consent Judgment provides: “The Parties stipulate and agree, and the Court finds, that this Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a). The Parties further stipulate and agree, and the Court finds, that the prospective relief in this Agreement is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the Parties agree and represent that the Agreement complies with the provisions of 18 U.S.C. § 3626(a)”;

¹ The Plaintiff Class is defined as “all present and future inmates confined in jails operated by the Department, except for the Elmhurst and Bellevue Prison Wards.” (Docket entry no. 249 ¶ II.2.)

WHEREAS, on August 14, 2020, the Court entered a Remedial Consent Order Addressing Non-Compliance (the “First Remedial Order,” docket entry no. 350) that included several remedial measures designed to address the repeated findings of the Nunez Independent Monitor (the “Monitor”) or “Monitoring Team,” which shall each refer to the Monitor and the members of the Monitoring Team) that the Defendants were in non-compliance with core provisions of the Consent Judgment, including with Section IV, ¶ 1 (Implementation of Use of Force Directive); Section VII, ¶ 1 (Thorough, Timely, Objective Investigations); Section VII, ¶ 7 (Timeliness of Preliminary Reviews); Section VII, ¶ 9 (a) (Timeliness of Full ID Investigations); Section VIII, ¶ 1 (Appropriate and Meaningful Staff Discipline); Section XV, ¶ 1 (Inmates Under the Age of 19, Protection from Harm); and Section XV, ¶ 12 (Inmates Under the Age of 19, Direct Supervision);

WHEREAS, in his Eleventh Report filed on May 11, 2021 (docket entry no. 368), the Monitor reported that the Defendants were not in compliance with numerous provisions of the First Remedial Order, including Section A, ¶ 2 (Facility Leadership Responsibilities), Section A, ¶ 3 (Revised De-escalation Protocol), Section A, ¶ 6 (Facility Emergency Response Teams), Section D, ¶ 1 (Consistent Staffing), Section D, ¶ 2 (ii) (Tracking of Incentives and Consequences), and Section D, ¶ 3 (Direct Supervision);

WHEREAS, the Court entered a Second Remedial Order on September 29, 2021 (docket entry no. 398), and a Third Remedial Order on November 22, 2021 (docket entry no. 424);

WHEREAS, after the three Remedial Orders failed to result in meaningful improvements, the Defendants developed an Action Plan, supported by the Monitor, that was designed to address Defendants’ overall lack of progress toward compliance by focusing on four foundational areas without which reform could not proceed—security practices, supervision and

leadership, staffing practices, and accountability—and the Court entered and So Ordered the Action Plan on June 14, 2022 (docket entry no. 465);

WHEREAS, the Court found that the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each compliant with the provisions of 18 U.S.C. § 3626(a) and were necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class;

WHEREAS, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each entered to address the ongoing non-compliance with the Consent Judgment and to achieve its primary goal: to protect the constitutional rights of incarcerated people and substantially reduce the level of violence in the jails;

WHEREAS, the Consent Judgment, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan are hereafter collectively referred to as “the Nunez Orders”;

WHEREAS, more than a year after the Action Plan was entered, the Monitor found in his July 10, 2023 Special Report (docket entry no. 557) that the Defendants had not made substantial and demonstrable progress in implementing the reforms, initiatives, plans, systems, and practices outlined in the Action Plan, and that there had not been a substantial reduction in the risk of harm facing incarcerated individuals and DOC staff;

WHEREAS, on November 17, 2023, the Plaintiff Class and the United States filed a Motion for Contempt and Appointment of Receiver;

WHEREAS, on November 27, 2024, this Court issued its factual findings and decision granting Plaintiffs’ Motion for Contempt and found that Defendants (i) are in contempt of eighteen core provisions of the Nunez Orders (the “Contempt Provisions”) “that have gone

unheeded for years and have highlighted failures inextricably linked to the Department’s historic pattern of excessive use of force against persons in custody” (docket entry no. 803, at 52);

(ii) “have not demonstrated diligent attempts to comply with the Contempt Provisions in a reasonable manner” (docket entry no. 803, at 52); and (iii) have repeatedly and consistently failed to remediate the violations of the federal rights of incarcerated people that necessitated entry of the Consent Judgment (docket entry no. 803, at 52, 54-56);

WHEREAS, this Court found that the “use of force rate and other rates of violence, self-harm, and deaths in custody are demonstrably worse than when the Consent Judgment went into effect in 2015” and the “unsafe and dangerous conditions in the jails...have become normalized despite the fact that they are clearly abnormal and unacceptable” (docket entry no. 803, at 11);

WHEREAS, this Court found that “for nine years, Defendants made only half-hearted, inconsistent efforts to comply with Court orders” (docket entry no. 803, at 50);

WHEREAS, this Court found that “[t]he record in this case makes clear that those who live and work in the jails on Rikers Island are faced with grave and immediate threats of danger, as well as actual harm, on a daily basis as a direct result of Defendants’ lack of diligence, and that the remedial efforts thus far undertaken by the Court, the Monitoring Team, and the parties have not been effective to alleviate this danger” (docket entry no. 803, at 55);

WHEREAS, this Court found that “Defendants’ ongoing failure to comply” requires a remedy that addresses the “insufficiently resourced leadership; a lack of continuity in management; failures of supervision and cooperation between supervisors and line officers; a lack of skill or imagination to create and implement transformative plans; and an unwillingness or inability to cooperate with the Monitoring Team recommendations to accomplish the changes necessary” (docket entry no. 803, at 54);

WHEREAS, this Court found that “[t]he last nine years also leave no doubt that continued insistence on compliance with the Court’s orders by persons answerable principally to political authorities would lead only to confrontation and delay; that the current management structure and staffing are insufficient to turn the tide within a reasonable period; that Defendants have consistently fallen short of the requisite compliance with Court orders for years, at times under circumstances that suggest bad faith; and that enormous resources—that the City devotes to a system that is at the same time overstaffed and underserved—are not being deployed effectively” (docket entry no. 803, at 55-56); and

WHEREAS, as required by 18 U.S.C. § 3626(a), the prospective relief in this Order is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the Plaintiff Class and the United States, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. Appointment of Nunez Remediation Manager and Nunez Remediation Manager’s Duties

- A. [NAME] is ~~here by~~ hereby appointed to serve in this case as Nunez Remediation Manager, with the responsibility and authority to take all necessary steps to promptly achieve Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with the Contempt Provisions.
- B. The Nunez Remediation Manager’s work shall be guided by benchmarks identified in the “Remediation Action Plan,” a work plan that includes specific and concrete steps and milestones designed to achieve Substantial Compliance

with the Contempt Provisions ~~within three years of the date the Court files the~~
~~Nunez Remediation Manager's Acceptance of this appointment on the public~~
~~docket for this case ("Acceptance Effective Date"), subject to extension of the~~
~~target period for any particular elements of the plan upon a showing of good cause~~
~~therefor.~~ The process to determine the substance of the Remediation Action Plan
 is detailed in Section II.A.

- C. The Nunez Remediation Manager shall provide leadership and executive management with the goal of developing and implementing a sustainable system that protects the constitutional rights of incarcerated people.
- D. The Nunez Remediation Manager shall be answerable only to the Court.
- E. The Nunez Remediation Manager shall maintain an office within Department headquarters or on Rikers Island and shall be onsite with sufficient frequency, regularity, and duration to carry out their duties.

II. Development and Implementation of the Remediation Action Plan

- A. The Nunez Remediation Manager, in consultation with the Commissioner and the Monitoring Team, shall develop a Remediation Action Plan. ~~The to be executed within the initial two-year period following the Court's approval of the Remediation Action Plan. Nothing in this provision relates to the tenure of the Nunez Remediation Manager, or the duration of their authority with respect to a specific Contempt Provision, which is governed exclusively by Sections III.C and IX.A.~~

- i. The Remediation Action Plan shall identify the:

A.1. include specific and concrete steps that are necessary to achieve ~~substantial compliance~~ Substantial Compliance with the Contempt Provisions ~~within no more than three years of the Nunez Remediation Manager's Acceptance Effective Date. ("Benchmarks")~~. The ~~Remediation Action Plan shall include transformative and sustainable initiatives which shall include, any positive initiatives currently underway that must be sustained or enhanced. Further, the Remediation Action Plan shall address relevant recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions. These actions~~ Benchmarks shall be organized into priorities with specified ~~benchmarks~~ milestones to be achieved within 12-month periods, beginning with the safety-related areas and actions that are most urgently in need of attention. ~~;~~

2. include transformative and sustainable initiatives which shall include any positive initiatives currently underway that must be sustained or enhanced; and

3. address recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions.

i.ii. The Remediation Action Plan shall be provided to ~~counsel for the Plaintiff Class and the United States~~ the parties in draft form for comment within 90 days of the date ~~of of the~~ of the Nunez Remediation Manager's acceptance of this appointment ("Acceptance Effective Date. Counsel for the Plaintiff

~~Class and the United States~~”). The parties shall provide the Nunez Remediation Manager, ~~Commissioner~~the Monitoring Team, and the ~~Monitoring Team~~other parties with their comments on the Remediation Action Plan, if any, within ~~21~~30 days of receipt. The Nunez Remediation Manager, in consultation with the Commissioner and Monitoring Team, shall consider the comments from ~~Counsel for the Plaintiff Class and the United States~~the parties and make any changes deemed necessary before filing the final proposed Remediation Action Plan with the Court. The final Remediation Action Plan shall be filed with the Court for approval within 21 days of receipt of comments from the ~~Counsel for the Plaintiff Class and United States~~parties.

~~ii.~~iii. The Nunez Remediation Manager may thereafter seek to modify or amend the Remediation Action Plan, including changing the timing of the target period for any particular element of the Remediation Action Plan, upon application to the Court. The Nunez Remediation Manager shall consult with the Commissioner~~and~~, the Monitoring Team, and the parties in advance~~of any application~~ before making any such application to the Court and any such application shall be made on notice to the parties and the Monitoring Team.

- B. Implementation of the Remediation Action Plan must begin immediately upon its approval by the Court. This work shall be undertaken in collaboration with the Commissioner to the greatest extent consistent with efficiency, effectuation of

change, and the fostering of a respectful, sustainably safety-oriented approach to management.

- C. Within 30 days following Court approval of the Remediation Action Plan, the Nunez Remediation Manager, the Monitoring Team, and the Commissioner shall jointly develop an updated DOC organizational chart that includes delineation of the reporting lines of divisions, operational functions, and personnel that are subject to the direct authority of the Nunez Remediation Manager and the Commissioner, respectively, and those where both exercise direct authority over aspects of the divisions, operations, and personnel. In the event of conflict regarding divisions of labor, the Nunez Remediation Manager has ultimate authority.

III. Assessment of Compliance & Transition Back to DOC Control

- ~~A. The Monitor shall file a report within 130 days following~~After the Remediation Action Plan has been approved by the Court, the bi-annual Monitor's Report for each Reporting Period² describing the~~shall also include a description of the efforts the Department and the~~ Nunez Remediation Manager have taken to implement the requirements of the Remediation Action Plan and ~~evaluating an evaluation of~~ the extent to which the ~~Department and Remediation Manager Defendants~~ have complied with ~~the benchmarks of the Remediation Action Plan and~~ each of the Contempt Provisions.

² _____ The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.

~~A. Upon a finding by The reports should also describe the Monitoring Team that one or more of extent to which the Defendants have met the benchmarks of the Remediation Action Plan or the Contempt Provisions is set forth in the Remediation Action Plan.~~

~~B. In the event the Monitor finds Defendants to be in Substantial Compliance, the Court shall determine whether Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with the relevant benchmark(s) and one or more of the Contempt Provision(s) has been achieved.~~

~~C.B. Within 30 days of the Court's finding Provisions during a Reporting Period, the Nunez Remediation Manager shall be obligated to, within 15 days, work with the Commissioner on a Transition Plan that outlines (1: (i) how to sustain the progress achieved, (2ii) the steps the Nunez Remediation Manager will take to prepare the Department to operate independently in the relevant area, and (3iii) the actions the Department will take to maintain the required performance level and sustain compliance. -The Monitor shall be consulted on the Transition Plan.~~

~~D.C. The In the event the Monitor finds Defendants to be in Substantial Compliance with one or more Contempt Provisions for three successive Reporting Periods (i.e. for 18 months), the Court shall determine whether Substantial Compliance with the relevant Contempt Provision(s) has been achieved. The Nunez Remediation Manager's authority over the relevant benchmark of the Remediation Action Plan or Contempt Provision(s) shall be terminated only upon the Monitoring Team's filing of the Monitor's Report Court's finding, after having~~

~~heard from the parties, that reports the benchmark of the Remediation Action Plan or Contempt Provision Defendants have been~~ in Substantial Compliance ~~with the Contempt Provision~~ for ~~the third~~three successive Reporting ~~Period~~Periods.

IV. Powers of the Nunez Remediation Manager. ~~The Beginning on the Acceptance Effective Date, the~~ Nunez Remediation Manager shall have all powers necessary to achieve Substantial Compliance with the Contempt Provisions, including but not limited to:

- A. **General Powers:** The Nunez Remediation Manager shall have the authority to exercise all powers vested by law in the Commissioner to the extent necessary to achieve compliance with the Contempt Provisions. The Nunez Remediation Manager shall have such powers to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contracting, legal, and other operational functions of the DOC to the extent necessary to achieve compliance with the Contempt Provisions.
- B. **Specific Powers:** Without in any way limiting the Nunez Remediation Manager's general powers detailed in Paragraph A above, the Nunez Remediation Manager shall have the authority to exercise the following specific powers to the extent necessary to achieve compliance with the Contempt Provisions, and to the extent vested by law in the Commissioner:
 - i. The Nunez Remediation Manager shall have the authority to enact or change DOC policies, procedures, protocols, systems, and practices ~~implicated by the Court's contempt findings.~~
 - ii. The Nunez Remediation Manager shall have the authority to establish personnel policies and direct personnel actions. The Nunez Remediation

Manager shall have the power to create, modify, abolish, or transfer employee and contractor positions, as well as to recruit, hire, train, terminate, promote, demote, transfer, and evaluate employees and contractors. The Nunez Remediation Manager shall have the authority to assign and deploy DOC staff.

iii. The Nunez Remediation Manager shall have the authority to determine the DOC's needs and positions with respect to contract provisions relevant to remediation of the Contempt Provisions.

iv. The Nunez Remediation Manager shall have the authority to procure and contract for supplies, equipment, tangible goods, and services.

v. The Nunez Remediation Manager shall have the authority to review, investigate, and take disciplinary or other corrective or remedial actions with respect to any violation of DOC policies, procedures, and protocols ~~implicated by the Court's contempt findings.~~

~~vi. The Nunez Remediation Manager shall have the authority to hire consultants, or obtain technical assistance, as the Nunez Remediation Manager deems necessary to perform their duties under this Order.~~

~~vii.~~vi. In exercising the powers conferred by this Order, the Nunez Remediation Manager shall use reasonable best efforts to consult and work collaboratively with the Commissioner.

~~viii.~~vii. The Nunez Remediation Manager shall have the authority to delegate any of these powers to the Commissioner and to retract or constrict such

delegations as the Nunez Remediation Manager, in the Nunez Remediation Manager's discretion, deems necessary.

- C. **Commissioner's Role:** The Commissioner shall retain ~~all of~~ Commissioner's exclusive authority in areas that do not implicated by fall within the Contempt Provisions. The Commissioner and the Nunez Remediation Manager are urged and expected to work collaboratively in aid of the goals of compliance with the Nunez Orders and the safe, sustainable management of the jails. The Nunez Remediation Manager shall have the authority to direct the Commissioner to take any steps that the Nunez Remediation Manager deems necessary to comply with the requirements of the Contempt Provisions. It is expected that Defendants, and the Commissioner and DOC leadership, will work closely with the Nunez Remediation Manager to facilitate the Nunez Remediation Manager's ability to perform their duties under this Order. Nothing in this Order shall authorize the Nunez Remediation Manager to take any employment action with respect to the Commissioner.
- D. **Additional Powers:** The Nunez Remediation Manager may, after consultation with the Commissioner ~~and~~, the Monitoring Team, and the parties, petition the Court on notice to the parties and the Monitoring Team for such additional powers as are necessary to achieve compliance with the Contempt Provisions consistent with Section H. The Nunez Remediation Manager shall provide the position (which may include a request to be heard) of the parties and the Monitoring Team in any application to the Court.

E. Authority to Hire Consultants: The Nunez Remediation Manager shall have the authority to hire consultants, or obtain technical assistance, as the Nunez Remediation Manager deems necessary to perform their duties under this Order.

E.F. Access: The Nunez Remediation Manager, including all of their staff and consultants, (collectively referred to as the “Remediation Manager Team”), shall have unlimited access to all records and files (paper or electronic) maintained by the DOC and shall have unlimited access to all DOC facilities, incarcerated people, and DOC staff. This access includes the authority to conduct confidential interviews with DOC staff and incarcerated people. The Nunez Remediation Manager’s Manager Team’s ability to interview DOC staff shall be subject to the employee’s right to representation under certain circumstances as set forth in Section 75 of the New York Civil Service Law and MEO-16. Access to records should not include access to communications between and among DOC personnel and the New York City Law Department that are protected by the attorney-client or work-product privileges.

V. Reporting by the Nunez Remediation Manager.

- A. The Nunez Remediation Manager shall regularly report to and meet with the Court to update the Court regarding the status of efforts to comply with Contempt Provisions, and any specific obstacles or impediments encountered by the Nunez Remediation Manager.
- B. Within 60 days ~~of the date~~ of the Acceptance Effective Date, the Nunez Remediation Manager shall, in consultation with the Monitoring Team, propose for the Court’s approval a specific schedule for the submission of regular written reports to be filed on the public docket.

C. The Nunez Remediation Manager's Reports shall be written with due regard for the privacy interests of individuals in custody and Staff Members; federal, state, and local laws regarding the privacy of such information; and the interests of the Department in protecting against the disclosure of non-public or privileged information. Consistent with such interests and laws, the Nunez Remediation Manager shall redact individual-identifying information from the Remediation Manager's Reports and any documents submitted with those Reports, and shall give due consideration to the Department's requests to redact any other information. To the extent the Nunez Remediation Manager declines to make redactions requested by the Department, the Remediation Manager's Report and any documents submitted with that report shall be submitted to the Court under seal for the Court to consider the Department's proposed redactions before making the Remediation Manager's Report public.

E.D. The Nunez Remediation Manager shall remain in contact with the Court throughout the Nunez Remediation Manager's tenure on an informal, as needed, basis.

~~VI.I.~~ The Remediation Manager Team shall regularly communicate and ~~Role of the Monitor.~~

- ~~A. Consistent with Section IV(B), this order does not alter the role or responsibilities of the Monitor as described in the Nunez Orders, including, but not limited to obligations to assess compliance, provide technical assistance, and regularly report to the Court in accordance with his past practices.~~
- ~~B. Beginning with the 20th Reporting Period (January to June 2025), the Monitor's Reports shall include an assessment of compliance (pursuant to § XX, ¶ 18 of the Consent Judgment) with the select group of provisions (as defined by the Action~~

~~Plan § G, ¶ 5(b)), the Contempt Provisions, and the benchmarks of the Remediation Action Plan (once approved by the Court). The assignment of compliance ratings to all other provisions of the Nunez Orders is suspended through December 31, 2025.~~

~~i.A. Within 90 days after the Court's approval of the Remediation Action Plan, the Monitoring Team shall develop recommendations regarding streamlining and compliance assessment of the Nunez Orders that are not subject to the Remediation Action Plan. The Monitoring Team shall provide these recommendations to the parties for consideration and comment before submitting the recommendations to the Court.~~

~~C.E. The Nunez Remediation Manager shall regularly~~ consult with the Monitoring Team in the same manner as the Defendants are required to consult with the Monitoring Team under the Nunez Orders. Such consultation shall also include consultation on progress that has been made in fulfilling the Remediation Action Plan ~~and~~, how to address ~~potential~~ obstacles to achieving compliance, as well as the strategies to achieve Substantial Compliance with the Contempt Provisions. The Nunez Remediation Manager Team shall ~~obtain~~ cooperate fully with the Monitor's approval Monitor and shall share information that the Monitor needs to the extent it is required by the Contempt Provisions in the Nunez Orders fulfill his role and responsibilities.

VI. Role of the Monitor.

A. This Order does not alter the role or responsibilities of the Monitor as described in the Nunez Orders, including, but not limited to obligations to assess compliance,

provide technical assistance, and to regularly report to the Court in accordance with his past practices.

B. Within 90 days after the Court's approval of the Remediation Action Plan, the Monitoring Team shall develop recommendations regarding streamlining and assessing compliance with the provisions of the Nunez Orders except for the Contempt Provisions. The Monitoring Team shall provide these recommendations to the parties for consideration and comment before submitting the recommendations to the Court.

~~D.C.~~ The Nunez Remediation Manager and the Monitor are independent positions that each report to the Court and are not answerable to each other.

VII. Immunity and Indemnity.

- A. The Nunez Remediation Manager ~~and the Nunez Remediation Manager's staffTeam~~ shall have the status of officers and agents of the Court, and as such shall be vested with the same immunities as vest with the Court.
- B. The Defendants shall indemnify ~~the Nunezany~~ Remediation Manager ~~and their staffTeam member~~ in any litigation brought against ~~the Nuneza~~ Remediation Manager ~~or their staffTeam member~~ regarding activities conducted in the course of ~~the Nunez Remediation Manager'stheir~~ official duties.

VIII. Compensation and Responsibility for Payment.

- A. The City of New York shall bear all reasonable fees, costs, and expenses of the Nunez Remediation Manager, including payments to the Nunez Remediation ~~Manager's staff~~ Manager Team. Such fees, costs, and expenses shall be sufficient to allow the Nunez Remediation Manager to fulfill their duties pursuant to this Order in a reasonable and efficient manner. The Nunez Remediation Manager

may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort. The Nunez Remediation Manager shall submit an invoice for their services, and the services of their consultants and staff, to the City on a monthly basis. Those invoices will include charges for fees, costs, and expenses. Payment on such invoices shall be made within 60 days of receipt. If the City objects to any fees, costs, or expenses as unreasonable, unnecessary, or duplicative, the City shall submit the invoice to the Court for a determination of reasonable fees, costs, and expenses.

- B. Within 30 days of the ~~date of~~ Acceptance Effective Date, the Nunez Remediation Manager shall submit to the Court and the City an initial statement of rates and proposed fees and expenses, which the Nunez Remediation Manager may modify from time to time as appropriate. If the City raises any objection to the statement, the City and the Nunez Remediation Manager shall promptly meet and confer, and any unresolved objections shall jointly be submitted to the Court for resolution.

IX. Duration of the Nunez Remediation Manager's Tenure.

- A. The Nunez Remediation ~~Manager's authority~~ Manager will ~~continue~~ remain in place until the Court determines that Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with all of the Contempt Provisions has been achieved and sustained for ~~a period of 12~~ three successive Reporting Periods (i.e., 18 months consistent with Section III.).
- B. Nothing in this Order affects the terms of the Consent Judgment or other Nunez Orders, which remain in full force and effect. In the event the Nunez

Remediation Manager's tenure terminates, the Consent Judgment and other Nunez Orders will remain in full force and effect until the Court makes a finding that the Defendants have achieved Substantial Compliance with the provisions of the Consent Judgment and have maintained Substantial Compliance for a period of twenty-four (24) months, as set forth in Section XXI, ¶ 5 of the Consent Judgment.

X. Cooperation.

- A. The Defendants, and all agents or persons within the employ of the Defendants (including contract employees), and all persons in concert and in participation with them, the ~~Monitor~~Monitoring Team, and all counsel in this action, shall fully cooperate with the Nunez Remediation Manager Team in the discharge of the Nunez Remediation Manager's duties under this Order, ~~and~~ The Defendants shall promptly respond to all inquiries and requests from the Remediation Manager Team related to compliance with the Nunez Orders. To the extent that a party asserts that information requested by the Remediation Manager Team is privileged, or is unrelated to the proper duties of the Nunez Remediation Manager, they may assert such objections to the Nunez Remediation Manager. To the extent necessary to resolve such objections, the Nunez Remediation Manager may seek appropriate relief from the Court.

XI. Other Terms.

- A. If at any point the Nunez Remediation Manager determines that ~~they need~~the Department needs additional funding to fulfill the Remediation Action Plan that is not budgeted for that fiscal year, the Nunez Remediation Manager shall immediately consult the Commissioner before notifying the City Council's

Finance Division and the Mayor's Office of Management and Budget of the specific purpose and the amount of funds needed. If the issue is not timely resolved, the Nunez Remediation Manager or any party may request a hearing before the Court.

- B. The Nunez Remediation Manager shall make reasonable efforts to exercise their authority in a manner consistent with applicable state and local laws, regulations, and contracts. However, in the event the Nunez Remediation Manager determines that those laws, regulations, or contracts impede the Nunez Remediation Manager from carrying out their duties under this Order and achieving compliance with the Contempt Provisions, the Nunez Remediation Manager may, after consultation with the Commissioner, the Monitoring Team, and the parties, petition the Court on notice to the parties to waive any legal or contractual requirement that is causing the impediment or seek other appropriate relief on notice to the parties and the Monitoring Team.
- C. The Nunez Remediation Manager ~~and their staff~~Team shall have the authority to communicate ex parte and confidentially with each party and each party's legal representatives, as well as with the Court and the Monitoring Team.
- D. Absent leave of the Court, the Nunez Remediation Manager ~~and their staff~~Team may not testify in any litigation or proceeding other than this case, including public hearings or other proceedings before the New York City Council, the Board of Correction, or the New York State legislature, with regard to any act or omission of the DOC or any of the DOC's agents, representatives, or employees related to the Nunez Orders. ~~The Nunez Remediation Manager and their staff~~

~~may not give interviews or make public statements regarding their work under the Nunez Orders, other than reports filed on the docket, without the permission of the Court.~~

- E. Unless such conflict is waived in writing by the ~~Parties,~~parties, no member of the Nunez Remediation Manager and their staffTeam may~~not~~ accept employment or provide consulting services that present a conflict of interest with their responsibilities under this Order, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the DOC or the DOC's agents, representatives, or employees.
- F. The Nunez Remediation Manager is an agent of the Court and is not a federal, State, or local agency or an agent thereof.
- G. If at any time the Nunez Remediation Manager position becomes vacant, the parties and the Monitor shall confer on potential replacements and the parties shall meet and confer and endeavor to jointly provide the ~~court~~Court with no more than four candidates to replace the Nunez Remediation Manager. The parties shall submit their recommendations, with supporting materials, to the Court confidentially. Once the Court has received the parties' recommendations, the Court shall review the proposed candidates, and any further candidates the Court, in its discretion, may deem appropriate for consideration, and select the new Nunez Remediation Manager.

XII. Effective Date.

- A. This Order Appointing the Nunez Remediation Manager shall become effective following the appointed Nunez Remediation Manager's confirmation of their

~~Acceptance~~acceptance of the powers, responsibilities and duties imposed by this Order by signing a copy of this Order below and returning the countersigned copy to the Court by email addressed to SwainNYSDCorresp@nysd.uscourts.gov. The Order shall be effective on the Acceptance Effective Date.

SO ORDERED this ____ day of _____, 2025

LAURA TAYLOR SWAIN
CHIEF UNITED STATES DISTRICT JUDGE

ACCEPTED

(Signature)

(Typed or printed name)

Date: _____

EXHIBIT B

APPENDIX B: ORDER APPOINTING NUNEZ REMEDIATION MANAGER

The Court intends to enter an order in substantially the following form upon the selection of the Nunez Remediation Manager. Any objections to the language of the order must be discussed with the Monitoring Team and filed in writing by 12:00 p.m. on June 27, 2025.

WHEREAS, on October 22, 2015, this Court entered the Consent Judgment (docket entry no. 249) in this matter to correct the violation of the constitutional rights of people incarcerated in jails operated by the New York City Department of Correction (“DOC” or “the Department”)¹;

WHEREAS, the Consent Judgment required the Defendants to take specific actions to remedy a pattern and practice of violence by staff against incarcerated individuals, and to develop and implement new practices, policies, and procedures to reduce violence in the jails and ensure the safety and well-being of incarcerated individuals;

WHEREAS, Section XXII, ¶ 1 of the Consent Judgment provides: “The Parties stipulate and agree, and the Court finds, that this Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a). The Parties further stipulate and agree, and the Court finds, that the prospective relief in this Agreement is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the Parties agree and represent that the Agreement complies with the provisions of 18 U.S.C. § 3626(a)”;

¹ The Plaintiff Class is defined as “all present and future inmates confined in jails operated by the Department, except for the Elmhurst and Bellevue Prison Wards.” (Docket entry no. 249 ¶ II.2.)

WHEREAS, on August 14, 2020, the Court entered a Remedial Consent Order Addressing Non-Compliance (the “First Remedial Order,” docket entry no. 350) that included several remedial measures designed to address the repeated findings of the Nunez Independent Monitor (the “Monitor” or “Monitoring Team,” which shall each refer to the Monitor and the members of the Monitoring Team) that the Defendants were in non-compliance with core provisions of the Consent Judgment, including with Section IV, ¶ 1 (Implementation of Use of Force Directive); Section VII, ¶ 1 (Thorough, Timely, Objective Investigations); Section VII, ¶ 7 (Timeliness of Preliminary Reviews); Section VII, ¶ 9 (a) (Timeliness of Full ID Investigations); Section VIII, ¶ 1 (Appropriate and Meaningful Staff Discipline); Section XV, ¶ 1 (Inmates Under the Age of 19, Protection from Harm); and Section XV, ¶ 12 (Inmates Under the Age of 19, Direct Supervision);

WHEREAS, in his Eleventh Report filed on May 11, 2021 (docket entry no. 368), the Monitor reported that the Defendants were not in compliance with numerous provisions of the First Remedial Order, including Section A, ¶ 2 (Facility Leadership Responsibilities), Section A, ¶ 3 (Revised De-escalation Protocol), Section A, ¶ 6 (Facility Emergency Response Teams), Section D, ¶ 1 (Consistent Staffing), Section D, ¶ 2 (ii) (Tracking of Incentives and Consequences), and Section D, ¶ 3 (Direct Supervision);

WHEREAS, the Court entered a Second Remedial Order on September 29, 2021 (docket entry no. 398), and a Third Remedial Order on November 22, 2021 (docket entry no. 424);

WHEREAS, after the three Remedial Orders failed to result in meaningful improvements, the Defendants developed an Action Plan, supported by the Monitor, that was designed to address Defendants’ overall lack of progress toward compliance by focusing on four foundational areas without which reform could not proceed—security practices, supervision and

leadership, staffing practices, and accountability—and the Court entered and So Ordered the Action Plan on June 14, 2022 (docket entry no. 465);

WHEREAS, the Court found that the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each compliant with the provisions of 18 U.S.C. § 3626(a) and were necessary to correct the violations of federal rights as alleged by the United States and the Plaintiff Class;

WHEREAS, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan were each entered to address the ongoing non-compliance with the Consent Judgment and to achieve its primary goal: to protect the constitutional rights of incarcerated people and substantially reduce the level of violence in the jails;

WHEREAS, the Consent Judgment, the First Remedial Order, the Second Remedial Order, the Third Remedial Order, and the Action Plan are hereafter collectively referred to as “the Nunez Orders”;

WHEREAS, more than a year after the Action Plan was entered, the Monitor found in his July 10, 2023 Special Report (docket entry no. 557) that the Defendants had not made substantial and demonstrable progress in implementing the reforms, initiatives, plans, systems, and practices outlined in the Action Plan, and that there had not been a substantial reduction in the risk of harm facing incarcerated individuals and DOC staff;

WHEREAS, on November 17, 2023, the Plaintiff Class and the United States filed a Motion for Contempt and Appointment of Receiver;

WHEREAS, on November 27, 2024, this Court issued its factual findings and decision granting Plaintiffs’ Motion for Contempt and found that Defendants (i) are in contempt of eighteen core provisions of the Nunez Orders (the “Contempt Provisions”) “that have gone

unheeded for years and have highlighted failures inextricably linked to the Department's historic pattern of excessive use of force against persons in custody" (docket entry no. 803, at 52);

(ii) "have not demonstrated diligent attempts to comply with the Contempt Provisions in a reasonable manner" (docket entry no. 803, at 52); and (iii) have repeatedly and consistently failed to remediate the violations of the federal rights of incarcerated people that necessitated entry of the Consent Judgment (docket entry no. 803, at 52, 54-56);

WHEREAS, this Court found that the "use of force rate and other rates of violence, self-harm, and deaths in custody are demonstrably worse than when the Consent Judgment went into effect in 2015" and the "unsafe and dangerous conditions in the jails...have become normalized despite the fact that they are clearly abnormal and unacceptable" (docket entry no. 803, at 11);

WHEREAS, this Court found that "for nine years, Defendants made only half-hearted, inconsistent efforts to comply with Court orders" (docket entry no. 803, at 50);

WHEREAS, this Court found that "[t]he record in this case makes clear that those who live and work in the jails on Rikers Island are faced with grave and immediate threats of danger, as well as actual harm, on a daily basis as a direct result of Defendants' lack of diligence, and that the remedial efforts thus far undertaken by the Court, the Monitoring Team, and the parties have not been effective to alleviate this danger" (docket entry no. 803, at 55);

WHEREAS, this Court found that "Defendants' ongoing failure to comply" requires a remedy that addresses the "insufficiently resourced leadership; a lack of continuity in management; failures of supervision and cooperation between supervisors and line officers; a lack of skill or imagination to create and implement transformative plans; and an unwillingness or inability to cooperate with the Monitoring Team recommendations to accomplish the changes necessary" (docket entry no. 803, at 54);

WHEREAS, this Court found that “[t]he last nine years also leave no doubt that continued insistence on compliance with the Court’s orders by persons answerable principally to political authorities would lead only to confrontation and delay; that the current management structure and staffing are insufficient to turn the tide within a reasonable period; that Defendants have consistently fallen short of the requisite compliance with Court orders for years, at times under circumstances that suggest bad faith; and that enormous resources—that the City devotes to a system that is at the same time overstaffed and underserved—are not being deployed effectively” (docket entry no. 803, at 55-56); and

WHEREAS, as required by 18 U.S.C. § 3626(a), the prospective relief in this Order is narrowly drawn, extends no further than is necessary to correct the violations of federal rights as alleged by the Plaintiff Class and the United States, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. Appointment of Nunez Remediation Manager and Nunez Remediation Manager’s Duties

- A. [NAME] is hereby appointed to serve in this case as Nunez Remediation Manager, with the responsibility and authority to take all necessary steps to promptly achieve Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with the Contempt Provisions.
- B. The Nunez Remediation Manager’s work shall be guided by the “Remediation Action Plan,” a work plan that includes specific and concrete steps and milestones

designed to achieve Substantial Compliance with the Contempt Provisions. The Remediation Action Plan is detailed in Section II.A.

- C. The Nunez Remediation Manager shall provide leadership and executive management with the goal of developing and implementing a sustainable system that protects the constitutional rights of incarcerated people.
- D. The Nunez Remediation Manager shall be answerable only to the Court.
- E. The Nunez Remediation Manager shall maintain an office within Department headquarters or on Rikers Island and shall be onsite with sufficient frequency, regularity, and duration to carry out their duties.

II. Development and Implementation of the Remediation Action Plan

- A. The Nunez Remediation Manager, in consultation with the Commissioner and the Monitoring Team, shall develop a Remediation Action Plan to be executed within the initial two-year period following the Court's approval of the Remediation Action Plan. Nothing in this provision relates to the tenure of the Nunez Remediation Manager, or the duration of their authority with respect to a specific Contempt Provision, which is governed exclusively by Sections III.C and IX.A.

- i. The Remediation Action Plan shall:

- 1. include specific and concrete steps that are necessary to achieve Substantial Compliance with the Contempt Provisions (“Benchmarks”). The Benchmarks shall be organized into priorities with specified milestones to be achieved within 12-month periods, beginning with the safety-related areas and actions that are most urgently in need of attention;

2. include transformative and sustainable initiatives which shall include any positive initiatives currently underway that must be sustained or enhanced; and
 3. address recommendations from the Monitoring Team to support advancing compliance with the Contempt Provisions.
- ii. The Remediation Action Plan shall be provided to the parties in draft form for comment within 90 days of the date of the Nunez Remediation Manager's acceptance of this appointment ("Acceptance Effective Date"). The parties shall provide the Nunez Remediation Manager, the Monitoring Team, and the other parties with their comments on the Remediation Action Plan, if any, within 30 days of receipt. The Nunez Remediation Manager, in consultation with the Commissioner and Monitoring Team, shall consider the comments from the parties and make any changes deemed necessary before filing the final proposed Remediation Action Plan with the Court. The final Remediation Action Plan shall be filed with the Court for approval within 21 days of receipt of comments from the parties.
- iii. The Nunez Remediation Manager may thereafter seek to modify or amend the Remediation Action Plan, including changing the timing of the target period for any particular element of the Remediation Action Plan, upon application to the Court. The Nunez Remediation Manager shall consult with the Commissioner, the Monitoring Team, and the parties in advance

before making any such application to the Court and any such application shall be made on notice to the parties and the Monitoring Team.

- B. Implementation of the Remediation Action Plan must begin immediately upon its approval by the Court. This work shall be undertaken in collaboration with the Commissioner to the greatest extent consistent with efficiency, effectuation of change, and the fostering of a respectful, sustainably safety-oriented approach to management.
- C. Within 30 days following Court approval of the Remediation Action Plan, the Nunez Remediation Manager, the Monitoring Team, and the Commissioner shall jointly develop an updated DOC organizational chart that includes delineation of the reporting lines of divisions, operational functions, and personnel that are subject to the direct authority of the Nunez Remediation Manager and the Commissioner, respectively, and those where both exercise direct authority over aspects of the divisions, operations, and personnel. In the event of conflict regarding divisions of labor, the Nunez Remediation Manager has ultimate authority.

III. Assessment of Compliance & Transition Back to DOC Control

- A. After the Remediation Action Plan has been approved by the Court, the bi-annual Monitor's Report for each Reporting Period² shall also include a description of the efforts the Department and the Nunez Remediation Manager have taken to

² The Reporting Periods in this case cover January 1 to June 30 and July 1 to December 31 of each year.

implement the requirements of the Remediation Action Plan and an evaluation of the extent to which the Defendants have complied with each of the Contempt Provisions. The reports should also describe the extent to which the Defendants have met the benchmarks set forth in the Remediation Action Plan.

- B. In the event the Monitor finds Defendants to be in Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with one or more of the Contempt Provisions during a Reporting Period, the Nunez Remediation Manager shall, within 15 days, work with the Commissioner on a Transition Plan that outlines: (i) how to sustain the progress achieved, (ii) the steps the Nunez Remediation Manager will take to prepare the Department to operate independently in the relevant area, and (iii) the actions the Department will take to maintain the required performance level and sustain compliance. The Monitor shall be consulted on the Transition Plan.
- C. In the event the Monitor finds Defendants to be in Substantial Compliance with one or more Contempt Provisions for three successive Reporting Periods (i.e. for 18 months), the Court shall determine whether Substantial Compliance with the relevant Contempt Provision(s) has been achieved. The Nunez Remediation Manager's authority over the relevant Contempt Provision(s) shall be terminated only upon the Court's finding, after having heard from the parties, that Defendants have been in Substantial Compliance with the Contempt Provision for three successive Reporting Periods.

IV. Powers of the Nunez Remediation Manager. Beginning on the Acceptance Effective Date, the Nunez Remediation Manager shall have all powers necessary to achieve Substantial Compliance with the Contempt Provisions, including but not limited to:

- A. **General Powers:** The Nunez Remediation Manager shall have the authority to exercise all powers vested by law in the Commissioner to the extent necessary to achieve compliance with the Contempt Provisions. The Nunez Remediation Manager shall have such powers to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contracting, legal, and other operational functions of the DOC to the extent necessary to achieve compliance with the Contempt Provisions.
- B. **Specific Powers:** Without in any way limiting the Nunez Remediation Manager's general powers detailed in Paragraph A above, the Nunez Remediation Manager shall have the authority to exercise the following specific powers to the extent necessary to achieve compliance with the Contempt Provisions, and to the extent vested by law in the Commissioner:
 - i. The Nunez Remediation Manager shall have the authority to enact or change DOC policies, procedures, protocols, systems, and practices.
 - ii. The Nunez Remediation Manager shall have the authority to establish personnel policies and direct personnel actions. The Nunez Remediation Manager shall have the power to create, modify, abolish, or transfer employee and contractor positions, as well as to recruit, hire, train, terminate, promote, demote, transfer, and evaluate employees and

contractors. The Nunez Remediation Manager shall have the authority to assign and deploy DOC staff.

- iii. The Nunez Remediation Manager shall have the authority to determine the DOC's needs and positions with respect to contract provisions relevant to remediation of the Contempt Provisions.
- iv. The Nunez Remediation Manager shall have the authority to procure and contract for supplies, equipment, tangible goods, and services.
- v. The Nunez Remediation Manager shall have the authority to review, investigate, and take disciplinary or other corrective or remedial actions with respect to any violation of DOC policies, procedures, and protocols.
- vi. In exercising the powers conferred by this Order, the Nunez Remediation Manager shall use reasonable best efforts to consult and work collaboratively with the Commissioner.
- vii. The Nunez Remediation Manager shall have the authority to delegate any of these powers to the Commissioner and to retract or constrict such delegations as the Nunez Remediation Manager, in the Nunez Remediation Manager's discretion, deems necessary.

C. **Commissioner's Role:** The Commissioner shall retain exclusive authority in areas that do not fall within the Contempt Provisions. The Commissioner and the Nunez Remediation Manager are urged and expected to work collaboratively in aid of the goals of compliance with the Nunez Orders and the safe, sustainable management of the jails. The Nunez Remediation Manager shall have the authority to direct the Commissioner to take any steps that the Nunez

Remediation Manager deems necessary to comply with the requirements of the Contempt Provisions. It is expected that Defendants, and the Commissioner and DOC leadership, will work closely with the Nunez Remediation Manager to facilitate the Nunez Remediation Manager's ability to perform their duties under this Order. Nothing in this Order shall authorize the Nunez Remediation Manager to take any employment action with respect to the Commissioner.

- D. **Additional Powers:** The Nunez Remediation Manager may, after consultation with the Commissioner, the Monitoring Team, and the parties, petition the Court on notice to the parties and the Monitoring Team for such additional powers as are necessary to achieve compliance with the Contempt Provisions. The Nunez Remediation Manager shall provide the position (which may include a request to be heard) of the parties and the Monitoring Team in any application to the Court.
- E. **Authority to Hire Consultants:** The Nunez Remediation Manager shall have the authority to hire consultants, or obtain technical assistance, as the Nunez Remediation Manager deems necessary to perform their duties under this Order.
- F. **Access:** The Nunez Remediation Manager, including all of their staff and consultants (collectively referred to as the "Remediation Manager Team"), shall have unlimited access to all records and files (paper or electronic) maintained by the DOC and shall have unlimited access to all DOC facilities, incarcerated people, and DOC staff. This access includes the authority to conduct confidential interviews with DOC staff and incarcerated people. The Remediation Manager Team's ability to interview DOC staff shall be subject to the employee's right to representation under certain circumstances as set forth in Section 75 of the New

York Civil Service Law and MEO-16. Access to records should not include access to communications between and among DOC personnel and the New York City Law Department that are protected by the attorney-client or work-product privileges.

V. Reporting by the Nunez Remediation Manager.

- A. The Nunez Remediation Manager shall regularly report to and meet with the Court to update the Court regarding the status of efforts to comply with Contempt Provisions, and any specific obstacles or impediments encountered by the Nunez Remediation Manager.
- B. Within 60 days of the Acceptance Effective Date, the Nunez Remediation Manager shall, in consultation with the Monitoring Team, propose for the Court's approval a specific schedule for the submission of regular written reports to be filed on the public docket.
- C. The Nunez Remediation Manager's Reports shall be written with due regard for the privacy interests of individuals in custody and Staff Members; federal, state, and local laws regarding the privacy of such information; and the interests of the Department in protecting against the disclosure of non-public or privileged information. Consistent with such interests and laws, the Nunez Remediation Manager shall redact individual-identifying information from the Remediation Manager's Reports and any documents submitted with those Reports, and shall give due consideration to the Department's requests to redact any other information. To the extent the Nunez Remediation Manager declines to make redactions requested by the Department, the Remediation Manager's Report and any documents submitted with that report shall be submitted to the Court under

seal for the Court to consider the Department's proposed redactions before making the Remediation Manager's Report public.

- D. The Nunez Remediation Manager shall remain in contact with the Court throughout the Nunez Remediation Manager's tenure on an informal, as needed, basis.
- E. The Remediation Manager Team shall regularly communicate and consult with the Monitoring Team in the same manner as the Defendants are required to consult with the Monitoring Team under the Nunez Orders. Such consultation shall also include consultation on progress that has been made in fulfilling the Remediation Action Plan, how to address obstacles to achieving compliance, as well as the strategies to achieve Substantial Compliance with the Contempt Provisions. The Remediation Manager Team shall cooperate fully with the Monitor and shall share information that the Monitor needs to fulfill his role and responsibilities.

VI. Role of the Monitor.

- A. This Order does not alter the role or responsibilities of the Monitor as described in the Nunez Orders, including, but not limited to obligations to assess compliance, provide technical assistance, and to regularly report to the Court in accordance with his past practices.
- B. Within 90 days after the Court's approval of the Remediation Action Plan, the Monitoring Team shall develop recommendations regarding streamlining and assessing compliance with the provisions of the Nunez Orders except for the Contempt Provisions. The Monitoring Team shall provide these

recommendations to the parties for consideration and comment before submitting the recommendations to the Court.

- C. The Nunez Remediation Manager and the Monitor are independent positions that each report to the Court and are not answerable to each other.

VII. Immunity and Indemnity.

- A. The Remediation Manager Team shall have the status of officers and agents of the Court, and as such shall be vested with the same immunities as vest with the Court.
- B. The Defendants shall indemnify any Remediation Manager Team member in any litigation brought against a Remediation Manager Team member regarding activities conducted in the course of their official duties.

VIII. Compensation and Responsibility for Payment.

- A. The City of New York shall bear all reasonable fees, costs, and expenses of the Nunez Remediation Manager, including payments to the Remediation Manager Team. Such fees, costs, and expenses shall be sufficient to allow the Nunez Remediation Manager to fulfill their duties pursuant to this Order in a reasonable and efficient manner. The Nunez Remediation Manager may hire or consult with such additional qualified staff as is reasonably necessary to fulfill their duties pursuant to this Order without duplication of effort. The Nunez Remediation Manager shall submit an invoice for their services, and the services of their consultants and staff, to the City on a monthly basis. Those invoices will include charges for fees, costs, and expenses. Payment on such invoices shall be made within 60 days of receipt. If the City objects to any fees, costs, or expenses as

unreasonable, unnecessary, or duplicative, the City shall submit the invoice to the Court for a determination of reasonable fees, costs, and expenses.

- B. Within 30 days of the Acceptance Effective Date, the Nunez Remediation Manager shall submit to the Court and the City an initial statement of rates and proposed fees and expenses, which the Nunez Remediation Manager may modify from time to time as appropriate. If the City raises any objection to the statement, the City and the Nunez Remediation Manager shall promptly meet and confer, and any unresolved objections shall jointly be submitted to the Court for resolution.

IX. Duration of the Nunez Remediation Manager's Tenure.

- A. The Nunez Remediation Manager will remain in place until the Court determines that Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with all of the Contempt Provisions has been achieved and sustained for three successive Reporting Periods (i.e., 18 months).
- B. Nothing in this Order affects the terms of the Consent Judgment or other Nunez Orders, which remain in full force and effect. In the event the Nunez Remediation Manager's tenure terminates, the Consent Judgment and other Nunez Orders will remain in full force and effect until the Court makes a finding that the Defendants have achieved Substantial Compliance with the provisions of the Consent Judgment and have maintained Substantial Compliance for a period of twenty-four (24) months, as set forth in Section XXI, ¶ 5 of the Consent Judgment.

X. Cooperation.

A. The Defendants, and all agents or persons within the employ of the Defendants (including contract employees), and all persons in concert and in participation with them, the Monitoring Team, and all counsel in this action, shall fully cooperate with the Remediation Manager Team in the discharge of the Nunez Remediation Manager's duties under this Order. The Defendants shall promptly respond to all inquiries and requests from the Remediation Manager Team related to compliance with the Nunez Orders. To the extent that a party asserts that information requested by the Remediation Manager Team is privileged, or is unrelated to the proper duties of the Nunez Remediation Manager, they may assert such objections to the Nunez Remediation Manager. To the extent necessary to resolve such objections, the Nunez Remediation Manager may seek appropriate relief from the Court.

XI. Other Terms.

- A. If at any point the Nunez Remediation Manager determines that the Department needs additional funding to fulfill the Remediation Action Plan that is not budgeted for that fiscal year, the Nunez Remediation Manager shall immediately consult the Commissioner before notifying the City Council's Finance Division and the Mayor's Office of Management and Budget of the specific purpose and the amount of funds needed. If the issue is not timely resolved, the Nunez Remediation Manager or any party may request a hearing before the Court.
- B. The Nunez Remediation Manager shall make reasonable efforts to exercise their authority in a manner consistent with applicable state and local laws, regulations, and contracts. However, in the event the Nunez Remediation Manager

determines that those laws, regulations, or contracts impede the Nunez Remediation Manager from carrying out their duties under this Order and achieving compliance with the Contempt Provisions, the Nunez Remediation Manager may, after consultation with the Commissioner, the Monitoring Team, and the parties, petition the Court on notice to the parties to waive any legal or contractual requirement that is causing the impediment or seek other appropriate relief on notice to the parties and the Monitoring Team.

- C. The Remediation Manager Team shall have the authority to communicate ex parte and confidentially with each party and each party's legal representatives, as well as with the Court and the Monitoring Team.
- D. Absent leave of the Court, the Remediation Manager Team may not testify in any litigation or proceeding other than this case, including public hearings or other proceedings before the New York City Council, the Board of Correction, or the New York State legislature, with regard to any act or omission of the DOC or any of the DOC's agents, representatives, or employees related to the Nunez Orders.
- E. Unless such conflict is waived in writing by the parties, no member of the Remediation Manager Team may accept employment or provide consulting services that present a conflict of interest with their responsibilities under this Order, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the DOC or the DOC's agents, representatives, or employees.

- F. The Nunez Remediation Manager is an agent of the Court and is not a federal, State, or local agency or an agent thereof.
- G. If at any time the Nunez Remediation Manager position becomes vacant, the parties and the Monitor shall confer on potential replacements and the parties shall meet and confer and endeavor to jointly provide the Court with no more than four candidates to replace the Nunez Remediation Manager. The parties shall submit their recommendations, with supporting materials, to the Court confidentially. Once the Court has received the parties' recommendations, the Court shall review the proposed candidates, and any further candidates the Court, in its discretion, may deem appropriate for consideration, and select the new Nunez Remediation Manager.

XII. Effective Date.

- A. This Order Appointing the Nunez Remediation Manager shall become effective following the appointed Nunez Remediation Manager's confirmation of their acceptance of the powers, responsibilities and duties imposed by this Order by signing a copy of this Order below and returning the countersigned copy to the Court by email addressed to SwainNYSDCorresp@nysd.uscourts.gov. The Order shall be effective on the Acceptance Effective Date.

SO ORDERED this ____ day of _____, 2025

LAURA TAYLOR SWAIN
CHIEF UNITED STATES DISTRICT JUDGE

ACCEPTED

(Signature)

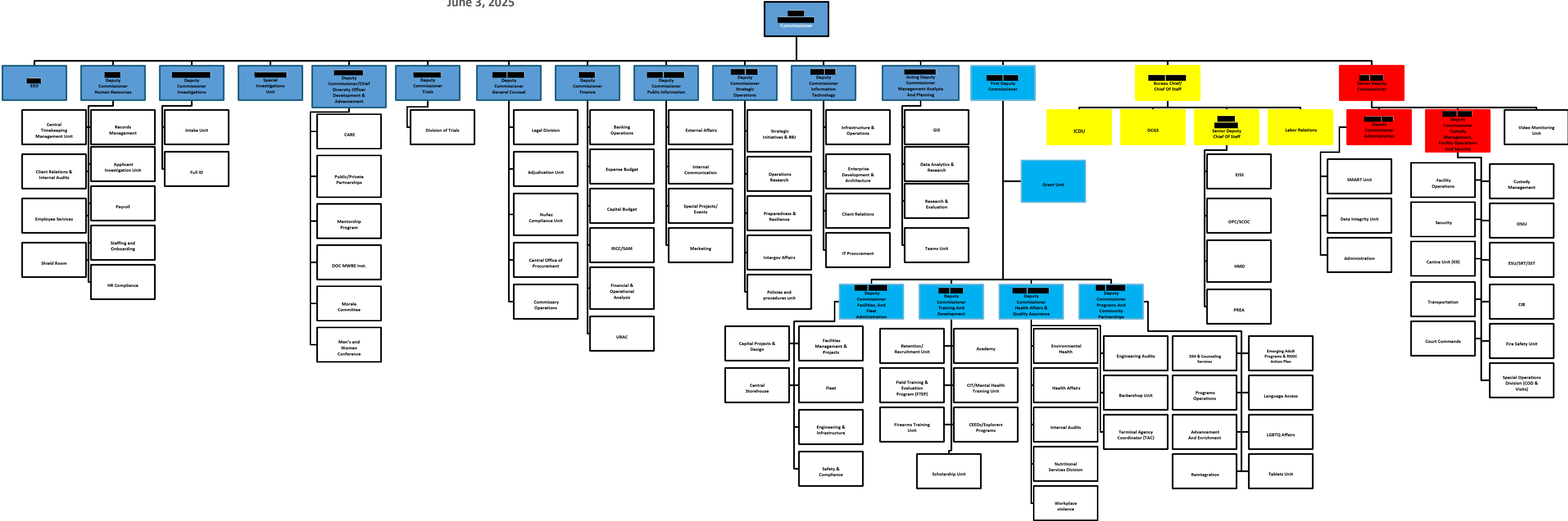
(Typed or printed name)

Date: _____

EXHIBIT C

DEPARTMENT OF
CORRECTION

June 3, 2025



APPENDIX D

Updated Summary of Nine Receivership Cases

(Originally included in the Monitor's January 24, 2025 Report)

ALABAMA	
Case	Newman, et al. v. State of Alabama, et al., 2:72-cv-03501 (M.D. Ala.); Pugh, et al. v. Bennett, et al., 2:74-cv-00057 (M.D. Ala.); James, et al. v. Bennett, et al., 2:74-cv-00203 (M.D. Ala.)
Status	Closed
Description of the System	
Description of the System	Entire State System (with multiple facilities but exact number unknown)
Average Daily Population	Early 1970s pre-Receiver: 3,698; ⁱ December 1988 at end of receivership: 12,440 ⁱⁱ
Description of the Case	Three cases re: Alabama prisons were combined into one, with the Court finding that the state prison system was overcrowded, the PIC classification system was failing, those with mental illness were not given access to mental healthcare, general medical care was inadequate, living conditions were decrepit, and there was a general failure to protect persons in custody ("PIC"s) from violence or provide meaningful work or education. ⁱⁱⁱ In 1976, the state legislature created a Legislative Prison Task Force to monitor the system, which found lack of compliance was due primarily to inadequate and inefficient management. ^{iv} In 1979, the Governor of the state petitioned to be the Receiver, and the Court appointed him as the Receiver. ^v The Governor remained the Receiver until a Prison Implementation Committee was established in 1983 to monitor and work alongside government officials to implement the Court's orders. ^{vi}
Description of Receivership	
Initiated	February 2, 1979 ^{vii}
Completed	Approximately January 1983. It appears the receivership ended when the Prison Implementation Committee went into effect. ^{viii}
Name of Entity	Receiver
Term, per Agreement and/or Conditions for Termination of the Receiver's Authority	At the time of the initial order, it was determined the receivership would last "[F]or a period of not less than one year, unless and until the receiver requests to be relieved or the Court orders a termination of the receivership before a year elapses" ^{ix} However, it continued until a Prison Implementation Committee was created and, "The Receiver, the Commissioner, the United States and the plaintiffs agree[d] that [it was] an appropriate time to institute a different and more effective procedure to assure continuing improvements in the prison system while at the same time extracting the court from the day to day superintendence of the prison system." ^x
Actual Duration	Nearly 4 years, followed by an ongoing Prison Implementation Committee that continues to monitor compliance
Appointed by Court or	Appointed ^{xi}

ALABAMA	
Negotiated by Parties	
Description of Appointee	The Receiver in this case was the state’s elected Governor, who petitioned to be the Receiver. ^{xii}
Authority and Powers	Receiver to have “all of its functions, duties, powers and authority to manage, supervise and control all penal and correctional institutions in the State of Alabama and all funds now held or controlled and all other duties and functions imposed upon the said Board under the laws of Alabama, including without limitation the power to hire, discharge, suspend and supervise the Commissioner of Corrections, deputy commissioners, and any other personnel employed by the Board.” ^{xiii}
Monitor, Special Master or Advisory Board	None
Role of the Local Government	The court ordered the Alabama Board of Corrections to transfer all their control and management duties to the governor, but the Commissioner of Corrections was kept on though subject to the hiring/firing of the Receiver. ^{xiv}
Transition Back to Local Government	In 1983, the Receiver and Parties agreed to the creation of a Prison Implementation Committee that was tasked with working with the Governor (who had been serving as the Receiver) and the Commissioner of Corrections. ^{xv} “All the members of the Prison Implementation Committee had previous involvement in this and other cases as lawyers, the Chairman of the original Human Rights Committee, and expert witnesses.” ^{xvi} The Implementation Committee stayed on until 1988, 4 years after the receivership ended, until the Court found that the “broad, remedial objectives” of the prior decrees had been met. ^{xvii}
Current Status of the System	
	Following a multi-year investigation, the U.S. Justice Department sued the State of Alabama in September 2020 for unconstitutional treatment of people in custody in its men’s prisons “because Alabama fails to provide adequate protection from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse, fails to provide safe and sanitary conditions, and subjects prisoners to excessive force at the hands of prison staff.” ^{xviii}

WAYNE COUNTY, MI	
Case	Wayne County Jail Inmates v. Wayne County Sheriff, 71-173217-CZ (Michigan state trial court)
Status	Believed to be ongoing
Description of the System	
Description of the System	1 County jail system
Average Daily Population	1,700 PICs ^{xix}
Description of the Case	In 1971, a complaint was filed alleging “depraved, inhuman and barbaric” conditions at the jail. ^{xx} A monitorship was imposed, and in 1988, a new monitor filed a report describing noncompliance with every provision of the judgment. ^{xxi} In 1989, the judge imposed a receivership. “He cited as the offending areas environmental conditions, mental health, medical care, classification and discipline” due to mismanagement and insufficient funding. ^{xxii} The judge argued some of this was due to conflict between the Sheriff and Chief Executive Officer of the town. ^{xxiii} On emergency leave to appeal, the Supreme Court reversed this Court and stayed the receivership order, but the Michigan Court of Appeals affirmed the decision to impose a Receiver. ^{xxiv} The Michigan Court of Appeals found five problem areas - environmental conditions, mental health, medical care, PIC classification, and discipline. ^{xxv}
Description of Receivership	
Initiated	Approximately July 1989 ^{xxvi}
Completed	Unknown
Name of Entity	Receiver
Term, per Agreement and/or Conditions for Termination of the Receiver’s Authority	“At the conclusion of one year from the effective date of [the Receiver’s] appointment as receiver, the monitors shall prepare a comprehensive report of the defendants’ compliance with the Final Judgment. Upon submission of that report, the Court will consider whether it is appropriate to terminate the receivership and return operational control of the jail to the Sheriff, or, in the absence of compliance, to take such other steps as are necessary to bring about compliance with the Final Judgment.” ^{xxvii} “The appointment of the Wayne County Executive as receiver is nominally for one year. The receivership could be terminated earlier. We fully anticipate that the trial court will not extend the extraordinary remedy beyond the period absolutely necessary for obtaining compliance with the final judgment [...] The cooperation of all interested parties and the prompt filing and evaluation of quarterly reports in accordance with the receivership order should facilitate this goal.” ^{xxviii}
Actual Duration	Unknown
Appointed by Court or Negotiated by Parties	Appointed ^{xxix}

WAYNE COUNTY, MI	
Description of Appointee	Receivership power was given to the Chief Executive Officer for the county instead of an outside expert. “Judge Kaufman chose the Wayne County Executive rather than Vincent Nathan or an ‘outside’ expert, because that appointment intruded least upon the governing structure of Wayne County.” ^{xxx}
Authority and Powers	“As receiver, [the Chief Executive Officer of the county] shall exercise responsibility and control over all operational matters relating to all Wayne County Jail facilities. [The Chief Executive Officer of the county] shall be responsible also for the supervision of all administrative, civilian and security staff of the jail and shall exercise all authority with respect to the operation of the jail that formerly resided in the Sheriff of Wayne County. [The Chief Executive Officer of the county] shall retain responsibility for all fiscal matters relating to the jail that he currently exercises as the County’s Chief Executive Officer.” ^{xxxi}
Monitor, Special Master or Advisory Board	Monitors that existed before the Receiver remained in place ^{xxxii}
Role of the Local Government	Based on the Michigan Appeals Court order, it seems all powers held by the Sheriff were given to the Receiver.
Transition Back to Local Government	Unknown
Current Status of the System	
	In September 2024, Wayne County opened a new “state-of-the-art” jail facility without any bars. Just over a month after the facility had opened, 2 people in custody had died by suicide in mental health units within the new facility. ^{xxxiii} In a 13-month period from 2016-2017, eight people had died by suicide in the old facility, triggering an investigation by the Department of Justice into the treatment of those in custody with disabilities. ^{xxxiv} Additionally in 2024, Wayne County agreed to a \$7 million dollar settlement when a person in custody was beaten to death by another person in custody inside his cell in 2023. ^{xxxv}

WASHINGTON, DC	
Case	Campbell, et al. v. McGruder, et al., 1:71-cv-01462 (D.D.C.); Inmates of D.C. Jail, et al. v. Jackson, et al., 1:75-cv-01668 (D.D.C.)
Status	Closed
Description of the System	
Description of the System	1 City Jail System
Average Daily Population	Population capped at 1,694 PICs by a 1985 Court Order ^{xxxvi}
Description of the Case	In 1971, a lawsuit was filed alleging the PICs in the jail were subject to overcrowding, inadequate food, denial of access to counsel, inadequate medical services, lack of contact with community, and lack of employment programs. In 1985, the Court entered into a remedial stipulation requiring a medical expert to review and make recommendations regarding medical and mental health service delivery. ^{xxxvii} In 1993, the Court appointed a Special Officer to “monitor and report” on the jails’ efforts to meeting its Court Orders. ^{xxxviii} In 1994, the Special Officer reported that there were significant problems with the delivery of healthcare. ^{xxxix} In 1994, the DC DOC agreed to implement remedial plans to address these issues. ^{xl} In 1995, the Special Officer again reported on the refusal to comply with these Court-ordered plans, which led the Court to impose a Receiver tasked with improving medical and mental health services in the jail. ^{xli}
Description of Receivership	
Initiated	Order Entered: July 11, 1995 Receiver starts: August 21, 1995 ^{xlii}
Completed	September 18, 2000 ^{xliii}
Name of Entity	Receiver
Term, per Agreement and/or Conditions for Termination of the Receiver’s Authority	“[T]his receivership shall expire five years from the date that the receiver is appointed, unless the Court finds good cause to extend the appointment. The Court may terminate the receivership prior to the expiration of five years if the Special Officer certifies that the defendants are in compliance with all orders of this Court concerning medical and mental health services at the Jail and that management structures are in place to ensure that the there is no foreseeable risk of future non-compliance.” ^{xliv}
Actual Duration	5 years
Appointed by Court or Negotiated by Parties	Appointed; The Court determined that a Receiver was needed, but the Parties conferred and agreed upon the person appointed to be the Receiver ^{xlv}
Description of Appointee	The Court determined that a Receiver was needed, but the Parties conferred and agreed upon the person appointed to be the Receiver ^{xlvi}
Authority and Powers	Required to correct all deficiencies in the delivery of medical and mental health services and given the following powers: “1. All powers currently held by the Mayor, City Administrator, Director of the Department of Corrections, Assistant Director for Health Services and

WASHINGTON, DC	
	Chief Medical Officer regarding the delivery of medical and mental health services at the District of Columbia Jail. 2. The power to create, modify, abolish or transfer positions; to hire, terminate, promote, transfer, evaluate and set compensation for staff to the extent necessary to obtain compliance with this Court’s orders, the cost of such activity to be borne by the defendants. 3. The power to procure such supplies, equipment or services as are necessary to obtain compliance with this Court’s orders, the cost of such procurement to be borne by the defendants. 4. The power to contract for such services as are necessary to obtain compliance with this Court’s orders, the cost of such contracts to be borne by the defendants. 5. The power to hire such consultants, or to obtain such technical assistance as he or she deems necessary to perform her or his functions, the cost of such consultants or technical assistance to be borne by the defendants. 6. The power to petition the Court for such additional powers as are necessary to obtain compliance with this Court’s orders.”^{xlvi}
Monitor, Special Master or Advisory Board	Special Officer (Court-appointed “to monitor and report”) that existed before the Receiver remained in place ^{xlvi}
Role of the Local Government	The Receiver was only given power over the medical/mental health services.
Transition Back to Local Government	The Receiver contracted with the Center for Correctional Health and Policy Studies, Inc. (CCHPS), a private not-for-profit organization, to provide medical services at the Jail beginning in March 2000. When the receivership ended, the DC DOC continued to contract with CCHPS. In April 2003, the CCHPS contract was extended to a second facility operated by DOC.^{xli} Before concluding the receivership, the Court required the Receiver to ensure “that management structures are in place to ensure that the there is no foreseeable risk of future non-compliance.”^l
Current Status of the System	
	In April 2024, people in custody in DC filed a class action lawsuit alleging unconstitutional treatment due to DC Jail’s failure to provide adequate medical care and indifference to those with serious medical conditions. ^{li}

FULTON COUNTY, GA	
Case	Harper, et al. v. Bennet, et al., 1:04-cv-01416 (N.D. Ga.)
Status	Closed
Description of the System	
Description of the System	1 County Jail System - 1 facility
Average Daily Population	3,299 PICs as of 5/24/2004 ^{lii}
Description of the Case	In 2004, a PIC filed a complaint about the jails alleging they “were confined in unconstitutional living conditions due to an excessive number of inmates in the Jail, an inadequate number of detention officers to ensure their safety, the breakdown of the ventilation, plumbing and laundry systems, and other circumstances.” ^{liii} This was confirmed by a court-appointed expert, who recommended a Receiver. ^{liv} The Parties agreed to a receivership, and an individual was selected and appointed to the Court to serve through the end of the year (2004) when the Sheriff’s (the current custodian of the jail) was replaced via an election. ^{lv} The Receiver served less than 6 months. About a year after the receivership ended, the Parties all entered into a consent decree appointing a monitor that served until 2014. ^{lvi}
Description of Receivership	
Initiated	Order Entered: July 14, 2004 Receiver starts: July 23, 2004 ^{lvii}
Completed	January 1, 2005, when the newly elected sheriff of Fulton County assumed responsibility for the Jail ^{lviii}
Name of Entity	Receiver
Term, per Agreement and/or Conditions for Termination of the Receiver’s Authority	“[T]he current conditions provide a sufficient basis for the Court to appoint a temporary receiver to replace [the County Sherriff] as jail custodian until a new, duly-elected sheriff takes office in January 2005” ^{lix}
Actual Duration	Less than 6 months, followed by an ongoing monitorship
Appointed by Court or Negotiated by Parties	Appointed ^{lx}
Description of Appointee	The Court determined who the Receiver should be, though the Parties consented to the appointment of a Receiver. The Court selected the Receiver because of “[his] outstanding qualifications as an experienced jail administrator with the federal Bureau of Prisons, the glowing recommendations of his references, and the Court's own assessment after conducting a personal interview.” ^{lxi}

FULTON COUNTY, GA	
Authority and Powers	“the Receiver shall have the same powers and responsibilities as the Fulton County Sheriff with respect to the management, supervision, and operation of the jail, including but not limited to the power to hire, fire, and discipline employees and the power to make all budgetary and other decisions ordinarily entrusted to the sheriff.”^{lxii} “Specifically, the Receiver shall make every effort (1) to reduce the inmate population at the Rice Street facility to at or below 2,250; (2) to repair and properly maintain the basic systems at the jail, including especially the plumbing, air conditioning, ventilation, and electrical systems; and (3) to provide a sufficient number of trained and qualified staff to adequately protect the health and safety of both inmates and staff.”^{lxiii} If the county processes or resources are not enough, “then the Receiver may apply to the Court for an appropriate order directing the County and the Board of Commissioners to provide whatever resources or assistance may be needed.”^{lxiv}
Monitor, Special Master or Advisory Board	Court-appointed expert that recommended the receivership continued to conduct bimonthly site visits and consult with the Receiver ^{lxv}
Role of the Local Government	Receiver appointed “to replace” the Sheriff as the custodian of the jail. “[The Sherriff] shall have no further authority with respect to the jail but has agreed to be available for consultation with the Receiver to the extent he deems necessary.” ^{lxvi}
Transition Back to Local Government	The receivership ended as stated in the order, when a new sheriff was elected and resumed control of the facility. However, the litigation continued until a consent order was reached and entered on 12/21/2005. ^{lxvii} This order led to the creation of a monitorship and the setting of compliance provisions. The monitorship eventually ended and the case closed in 2014.
Current Status of the System	
	In November 2024, a U.S. Justice Department investigation concluded that the Fulton County Jails violated constitutional rights because “people incarcerated in the Fulton County Jail suffered harms from pest infestation and malnourishment and were put at substantial risk of serious harm from violence by other incarcerated people — including homicides, stabbings and sexual abuse.” They also found that the Fulton County Jail fails to provide adequate medical or mental health services or special education services to 17-year-olds in custody, and uses solitary confinement in discriminatory ways that expose people to harm. ^{lxviii}

CALIFORNIA (PLATA)	
Case	Plata, et al. v. Newsom, et al., 4:01-cv-01351 (N.D. Cal.)
Status	Ongoing
Description of the System	
Description of the System	Medical Healthcare for the Entire State System - 31 facilities ^{lxxix}
Average Daily Population	166,000 in custody in 2005 when receivership went into effect ^{lxxx} 90,744 as of August 2024 ^{lxxxi}
Description of the Case	In 2001, the initial complaint alleged the state violated the Eighth Amendment by providing inadequate medical care in the state's prisons. The state agreed in 2002 to take a series of actions to address the deficiencies, but in 2006, the Court found the state had not fulfilled its orders and imposed a Receiver to "reverse the entrenched paralysis and dysfunction and bring the delivery of health care in California prisons up to constitutional standards." ^{lxxxii} The first Receiver analyzed the system to determine what reforms were needed, and the second Receiver has been implementing them.
Description of Receivership	
Initiated	Order Entered: February 14, 2006 Receiver starts: April 17, 2006 ^{lxxxiii}
Completed	Ongoing
Name of Entity	Receiver
Term, per Agreement and/or Conditions for Termination of the Receiver's Authority	"The Receivership shall remain in place no longer than the conditions which justify it make necessary, and shall cease as soon as the Court is satisfied, and so finds in consultation with the Receiver, that Defendants have the will, capacity, and leadership to maintain a system of providing constitutionally adequate medical health care services to class members. The Court expects that as the Receivership progresses, the Receiver will attempt to engage Defendants in assuming responsibility over portions of the system that are within Defendants' demonstrated ability to perform, so that the ultimate transfer of power back to the State will be transitional." ^{lxxxiv}
Actual Duration	18 years and going (on November 25, 2024, the Court appointed the advisory board in this case to a term through December 31, 2027 ^{lxxxv})
Appointed by Court or Negotiated by Parties	Appointed ^{lxxxvi}
Description of Appointee	The Receiver position has been held by 2 different people: First Receiver served February 14, 2006-January 23, 2008 Second Receiver has been in place January 23, 2008-present The Court explained that a new Receiver was appointed because "The Receivership has reached a critical juncture at which it must now move from a primarily investigative and evaluative phase, during which the

CALIFORNIA (PLATA)	
	Receivership analyzed the current system to determine what reforms were necessary and worked to create the infrastructure required to effectuate such reforms, into an implementation phase, during which the Receivership must translate the conceptualized reforms into reality... After careful reflection and deliberation, the Court has concluded that such work would best be accomplished by appointing a new Receiver who brings a different set of strengths appropriate to guiding the Receivership through its second phase.”^{lxxvii} The first Receiver had previously worked as an executive director of health & hospital systems and was selected after the Court conducted a “national search.”^{lxxviii} The second Receiver was a legal expert and professor who had worked in various branches in government, including direct experience with the reform of troubled government agencies.^{lxxix}
Authority and Powers	“The Receiver shall provide leadership and executive management of the California prison medical health care delivery system with the goals of restructuring day-to-day operations and developing, implementing, and validating a new, sustainable system that provides constitutionally adequate medical care to all class members as soon as practicable. To this end, the Receiver shall have the duty to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contractual, legal, and other operational functions of the medical delivery component of the CDCR.”^{lxxx} “In the event, however, that the Receiver finds that a state law, regulation, contract, or other state action or inaction is clearly preventing the Receiver from developing or implementing a constitutionally adequate medical health care system, or otherwise clearly preventing the Receiver from carrying out his duties as set forth in this Order, and that other alternatives are inadequate, the Receiver shall request the Court to waive the state or contractual requirement that is causing the impediment.”^{lxxxi}
Monitor, Special Master or Advisory Board	Advisory Board ^{lxxxii}
Role of the Local Government	“The Receiver shall exercise all powers vested by law in the Secretary of the CDCR as they relate to the administration, control, management, operation, and financing of the California prison medical health care system. The Secretary’s exercise of the above powers is suspended for the duration of the Receivership; it is expected, however, that the Secretary shall work closely with the Receiver to facilitate the accomplishment of his duties under this Order.”^{lxxxiii}
Transition Back to Local Government	“The Court expects that as the Receivership progresses, the Receiver will attempt to engage Defendants in assuming responsibility over portions of the system that are within Defendants’ demonstrated ability to perform, so that the ultimate transfer of power back to the State will be transitional.

CALIFORNIA (PLATA)	
	Prior to the cessation of the Receivership, the Receiver shall develop a Plan for Post-Receivership Governance of the system, which shall include consideration of its structure, funding, and governmental responsibility for its long-term operation. The Receiver shall present this plan to the Court for approval and adoption as an order.” ^{lxxxiv}
Current Status of the System	
	As of August 2025, medical operations at 31 of 35 facilities have been delegated back to the authority of the California Department of Corrections and Rehabilitation Secretary. ^{lxxxv}

COOK COUNTY, IL	
Case	Doe, et al. v. Cook County, et al., 1:99-cv-03945 (N.D. Ill.)
Status	Closed
Description of the System	
Description of the System	One Juvenile Facility
Average Daily Population	500 Beds
Description of the Case	The complaint “alleged gross mismanagement of the JTDC leading to overcrowding, unsafe and unsanitary facilities, inadequate medical, dental, and mental health care, physical violence and abuse by residents and staff, unfair discipline, and inadequate access to education... Substantial compliance with the settlement agreement would be achieved when the defendants hired new management and additional staff, increased security, and developed an improved disciplinary protocol.” In 2007, the plaintiffs filed a Motion for Receiver and claimed that the conditions of the JTDC were worse than at the beginning of the lawsuit. ^{lxxxvi}
Description of Receivership	
Initiated	August 14, 2007 ^{lxxxvii}
Completed	May 20, 2015 ^{lxxxviii}
Name of Entity	Transitional Administrator (TA)
Term, per Agreement and/or Conditions for Termination of the Receiver’s Authority	“The appointment of the TA shall be subject to dissolution by agreement of the parties or upon a showing of substantial compliance to this Court with the terms of the [Court Orders].” ^{lxxxix}
Actual Duration	Almost 8 years
Appointed by Court or Negotiated by Parties	Negotiated
Description of Appointee	The individual was chosen by all Parties and was a leading expert in the field of juvenile detention reform. ^{xc}
Authority and Powers	“To oversee, supervise, and direct all management, administrative, financial, contractual, personnel, security, housing, custodial, purchasing, maintenance, technology, health services, mental health services, food and laundry service, recreational, educational, and programmatic functions relating to the operation of the JTDC consistent with the authority vested in the position of Superintendent of the JTDC and to restructure the JTDC into an institution that substantially complies with the Court Orders.”^{xci} Given “All powers relating to the operation of the JTDC” including the budget.^{xcii}

COOK COUNTY, IL	
	Those involved in the receivership reported that they tried to use the typical processes, but often those wouldn't work and they would have to petition the judge for additional authority, including: - Hiring a third party staff recruiting firm to hire and onboard new staff - Hiring a third party security firm to supplement current staff - Requiring existing staff to reapply for their jobs and some were not rehired^{xciii}
Monitor, Special Master or Advisory Board	Monitor (but role eliminated with appointment of Transitional Administrator) ^{xciv}
Role of the Local Government	No, the TA became the sole administrative authority over the JTDC.
Transition Back to Local Government	The TA stayed on as an expert at the conclusion of the TA period for six months to "observe the transition in order to identify any potentially serious deviations from" the Court Orders for 3 months. He could no longer operate the facility but could still consult. He submitted reports to the Parties during this transitional period.^{xcv} Contractors that were brought in stayed after the TA period ended.^{xcvi} During a panel discussion, one of the individuals who worked alongside the Receiver stated, "And even today, we have some of the same folks that were brought in under the transitional administrator that are still there today, working through this, trying to maintain what was created by the team."^{xcvii}
Current Status of the System	
	A "Blue Ribbon Committee" convened by the Cook County Chief Judge to investigate the use of room confinement and other concerns at the JTDC. The Committee published its report in 2022 finding that the JTDC does keep youth safe, but it does not rehabilitate or heal youth in its care and that staff do not actively engage with youth. The Committee also reported that while the JTDC doesn't use solitary confinement, the conditions are isolating and depriving, with youth locked in their cells at least 13 hours a day. The Committee also found that programming, educational, and vocational opportunities were lacking.^{xcviii}

ORLEANS PARISH, LA	
Case	Jones, et al. v. Gusman et al., 2:12-cv-00859 (E.D. La.)
Status	Ongoing
Description of the System	
Description of the System	1 City Jail System with 2 facilities
Average Daily Population	1,451 in January 2018 to 1,167 as of June 2019 ^{xcix}
Description of the Case	In 2012, the Parties entered into a Consent Judgment, “seeking to address deficiencies in safety and security, medical and mental health care, environmental conditions, fire safety, and limited English proficiency services at the Orleans Parish jail facilities.” ^c The Court eventually approved the selection of the lead monitor and six sub-monitors in 2013. ^{ci} Plaintiffs’ filed a receivership motion, and eventually in 2016, the Parties agreed to the creation of an Independent Compliance Director (ICD) position. ^{cii} The first ICD served about a year and a half, but the Court was “dissatisfied with the pace of reform and lack of compliance,” so a second ICD was put into place. ^{ciii} The Monitor initially reported progress under this ICD, but saw regression towards the end of the receivership that continued after the receivership ended. ^{civ}
Description of Receivership	
Initiated	Order Entered: June 21, 2016 ^{cv} Receiver starts: October 1, 2016 ^{cvi}
Completed	November 27, 2020 ^{cvi}
Name of Entity	Independent Jail Compliance Director
Term, per Agreement and/or Conditions for Termination of the Receiver’s Authority	“The Compliance Director’s authority will continue until the Court determines that sustained and sustainable material progress with substantial compliance with the Consent Judgment is achieved as described in more detail below. At a minimum, this shall mean that required policies have been developed and implemented per the Consent Judgment, staff have been adequately trained on those policies, and OPSO has developed a quality assurance/audit system that effectively evaluates whether staff are implementing the policies in practice and corrects their conduct when they do not.”^{cviii} Compliance Director’s plan should explain how to “facilitate sustainable compliance with the Consent Judgment within one year of the appointment of the Compliance Director.” “If a Consent Judgment provision cannot be brought into substantial compliance with concrete steps in one year, the Plan will provide specific deadlines for compliance as soon as is practicable thereafter.”^{cix} No sooner than nine months after the appointment of the Compliance Director, the Sheriff may file a motion to terminate the Compliance Directorship on the basis that the Compliance Director has enabled the

ORLEANS PARISH, LA	
	Orleans Parish Jail to achieve material progress with substantial compliance with all provisions of the Consent Judgment” ^{cx}
Actual Duration	4 Years
Appointed by Court or Negotiated by Parties	Negotiated
Description of Appointee	The Compliance Director position has been held by 2 different people: First Compliance Director served October 1, 2016-January 29, 2018.^{cx} The Second Compliance Director served February 19, 2018-November 27, 2020^{cxii} The first Compliance Director was removed because “the Court is nonetheless dissatisfied with the pace of reform and lack of compliance” under the first Compliance Director.^{cxiii} For the appointment of the first Compliance Director, the Judge ordered the Parties to recommend individuals and for the Sheriff to select the final person from the candidates.^{cxiv} The Second Compliance Director had been serving as the Correctional Practice Monitor for the case prior to being appointed as the Compliance Director.^{cxv}
Authority and Powers	The Compliance Director must ensure “required policies have been developed and implemented per the Consent Judgment, staff have been adequately trained on those policies, and [the Sheriff’s Office] has developed a quality assurance/audit system that effectively evaluates whether staff are implementing the policies in practice and corrects their conduct when they do not.”^{cxvi} The following areas were in need of support: use of force, supervision, staffing, internal accountability systems, services for and protection of youthful prisoners, medical and mental health care, and the quality of investigations completed by the Investigative Services Bureau and Internal Affairs Division.^{cxvii} Compliance Director can submit a revised Jail Operations budget to the City, and was given exclusive control over all funding, subject to approval of the City Council.^{cxviii} Compliance Director has “final authority to create, modify, abolish or transfer employee and contractor positions; to recruit, hire, discipline, terminate, promote, demote, transfer, and evaluate employees and contractors”^{cxix}
Monitor, Special Master or Advisory Board	Monitors remained on the case, but “less technical assistance will be expected and required” ^{cxx}

ORLEANS PARISH, LA	
Role of the Local Government	Sheriff in charge of jail remains in position and “The Compliance Director shall seek advice and/or approval from the Sheriff regarding all decisions that materially impact compliance with the Consent Judgment, unless doing so would cause unreasonable delay, and otherwise regularly inform the Sheriff regarding jail operations.” ^{cxxxi}
Transition Back to Local Government	“Once the Compliance Director’s appointment is terminated by the Court and authority for Jail administration and operations reverts to the Sheriff, OPSO and the Sheriff will continue to be subject to the requirement that compliance be sustained for the two-year period required by § XI.C. of the Consent Judgment.”^{cxxii} The Monitor continued to work (and is still working as of mid-2025 on this case after the receivership ended.
Current Status of the System	
	In June 2024, the Judge in this case entered a new court-ordered action plan that was negotiated by the Parties and monitor after seeing “regression” in compliance after the operations of the facility were delegated from the Compliance Director back to the Orleans Parish Sheriff’s Office. ^{cxxiii}

MIAMI-DADE COUNTY, FL	
Case	United States v. Miami-Dade County, the Board of County Commissioners, et al., 1:13-cv-21570 (S.D. Fla.)
Status	Closed
Description of the System	
Description of the System	Multiple facilities
Average Daily Population	4,706 in 2024 ^{cxxiv}
Description of the Case	Two court-ordered agreements set out 171 compliance provisions regarding areas of protection from harm, fire and life safety, and inmate grievances. At the start of the Interim Compliance Director's (ICD) tenure, the jails were not in compliance with 14 provisions of the agreements. The ICD grouped them into 5 categories: 1. Protection from Harm/Objective Inmate Classification 2. Segregation of Inmates with Serious Mental Illness (SMI) 3. Mortality and Morbidity Reviews, later referred to as Major Incident Reviews 4. Audits and Continuous Improvement 5. Sexual Misconduct (compliance with the Prison Rape Elimination Act (PREA)).^{cxxv} In this case, compliance must be maintained for 18+ consecutive months to officially close out a provision.^{cxxvi}
Description of Receivership	
Initiated	February 15, 2023 ^{cxxvii}
Completed	July 22, 2025 ^{cxxviii}
Name of Entity	Independent Compliance Director
Term, per Agreement and/or Conditions for Termination of the Receiver's Authority	"[U]ntil at least October 31, 2023, when substantial compliance with the Agreements will be achieved. At that time, the Parties shall confer on the retention and responsibilities of a Compliance Director during the period of sustaining compliance as set forth in the Agreements and shall submit any proposed amendments to this Stipulated Order to the Court as may be required."^{cxxix} For purposes of completeness we include the following provision, but note this language relates to the termination of a provision overall versus termination of authority of an outside actor: "The Consent Agreement at Section VII.C. specifically provides for separate and independent termination of individual substantive provisions of the Agreement if Defendants reach and maintain substantial compliance for eighteen (18) months, i.e., maintain sustained substantial compliance."^{cxxx}
Actual Duration	2 years and 5 months

MIAMI-DADE COUNTY, FL	
Appointed by Court or Negotiated by Parties	Negotiated ^{cxxxix}
Description of Appointee	The County Mayor appointed the individual who would serve as the Compliance Director, but the individual was also recommended by the monitor “for his expertise and knowledge in the subject area of jail reform and modern jail practices.” ^{cxxxix} Prior to his appointment as the Compliance Director, the individual had also served as a consultant to Miami-Dade County regarding this case. ^{cxxxix}
Authority and Powers	The Compliance Director shall have the Administrative Authority “to direct personnel actions, including, but not limited to, the authority to direct hiring, firing, suspension, supervision, promotion, transfer, and disciplinary actions, and establish administrative personnel policies and positions,” “negotiate new contracts and agreements,” “direct specific actions at MDCR to attain and sustain substantial compliance levels,” including changing policy or practice or maintaining/eliminating programming.^{cxxxix} The Compliance Director can request the Court for the ability to take additional action if applicable laws/agreements or Parties stand in the way. Must devise a plan to 1) conduct an inmate bed and classification analysis and implement a plan to address the results; 2) reduce inmate-on-inmate violence; 3) develop and implement policies, protocols, trainings, and audits for PREA purposes; 4) determine how the county will self-monitor itself.^{cxxxix}
Monitor, Special Master or Advisory Board	Monitor’s role remained the same ^{cxxxix}
Role of the Local Government	The Independent Compliance Director reported to the Mayor.
Transition Back to Local Government	The Compliance Director was tasked with helping the agency “self-monitor” itself, and the jails are nearing sustained compliance on all provisions the time period required (18 consecutive months), which will trigger the end of the ICD’s tenure and transition of power back to the local agency
Current Status of the System	
	In November 2023, the Miami-Dade County Corrections and Rehabilitation Department (MDCR) entered into compliance with all requirements of this case’s Consent Agreement for the first time. To terminate the agreements, the MDCR must maintain compliance for 18 months. ^{cxxxix} The MCDR sustained compliance for 18 months, and on

MIAMI-DADE COUNTY, FL	
	July 22, 2025, the Court issued an order terminating the Consent Agreement in this case. ^{cxxxviii}

HINDS COUNTY, MS	
Case	United States v. Hinds County, et al., 3:16-cv-00489 (S.D. Miss.)
Status	Ongoing
Description of the System	
Description of the System	One county jail facility
Average Daily Population	750 in 2022 ^{cxxxix}
Description of the Case	A 2015 DOJ investigation into the Hinds County jails found that the facilities were understaffed, staff weren't adequately trained or supervised, and the facilities were poorly maintained. Staff failed to supervise PICs with a history of violence, mental illness, or suicide attempts, and routinely used excessive force. In 2016, the DOJ filed a lawsuit based on its findings.^{cxl} A joint settlement motion was filed ordering Hinds County to undertake certain reforms and implement a monitor.^{cxli} After additional orders and years of non-compliance, in 2022, the Judge found the county in contempt and issued a receivership.^{cxlii} A few days before the Receiver was supposed to start, the Fifth Circuit stayed the implementation of the Receiver pending appeal of the receivership order. In October 2024, the Fifth Circuit affirmed the decision to appoint a Receiver, but remanded for further proceedings to more narrowly tailor the scope of the Receiver's powers.^{cxliii} The Parties engaged in motion practice following the Fifth Circuit decision, and an updated Court Order outlining the receivership was issued on June 27, 2025.^{cxliv}
Description of Receivership	
Initiated	Not yet initiated Initial Order Entered: October 31, 2022 The receiver was scheduled to start on January 1, 2023^{cxlv}, but the Fifth Circuit issued a stay of his appointment pending the appeal decision. Updated Order Entered: June 27, 2025 The receiver is now scheduled to take over operational control of the facility on October 1, 2025, but began developing a plan of action and annual budget proposal on July 1, 2025.^{cxlvi}
Completed	N/A because the receivership is still in its early stages
Name of Entity	Receiver
Term, per Agreement and/or Conditions for Termination of the Receiver's Authority	"The Receivership shall remain in place no longer than necessary to remedy the unconstitutional conditions justifying the appointment. The Receivership will end as soon as the Court finds that Defendants have remedied RDC's unconstitutional conditions and achieved substantial compliance with the Court's Orders."^{cxlvii} "The Court anticipates that substantial compliance will be achieved by the time RDC closes and detainees have been moved into the new Jail facility

HINDS COUNTY, MS	
	and expects remediation of other non-physical-plant-related deficiencies by that time as well.”^{cxlviii} “Each year, the Receiver shall schedule a formal assessment with the Court, during which the Court will regularly assess progress under the Receivership and determine whether the Receiver’s duties should be modified or eliminated.”^{cxlix}
Actual Duration	N/A because the receivership is still in its early stages
Appointed by Court or Negotiated by Parties	Appointed ^{cl}
Description of Appointee	The individual was selected from four candidates submitted by the Parties. The Court interviewed two of these candidates and selected a candidate with prior law enforcement and correctional leadership experience that was also a member of National Institute of Corrections and American Correctional Association and a consultant for DOJ. ^{cli}
Authority and Powers	“The Receiver shall have all powers, authorities, rights, and privileges now possessed by the officers, managers, and interest holders of and relating to RDC, in addition to all powers and authorities of a receiver at equity under all applicable state and federal laws, in accordance with Rule 66 of the Federal Rules of Civil Procedure.”^{clii} “The Receiver shall hold and exercise all executive, management, and leadership powers for the Defendants with respect to the custody, care, and supervision of Hinds County detainees at RDC, including the power to admit, book, release, transfer, and supervise detainees at RDC in a constitutional manner.”^{cliii} “The Receiver shall be in day-to-day charge of RDC operations. The Receiver shall not have day-to-day oversight of the Work Center or the Jackson Detention Center. Additionally, the Receiver shall not have day-to-day oversight of the Henley-Young Juvenile Justice Center, except as it pertains to youth charged as adults.”^{cliv} “The Receiver shall have the duty to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contractual, and other operational functions for RDC.”^{clv}
Monitor, Special Master or Advisory Board	Monitor that existed before the Receiver remained in place ^{clvi}
Role of the Local Government	The order contemplates that the Receiver will be given the operational authority of the County Sheriff for the RDC (one of the three adult facilities) in the county, as well as any youth charged as adults in the county’s juvenile detention center. However, the county “shall work

HINDS COUNTY, MS	
	closely with the Receiver to facilitate the accomplishment of the Receiver's duties under this Order." ^{clvii}
Transition Back to Local Government	"The Court expects that the Receiver will transition operational responsibilities and powers over RDC back to Defendants as Defendants demonstrate the ability to operate RDC in a constitutional manner."^{clviii} "Prior to any transfer of powers and responsibilities to the Defendants, the Receiver shall develop a Transition Plan."^{clix} "The Transition Plan shall provide long-term management and policy recommendations as to the overall structure and funding of RDC and the Jail, and as to Defendants' responsibilities."^{clx} "The Transition Plan will also provide specific operational guidance to Defendants so that they can sustain constitutional conditions after powers and authority have been transferred back to them."^{clxi}
Current Status of the System	
	The receiver is developing a plan of action, and is scheduled to take over operational control of the facility on October 1, 2025. ^{clxii}

CALIFORNIA (COLEMAN)	
Case	Coleman, et. al., v. Newsom, et. al., 2:90-cv-00520 (E.D. Cal.)
Status	Ongoing
Description of the System	
Description of the System	Mental Healthcare for the Entire State System - 31 facilities ^{clxiii}
Average Daily Population	35,859 in May 2025 ^{clxiv}
Description of the Case	“In 1995, the court found defendants in violation of their Eighth Amendment obligation to provide seriously mentally ill inmates confined in the California Department of Corrections and Rehabilitation (CDCR)... with access to constitutionally adequate mental health care.”^{clxv} A Special Master was appointed to provide expert advice to CDCR and monitor the implementation and compliance with any Court-ordered relief.^{clxvi} In 2023, the Court found Defendants in contempt for failure to comply with provisions regarding adequate staffing levels.^{clxvii} In July 2024 after continuing non-compliance with multiple provisions of the Court orders, the Court began briefing on a potential receivership.^{clxviii} A receiver-nominee was appointed in April 2025 to develop a Receivership Action Plan, which was accepted by the Court in August 2025.^{clxix} The receiver-nominee was formally appointed as the receiver to begin implementation of the plan starting in September 2025.^{clxx}
Description of Receivership	
Initiated	April 2, 2025 to develop the Receivership Action Plan, ^{clxxi} and September 1, 2025 to begin implementing the plan ^{clxxii}
Completed	N/A because the receivership is still in its early stages
Name of Entity	Receiver
Term, per Agreement and/or Conditions for Termination of the Receiver’s Authority	The receiver was appointed “[F]or an initial period of four months” while developing the Receivership Action Plan, which would include a timeline and metrics for the duration of the receivership.^{clxxiii} The timeline included in the Receivership Action Plan accepted by the Court “assumes a very optimistic five- to seven-year period to complete implementation and demonstrate durability for most, if not all, remedies.”^{clxxiv} “In reaching this conclusion the court notes the five to seven years must be evaluated against the backdrop of the long-running remedial phase of this case, which has taken thirty years so far, with some progress as noted above but no durable end otherwise in sight.”^{clxxv}
Actual Duration	N/A because the receivership is still in its early stages
Appointed by Court or Negotiated by Parties	Appointed ^{clxxvi}
Description of Appointee	The Parties proposed the candidate for the receiver, who was an experienced correctional professional from outside the California system, and the Court imposed this agreed-upon candidate. ^{clxxvii}

CALIFORNIA (COLEMAN)	
Authority and Powers	“The Receiver will control [the Mental Health Services Delivery System] for the duration of the Receivership.”^{clxxviii} The Receiver has all authority and power to carry out the Receiver’s Action Plan. “The Receiver-nominee shall make all reasonable efforts to exercise her powers, as described in this order, in a manner consistent with California state laws, regulations, and contracts, including labor contracts. In the event, however, that the Receiver-nominee finds a state law, regulation, contract, or other state action or inaction would prevent her from implementing a material provision of the court-ordered remedy in this action, or otherwise clearly prevent her from carrying out her duties as set forth in this order, and that alternatives are inadequate, the Receiver-nominee in the Receivership Action Plan may propose the court waive the state or contractual requirement that is causing the impediment.”^{clxxix}
Monitor, Special Master or Advisory Board	Special Master that existed before the Receiver remains in place.^{clxxx} However, the Receiver proposed integrating the Special Master’s team into the Receiver’s team so that the Special Master would report directly to the Receiver.^{clxxxi} The Court has directed the Receiver to provide a plan for this integration.^{clxxxii}
Role of the Local Government	“All defendants, and all agents, or persons within the employ of any defendant in this action (including contract employees), and all persons in concert and participation with them, and all counsel in this action, shall fully cooperate with the Receiver-nominee in the discharge of her duties under this order, and shall promptly respond to all inquiries and requests related to her performance of those duties.”^{clxxxiii} The Receiver’s Action Plan includes specific steps for collaborating with CDCR throughout the receivership.
Transition Back to Local Government	“To prepare to resume control when the Receivership ends, it is essential that CDCR leadership play an active role in implementing the Action Plan.”^{clxxxiv} For this reason, the Receiver’s Action Plan includes specific steps for collaborating with CDCR and transitioning work managed by the Receiver’s team back to CDCR.
Current Status of the System	
	The Receiver completed a proposed Action Plan, which was approved by the Court on August 27, 2025, with certain clarifications and instructions.^{clxxxv} The receiver was ordered to begin implementing the Action Plan beginning September 1, 2025.^{clxxxvi}

ⁱ Brian Lyman, In 1976, the Feds Took Over Alabama’s Prison System. And Alabama’s Prisons Improved, Montgomery Advertiser (September 23, 2021), <https://www.montgomeryadvertiser.com/story/news/2021/09/24/1976-feds-took-over-alabamas-prison-system-prisons-improved/5829014001/>

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- ii *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Memorandum Opinion dated December 28, 1988, at pg. 4.
 - iii *Newman v. State of Ala.*, 466 F. Supp. 628 (M.D. Ala. 1979)
 - iv *Newman v. State of Ala.*, 466 F. Supp. 628, 637 (M.D. Ala. 1979)
 - v *Newman v. State of Ala.*, 466 F. Supp. 628, 636 (M.D. Ala. 1979); *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Court Order dated February 2, 1979.
 - vi *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Consent Agreement dated January 5, 1983, at pgs. 2-3.
 - vii *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Court Order dated February 2, 1979.
 - viii *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Consent Agreement dated January 5, 1983, at pgs. 2-3.
 - ix *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Court Order dated February 2, 1979, at pg. 2.
 - x *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Consent Agreement dated January 5, 1983 at pg. 2.
 - xi *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Court Order dated February 2, 1979.
 - xii *Newman v. State of Ala.*, 466 F. Supp. 628 (M.D. Ala. 1979).
 - xiii *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Court Order dated February 2, 1979, at pg. 2.
 - xiv *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Court Order dated February 2, 1979.
 - xv *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Consent Agreement dated January 5, 1983.
 - xvi *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Memorandum Opinion dated December 28, 1988, at pg. 3.
 - xvii *Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Memorandum Opinion dated December 28, 1988, at pg. 19.
 - xviii Press Release, U.S. Dep't of Justice, Justice Department Files Lawsuit Against the State of Alabama for Unconstitutional Conditions in State's Prisons for Men (December 9, 2020), <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-alabama-unconstitutional-conditions-states>
 - xix *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 652-653 (1989).
 - xx *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 637 (1989).
 - xxi *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 639-640 (1989).
 - xxii *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 643-644 (1989).
 - xxiii *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 645 (1989).
 - xxiv *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 648, 668 (1989).
 - xxv *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 644 (1989).
 - xxvi *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 642, 647 (1989).
 - xxvii *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 646 (1989).
 - xxviii *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 667 (1989).
 - xxix *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 662-663 (1989).
 - xxx *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 645-646 (1989).
 - xxxi *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 646 (1989).

xxxii *Wayne County Jail Inmates v. Wayne County Chief Executive Officer*, 178 Mich. App. 634, 646 (1989).

xxxiii Ross Jones, Wayne County's New Jail Grapples with 2 Inmate Suicides in less than a Month, ABC 7 (October 8, 2024), https://www.wxyz.com/news/local-news/investigations/wayne-countys-new-jail-grapples-with-2-inmate-suicides-in-less-than-a-month#google_vignette

xxxiv Ross Jones, Wayne County's New Jail Grapples with 2 Inmate Suicides in less than a Month, ABC 7 (October 8, 2024), https://www.wxyz.com/news/local-news/investigations/wayne-countys-new-jail-grapples-with-2-inmate-suicides-in-less-than-a-month#google_vignette

xxxv Ross Jones, Wayne County to Pay \$7 Million over Inmate's 'Heinous' Murder Inside Jail, ABC 7 (July 11, 2024), <https://www.wxyz.com/news/local-news/investigations/wayne-county-to-pay-7-million-over-inmates-heinous-murder-inside-jail>

xxxvi Chronology of D.C. Jail Crisis, Wash. Post. (March 23, 1986), <https://www.washingtonpost.com/archive/local/1986/03/23/chronology-of-dc-jail-crisis/3bd80546-0323-476d-9ee6-ba6ce8396a3f/>

xxxvii *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pg. 2.

xxxviii *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pg. 2.

xxxix *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pg. 3.

xl *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pg. 4-6.

xli *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pgs. 6-7.

xlii *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 90 (only available on the full docket).

xliii *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 283.

xliv *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pg. 10.

xlvi *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pg. 7. (See also Dkt. 90, only available on the full docket)

xlvi *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pg. 7. (See also Dkt. 90, only available on the full docket)

xlvi *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pgs. 7-9.

xlvi *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pgs. 2, 8.

xlvi U.S. General Accounting Office, District of Columbia Jail: Medical Services Generally Met requirements and Costs Decreased, but Oversight is Incomplete (June 2004), <https://www.gao.gov/assets/gao-04-750.pdf>

¹ *Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87 at pg. 10.

li Justin Wm. Moyer, D.C. Jail Medical Care 'Systemically Dysfunctional,' Suit Alleges, Wash. Post (April 29, 2023), <https://www.washingtonpost.com/dc-md-va/2023/04/29/dc-jail-health-care-lawsuit/>

lii *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 89, Appendix "A," pg. 3.

liii *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 89 at pg. 3.

liv *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 35 at pg. 3.

lv *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 24 at pgs. 1-2.

lvi *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 89 at pgs. 29-30.

lvii *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pg. 2.

lviii *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pg. 2.

lix *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pg. 2.

^{lx} *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pg. 2; *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 24 at pg. 2.

^{lxi} *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pg. 2.

^{lxii} *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pgs. 2-3.

^{lxiii} *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pg. 3.

^{lxiv} *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pg. 4.

^{lxv} *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pg. 3.

^{lxvi} *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 41 at pgs. 2-3.

^{lxvii} *Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 89.

^{lxviii} Press Release, U.S. Dept' of Justice, Justice Department Finds Conditions at Fulton County Jail in Georgia Violate the Constitution and Federal Law (November 14, 2024), <https://www.justice.gov/opa/pr/justice-department-finds-conditions-fulton-county-jail-georgia-violate-constitution-and>

^{lxix} CCHCS Facts, <https://cchcs.ca.gov/factsheet/> (last visited January 15, 2025)

^{lxx} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pg. 2.

^{lxxi} CCHCS Facts, <https://cchcs.ca.gov/factsheet/> (last visited August 28, 2025)

^{lxxii} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 371 at pg. 2.

^{lxxiii} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pg. 2.

^{lxxiv} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pgs. 7-8.

^{lxxv} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 3939.

^{lxxvi} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pg. 2.

^{lxxvii} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 1063 at pg. 4.

^{lxxviii} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pgs. 1-2 and attached CV.

^{lxxix} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 1063 at pg. 5 and attached CV.

^{lxxx} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pg. 2.

^{lxxxi} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pg. 5.

^{lxxxii} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pg. 10.

^{lxxxiii} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pg. 4.

^{lxxxiv} *Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473 at pgs. 7-8.

^{lxxxv} CCHCS Facts, <https://cchcs.ca.gov/factsheet/> (last visited August 28, 2025)

^{lxxxvi} Case: Doe v. Cook County, Civil Rights Litigation Clearinghouse, <https://clearinghouse.net/case/9633/> (last visited January 15, 2025)

^{lxxxvii} *Doe, et al. v. Cook County, et al.*, 1:99-cv-03945 (N.D. Ill.), Dkt. 330.

^{lxxxviii} *Doe, et al. v. Cook County, et al.*, 1:99-cv-03945 (N.D. Ill.), Dkt. 786.

^{lxxxix} *Doe, et al. v. Cook County, et al.*, 1:99-cv-03945 (N.D. Ill.), Dkt. 330 at pgs. 11-12.

^{xc} The Cook County Story, Vital City, <https://www.vitalcitynyc.org/articles/fixing-new-york-citys-jails-a-federal-receiver-panel-one> (last visited January 15, 2025)

^{xci} *Doe, et al. v. Cook County, et al.*, 1:99-cv-03945 (N.D. Ill.), Dkt. 330 at pg. 2.

^{xcii} *Doe, et al. v. Cook County, et al.*, 1:99-cv-03945 (N.D. Ill.), Dkt. 330 at pgs. 4-5.

^{xciii} The Cook County Story, Vital City, <https://www.vitalcitynyc.org/articles/fixing-new-york-citys-jails-a-federal-receiver-panel-one> (last visited January 15, 2025)

^{xciv} *Doe, et al. v. Cook County, et al.*, 1:99-cv-03945 (N.D. Ill.), Dkt. 330 at pg. 11.

^{xcv} *Doe, et al. v. Cook County, et al.*, 1:99-cv-03945 (N.D. Ill.), Dkt. 786 at pg. 2.

^{x cvi} *Doe, et al. v. Cook County, et al.*, 1:99-cv-03945 (N.D. Ill.), Dkt. 786 at pg. 1.

^{xcvii} The Cook County Story, Vital City, <https://www.vitalcitynyc.org/articles/fixing-new-york-citys-jails-a-federal-receiver-panel-one> (last visited January 15, 2025)

^{xcviii} Jonah Newman & Carlos Ballesteros, Cook County Juvenile Jail Using ‘Semantics’ to Hide Many Hours Youths are Isolated: Report, Injustice Watch (August 23, 2022), <https://www.injusticewatch.org/juvenile-courts/youth-incarceration/2023/cook-county-jtdc-abuses-report/>

^{xcix} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1259 at pg. 45, fn. 8.

^c *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pg. 1.

^{ci} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pgs. 1-2.

^{cii} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pgs. 2-3.

^{ciii} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1151 at pgs. 1-2.

^{civ} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1404 at pg. 5.

^{cv} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082.

^{cvi} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1097 at pg. 1.

^{c vii} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1404 at pg. 5.

^{c viii} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pg. 3.

^{c ix} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pgs. 5-6.

^{cx} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pg. 15.

^{c xi} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1151 at pg. 2.

^{c xii} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1151 at pg. 2, Dkt. 1404 at pg. 5.

^{c xiii} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1151 at pg. 1.

^{c xiv} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pg. 3.

^{c xv} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1151 at pg. 2.

^{c xvi} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pg. 3.

^{c xvii} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pg. 8.

^{c xviii} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pgs. 9-10.

^{c xix} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pg. 12.

^{c xx} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pg. 5.

^{c xxi} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pgs. 2-3.

^{c xxi i} *Jones, et al. v. Gusman et al.*, 2:12-cv-00859 (E.D. La.), Dkt. 1082 at pgs. 15-16.

^{c xxi i i i} Ken Daley, Federal Judge Orders New Orleans Jail Measures, Citing ‘Regression’ in Consent Decree Compliance, Fox 8 (June 19, 2024), <https://www.fox8live.com/2024/06/19/federal-judge-orders-new-orleans-jail-measures-citing-regression-consent-decree-compliance/>

^{c xxi v} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 277-1 at pg. 8.

^{cxxv} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 277-1, pgs. 1-2.

^{cxxvi} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260 at pg. 13.

^{cxxvii} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260.

^{cxxviii} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 293.

^{cxxix} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260 at pg. 4.

^{cxix} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260 at pg. 13.

^{cxixi} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260 at pg. 3.

^{cxixiii} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260 at pg. 3.

^{cxixiii} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 277-1 at pg. 1.

^{cxixiv} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260 at pgs. 5-6.

^{cxixv} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260 at pg. 7-8.

^{cxixvi} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260 at 13.

^{cxixvii} Press Release, Miami-Dade County, Miami-Dade County's Corrections Department Enters in Compliance with Department of Justice Consent Agreement (November 4, 2023), https://www.miamidade.gov/global/release.page?Mduid_release=rel1699104407886909

^{cxixviii} *United States v. Miami-Dade County, the Board of County Commissioners, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 293.

^{cxixix} *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 242 at pg. 4.

^{cxli} Case: United States v. Hinds County, Civil Rights Litigation Clearinghouse, <https://clearinghouse.net/case/14561/> (last visited January 15, 2025)

^{cxli} Case: United States v. Hinds County, Civil Rights Litigation Clearinghouse, <https://clearinghouse.net/case/14561/> (last visited January 15, 2025)

^{cxlii} *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 215.

^{cxliii} *United States v. The Hinds County Board of Supervisors & Hinds County Sheriff Tyree Jones*, 22-60203 (5th Cir.), Dkt. 195-1.

^{cxliv} *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282.

^{cxlv} *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 215 at pg. 4.

^{cxlvi} *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-4 at pg. 1.

^{cxlvii} *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 9.

^{cxlviii} *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 9.

^{cxlix} *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 11.

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- cl *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 215 at pgs. 1-2.
- cli *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 215 at pgs. 1-3.
- clii *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pgs. 1-2.
- cliii *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 2.
- cliv *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 2.
- clv *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 2.
- clvi *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-1 at pg. 9.
- clvii *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 2.
- clviii *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 10.
- clix *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 10.
- clx *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 10.
- clxi *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2 at pg. 10.
- clxii *United States v. Hinds County, et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-4 at pg. 1.
- clxiii CCHCS Facts, <https://cchcs.ca.gov/factsheet/> (last visited January 15, 2025)
- clxiv *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8722 at pg. 11, *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752 at pg. 1.
- clxv *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752 at pg. 3.
- clxvi *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752 at pg. 3.
- clxvii *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8722 at pg. 6.
- clxviii *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8722 at pgs. 6-7.
- clxix *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8722 at pg. 7, *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752.
- clxx *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752 at pg. 24, *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8753 at pg. 6.
- clxxi *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8589 at pg. 6.
- clxxii *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752 at pg. 24, *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8753 at pg. 6.
- clxxiii *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8589 at pg. 2.
- clxxiv *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8722 at pg. 8.
- clxxv *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752 at pg. 20.
- clxxvi *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752 at pg. 10.
- clxxvii *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752 at pgs. 10-12.
- clxxviii *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8722 at pgs. 14-15.
- clxxix *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8589 at pg. 4.
- clxxx *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8589 at pgs. 6-7.
- clxxxi *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8722 at pgs. 18-19.
- clxxxii *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8753 at pgs. 3-4, 7.
- clxxxiii *Coleman, et al., v. Newsom, et al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8589 at pg. 6.

^{clxxxiv} *Coleman, et. al., v. Newsom, et. al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8722 at pgs. 14-15.

^{clxxxv} *Coleman, et. al., v. Newsom, et. al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8753.

^{clxxxvi} *Coleman, et. al., v. Newsom, et. al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8752 at pg. 24, *Coleman, et. al., v. Newsom, et. al.*, 2:90-cv-00520 (E.D. Cal.), Dkt. 8753 at pg. 6.

APPENDIX E

**Excerpts of Provisions Regarding Termination of Receivership Authority from
Other Correctional Receivership Orders**

Alabama –

- “a period of not less than one year, unless and until the receiver requests to be relieved or the Court orders a termination of the receivership before a year elapses” (*Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Court Order dated February 2, 1979 at pg. 2)
 - This receivership went on for nearly 4 years, and was terminated when a Prison Implementation Committee was established – “The Receiver, the Commissioner, the United States and the plaintiffs agree that this is an appropriate time to institute a different and more effective procedure to assure continuing improvements in the prison system while at the same time extracting the court from the day to day superintendence of the prison system.” (*Newman, et al. v. State of Alabama, et al.*, 2:72-cv-03501 (M.D. Ala.), Consent Agreement dated January 5, 1983 at pg. 2)

California (Plata) –

- “The Receivership shall remain in place no longer than the conditions which justify it make necessary, and shall cease as soon as the Court is satisfied, and so finds in consultation with the Receiver, that Defendants have the will, capacity, and leadership to maintain a system of providing constitutionally adequate medical health care services to class members. The Court expects that as the Receivership progresses, the Receiver will attempt to engage Defendants in assuming responsibility over portions of the system that are within Defendants' demonstrated ability to perform, so that the ultimate transfer of power back to the State will be transitional.” (*Plata, et al. v. Newsom, et al.*, 4:01-cv-01351 (N.D. Cal.), Dkt. 473, Order Appointing a Receiver dated February 14, 2006 at pgs. 7-8)

Cook County, IL –

- “The appointment of the [Temporary Administrator] shall be subject to dissolution by agreement of the parties or upon a showing of substantial compliance to this Court with

the terms of the [other Court orders in this case] and this Agreed Order.” (*Doe, et al. v. Cook Cnty., et al.*, 1:99-cv-03945 (N.D. Ill.), Dkt. 330, Agreed Order Appointing a Transitional Receiver dated August 14, 2007 at pgs. 11-12)

Washington, D.C. –

- “[T]his receivership shall expire five years from the date that the receiver is appointed, unless the Court finds good cause to extend the appointment. The Court may terminate the receivership prior to the expiration of five years if the Special Officer certifies that the defendants are in compliance with all orders of this Court concerning medical and mental health services at the Jail and that management structures are in place to ensure that there is no foreseeable risk of future non-compliance.” (*Inmates of D.C. Jail, et al. v. Jackson, et al.*, 1:75-cv-01668 (D.D.C.), Dkt. 87, Findings and Order Appointing Receiver dated July 11, 1995 at pg. 10)

Fulton County, GA –

- “[T]he current conditions provide a sufficient basis for the Court to appoint a temporary receiver to replace [the County Sherrieff] as jail custodian until a new, duly elected sheriff takes office in January 2005” (*Harper, et al. v. Bennet, et al.*, 1:04-cv-01416 (N.D. Ga.), Dkt. 24, Consent Order dated July 7, 2004 at pg. 3)

Hinds County, MS –

- “The Receivership shall remain in place no longer than necessary to remedy the unconstitutional conditions justifying the appointment. The Receivership will end as soon as the Court finds that Defendants have remedied RDC’s unconstitutional conditions and achieved substantial compliance with the Court’s Orders.” (*U.S. v. Hinds Cnty., et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2, Order on Receiver’s Duties dated June 27, 2025 at pg. 9)
- “The Court anticipates that substantial compliance will be achieved by the time RDC closes and detainees have been moved into the new Jail facility and expects remediation of other non-physical-plant-related deficiencies by that time as well.” (*U.S. v. Hinds Cnty., et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2, Order on Receiver’s Duties dated June 27, 2025 at pg. 9)

- “Each year, the Receiver shall schedule a formal assessment with the Court, during which the Court will regularly assess progress under the Receivership and determine whether the Receiver’s duties should be modified or eliminated.” (*U.S. v. Hinds Cnty., et al.*, 3:16-cv-00489 (S.D. Miss.), Dkt. 282-2, Order on Receiver’s Duties dated June 27, 2025 at pg. 11)

Miami-Dade County, FL –

- “The Parties have agreed to the appointment of Mr. Gary Raney as the Independent Compliance Director until at least October 31, 2023, when substantial compliance with the Agreements will be achieved. At that time, the Parties shall confer on the retention and responsibilities of a Compliance Director during the period of sustaining compliance as set forth in the Agreements and shall submit any proposed amendments to this Stipulated Order to the Court as may be required.” (*U.S. v. Miami-Dade Cnty., the Bd. of Cnty. Comm’rs, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260, Stipulated Order regarding Appointment of Independent Jail Compliance Director dated February 15, 2023 at pg. 4)
- “The Consent Agreement at Section VII.C. specifically provides for separate and independent termination of individual substantive provisions of the Agreement if Defendants reach and maintain substantial compliance for eighteen (18) months, i.e., maintain sustained substantial compliance.” (*U.S. v. Miami-Dade Cnty., the Bd. of Cnty. Comm’rs, et al.*, 1:13-cv-21570 (S.D. Fla.), Dkt. 260, Stipulated Order regarding Appointment of Independent Jail Compliance Director dated February 15, 2023 at pg. 13) [For purposes of completeness we include this provision, but note this language relates to the termination of a provision overall versus termination of authority of an outside actor]

Orleans Parish, LA –

- “The Compliance Director's authority will continue until the Court determines that sustained and sustainable material progress with substantial compliance with the Consent Judgment is achieved, as described in more detail below. At a minimum, this shall mean that required policies have been developed and implemented per the Consent Judgment, staff have been adequately trained on those policies, and OPSO has developed a quality assurance/audit system that effectively evaluates whether staff are implementing the policies in practice and corrects their conduct when they do not.” (*Jones, et al. v. Gusman*

et al., 2:12-cv-00859 (E.D. La.), Dkt. 1082, Stipulated Order for Appointment of Independent Jail Compliance Director at pg. 3)

Wayne County, MI –

- “At the conclusion of one year from the effective date of [the receiver’s] appointment as receiver, the monitors shall prepare a comprehensive report of the defendants' compliance with the Final Judgment. Upon submission of that report, the Court will consider whether it is appropriate to terminate the receivership and return operational control of the jail to the Sheriff, or, in the absence of compliance, to take such other steps as are necessary to bring about compliance with the Final Judgment.” (*Wayne Cnty. Jail Inmates v. Wayne Cnty. Chief Exec. Officer*, 178 Mich. App. 634, 647 (1989), quoting the Receivership Order originally issued in the case)
- “The appointment of the Wayne County Executive as receiver is nominally for one year. The receivership could be terminated earlier. We fully anticipate that the trial court will not extend the extraordinary remedy beyond the period absolutely necessary for obtaining compliance with the final judgment. *Turner, supra*. The cooperation of all interested parties and the prompt filing and evaluation of quarterly reports in accordance with the receivership order should facilitate this goal.” (*Wayne Cnty. Jail Inmates v. Wayne Cnty. Chief Exec. Officer*, 178 Mich. App. 634, 667 (1989))

APPENDIX F

Updated Index of Court Filings cited in the Receivership Charts

(Index Originally Filed with Monitor's January 24, 2025 Report Dkt. 811)

Alabama <i>Newman, et al. v. State of Alabama, et al., 2:72-cv-03501 (M.D. Ala.);</i> <i>Pugh, et al. v. Bennett, et al., 2:74-cv-00057 (M.D. Ala.);</i> <i>James, et al. v. Bennett, et al., 2:74-cv-00203 (M.D. Ala.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
N/A	<i>Newman v. State of Ala.</i> , 466 F. Supp. 628 (M.D. Ala. 1979)	Dkt. 811-1, App. B, Ex. 1
N/A	Court Order dated February 2, 1979	Dkt. 811-1, App. B, Ex. 2
N/A	Consent Agreement dated January 5, 1983	Dkt. 811-1, App. B, Ex. 3
N/A	Memorandum Opinion dated December 18, 1989	Dkt. 811-1, App. B, Ex. 4

Wayne County, MI <i>Wayne County Jail Inmates v. Wayne County Sheriff, 71-173217-CZ (Michigan state trial court)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
N/A	<i>Wayne County Jail Inmates v. Wayne County Chief Executive Officer</i> , 178 Mich. App. 634 (1989)	Dkt. 811-1, App. B, Ex. 5

Washington, D.C. <i>Inmates of D.C. Jail, et al. v. Jackson, et al., 1:75-cv-01668 (D.D.C.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
N/A	Docket Sheet for the case	Dkt. 811-1, App. B, Ex. 6
Dkt. 87	Findings and Order Appointing Receiver	Dkt. 811-1, App. B, Ex. 7
Dkt. 283	Order terminating receivership	Dkt. 811-1, App. B, Ex. 8

Fulton County, GA <i>Harper, et al. v. Bennet, et al., 1:04-cv-01416 (N.D. Ga.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
Dkt. 24	Consent Order agreeing to receivership	Dkt. 811-1, App. B, Ex. 9
Dkt. 35	Letter from Court-Appointed Expert, Robert B. Greifinger, M.D.	Dkt. 811-1, App. B, Ex. 10

Fulton County, GA <i>Harper, et al. v. Bennet, et al., 1:04-cv-01416 (N.D. Ga.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
Dkt. 41	Order Appointing a Receiver	Dkt. 811-1, App. B, Ex. 11
Dkt. 89	Consent Order	Dkt. 811-1, App. B, Ex. 12

California (Plata) <i>Plata, et al. v. Newsom, et al., 4:01-cv-01351 (N.D. Cal.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
Dkt. 371	Findings of Fact and Conclusions of Law re: Appointment of a Receiver	Dkt. 811-1, App. B, Ex. 13
Dkt. 473	Order Appointing a Receiver	Dkt. 811-1, App. B, Ex. 14
Dkt. 1063	Order Appointing New Receiver	Dkt. 811-1, App. B, Ex. 15
Dkt. 3939	Order Re-Appointing Advisory Board Members	Dkt. 811-1, App. B, Ex. 16

Cook County, IL <i>Doe, et al. v. Cook County, et al., 1:99-cv-03945 (N.D. Ill.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
Dkt. 330	Agreed Order Appointing a Transitional Administrator	Dkt. 811-1, App. B, Ex. 17
Dkt. 786	Concluding Order for the Transitional Administrator	Dkt. 811-1, App. B, Ex. 18

Orleans Parish, LA <i>Jones, et al. v. Gusman et al., 2:12-cv-00859 (E.D. La.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
Dkt. 1082	Stipulated Order for Appointment of Independent Jail Compliance Director	Dkt. 811-1, App. B, Ex. 19
Dkt. 1097	Order Appointing Independent Jail Compliance Director	Dkt. 811-1, App. B, Ex. 20
Dkt. 1151	Minute Entry regarding the Resignation and Appointment of Receivers	Dkt. 811-1, App. B, Ex. 21
Dkt. 1259	Report No. 11 of the Independent Monitors	Dkt. 811-1, App. B, Ex. 22
Dkt. 1404	Report No. 13 of the Independent Monitors	Dkt. 811-1, App. B, Ex. 23

Miami-Dade County, FL <i>United States v. Miami-Dade County, the Board of County Commissioners, et al., 1:13-cv-21570 (S.D. Fla.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
N/A	Docket Sheet for the case	Dkt. 811-1, App. B, Ex. 24
Dkt. 260	Stipulated Order Regarding Appointment of Independent Jail Compliance Director	Dkt. 811-1, App. B, Ex. 25
Dkt. 277-1	Independent Compliance Director Court Directed Report	Dkt. 811-1, App. B, Ex. 26
Dkt. 278	United States' Compliance Report	Dkt. 811-1, App. B, Ex. 27
Dkt. 280	Parties' Notice of Termination of Settlement Agreement	Dkt. 811-1, App. B, Ex. 29
Dkt. 293	Order Terminating Consent Agreement	Attached to this Filing as Exhibit 1

Hinds County, MS <i>United States v. Hinds County, et al., 3:16-cv-00489 (S.D. Miss.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
Dkt. 169	The New Injunction	Dkt. 811-1, App. B, Ex. 29
Dkt. 215	Order Appointing Receiver	Dkt. 811-1, App. B, Ex. 30
Dkt. 216	Order regarding the receivership structure	Dkt. 811-1, App. B, Ex. 31
Dkt. 242	Court-Appointed Monitor's Eighteenth Monitoring Report	Dkt. 811-1, App. B, Ex. 32
N/A	Fifth Circuit Appeal Decision	Dkt. 811-1, App. B, Ex. 33
Dkt. 282	Order on Receivership dated June 27, 2025	Attached to this Filing as Exhibit 2
Dkt. 282-1	The 2025 Injunction	Attached to this Filing as Exhibit 3
Dkt. 282-2	Order on Receiver's Duties	Attached to this Filing as Exhibit 4
Dkt. 282-3	PLRA Analysis	Attached to this Filing as Exhibit 5

Hinds County, MS <i>United States v. Hinds County, et al., 3:16-cv-00489 (S.D. Miss.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
Dkt. 282-4	Order on Receivership Transition dated June 27, 2025	Attached to this Filing as Exhibit 6

California (Coleman) <i>Coleman, et. al., v. Newsom, et. al., 2:90-cv-00520 (E.D. Cal.)</i>		
Docket #	Description of Filing	Nunez Docket & Exhibit #
Dkt. 8589	Order and Order Appointing Receiver-Nominee	Attached to this Filing as Exhibit 7
Dkt. 8675	Order on Receiver Compensation	Attached to this Filing as Exhibit 8
Dkt. 8722	Receiver's Action Plan for the Mental Health Delivery System of the California Department of Corrections and Rehabilitation	Attached to this Filing as Exhibit 9
Dkt. 8752	Order Appointing Receiver	Attached to this Filing as Exhibit 10
Dkt. 8753	Order Approving Receiver's Action Plan	Attached to this Filing as Exhibit 11

Exhibit 1

(Miami-Dade County, FL)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:13-cv-21570-BLOOM

UNITED STATES OF AMERICA

Plaintiff,

v.

MIAMI-DADE COUNTY, THE BOARD
OF COUNTY COMMISSIONERS, *et. al.*,

Defendants.

_____ /

ORDER TERMINATING CONSENT AGREEMENT

THIS CAUSE is before the Court upon the Parties' Joint Motion for Termination of Consent Decree and to Dismiss with Prejudice ("Motion"), ECF No. [285], filed on April 8, 2025. On April 10, 2025, the Court deferred ruling on the Motion and ordered the parties to submit a report no later than July 18, 2025 advising the Court of the date on which the Miami Center for Mental Health and Recovery ("Center") would open and the plan established by the coordinated efforts of the Miami-Dade County Jail and the Center to refer eligible members of the mental health population from the Miami-Dade County Jail to the Center. ECF No. [286] at 4. On July 18, 2025, the Parties submitted a Joint Report. ECF No. [292]. The Court has considered the Motion, the Joint Report, the record, and is otherwise fully advised. For the foregoing reasons, the Motion is granted.

"A district court may terminate a consent decree when 'the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.'" *Peery v. City of Miami*, 977 F.3d 1061, 1069

(11th Cir. 2020) (quoting Fed. R. Civ. P. 60(b)(5)). In the Motion, the Parties note that the Independent Compliance Monitor’s 19th Compliance Report found that Defendants have reached Sustained Substantial Compliance for every provision of this Court’s Consent Agreement concerning conditions in the Miami-Dade Corrections and Rehabilitation Department (“MDCR”). ECF No. [285] at 1. Furthermore, the Consent Agreement states that “an individual substantive provision in this Agreement shall terminate after the United States finds that the County maintained sustained substantial compliance of that provision for a period of 18 months.” ECF No. [5-2] at 33.

In their Joint Report, the Parties “agree that the opening or operation of a facility at 2200 N.W. 7th Avenue in Miami . . . is not required by the Consent Agreement.” ECF No. [292] at 1. The Joint Report states that “the Center is not ‘supported by the terms of the consent decree’” and, therefore, “it is beyond the Court’s authority to require action in connection with it. *Id.* at 2. The Parties state that no opening date for the Center can be provided because “[t]he Center’s opening is subject to legislative action by the Board of County Commissioners and the occurrence of various other prerequisite approvals, including those outside Miami-Dade County’s control or sole control.” *Id.* at 3. Additionally, there “is no plan [to refer eligible members of the mental health population from the Miami-Dade County Jail to the Center] at present because the Center’s opening, use, and operations have not been approved.” *Id.*

Because the Consent Agreement is a contract, the Court follows “the rules for interpretation of contracts and appl[ies] principles of state contract law.” *Peery*, 977 F.3d at 1069. “In Florida, ‘the plain meaning of the language used by the parties controls as the best indication of the parties’ agreement,’ so contract terms ‘should be interpreted in accordance with their plain and ordinary meaning.’” *Id.* (quoting *In re Std. Jury Instructions—Contract & Bus. Cases*, 116 So. 3d 284, 315

(Fla. 2013)). In their Motion, the Parties note that “[a]s outlined in the Monitor’s Report, confirmed by the United States’ Report, and further supported by the Independent Compliance Director’s Report, the following provisions of the Consent Agreement have indeed maintained sustained substantial compliance for at least eighteen (18) months”:

1. III.A.1.e. (Intake Screening – Medical Records),
2. III.A.2.d. (Health Assessment – Risk Profiles),
3. III.A.4.d. (Medication Administration),
4. III.A.7.a. (Mortality & Morbidity - Reporting),
5. III.A.7.b. (Mortality & Morbidity – Addressing Problems),
6. III.A.7.c. (Mortality & Morbidity – Bi-Annual Review),
7. III.C.1.a.(1)(2)(3) (Referral Process & Access to Care),
8. III.C.2.c. (Mental Health Treatment – Initial Treatment Plan),
9. III.C.e.3. (Suicide Assessment & Prevention)
10. III.C.6.a.(4)i. (Custodial Segregation – Heightened Care),
11. III.C.6.a.(4)ii. (Custodial Segregation – Out of Cell Time), and
12. III.C.6.a.(6) (Custodial Segregation – Long Term).

ECF No. [285] at 2-3.

The parties entered into a Consent Agreement (“Consent Agreement”), ECF No. [5-2], effective May 22, 2013, to remedy the constitutional violations at the Miami-Dade County correctional facilities regarding inmates’ medical care, mental health care, and suicide prevention. A separate Settlement Agreement was signed on April 30, 2013, addressing inmates’ protection from harm, fire and life safety, and inmate grievances. *Id.* at 5; ECF No. [85-1] (“Settlement Agreement”). The Consent Agreement contained deadlines and requirements for implementation of 119 provisions. The Settlement Agreement contains 56 paragraphs. Defendants were to implement all provisions of the Consent Agreement and Settlement Agreement within 180 days of the Effective Dates. Unfortunately, implementation was slow or non-existent. For over ten (10) years, the Court has monitored compliance, and the lack thereof, of the Parties’ Settlement Agreement and Consent Agreement. Since that time, there have been numerous incidents, including suicides, that have been directly tied to failures and non-compliance with the provisions

of the Parties' Consent Agreement. *See* ECF No. [246]. Defendants represented to the Court that the Center will be open in 2025. ECF No. [286] at 1. Although the opening of the Center is a critical component of the sustained care of inmates with serious mental health conditions in our community, it is not explicitly outlined in the Consent Agreement. Because the aforementioned sections of the Consent Agreement have maintained substantial compliance for at least 18 months, they may be terminated. *See* ECF No. [5-2] at 33. These sections "were the last remaining provisions [of the Consent Agreement] to be terminated." ECF No. [285] at 3.

Accordingly, it is **ORDERED AND ADJUDGED**:

1. The Parties' Joint Motion for Termination of Consent Decree and to Dismiss with Prejudice, **ECF No. [285]**, is **GRANTED**.
2. The Defendant's Unopposed Motion to Terminate Consent Agreement, **ECF No. [287]**, is **DENIED AS MOOT**;
3. The above-styled case is **DISMISSED WITH PREJUDICE**;
4. Each party shall bear its own attorneys' fees and costs;
5. The Status Conference scheduled for **July 24, 2025 at 1:00 p.m.** is **CANCELED**;
6. To the extent not otherwise disposed of, all pending motions are **DENIED AS MOOT** and all deadlines are **TERMINATED**;
7. The Clerk of Court is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Miami, Florida, on July 21, 2025.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record

Exhibit 2

(Hinds County, MS)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAUSE NO. 3:16-CV-489-CWR-BWR

HINDS COUNTY, et al.,

Defendant.

ORDER

On February 12, 2025, the Fifth Circuit issued a revised opinion and mandate affirming in part and reversing in part this Court's Orders appointing a Receiver to implement the new injunction designed to bring the Raymond Detention Center ("RDC") into compliance with constitutional standards. *See United States v. Hinds Cnty. Bd. of Supervisors*, 128 F.4th 616 (5th Cir. 2025).

The Court of Appeals affirmed the injunction in all but one respect. It found the provisions concerning sexual assault overly broad and remanded the injunction with instructions "to remove the PREA-related provisions and set the boundaries of continued compliance monitoring." *Id.* at 632.

The Fifth Circuit also affirmed the receivership appointment; however, the appellate court found that it was improper to grant the Receiver "authority over the budget and related financial matters" and that this "[C]ourt's need-narrowness-intrusiveness analysis was not sufficiently specific as to the different powers given to the

receiver.” *Id.* at 637. It instructed the Court on remand to “reevaluate de novo the scope of the receivership consistent with [the Fifth Circuit’s] opinion.” *Id.* at 639.

On February 28, 2025, the Court held a hearing to discuss the Fifth Circuit’s mandate, after which it ordered the parties to submit proposals on the scope of the Receiver’s duties, “and to highlight the record evidence relevant to the de novo review and PLRA analysis required by the appellate mandate.” March 12, 2025, Text Order.

Hinds County did not highlight the record evidence as ordered and objects to the Court’s plan for executing the mandate. It argues that the Court must update the factual record to conduct the de novo review because the existing evidence is “stale” and does not reflect “the conditions at RDC today.” Docket No. 276 at 3. The United States disagrees. It contends that the PLRA’s statutory text “requires proving a ‘current and ongoing’ violation only in the context of termination of relief, not in ordering new prospective relief.” Docket 275 at 4–5. In its view, “the PLRA’s provision for entering new prospective relief is the only applicable section of the statute.” *Id.* at 6.

The United States raises a fair point regarding the statutory text of the PLRA. Compare 18 U.S.C. § 3626 (a)(1)(A) with § 3626 (b).¹ But the debate over the PLRA’s requirements for ordering and terminating relief is not relevant to the task before the Court today.

¹ Federal courts of appeals “are split on whether the PLRA’s ‘narrowly drawn and necessary’ language allows a court to grant [prospective] relief in the absence of [a current and] ongoing constitutional violation.” *Amos v. Cain*, No. 4:20-CV-7-DMB-JMV, 2021 WL 1080518, at *5 (N.D. Miss. Mar. 19, 2021) (collecting cases). “The Fifth Circuit has not yet squarely weighed in on this debate.” *Id.* at *6.

The Court has already ordered the relief in this case, which the Fifth Circuit affirmed based on the constitutional violations in the existing record. *See Hinds Cnty. Bd. of Supervisors*, 128 F.4th at 636 (concluding that the “receivership was necessary to remedy the current and ongoing constitutional violations” at RDC).

On remand, the Court must reevaluate the *scope* of that relief. The Fifth Circuit’s directive was clear: the district court must “reevaluate de novo the *scope* of the receivership consistent with this opinion.” *Id.* at 639 (emphasis added). The County has cited no legal authority providing that the Court must update the factual record to account for new evidence it did not consider when it appointed the Receiver. And this Court has found no such authority.²

Thus, pursuant to the Fifth Circuit’s mandate, the Court will consider the record evidence from “the twelve months prior to the [County’s] January 2022 motion to terminate,” *id.* at 627 n.5, in “conducting [its] need-narrowness-intrusiveness analysis” and in “develop[ing] a new description of the receiver’s powers,” *id.* at 639. To do otherwise would be “[in]consistent with [the Fifth Circuit’s] opinion” and undermine principles of both finality and judicial efficiency.³ *Id.* at 639.

Accordingly, the Court issues the following orders:

² The County says the evidence must reflect the conditions at RDC today because “the PLRA requires that the scope of the order must be determined with reference to the constitutional violations established by the plaintiffs before the court.” Docket No. 276 at 4 (citation modified). This is a *non sequitur*. The constitutional violations here were established “at the time the district court conduct[ed] the § 3626(b)(3) inquiry – *i.e.*, at the time termination [was] sought.” *Hinds Cnty. Bd. of Supervisors*, 128 F.4th at 626 (quotation marks omitted); *see also* Docket No. 168.

³ As the United States notes, updating the record on remand would “would result in an endless cycle between the District Court and the Court of Appeals.” Docket No. 275 at 4 n.3. It would effectively permit the County to “continu[e] to appeal this Court’s Orders and then claim that the record was stale each time the Court of Appeals remanded the case.” *Id.*

- 2025 Injunction: This order excludes the PREA-related provisions in the 2023 Injunction. *See* Docket No. 282-1 (replacing Docket No. 250-1). The Court has also modified the deadline for the County to notify the Monitor and United States of emergent conditions.
- 2025 Scope of the Receivership: This order provides a new description of the scope of the receivership. *See* Docket No. 282-2 (replacing Docket No. 249-1 at 31–43). The Court’s need-narrowness-intrusiveness analysis is provided in the corresponding memorandum. *See* Docket No. 282-3.
- Receiver’s Access: This order specifies when the transition period will begin and when the Receiver will assume operational control of RDC. *See* Docket No. 282-4.

SO ORDERED, this the 27th day of June, 2025.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE

Exhibit 3

(Hinds County, MS)



No. 3:16-CV-489-CWR-RHWR

UNITED STATES OF AMERICA,

Plaintiff,

v.

HINDS COUNTY, ET AL.

Defendants.

THE 2025 INJUNCTION

Before CARLTON W. REEVES, *District Judge.*

For the reasons explained in earlier Orders issued by this Court and the U.S. Court of Appeals for the Fifth Circuit, Hinds County is ordered to implement the following provisions at its Raymond Detention Center (“the Jail”). These remaining provisions are “narrowly drawn, extend[] no further than necessary to correct the violation of the Federal right, and the least intrusive means necessary to correct the violation of the Federal right” and will not have an

“adverse impact on public safety or the operation of a criminal justice system.” 18 U.S.C. § 3626(a).

1. Protection from Harm

38. Ensure that the Jail is overseen by a qualified Jail Administrator and a leadership team with substantial education, training and experience in the management of a large jail.

39. Ensure that all Jail supervisors have the education, experience, training, credentialing, and licensing needed to effectively supervise both prisoners and other staff members.

41. Ensure that Jail policies and procedures provide for the “direct supervision” of all Jail housing units.

42. Ensure that the Jail has sufficient staffing to adequately supervise prisoners, fulfill the terms of this Injunction, and allow for the safe operation of the Jail.

44. Develop and implement policies and procedures to ensure that detention officers are conducting rounds as appropriate.

45. Ensure that all correctional officers receive adequate pre- and post-service training to provide for reasonably safe conditions in the Jail.

c. “Direct supervision” training. Detention officers must receive specific pre- and post-service training on “direct supervision.” Such training must include instruction on how to supervise prisoners in a “direct supervision” facility, including instruction in effective communication skills and verbal de-escalation. Supervisors must receive training on how to monitor and ensure that staff are providing effective “direct supervision.”

46. Develop and implement policies and procedures for adequate supervisory oversight for the Jail.

2. Use of Force Standards

50. Develop and implement policies and procedures to regulate the use of force, including policies and procedures to ensure timely notification, documentation, and communication with supervisors and medical staff (including mental health staff) prior to and after any use of force.

3. Use of Force Training

52. The County must develop and implement a use of force training program.

53. Topics covered by use of force training must include:

- a. Instruction on what constitutes excessive force;
- b. De-escalation tactics;
- c. Methods of managing prisoners with mental illness to avoid the use of force;
- d. Defensive tactics;
- e. All Jail use of force policies and procedures, including those related to documentation and review of use of force.

55. The County must update any use of force training after any revision to a use of force policy or procedure.

4. Use of Force Reporting

56. Develop and implement use of force reporting policies and procedures that ensure that Jail supervisors have sufficient information to analyze and respond appropriately to use of force.

57. Require each staff member who used or observed a use of force to complete a Use of Force Report as promptly as possible. Staff members must accurately complete all fields on a Use of Force Report.

58. Ensure that Jail use of force reports include an accurate and detailed account of the events.

59. The County must ensure that Jail supervisors review, analyze, and respond appropriately to use of force.

61. All uses of force must be reviewed by supervisors who were neither involved in nor approved the use of force by the end of the supervisor's shift. All level 1 uses of force must also be reviewed by a supervisor who was neither involved in nor approved the use of force. The purposes of supervisor review are to determine whether the use of force violated Jail policies and procedures, whether the prisoner's rights may have been violated, and whether further investigation or disciplinary action is required.

5. Incident Reporting and Review

63. Develop and implement incident reporting policies and procedures that ensure that Jail supervisors have sufficient information to respond appropriately to reportable incidents.

64. Ensure that Incident Reports include an accurate and detailed account of the events.

66. Ensure that Jail supervisors review and respond appropriately to incidents.

6. Sexual Misconduct

7. Investigations

68. The County shall ensure that it identifies, investigates, and corrects misconduct that has or may lead to a violation of the Constitution.

a. Develop and implement comprehensive policies, procedures, and practices for the thorough and timely investigation of alleged staff misconduct, sexual assaults, and physical assaults of prisoners resulting in serious injury.

f. Provide the Monitor and United States a periodic report of investigations conducted at the Jail every four months. The report will include the following information:

- i. a brief summary of all completed investigations, by type and date;
- ii. a listing of investigations referred for administrative investigation;
- iii. a listing of all investigations referred to an appropriate law enforcement agency and the name of the agency; and
- iv. a listing of all staff suspended, terminated, arrested or reassigned because of misconduct or violations of policy and procedures. This list must also contain the specific misconduct and/or violation.
- v. a description of any corrective actions or changes in policies, procedures, or practices made as a result of investigations over the reporting period.

8. Grievance and Prisoner Information Systems

69. The grievance system must permit prisoners to confidentially report grievances without requiring the intervention of a detention officer.

71. All grievances must receive appropriate follow-up.

72. The grievance system must accommodate prisoners who have physical or cognitive disabilities, are illiterate, or have LEP, so that these prisoners have meaningful access to the grievance system.

9. Restrictions on the Use of Segregation

74. Within 8 hours of intake, prisoners in the booking cells must be classified and housed in more appropriate long-term housing where staff will provide access to exercise, meals, and other services.

75. The County must document the placement and removal of all prisoners to and from segregation.

76. Qualified Mental Health Professionals must conduct mental health rounds at least once a week (in a private setting if necessary, to elicit accurate information), to assess the mental health status of all prisoners in segregation and the effect of segregation on each prisoner's mental health, in order to determine whether continued placement in segregation is appropriate. These mental health rounds must not be a substitute for treatment.

77. The County must develop and implement restrictions on the segregation of prisoners with serious mental illness.

10. Youthful Prisoners

78. Develop and implement a screening, assessment and treatment program to ensure that youth with serious mental illness and disabilities, including developmental disabilities,

receive appropriate programs, supports, education, and services.

81. Ensure that the Jail's classification and housing assignment system does not merely place all youth in the same housing unit, without adequate separation based on classification standards. Instead, the system must take into account classification factors that differ even within the youth sub-class of prisoners. These factors include differences in age, dangerousness, likelihood of victimization, and sex/gender.

82. Train staff members assigned to supervise youth on the Jail's youth-specific policies and procedures, as well as on age-appropriate supervision and treatment strategies.

83. Specifically prohibit the use of segregation as a disciplinary sanction for youth. Segregation may be used on a youth only when the individual's behavior threatens imminent harm to the youth or others.

11. Lawful Basis for Detention

85. The County will not accept or continue to house prisoners in the Jail without appropriate, completed paperwork such as an affidavit, arrest warrant, detention hold, or judge's written detention order.

86. No person shall be incarcerated in the Jail for failure to pay fines or fees in contravention of the protections of the United States Constitution as set forth and discussed in *Bearden v. Georgia*, 461 U.S. 660 (1983) and *Cassibry v. State*, 453 So. 2d 1298 (Miss. 1984).

92. The County must ensure that the Jail timely releases from custody all individuals entitled to release. At minimum:

a. Prisoners are entitled to release if there is no legal basis for their continued detention. Such release must occur no later than 11:59 PM on the day that a prisoner is entitled to be released.

b. Prisoners must be presumed entitled to release from detention if there is a court order that specifies an applicable release date, or Jail records document no reasonable legal basis for the continued detention of a prisoner.

c. Examples of prisoners presumptively entitled to release include:

i. Individuals who have completed their sentences;

ii. Individuals who have been acquitted of all charges after trial;

iii. Individuals whose charges have been dismissed;

iv. Individuals who are ordered released by a court order; and

v. Individuals detained by a law enforcement agency that then fails to promptly provide constitutionally adequate, documented justification for an individual's continued detention.

12. Continuous Improvement and Quality Assurance

13. Criminal Justice Coordinating Committee

14. Implementation, Timing, and General Provisions

121. Within 30 days of the Effective Date of this Injunction, the County must distribute copies of the Injunction to all prisoners and Jail staff, including all medical and security staff, with appropriate explanation as to the staff members' obligations under the Injunction. At minimum:

- a. A copy of the Injunction must be posted in each unit (including booking/intake and medical areas), and program rooms (e.g., classrooms and any library).
- b. Individual copies of the Injunction must be provided to prisoners upon reasonable request.

15. Policy and Procedure Review

130. The County must review all existing policies and procedures to ensure their compliance with the constitutional violations addressed in this Injunction. Where RDC does not have a policy or procedure in place that complies with this Injunction, the County must revise or draft such a policy or procedure.

16. Monitoring

This Injunction must be monitored by an individual approved by the Court. Accordingly, paragraphs 136 through 158 of the Order Amending Consent Decree, and their subparagraphs, are hereby incorporated and remain in force.

17. County Assessment and Compliance Coordinator

18. Emergent Conditions

161. The County must notify the Monitor and United States of any prisoner death, riot, escape, injury requiring hospitalization, or over-detention of a prisoner (i.e. failure to

release a prisoner before 11:59 PM on the day she or he was entitled to be released), within 24 hours of learning of the event.

SO ORDERED, this the 27th day of June, 2025.

s/ CARLTON W. REEVES
United States District Judge

Exhibit 4

(Hinds County, MS)



No. 3:16-CV-489-CWR-BWR

UNITED STATES OF AMERICA,

Plaintiff,

v.

HINDS COUNTY, ET AL.,

Defendants.

ORDER ON RECEIVER'S DUTIES

Before CARLTON W. REEVES, *District Judge.*

Through a series of Orders, this Court and the U.S. Court of Appeals for the Fifth Circuit have directed a federal Receiver to operate Hinds County's Raymond Detention Center ("RDC"). This Order outlines the Receiver's duties.

I.

General Powers & Duties

The Receiver shall have all powers, authorities, rights, and privileges now possessed by the officers, managers, and

interest holders of and relating to RDC, in addition to all powers and authorities of a receiver at equity under all applicable state and federal laws, in accordance with Rule 66 of the Federal Rules of Civil Procedure.

The Receiver does not have unilateral authority to determine the annual budget for RDC and shall exercise all powers and fulfill all duties within the financial limitations outlined in Section II.

The Receiver's powers and duties are necessary to bring RDC into compliance with constitutional standards and the Court's Orders. To that end:

1. The Receiver shall hold and exercise all executive, management, and leadership powers for the Defendants with respect to the custody, care, and supervision of Hinds County detainees at RDC, including the power to admit, book, release, transfer, and supervise detainees at RDC in a constitutional manner.
2. The Receiver shall be in charge of the day-to-day operations at RDC. The Receiver shall not have day-to-day oversight of the Work Center or the Jackson Detention Center. Additionally, the Receiver shall not have day-to-day oversight of the Henley-Young Juvenile Justice Center, except as it pertains to youth charged as adults.
3. The Receiver shall have the duty to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contractual, and other operational functions for RDC.
4. The Defendants shall work closely with the Receiver to facilitate the accomplishment of the Receiver's duties under this Order.

5. The Receiver's authority and decisions are subject to review by the Court. To exercise these powers, the Receiver shall be onsite at RDC with sufficient frequency, regularity, and duration to carry out the Court's Orders.

6. The Receiver shall have the power to hire, fire, suspend, supervise, promote, transfer, discipline, and take all other personnel actions regarding employees, contract employees, and independent subject matter experts retained by the Receiver who perform services related to the operation of RDC.

7. The Receiver shall have the power to establish personnel policies, subject to the policy review provisions of the Court's Orders, and to create, abolish, or transfer positions related to the administration and operation of RDC.

8. The Receiver shall have the authority to negotiate agreements with the Sheriff's Department, Board of Supervisors, or other state, county, or city officials, to obtain the assistance of maintenance, administrative, or other agency staff not under the Receiver's direct control.

9. The Defendants shall cooperate with the Receiver and shall not withhold approval of such agreements except for good cause.

10. The Receiver shall coordinate with the County in negotiating new contracts and in renegotiating existing contracts.

II.

Duty to File Plan of Action, Budget, and Reporting

1. By August 1, 2025, the Receiver shall develop a Plan of Action designed to bring RDC into compliance with constitutional standards and the Court's Orders. The Plan of Action shall include a timeline for all specified remedies, indicating the responsible individuals and steps for implementation.
2. The parties shall have until July 14, 2025, to submit any proposals for the Plan of Action to the Receiver for consideration.
3. The Receiver shall submit the final Plan to the parties and the Court. The Plan will be filed with the Court as a public record.
4. The Receiver shall update and/or modify the Plan as necessary throughout the duration of the Receivership. The Receiver shall send updated versions of the Plan to the parties and file updated versions with the Court.
5. By August 1 of each year, the Receiver shall propose to the Board of Supervisors the annual RDC budget for the County's next fiscal year (beginning October 1).
6. The Receiver shall consult with the Sheriff in preparing the annual RDC budget, which shall include staff salaries and benefits, medical and mental health services (including the medical provider contract), physical plant improvements, fire safety, and any other remedies needed to address the constitutional deficiencies documented in this case.
7. The Receiver may elect to engage monitors or other independent subject-matter experts to gauge progress toward

constitutional minimums. The proposed annual budget shall also include salaries for all persons retained or brought in by the Receiver.

8. The parties shall have until July 14 to submit any budget-related proposals to the Receiver for consideration.

9. The Receiver shall have access to all County financial, accounting, and budget records and systems so that the Receiver can ascertain what has already been budgeted and spent on RDC, including on detention officers, the medical contractor, and facility repairs. The Defendants shall not unreasonably withhold access to such information.

10. The Board shall approve the Receiver's budget or propose an alternative within 14 days of receiving the Receiver's proposal. Any alternative budgets must include a budget forecast indicating how much the County will need to spend to comply with the Receivership and the Court Orders, including any anticipated, projected increases in personnel, repair, and operational costs

11. The Board of Supervisors and the Receiver shall have 10 days to negotiate any differences that are likely to impede the Receiver's ability to bring RDC into compliance with constitutional standards and the Court's Orders. If good faith negotiations fail, the matter shall be brought to the Court.

12. If at any point the Receiver determines that the amount in the annual budget is inadequate to discharge the Receiver's duties or achieve substantial compliance with the Court's Orders, the Receiver shall propose budget modifications to the Board of Supervisors, who shall consider and vote on the modifications within 21 days of receiving the proposed budget modifications. If the Board approves the

modifications, the County shall make the additional funds available within 30 days. If the Board does not approve the modifications, the matter may be brought to the Court.

13. The Receiver shall develop a system for periodically reporting on the status of the budget to the Board of Supervisors and shall ensure the transparency and accountability of budget operations.

III.

Access, Immunity, and Interference

1. The Receiver, including staff and consultants, shall have unlimited access to all County, Jail, and contractor (including medical provider) records and files, paper and electronic, including all institutional, personnel, financial, and detainee records, as deemed necessary by the Receiver to carry out their duties under this Order.

2. The Receiver and their personnel shall have unlimited physical access to RDC. The Receiver and their personnel shall not need to give notice before entering RDC.

3. Nothing in this provision is intended to limit or prohibit the Receiver or their personnel from having reasonable access to other facilities or locations housing RDC detainees, RDC staff, RDC records, or providing services or supplies for RDC.

4. The Receiver and their personnel shall have unlimited communications access to detainees, detention officers, RDC managers, medical and mental health staff, and maintenance staff. This access includes the authority to conduct confidential, ex parte interviews. This access also includes access to medical, mental health, and maintenance

contractors, including any firms retained to renovate or replace RDC facilities.

5. The Receiver and their personnel shall have the authority to communicate ex parte, and confidentially, with each party and the party's legal representatives, as well as with the Court.

6. The Receiver and their personnel shall have the status of officers and agents of the Court, and as such shall be vested with the same immunities as vested with the Court. Defendants shall completely indemnify the Receiver and their personnel in any litigation brought against the Receiver or their personnel regarding activities conducted in the course of the Receiver's official duties.

7. The Receiver shall make all reasonable efforts to exercise their powers, as described in this Order, in a manner consistent with applicable State and local laws, regulations, and contracts.

8. In the event that the Receiver finds that a State or local law, regulation, contract, or other third-party action or inaction is preventing the Receiver from carrying out the Court's Orders, the Receiver shall notify the parties and try to resolve the issue, communicating with any third parties, including state officers and other state or local agencies, as necessary.

9. If the Receiver is still unable to resolve the issue, the Receiver shall notify the Court and request appropriate action.

10. If the Court determines that the third party is unlawfully preventing implementation of constitutionally required remedies, the Court may grant additional, appropriate relief.

IV.

Term & Compensation

1. The Receiver shall receive reasonable compensation for the Receiver's services and expenses in an amount to be approved by the Court.
2. The Receiver shall have staffing necessary to fully carry out the Receiver's duties as set forth in this Order.
3. The Receiver and their personnel may not make any public statements (at a press conference or otherwise) with regard to any act or omission of the County, or disclose information provided to the Receiver pursuant to this Receivership, except as authorized by this Order, the Court, or by joint stipulation of the parties.
4. Without leave of the Court, the Receiver and their personnel may not testify in any litigation or proceeding other than this case with regard to any act or omission of the County, or the County's agents, representatives, or employees, as those acts or omissions relate to the Court's Orders. The preceding restriction does not apply to any legal action brought by the Receiver or their personnel against the County to obtain compensation for past services or to enforce their rights under this Order.
5. Unless called to testify by the Court or one of the parties, the Receiver and their personnel may not testify regarding any matter or subject that they may have learned as a result of their performance under this Agreement.
6. Unless such conflict is waived in writing by the County and the United States, the Receiver and their personnel must not accept employment or provide consulting services that would

present a conflict of interest with their responsibilities under this Receivership, including being retained (on a paid or unpaid basis) by any current or future private litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the County or the United States, including their departments, officers, agents or employees, regarding the subject matter of this case.

7. If the parties cannot agree on whether to waive a conflict, they may seek appropriate relief from the Court. The mere fact that the Receiver or their personnel provide expert opinion or consulting services regarding civil rights or institutional reform does not itself constitute a conflict, where such opinion or services are provided regarding another jurisdiction.

8. The Receivership is not a State, County, or local agency; nor is the Receiver or their personnel an agent of State, County, or local agency. Accordingly, records maintained or in the custody of the Receiver are not deemed public records subject to public inspection.

9. The Receivership shall remain in place no longer than necessary to remedy the unconstitutional conditions justifying the appointment. The Receivership will end as soon as the Court finds that Defendants have remedied RDC's unconstitutional conditions and achieved substantial compliance with the Court's Orders.

10. The Court anticipates that substantial compliance will be achieved by the time RDC closes and detainees have been moved into the new Jail facility and expects remediation of other non-physical-plant-related deficiencies by that time as well.

11. The Court expects that the Receiver will transition operational responsibilities and powers over RDC back to Defendants as Defendants demonstrate the ability to operate RDC in a constitutional manner.

12. Prior to any transfer of powers and responsibilities to the Defendants, the Receiver shall develop a Transition Plan.

13. The Transition Plan shall provide long-term management and policy recommendations as to the overall structure and funding of RDC and the Jail, and as to Defendants' responsibilities.

14. The Transition Plan will also provide specific operational guidance to Defendants so that they can sustain constitutional conditions after powers and authority have been transferred back to them.

15. All parties will have 21 days to comment on the Transition Plan before it is filed with the Court for the Court's approval.

16. The Receiver is expected to manage RDC in a manner that is professional and consistent with generally accepted management, accounting, and personnel standards.

17. In the event a party has a concern about the Receiver's management of RDC or their ability to expedite compliance with the Court's Orders, the party may petition the Court and in response, the Court may remove the Receiver for good cause.

18. If the Receiver position becomes vacant, the parties shall each propose up to three replacement candidates to the Court.

V.

Modification

Given that the Receiver position is significant in its scope and dimension, the Court finds that flexibility will be an important element in ensuring its effectiveness. Accordingly, this Order may be modified as necessary from time to time in accordance with federal law, including by motion of the parties or at the Receiver's written request, to ensure the success of the Receiver and the eventual return of RDC to the operation and control of the Defendants. Each year, the Receiver shall schedule a formal assessment with the Court, during which the Court will regularly assess progress under the Receivership and determine whether the Receiver's duties should be modified or eliminated.

SO ORDERED, this the 27th day of June, 2025.

s/ CARLTON W. REEVES
United States District Judge

Exhibit 5

(Hinds County, MS)



No. 3:16-CV-489-CWR-BWR

UNITED STATES OF AMERICA,

Plaintiff,

v.

HINDS COUNTY, ET AL.,

Defendants.

PLRA ANALYSIS

Before CARLTON W. REEVES, *District Judge.*

This memorandum provides the Court's need-narrowness-intrusiveness analysis on the scope of the Receiver's duties. See Docket No. 282-2.

"The PLRA instructs that any prospective relief must be 'narrowly drawn,' 'extend[] no further than necessary to correct the violation of the Federal right,' and serve as 'the least intrusive means necessary to correct the violation of the Federal right.'" *United States v. Hinds Cnty. Bd. of Supervisors*,

128 F.4th 616, 637 (5th Cir. 2025) (quoting 18 U.S.C. § 3626(a)(1)(A))). For the reasons provided below, the Court finds that each of the Receiver’s powers and duties satisfies the PLRA’s need-narrowness-intrusiveness standard.

I.

General Powers & Duties

The scope of the receivership is to bring RDC into compliance with constitutional standards and the Court’s Orders. Despite repeated opportunities, the County has failed to implement the Court’s remedial orders, *id.* at 14–15, 60–61; properly manage RDC operations and protect detainees from harm, *id.* at 48–53; and provide adequate staffing and supervision at RDC, *id.* at 43–47, 164 n.21.

The Receiver’s authority extends no further than necessary to ensure compliance with constitutional standards and the Court’s Orders. Day-to-day control is limited to operations at RDC and personnel who perform services related to the operation of the facility. Further, as explained below, the Receiver will work collaboratively with the Defendants in determining the budget for RDC and other financial-related matters (such as contract negotiations and staffing decisions).

The Court considered alternative measures, such as granting the Receiver partial control over RDC. It ultimately determined, however, that limited authority over the facility would be ineffective given the County’s repeated inability or unwillingness “to exhibit the leadership necessary to protect the lives of [detainees].” Docket No. 204 at 23 (quotation

marks omitted); *see also* Docket No. 249-1 at 14–17 (failure of less intrusive means).

Given “the severity and immediacy of the current and ongoing constitutional violations at RDC, the failure of less extreme measures to ensure inmate safety, the need for compliance with the court’s orders, and the lack of leadership at RDC necessary to ensure compliance,” the Court believes that the Receiver’s general powers and duties satisfy the PLRA’s need-narrowness-intrusiveness standard. *Hinds Cnty. Bd. of Supervisors*, 128 F.4th at 637.

II.

Duty to File Plan of Action, Budget, and Reporting

The Receiver’s duties to plan, budget, and report are necessary to ensure compliance with constitutional standards and the Court’s Orders.

The planning provisions are designed to ensure efficiency, progress, and accountability in achieving constitutional compliance. The Plan of Action will provide the Receiver with direction in executing their duties and will help support and justify the Receiver’s proposed budget for RDC. The planning process is also collaborative as it provides the parties with an opportunity to submit proposals for the Receiver’s consideration.

The budget provisions are particularly necessary, given the County’s failure to allocate resources appropriately and efficiently. *See* Docket No. 249-1 at 19–21. While granting the Receiver unilateral authority over RDC’s annual budget would go too far, completely excluding the Receiver from the

budgeting process would hinder the Receiver's ability to remedy the constitutional violations. Though the Receiver's authority over the budget and other financial-related matters is limited, the Court believes that the Receiver's input will help ensure that the necessary funds are allocated to address constitutional deficiencies at RDC.

To create an informed budget, the Receiver must have access to relevant County financial and accounting records. This access is explicitly limited to what is necessary to develop RDC's annual budget and does not extend beyond the scope of the Court's remedial Orders.

The Court included the reporting provision in light of the County's history of inadequate reporting and documentation. *See* Docket No. 168 at 51. To ensure transparency and accountability, the Receiver must regularly report on the status of the budget and operational progress.

In conclusion, the Court finds that the provisions in Section II are narrowly drawn, extend no further than necessary, and are the least intrusive means of providing transparency and accountability.

III.

Access, Immunity, and Interference

The County has repeatedly obstructed compliance efforts at RDC by undermining jail leadership, withholding information, and providing misleading reports to the Court. *See* Docket No. 168 at 18–19 (bypassing the Administrator's authority); Docket No. 165 at 10–17 (underreporting serious incidents and misrepresenting repairs); Docket No. 168 at 14–

19 (lack of institutional support led to resignation of Jail Administrator).

As such, the Receiver must have independent access to RDC to assess the conditions at the facility and implement corrective measures. This includes the ability to enter RDC without notice. The Court considered alternative measures, such as requiring the County to facilitate access or requiring the Receiver to provide notice before site visits, but concluded that these options would be inefficient and ineffective. Limiting the Receiver's access or requiring the Receiver to seek permission each time they need to enter the facility would create unnecessary delays and hinder progress.

The Receiver's authority to conduct confidential interviews with detainees, staff, and contractors, as well as communicate ex parte with the parties and the Court, is critical to obtaining candid and unbiased assessments of the conditions and day-to-day operations at RDC.

Additionally, designating the Receiver and their staff as agents of the Court with judicial immunity is necessary in order to protect against retaliatory litigation and political interference.

For these reasons, the Court concludes the measures in Section III are narrowly drawn, extend no further than necessary, and are the least restrictive means to ensure that the Receiver can achieve compliance with constitutional standards.

IV.

Term & Compensation

The provisions in Section IV also satisfy the PLRA’s need-narrowness-intrusiveness requirement. The term and compensation provisions are necessary, given the County’s failures to adhere to financial obligations. *See e.g.*, Docket No. 249-1 at 18 (“Forcing the Monitor to shoulder the burden of financing and spearheading essential initiatives”).

The Court has acted within its authority to order a reasonable compensation for the Receiver’s services. *See* Docket No. 215 at 3 n.3. Further, the provisions in Section IV specify that the Receivership will remain in place no longer than necessary to remedy the unconstitutional conditions that led to the appointment of the Receiver. The Receivership will conclude once the Court determines that the Defendants have corrected RDC’s unconstitutional conditions and made substantial progress in complying with the Court’s Orders.

V.

Modification

Lastly, Section V complies with the PLRA by providing the parties and the Receiver the opportunity to request modifications of this Order as necessary to comply with laws and Court’s Orders. It ensures that the Receivership is maintained only to the extent necessary to bring RDC into compliance with constitutional standards.

SO ORDERED, this the 27th day of June, 2025.

s/ CARLTON W. REEVES

United States District Judge

Exhibit 6

(Hinds County, MS)



No. 3:16-CV-489-CWR-BWR

UNITED STATES OF AMERICA,

Plaintiff,

v.

HINDS COUNTY, ET AL.,

Defendants.

ORDER

Before CARLTON W. REEVES, *District Judge.*

Pursuant to the 2025 *Order on the Scope of the Receiver's Duties*, Docket No. 282-2, on July 1, 2025, the Receiver shall begin his transition into the receivership by developing a plan of action and annual budget proposal to bring RDC into compliance with constitutional standards and the Court's Orders. To effectuate a smooth transition, the Receiver's operational control over RDC shall not take effect until October 1, 2025,

the beginning of the County's next fiscal year.¹ The County shall begin paying the Receiver on July 1, 2025. *See* Docket No. 249-1 at 3 n.3. Within 30 days of this Order, the Receiver shall submit to the County any outstanding invoices for the reasonable work performed and expenses incurred up to June 27, 2025. Payment of invoices shall be made within thirty days of receipt.

SO ORDERED, this the 27th day of June, 2025.

s/ CARLTON W. REEVES
United States District Judge

¹ The County must comply with the 2025 Injunction until the Receiver takes operational control of RDC.

Exhibit 7

(California - Coleman)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

No. 2:90-cv-0520 KJM SCR P

ORDER AND ORDER
APPOINTING RECEIVER-
NOMINEE

On March 19, 2025, the court issued an order informing the parties it intended to appoint Colette S. Peters as Receiver-nominee for a period of four months, to develop a plan to implement the court-ordered remedy in this case. The court ordered the parties to “meet and confer and file a joint statement concerning” the court’s intent to appoint Ms. Peters as Receiver-nominee and to “show cause if any they have” why the court should not appoint Ms. Peters as contemplated. March 19, 2025 Order and Order to Show Cause at 2, 3-7¹, ECF No. 8574. On March 28, 2025, the parties filed the required Joint Statement, ECF No. 8583, and on April 1, 2025 the court held a further status conference, ECF No. 8588. After consideration of the Joint

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¹ All citations to page numbers in documents filed in the Court’s Electronic Case Filing (ECF) system are to the page number assigned by ECF and located in the upper right hand corner of the page.

Statement and the positions of the parties and good cause appearing, the court now ORDERS AS
FOLLOWS:

I. APPOINTMENT OF RECEIVER-NOMINEE

Colette S. Peters is appointed to serve as Receiver-nominee in this case for an initial period of four months with the powers and duties set forth below, and with defendants bearing the costs of this initial phase of developing a Receivership Action Plan.

II. DUTIES AND POWERS OF RECEIVER-NOMINEE

A. Duties of the Receiver-nominee

The primary duty of the Receiver-nominee during the four month period beginning with issuance of this order is to develop a comprehensive Receivership Action Plan to effectuate full and durable compliance with the court-approved and court-ordered remedies in this action.

1. Receivership Action Plan

Within not more than four months of the effective date of appointment, in consultation with the parties and coordinating with the Special Master and his team, the Receiver-nominee shall develop and present to the court a detailed Receivership Action Plan designed to effectuate full compliance with the court-approved remedy in this case, including the Program Guide, the Compendium of Custody-Related Remedial Measures, all Staffing Plans, all court-ordered suicide prevention measures, as well as all other outstanding tasks required for complete and durable remediation in this action. The Receivership Action Plan shall include a proposed timeline for all actions and a set of metrics to evaluate the Receiver's progress and success.

Pending finalization of the Receivership Action Plan, the Receiver-nominee, after consultation with the parties, may alert the court to any measures she believes the court could address by order or stipulation to further the implementation of outstanding remedial measures and narrow the scope of work ultimately to be performed by the Receiver in implementing the Receivership Action Plan.

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1 **2. Reporting**

2 The Receiver-nominee shall provide updates to the court on a regular basis and no less
3 than monthly, and shall remain in contact with the court informally, as needed, during the time
4 allowed for development of the Receivership Action Plan.

5 **B. Powers and Authority of the Receiver-Nominee**

6 The Receiver-nominee shall have all powers necessary to fulfill the above duties under
7 this order, including, but not limited to:

8 **1. Personnel**

9 The Receiver-nominee is authorized to appoint the following individuals to her team:

- 10 • Martin Hoshino as Senior Advisor for purposes of developing the Receivership
11 Action Plan; and
12 • William Lothrop as Deputy Receiver-nominee.

13 Curriculum vitae for Mr. Hoshino and Mr. Lothrop are attached to this order as Exhibit A.

14 The Receiver-nominee is also authorized to appoint within one month from the date of
15 this order one additional Deputy Receiver-nominee, subject to providing the name, qualifications
16 and proposed rate of pay of the additional deputy to the court and obtaining the court's advance
17 approval.

18 The Receiver-nominee shall, in communication with the Secretary of the California
19 Department of Corrections and Rehabilitation (CDCR) and the Receiver in *Plata v. Newsom*,²
20 identify administrative and clerical support staff to assist with ministerial duties only.

21 While all court orders regarding the Special Mastership remain in effect, the Special
22 Master shall communicate with the Receiver-nominee as needed to ensure she is aware of his
23 court-ordered functions and ongoing activities and shall report to her any and all issues he
24 identifies as needing resolution during the four-month period provided by this order.

25 /////

² Case No. 01-1351 JST (N.D. Cal.).

1 **2. Governing State Laws, Regulations, and Contracts**

2 The Receiver-nominee shall make all reasonable efforts to exercise her powers, as
3 described in this order, in a manner consistent with California state laws, regulations, and
4 contracts, including labor contracts. In the event, however, that the Receiver-nominee finds a
5 state law, regulation, contract, or other state action or inaction would prevent her from
6 implementing a material provision of the court-ordered remedy in this action, or otherwise clearly
7 prevent her from carrying out her duties as set forth in this order, and that alternatives are
8 inadequate, the Receiver-nominee in the Receivership Action Plan may propose the court waive
9 the state or contractual requirement that is causing the impediment.

10 **3. Access to Records and Facilities**

11 The Receiver-nominee shall have unlimited access to all records and files (paper or
12 electronic) maintained by CDCR and the other defendants, including but not limited to all
13 institutional, personnel, financial, and prisoner records, as deemed necessary by the Receiver-
14 nominee to carry out her duties under this order.

15 The Receiver-nominee shall have unlimited access to all CDCR facilities, as she deems
16 necessary, to carry out her duties under this order. The Receiver-nominee shall provide
17 reasonable notice when scheduling any visits to facilities. The Receiver-nominee shall have
18 unlimited access to members of the *Coleman* class and to line and managerial staff, including the
19 authority to conduct confidential interviews with staff and class members, if she deems it
20 necessary to fulfill her duties under this order.

21 **4. Immunity and Indemnification**

22 The Receiver-nominee and her staff shall have the status of officers and agents of this
23 court, and as such shall be vested with the same immunities as vested with the court.

24 Defendants must pay all costs of this next phase, including salaries and benefits of the
25 Receiver-nominee and the members of her team as set out in this order. For purposes of payment
26 of those salaries and benefits only, CDCR shall hire the Receiver-nominee and Deputy Receiver-
27 nominees as employees consistent with CDCR's hiring practice for senior CDCR officials

1 including the Secretary of the CDCR and shall retain the Special Advisor as a Special
2 Consultant.³

3 Additionally, defendants shall indemnify the Receiver-nominee and members of her staff
4 to the same extent defendants are obligated to indemnify the Secretary of the CDCR.

5 **C. Office of the Receiver-nominee**

6 **1. Compensation and Method of Payment**

7 The Receiver-nominee shall be paid a reasonable compensation for her services at an
8 annualized rate of \$400,000.00, for the four-month period covered by this order, plus benefits
9 including police officer/firefighter (POFF) status for purposes of retirement.

10 Special Advisor Martin Hoshino shall be compensated for his services at an hourly rate
11 based on an annualized salary of \$390,000 for the four-month period covered by this order.

12 Deputy Receiver-nominee William Lothrop shall be compensated for his services at an
13 annualized rate of \$340,000.00 plus benefits including POFF status for purposes of retirement for
14 the four-month period provided by this order.

15 The Receiver-nominee, Special Advisor, and Deputy Receiver-nominee shall be eligible
16 for bonuses and cost of living adjustments (COLAs) to the same extent as the Secretary of CDCR
17 and CDCR shall determine their eligibility for and pay to them such bonuses and COLAs in the
18 same manner as provided for the Secretary of CDCR.

19 CDCR also will arrange to cover the reasonable expenses of the Receiver-nominee and
20 her staff, including travel expenses and per diem.

21 **2. Office Space**

22 The Receiver-nominee may arrange for use of office space as needed for the four month
23 period provided by this order, in a location to be determined in consultation with the court. As

³ Not later than April 4, 2025 at 12:00 noon, counsel for defendants shall file with the court a brief explanation of how any state law, rule or regulation affects CDCR's authority to employ the Receiver-nominee as required by this order, clearly identifying all such laws, rules, or regulations, and identifying the basis of this court's authority to waive such provisions. If any waivers are required, counsel shall provide proposed language to effect such waivers. Upon review of this filing, the court will issue any supplemental order as needed to ensure this order takes full effect, retroactive to April 2, 2025.

the court explained to the parties at the status conference on April 1, the court will arrange for the Receiver-nominee to use court space in the Robert T. Matsui U.S. Courthouse in Sacramento as office and meeting space on an as-needed basis, which the court anticipates may address the need for office space during the four-month period covered by this order.

3. All Other Costs

All other costs incurred by the Receiver-nominee relating to the fulfillment of her duties under this order shall be borne by defendants.

D. LENGTH OF TIME FOR PREPARATION OF RECEIVERSHIP PLAN

The time allowed for preparation and presentation to the court of a Receivership Action Plan will be for a period of not more than four months beginning on the date this order is filed.

E. COOPERATION

All defendants, and all agents, or persons within the employ of any defendant in this action (including contract employees), and all persons in concert and participation with them, and all counsel in this action, shall fully cooperate with the Receiver-nominee in the discharge of her duties under this order, and shall promptly respond to all inquiries and requests related to her performance of those duties. Any such person who interferes with the Receiver-nominee's work, or otherwise thwarts or delays the Receiver-nominee's performance of her duties under this order, shall be subject to contempt proceedings before this court.

The Secretary of the CDCR shall ensure that all of the CDCR's employees and agents (including contract employees) are given prompt notice of the substance of the cooperation required by this order. The Governor of California, the Director of the Department of State Hospitals, and the Director of the Department of Finance shall each ensure that employees of their respective offices are given prompt notice of the cooperation required by this order.

F. CONTINUATION OF MONITORING BY SPECIAL MASTER

While reporting to the Receiver-nominee as needed, as provided above, the Special Master and his team shall continue during the period of time covered by this order with the monitoring currently underway as provided by the Order of Reference, ECF No. 640, and plan to

1 provide the semi-annual monitoring reports as also provided by the Order of Reference. In her
2 Receivership Action Plan, the Receiver-nominee shall propose the manner in which the Receiver
3 will interface with the Special Master and consider the Special Master's monitoring reports in
4 determining the status of defendants' compliance with the remedial plans in this action.

5 **III. LITIGATION STAY**

6 Pending the Receiver-nominee's presentation of the Receivership Action Plan, the court
7 STAYS all litigation pending in this court with the exception of the following:

- 8 • Review of the Magistrate Judge's March 25, 2025 Findings and
9 Recommendations, ECF No. 8580.
- 10 • Implementation of the Plan for Expenditure of Staffing Fines, which the court
11 approved and ordered implemented by order filed August 29, 2024, ECF No.
12 8381, and which will proceed in accordance with the terms of the Plan promptly
13 upon issuance of the mandate following the Opinion of the U.S. Court of Appeals
14 for the Ninth Circuit filed March 19, 2025, ECF No. 8576.

15 Regarding the Plan for Expenditure of Staffing Fines, the parties are ordered to meet and
16 confer and file a joint statement within seven (7) days showing cause, if any they have, why the
17 court should not issue an order providing for and memorializing the following:

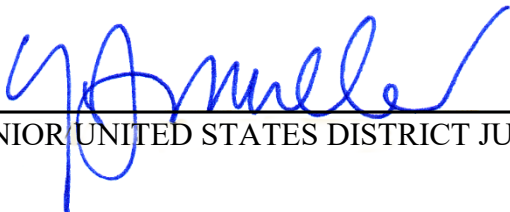
- 18 • As required by prior orders, implementation of the Plan for Expenditure of
19 Staffing Fines shall be funded by drawing on funds in the Mental Health Staffing
20 Deposit Fund;
- 21 • On March 28, 2025, as reported by defendants accumulated fines total
22 \$205,043.060.00;
- 23 • As of April 2, 2025, defendants have deposited a total of \$139,106,888.00 in the
24 Mental Health Staffing Special Deposit Fund;
- 25 • Consistent with the March 19, 2025 opinion of the Court of Appeals,
26 \$102,521,530.00 in fines to date are currently available to fund the Plan for
27 Expenditure of Staffing Fines without further litigation;

28 /////

- Defendants shall continue to report monthly fines consistent with this court's prior orders but shall only be required to deposit half of the reported fines into the Mental Health Staffing Deposit Fund until further order of the court. Further, defendants will not be required to deposit any additional funds unless and until the partial future deposits required by this order exceed \$36,585,358.00, which represents the difference between the amount currently in the Fund and the undisputed amount currently available to fund the Plan for Expenditure of Staffing Fines.
- Any other provision the parties jointly propose, or any one party proposes, to clarify implementation of the Plan for Expenditure of Staffing Fines.

IT IS SO ORDERED.

DATED: April 2, 2025.



SENIOR UNITED STATES DISTRICT JUDGE

Exhibit 8

(California - Coleman)

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 RALPH COLEMAN, et al.,
12 Plaintiffs,
13 v.
14 GAVIN NEWSOM, et al.,
15 Defendants.
16

No. 2:90-cv-0520 KJM SCR P
ORDER

17 On June 6, 2025, the court withdrew its prior directive to the California Department of
18 Corrections and Rehabilitation (CDCR) to hire the Receiver-nominee and Deputy Receiver-
19 nominees as employees and ordered instead that effective June 1, 2025, “the Receiver-nominee
20 and Deputy Receiver-nominees will be paid monthly an amount equivalent to the pro-rated share
21 of the same annualized salary and benefits” the court set in its April 2, 2025, April 22, 2025, and
22 May 1, 2025 orders, respectively. June 6, 2025 Order at 2, ECF No. 8668.

23 As noted, the court previously set compensation for the Receiver-nominee and her two
24 Deputies for the four-month period covered by the April 2, 2025 order appointing the Receiver-
25 nominee. April 2, 2025 Order at 5, ECF No. 8589; May 1, 2025 Order at 2, ECF No. 8625. As
26 the court explained and again confirms, that compensation meets all the criteria the court must
27 consider in setting “reasonable” compensation for a receiver. April 22, 2025 Order at 5, ECF No.

28 /////

1 8608 (applying factors from *Walton N. Moore Dry Goods Co. v. Lieurance*, 38 F.2d 186, 192 (9th
2 Cir. 1930).

3 In particular, the Receiver-nominee, her two Deputy-nominees, and her Senior Advisor,
4 are tasked with generating in a very compressed four-month period of time “a comprehensive,
5 detailed plan to finally achieve ‘full and durable compliance with the court-approved and court-
6 ordered remedies in this’” class action, which “has been in its remedial phase for almost thirty
7 years.” ECF No. 8608 at 5. As the court has found, “[a]fter thirty years of ongoing court
8 supervision, the benefits derived from development of that plan alone are great, if not
9 incalculable.” *Id.* All four members of the Receiver-nominee’s team, including the Receiver-
10 nominee herself, “have extensive, high level experience in prison administration” and, to date,
11 they have shown “a clear understanding of the task at hand and a high level of energy and focus
12 as they [work] on the myriad issues to be addressed, resolved, and assembled into the
13 comprehensive plan the court requires.” *Id.* at 5-6. Moreover, the Receiver-nominee is tasked
14 with preparing a plan to overcome the inability of defendants to attain compliance with the
15 remedy in this case. The nature of the task warrants a rate of pay reflecting a premium, as does
16 the fact that, nationwide, there is a very small pool of highly qualified Receiver-nominee
17 candidates available and willing to accept the assignment. Additionally, the Receiver-nominee
18 the court has identified, and the members of her team, unquestionably could have obtained other
19 highly compensated employment, which they have not pursued at this point given their
20 willingness to prepare the plan the court has requested, and to do so professionally with great
21 focus, commitment and depth of understanding.

22 Taking account of the above, the court in its discretion approved a salary for the Receiver-
23 nominee at an annualized rate of \$400,000.00, and for each of her Deputies a salary at an
24 annualized rate of \$340,000.00. ECF No. 8589 at 5; May 1, 2025 Order at 2, ECF No. 8625. All
25 of these salary levels are reasonable because the Receiver-nominee and her team are
26 exceptionally well-qualified and serve “now an arm of the court, developing a plan to bring
27 defendants into compliance with their constitutional responsibilities.” ECF No. 8608 at 6. The

1 salary levels also happen to be lower than the original starting salary for the *Plata*¹ Receiver,
2 adjusted for inflation. *Id.* Moreover, the *Plata* Receiver’s annual salary in 2024 was \$372,105,
3 and likely is higher this year given his annual “pay increases consistent with Administrative
4 Office of the Courts policy and Cost of Living Adjustments.” ECF No. 8597-1 at 3. The *Plata*
5 Receiver also receives separate compensation “for his work as a professor of law at the University
6 of the Pacific McGeorge School of Law,” *id.*, whereas the Receiver-nominee and her team are
7 working exclusively on the current task the court has ordered in this action. Fundamentally, the
8 annualized salary rate for the Receiver-nominee is only marginally higher, if at all, than the *Plata*
9 Receiver’s current salary paid through the California Administrative Office of the Courts. The
10 court thus now confirms the annualized salary rates for the Receiver-nominee and her team and
11 the rationale for them.

12 The court also ordered defendants to provide the Receiver-nominee and Deputy Receiver-
13 nominees benefits comparable to those afforded to the Secretary of CDCR. *Id.* at 7; *see also* ECF
14 No. 8625 at 2.² The court found this comparison met the requirements for the reasonableness
15 standard for the same reasons summarized above. Specifically, those reasons include:

- 16 • The Receiver-nominee and her Deputies and Senior Advisor are required to
17 prepare a comprehensive plan in four months “to finally achieve constitutional
18 compliance in this action . . . , a task neither Governor Newsom, who has been in
19 office for [over six] years, nor Secretary Macomber, who has been in his present
20 role for almost two and a half years, have been able to perform, nor have any of
21 their predecessors.” ECF No. 8608 at 7.

¹ *Plata v. Newsom*, Case No. 01-1351 JST (N.D. Cal.).

² In the May 1, 2025 order, the court expressly found that payment of salary and benefits at the same level for both Deputy Receiver-nominees was “both fair and reasonable.” ECF No. 8625 at 2. At that time, the Receiver-nominee requested a separate level of retirement benefits for the Deputy Receiver-nominee appointed on May 1, 2025 based on the Receiver-nominee’s determination she could not afford to have Ms. Toomey devote the extensive time required to enroll in court-ordered retirement benefits given the short period remaining before the Receivership Action Plan is due. The court granted the request to provide a different level of retirement benefits. *Id.* This order establishing a new method of payment incorporates the fundamental principle, which the court previously applied, that both Deputy Receiver-nominees should be compensated at the same level.

- The Receiver-nominee and Deputy Receiver-nominee Lothrop both have worked in public safety and corrections for over thirty years and are in this respect CDCR Secretary Macomber's peers at least, ECF No. 8608 at 7;
- Deputy Receiver-nominee Toomey, an attorney, has more than twenty-two years of federal government experience including both enforcement and high level corrections management experience, brings legal training and expertise, and "[h]er responsibilities will be substantially equivalent to Mr. Lothrop's during her three-month tenure," ECF No. 8625 at 2.

The court confirms these findings.

To assist the court in establishing the equivalence in payments, the Receiver-nominee has proposed using a calculation based on the average of Secretary Macomber's benefits as a percentage of his salary, and applying the same calculation to the salary rates the court has approved for the Receiver-nominee and her Deputies. The court accepts this methodology, which can be applied to information that is publicly available. Secretary Macomber was appointed to his current position on December 12, 2022.³ In 2024, his base salary was \$320,556.00 and the state paid benefits on his behalf in the amount of \$154,672.12. ECF No. 8597-1 at 3. The year before, in 2023, Secretary Macomber's base salary was \$291,396.39 and his benefits were \$169,998.19.⁴ Taking benefits in each year as a percentage of the salary for the respective year shows Secretary Macomber's benefits were 48 percent of his salary in 2024 and 58 percent of his salary in 2023. The average of these two numbers equals 53%. Applying this percentage to the previously approved salary levels yields the following numbers for benefits:

- Receiver-nominee: $\$400,000.00 \times .53 = \$212,000.00$
- Deputy Receiver-nominees: $\$340,000.00 \times .53 = \$180,200.00$

In addition, the court adjusts the benefits equivalence for taxes because unlike the benefits previously ordered the equivalent benefits amounts now required will be taxable income for the

³ <https://www.cdcr.ca.gov/about-cdcr/secretary/> (last checked June 11, 2025).

⁴ See <https://transparentcalifornia.com/salaries/search/?q=Secretary%2C%20Department%20Of%20Corrections%20And%20Rehabilitation> (last checked June 11, 2025).

Receiver-nominee and her Deputies. In response to the court's request, the Receiver-nominee has provided relevant information about the income tax rates that will apply to her and to her Deputies for the relevant time period. Applying those rates yields the following numbers after accounting for those taxes⁵:

- Receiver-nominee: $\$212,000.00 \times (1 - 45.9\%) = \$391,866.91$
- Deputy Receiver-nominee Lothrop: $\$180,200.00 \times (1 - 47.3\%) = \$341,555.97$
- Deputy Receiver-nominee Toomey: $\$180,200.00 \times (1 - 45.3\%) = \$329,067.64$

Finally, because the Receiver-nominee and Deputy Receiver-nominees will be self-employed, they will be required to pay Social Security and Medicare taxes in full; the Receiver-nominee informs the court that half of these taxes would have been paid by CDCR had they remained in CDCR's employment. Thus, these additional amounts for payment of half of Social Security and Medicare taxes will be added to the total compensation⁶:

- Receiver-nominee: $\$18,228.00 \text{ (SS)} + \$22,964.00 \text{ (Medicare)} / 2 = \$20,596.00$
- Deputy Receiver-nominee Lothrop: $\$18,228.00 \text{ (SS)} + \$19,765 \text{ (Medicare)} / 2 = \$18,996.50$
- Deputy Receiver-nominee Toomey: $\$18,228.00 \text{ (SS)} + \$19,183.00 \text{ (Medicare)} / 2 = \$18,705.50$

Taken together, total compensation equivalent to what the court ordered on April 2, 2025 is as follows:

- Receiver-nominee: $\$400,000.00 + \$391,866.91 + \$20,917.50 = \$812,784.41$
- Deputy Receiver-nominee Lothrop: $\$340,000.00 + \$341,555.97 + \$18,996.50 = \$700,552.47$
- Deputy Receiver-nominee Toomey: $\$340,000.00 + \$329,067.64 + \$18,815.50 = \$687,883.14$

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⁵ These amounts are calculated using the Tax-Exempt Yield formula. *See, e.g., Tax Equivalent Yield Calculator* (last checked June 9, 2025).

⁶ These amounts are calculated using the self-employment tax calculator found at www.taxact.com (last visited June 11, 2025).

1 These annualized amounts translate to the following amounts per month:

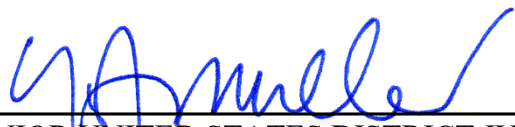
- 2 • Receiver-nominee: \$67,732.03
3 • Deputy Receiver-nominee Lothrop: \$58,379.37
4 • Deputy Receiver-nominee Toomey: \$57,323.60

5 To cover this compensation for the months of June and July 2025, on or before July 5,
6 2025, and rounding up slightly, defendants shall deposit with the Clerk of the Court a total
7 amount of \$370,000.00, which amount shall be deposited in an interest-bearing account
8 previously opened for this action. Thereafter, the court will make monthly orders for June and
9 July 2025 at the end of each month, directing the Clerk of the Court to pay the Receiver-nominee
10 and Deputy Receiver-nominees compensation in accordance with this order. Any funds
11 remaining after all court-ordered payments are made will be returned to defendants.

12 Except as modified by this order, all other provisions of the April 2, 2025, April 22, 2025,
13 and May 1, 2025 orders remain in full force and effect.

14 IT IS SO ORDERED.

15 DATED: June 11, 2025.



SENIOR UNITED STATES DISTRICT JUDGE

Exhibit 9

(California - Coleman)

2:90-cv-0520 KJM SCR

**ACHIEVING AND SUSTAINING A CONSTITUTIONALLY
ADEQUATE MENTAL HEALTH CARE SYSTEM**

**RECEIVER'S ACTION PLAN FOR THE
MENTAL HEALTH SERVICE DELIVERY SYSTEM
OF THE
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION**

August 1, 2025

TABLE OF CONTENTS

Executive Summary.....	3
Overview of <i>Coleman</i>	4
Development of the Action Plan.....	7
a. Research Observations.....	8
b. Status and Prioritization of Remedies.....	14
c. Unique Considerations for <i>Coleman</i>	15
Action Plan.....	17
Appendices	

1. Executive Summary

The California Department of Corrections and Rehabilitation (CDCR)¹ faces a critical juncture in its effort to resolve long-standing constitutional deficiencies in the delivery of mental health care. Our vision is to strategically frame and drive forward a bold, solutions-oriented plan that targets the root causes impeding meaningful progress—most notably, fragmentation, misaligned reporting structures, and persistent staffing shortages that disproportionately impact the largest and most vulnerable segment of the population.

Resolution is achievable. While trust among institutional stakeholders remains limited, there is a demonstrated willingness to cooperate with our team. The framework we propose capitalizes on this cooperation while establishing systems of accountability and oversight that do not rely on interpersonal trust to function. This pragmatic approach allows for rapid identification of barriers, targeted problem-solving, and swift implementation of durable solutions.

Our aggressive plan is designed to comply with the legal remedies by building a sustainable system of care that improves outcomes at every level—from crisis stabilization to enhanced outpatient care. It prioritizes those currently receiving the least support due to structural and staffing constraints.

Our Action Plan will provide:

- Streamlined oversight and leadership clarity to empower decision-making at institutional and system levels.
- Targeted resource allocation that addresses workforce shortages where patient need is greatest.
- Implementation readiness with a strong focus on actionable, time-bound solutions rather than prolonged analysis or delays.
- Data-informed accountability mechanisms to monitor progress and course-correct in real time.

While there are real costs associated with this transformation, the costs of inaction—both human and fiscal—are far greater. This plan is both necessary and feasible, and it provides a credible pathway to achieving durable compliance and lasting reform in CDCR's mental health system.

¹ Throughout this document, we refer to CDCR generally rather than differentiating between CDCR and CCHCS.

2. Overview of *Coleman*

Coleman v. Newsom is a 35-year-old civil suit involving Eighth Amendment violations with respect to delivery of mental health care to individuals incarcerated by CDCR.² Ralph Coleman, a person incarcerated at a CDCR institution, filed this *pro se* lawsuit in 1990. In November 1991, the *Coleman* court certified a plaintiff class of “all inmates with serious mental disorders who are now or who will in the future be confined within [CDCR].” 912 F.Supp. 1282, 1293 (E.D.Cal. 1995). In September 1995, the court adopted a series of findings and recommendations issued by Chief Magistrate Judge Moulds. *See* ECF 547. The court upheld Judge Moulds’ finding that “the delivery of necessary care to the mentally ill inmates who comprise the plaintiff class was so deficient that it constituted a substantial violation of the federal Constitution.” 912 F.Supp. at 1299. The court further adopted 12 recommendations aimed at correcting Eighth Amendment violations and approved the appointment of a Special Master. *See id.*

The constitutional deficiencies identified in the 1995 order were:

1. Lack of a systematic program for screening and evaluating inmates for mental illness.
2. Significant and chronic understaffing in mental health care services.
3. No quality assurance program to ensure competence of staff.
4. Significant delays in access to mental health care throughout the system.
5. Inadequate supervision of the use of medication.
6. Several deficiencies in the availability and utilization of involuntary medication.
7. Absence of any adequate systemwide procedures for use of mechanical restraints on seriously mentally disordered inmates.
8. An “extremely deficient” medical records system.
9. Inadequate implementation of defendants’ suicide prevention program.
10. Inadequate training of custodial staff “in the identification of signs and symptoms of mental illness.”
11. Placement of seriously mentally ill inmates in administrative segregation and segregated housing units “without any evaluation of their mental status” and without access to necessary mental health care while housed in such units.

² In 2015, *Hecker v. California Department of Corrections and Rehabilitation* was consolidated with *Coleman*. *Hecker* was brought by incarcerated individuals with psychiatric disabilities who alleged that they were excluded from programs, jobs, services, and activities on the basis of their disability and in violation of the Americans with Disabilities Act and the Rehabilitation Act. ECF 5284 at 2.

12. Use of tasers and 37mm guns against class members without considering whether the behavior leading to use of the weapon was caused by mental illness, or the impact of such weapon's use on that illness.

Id. at 1305-1323.

In December 1995, the court appointed a Special Master “to provide expert advice to defendants ... and to advise the court regarding assessment of defendants' compliance with their constitutional obligations.” ECF 640 at 2. The court later directed the Special Master to conduct monitoring rounds and report to the court on compliance with the remedy. *See id.* The Special Master has now completed 31 monitoring rounds.

Since the inception of the case, the court has approved a series of remedies to address the constitutional deficiencies identified in the 1995 order. The principal documents memorializing the court-approved remedies are:

- Mental Health Services Delivery System (MHSDS) Program Guide (Program Guide)
- Compendium of Custody-Related Remedial Measures
- Semi-annual mental health population projection plans
- Short-, intermediate-, and long-term bed plans
- 2009 and Psychiatric In-Patient (PIP) Staffing Plans
- Department of State Hospitals (DSH) Inpatient Staffing Plan

In 2011, as part of his 22nd Monitoring Round Report, the Special Master identified seven priorities that defendants needed to complete to support full implementation of the *Coleman* remedies. *See* ECF 3990.

- Reevaluate and update suicide prevention policies and practices.
- Make sure that seriously mentally ill inmates are properly identified, referred, and transferred to higher levels of mental health care that [were] only available from DSH.
- Review and comply with all elements of Administrative Segregation Unit Enhanced Outpatient Program Treatment Improvement Plan.
- Complete construction of mental health treatment space and beds.
- Fully implement the 2009 mental health staffing plan.
- Train staff for greater collaboration between custody and mental health.
- Refine and implement MHTS.net to its fullest extent and benefit.

See id. at 461-462. The court ordered defendants to complete the projects. *See* ECF 6486.

Coleman has a complex and contentious history. In 2009, a three judge court ordered California to reduce the size of its prison population to 137.5% of design capacity. *See Coleman v.*

Schwarzenegger, 922 F.Supp.2nd 882 (2009). The Supreme Court affirmed the ruling of the three judge court. *See Brown v. Plata*, 563 US 493 (2011).

In 2013, defendants moved to terminate *Coleman* on the grounds that they had remediated the core constitutional deficiencies identified in 1995. *See* ECF 4275. The court denied the motion based on evidence of ongoing constitutional violations. *See* ECF 4539. Later in 2013, the court expanded the scope of the remedy to include access to inpatient mental health care, segregated housing, and disciplinary procedures. *See* ECF 5131 at 72-74. Before and after the motion to terminate, CDCR and the Special Master worked to develop the Continuous Quality Improvement Tool (CQIT), piloting it at several institutions in 2016 and 2018. In late 2018, a whistleblower alleged misconduct by CDCR with regard to data reporting from CQIT. In 2019, following an investigation and hearing into the whistleblower's allegations, the court determined that defendants had "knowingly presented misleading information to the court." ECF 6427 at 40-41. The court ordered the Special Master to oversee a data remediation process. *See* ECF 8697.

By 2023, defendants had not achieved the staffing levels required by the 2009 Staffing Plan. In late 2023, following an evidentiary hearing, the court found defendants in contempt for failing to maintain at least a 90% fill rate in all mental health classifications. *See* ECF 8291 at 38. Consequently, the court imposed an initial sanction of \$111,939,244, which included a doubling of fines for civil coercive purposes. *See* ECF 8291 at 70. The Ninth Circuit upheld the district court's decision to hold the State in civil contempt. *See* ECF 8602 at 5-6. However, it vacated the fines to the extent that they exceeded the State's monthly salary savings and remanded to the district court. *See id.* at 5-6.

In July 2024, the court issued an order to show cause why it should not initiate formal proceedings to appoint a temporary receiver to complete implementation of the *Coleman* remedies. *See* ECF 8330 at 15. The court explained that "defendants have not succeeded in remedying unconstitutionally low mental health staffing levels in most programs in their MHSDS." *Id.* at 3. It further explained that contempt proceedings could begin soon on PIP staffing levels and suicide prevention. *See* ECF 8330 at 2. The court "tentatively conclude[d] that compared to the current pace of remediation a receiver would provide a more prompt and efficient complete remedy." *Id.* at 14.

In explaining its decisions regarding contempt and the proposed appointment of a receiver, the court highlighted several issues that we summarize here because they are important to understanding our proposed Action Plan.

- The *Coleman* class is "approximately 34,079 California state prisoners with serious mental disorders [and] . . . has more than doubled since the start of this action." ECF 8291 at 4.

- The *Coleman* class members “[have] been waiting for nearly three decades for the state to meet its constitutional obligations when it comes to the delivery of mental health care.” *Id.* at 4.
- The “vacancy rate in authorized mental health care positions was twenty-five percent” when *Coleman* was filed, and it is now higher. *Id.* at 7. (As discussed below, CDCR has made progress on staffing since the court issued this order.)
- Implementation of the *Coleman* remedies requires a “*sense of urgency*.” *Id.* at 65.
- The court “expects the appointment to be *temporary* in that it expects the receiver will oversee full implementation of the remedy in this action *as promptly as possible, sooner rather than later*.” ECF 8574 at FN 1 (emphasis added).
- “Professional, neutral leadership, external to the named defendants and their institutions, will be necessary” to implement the *Coleman* remedy. ECF 8330 at 14.

In April 2025, the court appointed a Receiver-nominee for a four-month period to develop a comprehensive Action Plan to effectuate full and durable compliance with the court-approved and court-ordered remedies in this action. *See* ECF 8589 at 2.

3. Development of the Action Plan

The court specified that the Action Plan must: 1) be developed in consultation with the parties and in coordination with the Special Master; 2) be designed to effectuate full compliance with the court-approved remedy in this case; and 3) include a timeline for implementation and metrics to assess progress.

The court provided the Receiver-nominee with four months to develop an Action Plan to resolve multiple outstanding issues in a 35-year-old case. On its own, this would have been challenging. However, the specific context of *Coleman* made it particularly daunting. *Coleman* has a docket of nearly 9,000 entries and more than two dozen appeals. It intersects with two other Federal class actions - *Plata v. Newsome* and *Armstrong v. Newsom*. And, it involves the provision of mental health care to more than 35,000 individuals.

We worked closely with the Special Master, the parties, and other stakeholders to create a focused, realistic plan that will achieve full implementation of the *Coleman* remedies and bring CDCR into compliance with the Eighth Amendment. The Action Plan is based on observations we made during our four-month review, the current status of the *Coleman* remedies, and several considerations that reflect the unusual complexity of this case.

Given the contentious nature of *Coleman*, we prioritized learning about issues from all sides and avoided relying on any single viewpoint to support the Action Plan. We synthesized information, ideas, and suggestions into recommendations that reflect our own ideas informed by our professional expertise and experience. *See* Appendix A.

Moreover, recognizing the fraught history of this case as well as the urgency required to address the needs of the *Coleman* class, we designed the Action Plan on a timeline that is aggressive, flexible, and realistic. The Action Plan assumes a very optimistic five- to seven-year period to complete implementation and demonstrate durability for most, if not all, remedies. As discussed below, our ability to meet this timeline is dependent on certain conditions, one of the most significant of which is the parties' willingness to turn toward constructive, forward-looking implementation and away from litigation.

The Action Plan also includes milestones and target timeframes designed to track progress and provide regular, transparent reports to the court. The milestones and target timeframes are based on available information and will be refined as necessary to account for new information.

Between April 2 and July 31, 2025, we participated in regular calls and meetings with the Special Master and his experts, plaintiff's counsel, the Office of the Governor, CDCR leadership, the *Plata* Receiver and his team, and the *Armstrong* Court Expert. We also communicated with subject matter experts, unions representing CDCR employees, academics, and criminal justice reform advocates. To encourage honest feedback in all discussions, we told interviewees that we would not attribute ideas to specific individuals or groups in the Action Plan. This proved effective in encouraging open dialogue.

We also visited North Kern State Prison (NKSP), California Institution for Men (CIM), California Health Care Facility (CHCF), Salinas Valley State Prison (SVSP), California State Prison – Sacramento (SAC), Department of State Hospitals, Atascadero (ASH), and California Institution for Women (CIW). Some of these visits were in conjunction with CDCR leadership, the Special Master's team, DSH leadership, plaintiffs' counsel, and/or local institution leadership. During visits, we met employees, observed programs and clinical encounters, toured facilities, learned about concerns, challenges, and accomplishments, and spoke with *Coleman* class members, including at least one class representative.

Finally, we reviewed thousands of pages of written materials, including court orders, briefs, and transcript, and information from the Special Master, parties, the *Plata* Receiver, the *Armstrong* Court Expert, individual CDCR employees, unions, and public sources.

a. Research Observations

The Action Plan incorporates several observations developed from the interviews, visits, and document review described above.³

MHSDS Structure, Communication, and Information Sharing. The Action Plan will create an effective organizational structure for MHSDS, and promote communication and information sharing.

³ Factual information from court filings and other documents is cited below. For reasons explained above, we do not identify the source of information conveyed during interviews or discussions.

MHSDS operates under a complex organizational structure that makes it difficult to understand who is ultimately responsible for delivery of constitutionally adequate mental health services. Mental, medical, and dental health services are all part of the California Correctional Healthcare System (CCHCS), which is led by an undersecretary and is one of three statutorily created components of CDCR. *See* CA Gov't Sec. 12838. A court-appointed receiver in *Plata* oversees the CCHCS medical care program. The CCHCS organizational chart show both the Undersecretary and the *Plata* Receiver with responsibility for the entire organization, including mental health. *See* Appendix B. Moreover, there is no single mental health clinician who exercises supervisory control over MHSDS. The Deputy Director, Statewide Mental Health Program sets mental health policy and supervises clinicians who work at headquarters. Mental health clinicians in institutions report to a chief executive officer (CEO) who reports to the Deputy Director, Institution Operations at headquarters. Both positions report to the Director, Health Care Services who is responsible for the medical, mental, and dental health programs.

The MHSDS structure is also complex because there are multiple intersections between *Coleman*, *Plata*, and *Armstrong*. Specifically, a series of court-approved coordination agreements make the *Plata* Receiver responsible for providing certain shared services (e.g., IT and facilities) for all three cases. These agreements, which were entered more than a decade ago, were important for deconfliction between the cases and to promote efficiency in CCHCS operations. We have discussed the coordination agreements with the *Plata* Receiver and the *Armstrong* Court Expert. They agree that circumstances have changed since those agreements were entered and the agreements should be revisited if the court approves a *Coleman* Receiver.

Further, poor communication and lack of information appear to be slowing implementation of *Coleman* remedies. Clinicians are frustrated at a lack of clear, easy-to-understand, and regular communication about issues that impact their daily work. Moreover, it can be difficult for employees to find and use policies comprising the *Coleman* remedies because they are not memorialized in the Department Operations Manual (DOM). In contrast, custody, medical and dental policies are in the DOM. Finally, there is no uniform MHSDS mechanism for sharing best practices and lessons learned across institutions. Increased information sharing would provide opportunities for clinicians to learn from CDCR peers as well as experts with experience in other corrections and healthcare systems.

Staffing Shortages. Staffing shortages impact every level of care in MHSDS, making it very difficult for CDCR to comply with *Coleman* remedies, particularly timely delivery of care. Therefore, the Action Plan places significant emphasis on building and retaining a mental health workforce because it is a foundational element to providing constitutionally adequate mental health care.

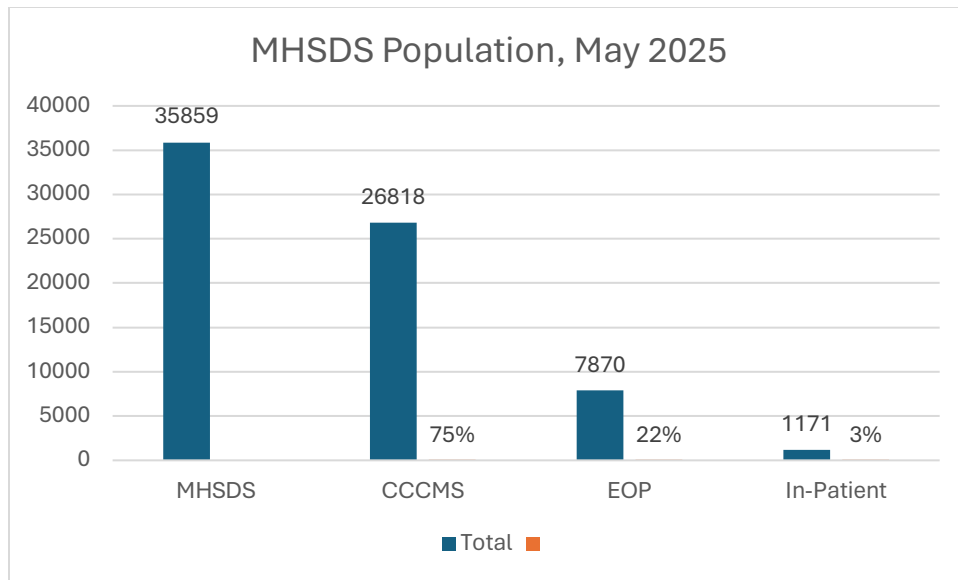
CDCR has struggled to achieve and maintain adequate mental health staffing levels since *Coleman* was filed. There are several reasons for this. First, the 2009 Staffing Plan, which covers most clinical positions, links staffing levels to patients. As explained below, the *Coleman* population has grown significantly. Therefore, the number of required clinicians rises in proportion to the population.⁴ In addition, CDCR struggles to hire in remote locations and to compete with employers that offer better pay, flexible schedules, and traditional work environments (e.g., offices and clinics). Moreover, morale among mental health clinicians is low. Clinicians cite poor compensation, inadequate work and treatment space, extensive caseloads, and excessive documentation requirements. This results in clinicians feeling that they cannot provide the care that patients need, making full implementation of the *Coleman* remedies beyond reach.

In order to increase clinician compensation and address concerns about working conditions, the court approved CDCR to use civil contempt fines to pay bonuses, buy supplies, and upgrade work and treatment space. *See* ECF 8381. However, the use of fines to pay bonuses and improve environments is a source of stress for clinicians who worry that fines are temporary.

Over the last 18 months, CDCR has made progress filling mental health vacancies. For example, the fill rates for psychiatrists is at or near 90% at most institutions. In addition, CDCR has taken several steps to increase staffing levels, including realigning human resources staff to streamline processes, reducing the time to hire, increasing use of telepsychiatry, and expanding the types of clinicians who can provide primary care. It is also expanding its use of technology and data analytics to address mental health staffing needs. It recently launched a new system to improve tracking and interaction with applicants during the hiring process. Moreover, it is working to improve how it manages and uses data. Finally, it is expanding its recruitment efforts to include use of a sophisticated talent acquisition system. This is promising progress. The Action Plan will leverage these changes to ensure that CDCR can sustain the mental health staff levels necessary to provide constitutionally adequate care.

Provision of Care. The *Coleman* population is about 40% of the overall CDCR population. *See* MIS Report, 5/27/2025. Most patients are treated in the Correctional Clinical Case Management System (CCCMS), the lowest level of care offered in MHSDS. The second largest group is treated in Enhanced Out-Patient (EOP) units. Patients with more significant needs are treated in Mental Health Crisis Bed (MHCB) units or PIP units. A small number of patients are transferred to the DSH for treatment every year.

⁴ In contrast, PIP staffing levels are based on the number of beds.



In order to achieve and sustain a constitutionally adequate mental health care program, CDCR must be able to provide patients with the right level of care in an appropriate environment based on the patient's individual need. The large size of the *Coleman* population already makes this challenging. In addition, other dynamics contribute to the challenge and help explain the deficiencies identified in the Special Master's recent monitoring reports.

First, there are differences between CDCR's medical and mental health care programs that contribute to poor clinician morale and reduced patient care in MHSDS. With regard to clinicians, the most concerning difference is fear. Some mental health clinicians fear their patients, while medical clinicians who treat the same patients do not share those fears. According to CDCR data, mental health clinicians experience fewer incidents of assault, battery, and other violence when compared to medical colleagues. However, mental health clinicians perceive that they are at greater risk in the workplace. Mental health clinicians also describe fear of providing inadequate care to patients due to staffing shortages and lack of resources, while others fear that inadequate supervision will put their licenses at risk.

In terms of patient care, there are also differences between the medical and mental health programs that impact the provision of care. Perhaps most important is that institutions use "triage plans" to limit mental health care, but not medical care, in response to staffing shortages. The "triage plans" prioritize care for patients at higher-levels at the expense of patients at lower levels of care. For example, CCCMS patients, for whom mandated care hours are already lowest, receive even less care under "triage plans." CDCR has started making changes to align the mental health and medical programs. However, more needs to be done. The Action Plan includes steps to align these programs with the goal of accelerating implementation of *Coleman* remedies.

Second, both patients and clinicians may be reluctant for patients to move between levels of care. Over the last four months, we heard numerous concerns related to patients experiencing trauma as a result of transfers. We also learned of concerns about patients moving from EOP to CCCMS beds. Specifically, both patients and clinicians express concerns that patients' mental health will deteriorate due to lack of programming in CCCMS beds. The Action Plan is designed to increase staffing at all care levels and provide additional resources to support patients moving between care levels in a manner that is consistent with their clinical needs. We believe that these are essential steps to providing constitutionally adequate care in an already overburdened system.

Third, some policies and practices such as use of segregation or force may be justified and also contribute to psychological deterioration in individuals with serious mental health conditions. The *Coleman* remedies already include policies that are designed to balance security concerns and delivery of quality health care. The Action Plan emphasizes increasing compliance with those policies to promote normalization and improve outcomes for patients and employees. For example, increased use of de-escalation techniques can decrease the number of patients who go to administrative segregation and lower the associated risk of their mental health deteriorating. It can also lower uses of force and improve the work environment for clinicians.

Finally, as part of providing timely and constitutionally adequate mental health care, CDCR is required to provide mental health programming to patients. While CDCR does provide some programming, it lacks a centralized approach to developing and using evidence-based programming across institutions. This would promote consistency in programming, centralize development of curricula and materials, and strengthen delivery of constitutionally adequate mental health care.

Suicide Prevention. The lack of an effective suicide prevention program was one of the original *Coleman* findings. CDCR remains out of compliance with this recommendation and suicides are higher per 100,000 adults in custody than they were when the case was filed in 1995. See 2023 Annual Suicide Report, Figure 2.

In 2011, the court approved several suicide prevention recommendations made by the Special Master. CDCR has not completed implementation of 13 of those recommendations. Presently, it lacks a comprehensive plan designed to complete implementation of all recommendations as quickly as possible.

As part of achieving sustainable change to its suicide prevention program, CDCR needs to be able to take a headquarters-driven approach to improving how it responds to patient suicides. This involves two issues. First, CDCR has developed a Quality Improvement Process (QIP) to identify patterns and trends in patient suicides and implement effective responses. Presently, the parties disagree about the effectiveness of QIPs, including whether they are sufficiently robust to support continual improvement. Second, the court has provisionally approved CDCR to take over the annual suicide report that has been handled by the Special Master. If appointed, a *Coleman* Receiver will be responsible for assessing CDCR's 2024 suicide report and

recommending whether the court should grant full approval for CDCR to assume responsibility for the annual suicide report.

The Action Plan is designed to fully implement an effective suicide prevention program as soon as possible.

Quality Assurance/Quality Improvement. The court has stressed in multiple orders that adoption of a quality assurance/improvement program, including full implementation of CQIT, is essential to allowing CDCR to self-monitor. *See e.g.*, ECF No. 6996 at 7-8 (CQIT's function in facilitating "defendants' assumption of responsibility for self-monitoring the adequacy of mental health care" is "as essential to the constitutional remedy as are individual components measured by CQIT.") CQIT is intended to enable CDCR to move from a focus on institution performance to a headquarters-driven quality improvement process that detects and addresses systemic issues related to quality of care. *See* ECF No. 4232 at 5; ECF 4205 at 63, 66-67.

On July 11, 2025, the Special Master reported that data remediation of all provisionally approved key indicators is complete. *See* ECF 8697 at 6. That paves the way for finalization of CQIT.

If appointed, there are several critical steps that the Receiver will take to implement CQIT, including testing the system, verifying the accuracy of data, developing a data governance structure, and recommending final indicators and compliance levels to the court.

With regard to recommending final indicators and identifying compliance thresholds, the Receiver will focus on the following:

- Does each metric provide valuable information about the provision and quality of mental health care being provided to patients?
- Does each metric provide clinicians with valuable information that helps identify trends and system-wide areas of concern?
- Does each compliance threshold reflect the importance of the issue being measured?
- Should any indicators be measure using compliance ranges rather than fixed percentages or numbers?

In addition, the Receiver will develop a revised monitoring process that utilizes both CQIT and field visits to assess compliance with remedies. The revised field monitoring process will establish new requirements for how institutions prepare for, participate in, and respond to monitoring visits. The revised process will provide timely, concise feedback and clear expectations for resolution of findings.

Availability and Use of Data. The Action Plan incorporates strategies for using technology and data analysis to achieve full and durable implementation of remedies. Both CQIT and CDCR's new human resources systems (discussed above) will be valuable tools for monitoring compliance with *Coleman* remedies. Moreover, completion of these systems will provide opportunities to use sophisticated data analysis to identify trends, anticipate challenges and

needs, and measure the impact of change. For example, once detailed data related to staffing and the provision of care are available, those data can be used to assess how, and to what extent, staffing levels relate to the quality of mental health care being provided to the *Coleman* class. That analysis could support institution-specific staffing adjustments taking into account information such as mission, security level, location, and competing local employers. Strengthening CDCR's ability to use data to inform staffing levels and the provision of care will be a critical step in demonstrating sustainability.

b. Status and Prioritization of Remedies

The Action Plan recognizes that CDCR has made progress in *Coleman* and prioritizes those remedies that need the most significant support to achieve full implementation. By prioritizing our approach, we intend to make as much progress as possible in the least amount of time. The Action Plan does not propose specific actions to address every remedy. Regardless, the Action Plan is designed to achieve full and durable implementation of all remedies. If appointed, we will adjust our approach as needed to address all remedies.

For the reasons explained above, the Action Plan explicitly prioritizes staffing, suicide prevention, and quality assurance. It also prioritizes increased compliance with existing remedies including policies related to use of administrative segregation, Custody and Mental Health Partnership Plans (CMHPP), and use of force. In many cases, the actions described in the Action Plan are designed to address more than one remedy. Therefore, the Action Plan is designed around themes rather than individual remedies. *See Appendix C.*

The Action Plan also reflects our view that CDCR is nearing full implementation of two remedies. First, it has adopted an electronic health records system (EHRS) that is used by the mental, medical, and dental health programs. The EHRS is the primary source of data for CQIT. Therefore, EHRS will need to be able to provide the specific data fields required for the final, court-approved CQIT indicators. If appointed, the Receiver will move forward with completion of CQIT and recommendation of final indicators. Once those steps are complete, we anticipate recommending that the court find that CDCR has fully remediated its medical records system. Second, CDCR has nearly finished the construction projects recommended in the Special Master's 22nd Round Monitoring Report. The last project at CIM is scheduled for completion in spring 2026. Once CDCR activates that facility, we anticipate recommending that the court find that CDCR has fully complied with the construction initiative identified by the Special Master.

c. Unique Considerations for *Coleman*

When developing the Action Plan, we considered many complex dynamics that are unique to *Coleman*, including the need to:

- **Plan for a seamless transition back to CDCR at the end of the Receivership.** The court has been clear that a Receivership is intended to be temporary. The Receiver will control

MHSDS for the duration of the Receivership. To prepare to resume control when the Receivership ends, it is essential that CDCR leadership play an active role in implementing the Action Plan.

- **Balance urgency and intentionality.** The long-standing denial of relief to the *Coleman* class highlights the need for near-term, meaningful change that delivers constitutionally adequate and sustainable mental health care. The Action Plan balances the potential effectiveness of certain courses of action with the time and resources needed to implement them. Consequently, the Action Plan prioritizes the use of existing systems, authorities, and procedures provided that we have sufficient information to conclude that they can be effective.
- **Employ the powers of the Receivership to make more profound changes at CDCR if the existing tools do not work.** A Receivership is a powerful remedy. We believe that we can make significant progress in *Coleman* using existing tools. However, if we are unable to fully implement the court-ordered remedies in a timely manner, we will seek the court's assistance to waive provisions of State law or take other necessary steps.
- **Create an independent vision for *Coleman* while recognizing how it intersects with *Plata* and *Armstrong*.** The Action Plan balances close collaboration with *Plata* and *Armstrong* with prioritizing implementation of the *Coleman* remedies.
- **Achieve constitutionally adequate mental health care by increasing focus on existing remedial requirements to normalize environments.** The Action Plan seeks to normalize environments which will promote the provision of quality mental health care and accelerate adherence to the Eighth Amendment. In this sense, the Action Plan is philosophically consistent with The California Model, which the State is already pursuing of its own accord.⁵ CDCR is implementing the California Model which draws on international best practices to change culture with the goal of improving working and living conditions for people in custody, employees, and visitors. See <https://www.cdcr.ca.gov/the-california-model/>.
- **Create an Office of the Receiver that can start work immediately while successfully integrating the Office of the Special Master.** The Special Master has significant expertise and institutional knowledge that a new Receiver must leverage to begin work quickly. Our Action Plan is designed to create near-term role clarity as to the Receiver and Special Master, while timely integrating key personnel/experts and functions of the Office of Special Master into a single, consolidated office supervised by the Receiver.

As discussed above, the Action Plan is intended to be aggressive, flexible, and realistic with a very optimistic five- to seven-year timeline. The following conditions are necessary to meet this aggressive timeline, and the absence of these conditions will delay final resolution of this case. If the necessary conditions are present, we are optimistic about making significant progress toward resolution within the five- to seven-year timeframe.

⁵ The California Model is a custody-focused initiative and is not in dispute in *Coleman*.

First, the parties must be willing to continue to engage in constructive dialogue and collaboration with a goal of achieving forward-looking change. For decades, *Coleman* has been marked by litigation and mistrust. In the past four months alone there have been multiple motions and one appeal. In contrast, the *Plata* and *Armstrong* cases, which are closely related to *Coleman*, operate in a much more constructive way. During development of the Action Plan, the party representatives with whom we met were collaborative and cooperative. Moreover, the Special Master and his experts, acting in their capacity as an arm of the court, provided timely and detailed feedback about *Coleman*.

Based on our experience over the last four months, we are optimistic that the dynamics in *Coleman* can change to a forward-looking focus on fully implementing the remedy. The Action Plan explains how the Receiver will work to resolve disagreements and foster collaboration and trust between the parties. However, the parties must be willing to engage in those processes. If every action of the Receiver is litigated, there is little promise that the Action Plan or the Receivership will be effective in the least time possible.

Second, the parties must be willing to focus on implementing existing remedies and ensuring they are durable. Full implementation of the *Coleman* remedies is long overdue. Therefore, the Action Plan identifies and prioritizes implementation of the existing court-ordered and approved remedies. At this point in the case, we believe that efforts to narrow or expand the remedies will draw attention and resources away the urgent task of achieving full implementation of the existing remedies.

Finally, the Receiver has the resources necessary to implement the *Coleman* remedies. We recognize that the State's current budget situation is difficult. However, constitutional compliance is required regardless of finances. ECF 8291 at 56. Moreover, the human and financial costs of not implementing the *Coleman* remedies are significant. While we will seek efficiencies and maximization of resources, the Action Plan will require additional resources to implement. *See* Appendix D.

Vision, Mission, and Strategic Goals

Vision Statement. The Office of the Receiver will enhance the delivery of mental health care by building a durable, constitutionally adequate, patient-centered correctional mental health care system that promotes dignity, accountability, and health equity, laying the foundation for the successful return of control to the State of California.

Mission Statement. In coordination with CDCR leadership, we will deliver a correctional mental health care system where every person with a serious mental health diagnosis receives timely, humane, and evidence-based care, supported by professional integrity, operational transparency, and continuous improvement. While embracing CDCR's principles of normalcy and humanity, we will enhance existing working and living environments to provide a constitutionally adequate level of mental health care along with work environments that provide meaningful and rewarding careers for clinicians.

We have identified six strategic goals in the Action Plan, each of which is designed to achieve constitutionally adequate and durable mental health care delivery by MHSDS.

Goal 1: Improve Mental Health Care Delivery Through Culture Change and Effective Management

Goal 2: Achieve and Retain a Qualified Mental Health Workforce

Goal 3: Provide Adequate Care at Every MHSDS Level and Treat Each Patient at the Appropriate Level of Care

Goal 4: Fully Implement a Suicide Prevention Program

Goal 5: Complete Development and Implementation of a Quality Assurance Program

Goal 6: Create Mechanisms to Demonstrate of Remedies

Below, we discuss each goal along with its associated objectives and the actions that the Receiver will take to achieve the goals and objectives. We also identify target timeframes for completion of each action. Appendix F summarizes the goals, objectives, actions, and target timeframes.

Overview of the Office of the Receiver

If appointed, the Receiver will lead implementation of the Action Plan. In order to make demonstrable progress in the anticipated timeframe, the Receiver will need a small staff and the ability to retain subject matter experts in mental health, human resources, custody, data analytics, and other areas. A draft organizational chart is attached. *See* Appendix E.

The Receiver will prioritize building trust and collaborative working relationships with and between the parties. This is essential to accelerating implementation of remedies and resolving *Coleman*. The Receiver will play a critical role in informally resolving disputes between the parties. The Receiver's approach will be based on clear, consistent, and frequent communication, openness to ideas, pragmatism, and timely decision making. When addressing disagreements between the parties, the Receiver will consider:

- What is needed to provide adequate mental health care?
- Does the resolution make good use of available resources?
- What is the best solution that provides quality care and timely resolution?

The Receiver will recommend use of an informal dispute resolution process before either party raises an issue with the court. The Receiver will hold a standing monthly meeting with both parties. Before the meeting, the parties will identify areas of concern or disagreement and come prepared to discuss resolution. If possible, the Receiver will resolve issues during the meeting. If necessary, the Receiver will convene one or more follow up meetings to try to resolve the issue. If informal resolution cannot be reached between monthly meetings, the Receiver will place the issue on the agenda for the next meeting. After discussing the issue with the parties, the Receiver will decide whether further discussion is likely to be productive. If so, the Receiver will continue to meet with the parties. If not, the Receiver will inform the parties that the informal resolution process has ended. The Receiver will decide the issue and notify the parties provided the decision is within the scope of authority delegated by the court. If the Receiver concludes that the issue requires court involvement, the Receiver will notify the court as quickly as possible and propose a resolution.

If appointed, the Receiver will work with the Special Master to facilitate a seamless integration of his office with the new Office of the Receiver. The offices will merge and the Special Master will report to the Receiver for all purposes. To achieve this transition, the Receiver will work with the Special Master to:

- Review current duties/projects of the Special Master and determine which should continue. Within 90 days of appointment, transition most Office of Special Master activities to the Office of the Receiver.
- Pause regularly scheduled field audits while visiting all institutions and assessing the best way for the Receiver to use field monitoring to achieve full compliance with all remedies.

- Assume responsibility for finalizing CQIT. This will be done in close collaboration with the *Plata* Receiver.
- Achieve full integration of the offices within 12 months.

Finally, the Receiver will continue to work closely with the *Plata* Receiver and *Armstrong* Court Expert to promote efficient coordination on issues of mutual interest and concern. The Receiver-nominee engaged regularly with the *Plata* Receiver and *Armstrong* Court Expert while developing this Action Plan, including attending the *Plata* Receiver's weekly executive team meeting and the monthly Court Coordination meetings. Therefore, the Receiver-nominee is well-positioned to work closely with them to ensure effective coordination.

Goals, Objectives & Actions

Goal 1: Improve Mental Health Care Delivery Through Culture Change and Effective Management. CDCR has many dedicated employees who strive to provide constitutionally adequate mental health care. However, the culture and management structures of the MHSDS do not provide sufficient support for employees or implementation of the *Coleman* remedies. The Receiver will need to change the culture and mindset at CDCR with regard to *Coleman* and address the MHSDS management structure to provide clear lines of authority, accountability, and role clarity, all of which are necessary to create durable change.

Objective 1.1 Use communication, transparency, and accountability to drive change. It is essential that employees believe that implementation of the *Coleman* remedies is achievable and that the Receiver, and CDCR and CCHCS leadership consistently communicate that message. The Receiver will prioritize communication, transparency, and accountability to create a shared vision around the implementation of the *Coleman* remedies. This will include seeking opportunities to increase accessibility of information and encourage information sharing.

Action 1.1.1 Implement a comprehensive communications strategy. The Receiver will develop and implement a communications strategy to educate employees and stakeholders about the Receiver's vision, role, goals, objectives, and expectations. Once the initial strategy is in place, the Receiver will create opportunities for employees to provide feedback and track Action Plan progress. Initial strategy developed and implemented in 90 days.⁶

Action 1.1.2 Assess options for aligning the MHSDS policy process with that used by the medical and dental health programs. Move Program Guide requirements into the DOM to ensure that it is easily available to employees. Assess the mental health policy development and publication process and decide whether to adopt some or all of the processes used by medical and dental. Finally, assess whether certain mental health information should be promulgated in regulations. Complete movement of Program Guide to DOM within 12 months. Complete assessments of policy process and regulations within 18 months.

Action 1.1.3 Share best practices across CDCR institutions. Develop a strategy to identify and share best practices that support implementation of remedies and increased adherence to the Program Guide. Complete strategy development within nine months.

⁶ If appointed, the Receiver will create an interim communications plan to cover the first 90 days. That will include meetings and calls with CDCR and CCHCS leadership, visits to institutions, and communications to employees.

Objective 1.2 Streamline and clarify the MHSDS management structure. The current MHSDS structure is not providing the level of mental health coordination and oversight needed to complete implementation of the *Coleman* remedies.

Action 1.2.1 Centralize and streamline mental health reporting structure under a *Coleman* receiver. Determine the most effective organizational structure to supervise MHSDS. Implement the new structure. Update all organizational charts and documents to ensure that supervisory structure is clear. Communicate changes to employees. Complete changes within 180 days.

Goal 2: Achieve and Retain a Well-Qualified Mental Health Workforce. Achieving and maintaining a well-qualified mental health workforce is critical to resolving *Coleman*. In order to accomplish this, leadership at all levels must prioritize hiring, onboarding, and retention of mental health employees. Moreover, CDCR must use sophisticated recruitment practices, research and data analytics to assess staffing challenges, identify trends, project needs, and set goals. It also needs user-friendly tools (e.g., dashboards and reports) that leaders at all levels of the organization can use to monitor recruitment, hiring, and retention.

The Receiver will hire a senior advisor to provide dedicated, daily attention to staffing issues. The senior advisor will work closely with human resources and program offices on recruitment, hiring, and retention.

Objective 2.1 Adopt a focused, leadership-driven approach to hiring, onboarding, and retention. Addressing CDCR's mental health staffing shortage will require continuous leadership support to build and sustain adequate staffing levels.

Action 2.1.1 Make it a leadership priority to timely identify and fill all mental health vacancies. Communicate Receiver's expectation that vacancies be identified and filled as quickly as possible. The Receiver will issue a guidance memo explaining her expectations and will make this a central theme of her communications plan. Guidance memo issued within 30 days.

Action 2.1.2 Require that new mental health units be appropriately staffed when they open (or reopen). Develop a procedure to ensure that all new units (e.g., EOP, MHCB, PIP) are staffed appropriately when they open. Implement new procedures within 12 months.

Action 2.1.3. Limit use of triage plans. The Receiver's goal will be to eliminate the use of triage plans to the greatest extent possible. Until that time, the Receiver will review and approve the use of any triage plans. If appointed, the Receiver will require institutions to submit all active triage plans within 30 days. The Receiver will determine whether and to what extent each institution may continue to use a triage plan. In addition, the Receiver will institute a new procedure to evaluate, approve, and monitor triage plans. New procedures implemented within 120 days.

Action 2.1.4 Ensure that new employees get off to a strong start. It is essential that new employees have a positive experience even before they start work. Leadership can and should play a critical role in onboarding new employees in a manner that starts them on a positive path to a productive career. The Receiver will establish a consistent onboarding program for all mental health clinicians. The new program will require local leadership involvement in onboarding to ensure that new mental health employees have a positive experience. Once the plan is implemented, the Receiver will assess its use through surveys and field visits. Onboarding program developed and implemented within 12 months.

Action 2.1.5 Assess need for additional resources to support mental health recruitment, hiring, and retention. Addressing CDCR's mental health staffing needs requires a significant investment of time and resources. The Receiver will assess the number of employees currently focused on mental health staffing and evaluate whether additional resources are needed, on a short- or long-term basis, to achieve the required 90% mental health staffing level at every institution. Complete assessment within 90 days. If additional resources are needed, submit plan to court within 120 days.

Objective 2.2 Use Sophisticated Recruitment Strategies to Increase Clinician Staffing Levels. CDCR is expanding its use of technology and data to strengthen recruitment. Objective 2.4 addresses use of data for recruitment. In addition to supporting the use of technology and data to enhance recruitment efforts, the Receiver will centralize and expand the use of clinical internship programs in MHSDS. Robust clinical internship programs can be highly effective tools for attracting new clinicians. While MHSDS does use clinical internship programs, they are not centrally managed or standardized across institutions.

Action 2.2.1 Enhance recruitment of clinicians by expanding use of mental health internship programs. The Receiver will hire a coordinator who will develop a plan to centralize and expand use of clinical internship programs. The plan will establish goals and targets for annual internship program expansion, strategies for achieving expansion, and proposed metrics for assessing the impact of expanded programs on clinician fill rates and retention. Complete internship centralization and expansion plan within 12 months.

Objective 2.3: Increase Retention by Addressing Clinician Concerns Regarding Working Environments and Compensation. In order to address staffing needs in a meaningful and sustainable way, CDCR must be able to retain clinicians once it hires them. Therefore, it is insufficient to focus only on hiring. Retention is equally important.

Action 2.3.1 Assess factors contributing to clinician fear and identify strategies for addressing them. Clinician fear, especially of patients, is a serious concern that needs to be addressed to improve morale and create better outcomes for patients and clinicians. The Receiver will partner with an outside expert to assess this issue and identify strategies designed to address it. Complete assessment within 12 months.

Action 2.3.2 Evaluate compensation concerns. The Receiver will propose that the monthly bonuses currently paid from fines be made permanent. In addition, the Receiver will assess the need for additional increases in compensation to address hardest-to-fill locations or positions. Within 60 days, provide the court with results of assessment and recommendations.

Action 2.3.3 Develop a comprehensive plan to ensure that all institutions provide adequate work and treatment space for mental health clinicians and programs.

Survey all institutions to assess office and treatment space needs and options (e.g., renovation of existing space, hoteling, use of trailers, etc.). Following the assessment, the Receiver will develop a plan and timeline for phased implementation of prioritized needs. Complete plan within 18 months.

Action 2.3.4 Expand use of hybrid and flexible work options for mental health clinicians. We recommend that the court approve the hybrid work policy negotiated by the parties and pending with the court. In addition, the Receiver will assess other options for increasing workplace flexibility for clinicians. Complete assessment within 12 months.

Action 2.3.5 Decrease clinician time spent on non-clinical tasks. The Receiver will evaluate clinician hours spent on non-clinical tasks and identify options for reducing that time. This will include consider options for increasing administrative support, changing policies and procedures, simplifying documentation requirements, and deploying new technologies. Complete assessment within one year.

Objective 2.4 Increase the Use of Data Analytics to Achieve and Sustain Adequate Mental Health Staffing Levels. As discussed above, CDCR is developing several tools that will allow it to collect and use data to analyze issues related to recruitment, hiring, retention, and morale. This data will be a critical resource to achieving sustainable mental health staffing levels. The following are steps that the Receiver will take as the new systems are being developed. Once reliable data is available, the Receiver will develop a more comprehensive plan to use of data analytics to support mental health staffing.

Action 2.4.1 Work with CCHCS leadership to complete development and expansion of planned systems. The Receiver will champion ongoing efforts to develop the applicant tracking system, centralize and standardize data, and adopt new technologies for talent acquisition. For this action, the timeframe is dependent on status of each project at the time of appointment.

Action 2.4.2 Use data to assess recruitment and hiring processes. As data becomes available from the applicant tracking and other systems, the Receiver will begin using it to assess issues such as how applicants enter the CDCR hiring process, how long it takes to hire, and what types of recruitment strategies work best for specific professions. Timeframe is as soon as possible once data becomes available.

Goal 3: Provide Adequate Care at Every MHSDS Level and Treat Each Patient at the Appropriate Level of Care. The MHSDS population has increased substantially since 1990. Therefore, it is essential that CDCR treat patients at the correct level of care, including allowing them to step down when it is clinically appropriate. Moreover, increasing compliance with existing remedies can decrease interactions that contribute to a patient's psychological deterioration and help avoid the need to move patients to higher levels of care.

Objective 3.1 Expand policies and procedures that encourage patients to step down. It can be difficult for patients to step down between care levels. There are many reasons for this, including fewer treatment requirements and resources for CCCMS as well as CDCR policies and procedures that can disincentive stepping down.

Action 3.1.1 Evaluate the use of Resource Teams to enhance patients' ability and willingness to step down. Work with the Amend program at UCSF to deploy trained Resource Teams at each PIP. The five Teams will work to ensure that each patient living in a PIP receives consistent engagement in out-of-cell activities designed to improve their social skills and capacity to live in a less restrictive and specialized environment. The goal of the Resource Teams is to train custody staff to have more meaningful work, help PIP patients avoid stagnation, and optimize their ability to advance under psychiatric care. The ultimate aim is to support each patient's clinical advancement toward being assessed as ready to step down to EOP level care. If Resources Teams are successful in the PIP units, the Receiver will explore the possibility of expanding the teams to other units. Enter agreement with Amend within 90 days.

Objective 3.2 Reduce interactions that can contribute to psychological deterioration in patients. As discussed above, the size of the *Coleman* class makes it essential for CDCR to increase adherence to existing policies relating to use of administrative segregation and force. This can help decrease the likelihood that patients need to move to higher levels of care.

Action 3.2.1 Increase compliance with existing remedies regarding use of Administrative Segregation Units. Develop a plan to increase compliance with existing policies regarding use of administrative segregation. Plan developed within 18 months.

Action 3.2.2. Increase compliance with existing policies regarding use of force. Develop a plan for increasing compliance with existing use of force policies, including training requirements and Custody and Mental Health Partnership Plans. Plan developed within 18 months.

Objective 3.3 Expand use of evidence-based mental health treatment programs. CDCR can improve patient outcomes by increasing its use of evidence-based programs. By offering more programming in CCCMS, CDCR can support patients' ability to step down when it is clinically appropriate for them to do so.

Action 3.3.1 Develop a transparent and replicable process for assessing programming needs and expanding use of evidence-based programs to meet those needs. Partner

with outside expert to develop a plan for CDCR to expand use of programming, particularly in CCCMS. Assessment to be completed within 24 months.

Goal 4: Fully Implement Suicide Prevention Program. The lack of an effective suicide prevention program was one of the original *Coleman* findings. Moreover, CDCR's suicide rates have increased significantly over the last several years. It is past time to fully implement the suicide prevention program.

Objective 4.1 Complete implementation of 13 recommendations from the Special Master's 22nd Round Monitoring Report.

Action 4.1.1 Establish implementation goals and plans to resolve outstanding suicide recommendations. Develop goals and implementation plan to resolve all outstanding suicide recommendations. Plan will be based on root cause analysis to determine why CDCR has not implemented each recommendation. Plan will include prioritization of recommendations and/or institutions to guide implementation. Goals and plan developed within 180 days.

Action 4.1.2 Complete transition of annual suicide reporting to CDCR. Work with CDCR and parties to evaluate 2025 draft suicide report, resolve disagreements, and provide a recommendation to the court. Timeframe is dependent on when draft plan is ready for review.

Action 4.1.3 Evaluate QIPs to ensure that they support continuous quality improvement. Within 18 months, identify and implement any changes needed to strengthen QIPs.

Goal 5: Complete Development and Implementation of a Quality Assurance Program. CDCR must complete implementation of an effective quality assurance/improvement program to resolve *Coleman*.

Objective 5.1 Recommend final CQIT indicators and thresholds to court. Since CQIT is intended to facilitate self-monitoring by CDCR, it must provide accurate, reliable information that identifies areas of concern at an agency-wide level.

Action 5.1.1 Test CQIT data and functionality. Develop and implement a plan to test CQIT. Complete testing within 12 months.

Action 5.1.2 Recommend final indicators and compliance thresholds to the court. Within 18 months, recommend final indicators and compliance thresholds.

Action 5.1.3 Complete development of user-friendly CQIT dashboards to monitor compliance. In order to ensure that the quality assurance/improvement program is durable, clinicians, the parties, and the Receiver need easy-to-use data dashboards. Within one year

following court approval of final indicators, develop, test, and deploy user-friendly CQIT dashboards.

Objective 5.2 Develop new processes for field monitoring and for recommending to the court that CDCR has fully implemented a remedy. With the completion of data remediation and the expectation that CQIT can soon be used as part of monitoring, the Receiver will adopt a revised approach to field monitoring and develop a process for recommending that CDCR has fully implemented a remedy.

Action 5.2.1 Implement a revised field monitoring process. Implement a revised field monitoring process that uses both CQIT and institution visits to assess compliance with remedies. New process will include timeframes for feedback and parameters for report content and recommendations. New process implemented within 180 days.

Action 5.2.2 Implement a new process to guide institutions through the pre- and post-field monitoring process. Implement new processes that establish Receiver's expectations for how institutions will participate in field monitoring. This includes timelines and requirements for institutional: 1) self-assessments using CQIT data; 2) action plans to address deficiencies; and, 3) implementation of all recommendations. Within 12 months, implement new processes.

Action 5.2.3 Seek court approval for a process to recommend that CDCR has fully implemented a remedy. Develop a process for recommending to the court that CDCR has fully implemented a remedy. Proposed process will detail the steps that the Receiver will take to evaluate whether the remedy is fully implemented and identify the types of information that the Receiver will use to support its recommendation. Within 12 months, submit proposal to court for approval.

Goal 6: Create Mechanism to Demonstrate Sustainability of Remedies. Many of the actions described above are designed to promote sustainability. For example, revising the MHSDS management structure, improving communications, increasing the use of evidence-based programming, and making it easier for patients to accept care, are all designed to provide long-term changes that support the provision of constitutionally adequate mental health care. In addition to these ideas, we will explore other ideas to improve sustainability.

Objective 6.1 Assess feasibility of MHSDS seeking outside accreditation. One way to demonstrate the durability of the care provided by MHSDS is to seek outside accreditation to show how that care aligns with community standards.

Action 6.1 Partner with outside expert to assess feasibility of MHSDS seeking outside accreditation. Assessment complete within 36 months.

Appendix A

Qualifications and Accomplishments of Receiver-Nominee & Deputy Receiver-Nominees

Receiver- Nominee Colette S. Peters

Leveraging more than 34 years of public safety experience, she served as Director of the Oregon Department of Corrections for over a decade and, up until recently, led the Federal Bureau of Prisons (FBOP). Prior to her departure from the FBOP, she was the longest-tenured active corrections director in the country, totaling 16 years of service as a director.

She has earned an international reputation for advancing the principles of normalcy and humanity for those who work and live in prisons, promoting employee wellness, increasing agency efficiency and effectiveness, and using data to improve outcomes for people in custody. Over the past 22 years, she has held executive-level roles including Director of the Oregon Youth Authority and Oregon's Inspector General.

Receiver-Nominee William Lothrop

An accomplished correctional executive with over 32 years of progressive leadership within the Federal Bureau of Prisons (FBOP), including tenure as Acting Director and Deputy Director, he brings demonstrated expertise in high-level corrections administration, public safety policy, crisis response, and institutional reform. Adept at managing large-scale operations, he has led diverse, multidisciplinary teams across the country—including oversight of 122 facilities across six regions, as well as medical services, mental health services, and reentry initiatives.

He prioritized accountability in addressing sexual misconduct and ensured that facilities received improved access to suicide prevention care through appropriate mental health treatment and accurate, up-to-date mental health information related to suicide risk. He worked to reduce the opportunity for—and lethality of—self-directed violence by tracking and reporting the use of restrictive housing, lockdowns, and the presence of illicit substances and contraband. He used data and research to refine suicide prevention policies, developing data-driven recommendations for assessing suicide risk and mandating institutional reviews following the death or suicide attempt of an incarcerated individual—efforts aimed at fostering transparency, accountability, and continuous improvement in correctional health care.

Receiver-Nominee Kathleen Toomey

Drawing on more than 24 years at the U.S. Department of Justice (DOJ), she is a skilled executive and legal professional who excels at using innovation, creativity, research, and data analysis to solve complex organizational challenges. With over a decade of experience managing high-level operations in legal and law enforcement agencies, she has addressed chronic

operational issues in organizations subject to extensive oversight from Congress, the DOJ Office of the Inspector General, and the Government Accountability Office. At FBOP she led efforts to tackle a severe staffing shortage—increasing staffing levels at the FBOP from 89% to 93% within 12 months— and a \$3 billion modernization and repair backlog.

She has overseen some of the most complex components of large organizations, including Human Resources, Administration and Finance, the Office of Congressional and Public Affairs, and Information & Technology. Notably, she developed an Urgent Action Team approach to solving chronic institution-specific issues and led the first rapid-response team at Metropolitan Detention Center Brooklyn, a facility long challenged by cultural, staffing, and infrastructure issues. Under her leadership, the team swiftly addressed urgent needs related to staffing, health services, and operations. In less than nine months, custody staff levels increased from 55% to 70% through targeted pay increases and the development of new tools that streamlined and accelerated the hiring process. She also advanced patient care by expanding the use of telehealth while partnering with a local hospital (See Attached *Brooklyn Urgent Action Team Fact Sheet as of September 19, 2024*).

Together at the Federal Bureau of Prisons (See Attached *Reforming and Strengthening the Federal Bureau of Prisons 2021-2025*

<https://www.justice.gov/archives/media/1385321/dl?inline>)

As the Director, Deputy Director, and Associate Deputy Director of the Federal Bureau of Prisons (FBOP), they inherited the agency during a time of significant turmoil, including allegations of inhumane and criminal activity. They led one of the largest law enforcement agencies within the U.S. Department of Justice and the nation's largest correctional system, overseeing complex national operations and nearly 40,000 employees across six regions—all while managing an \$8 billion budget.

Together, they upheld constitutional principles while advancing the Bureau's dual-purpose mission: to foster a humane and secure environment and to ensure public safety by preparing individuals for successful reentry into their communities.

They were responsible for the care and custody of nearly 155,000 adults housed in 122 federal prisons, 178 community-based facilities, and on home confinement. This included oversight of their education, programmatic needs, and their physical, medical, mental and behavioral health. Through FBOPs National Gang Unit, Counter-Terrorism Unit, and Intelligence Office, they collaborated with federal and local law enforcement partners to gather intelligence and maintain the safety and security of our institutions and communities around the globe.

They worked closely with FBOPs national union leadership to ensure that employees received resources and support. They regularly engaged with Congress to communicate the Bureau's longstanding challenges and successfully garnered public policy support and additional funding. They also collaborated with the Office of the Inspector General and the Government Accountability Office to promote accountability and root out misconduct.

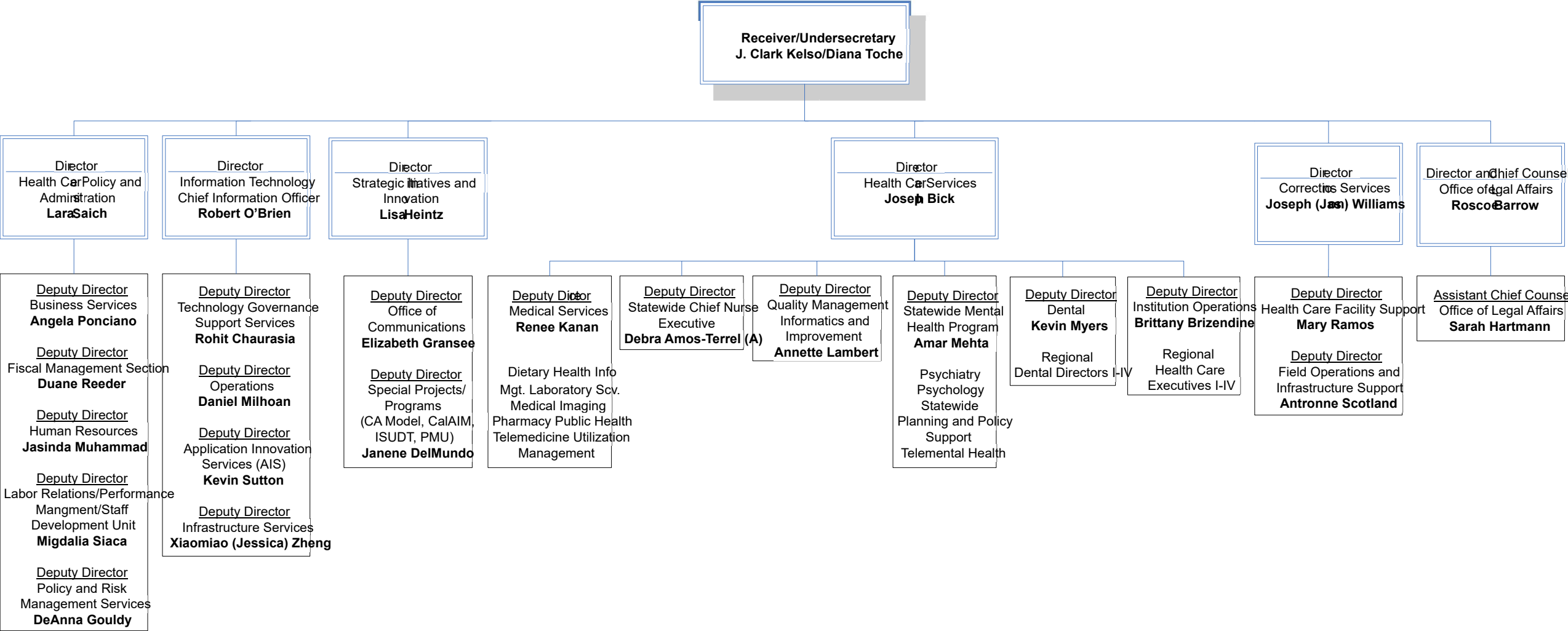
Key accomplishments include:

- **Strengthened efforts to prevent deaths in custody.** Identified and implemented more than 50 actions to reduce suicide risk among individuals in custody, including:
 - Ensuring employees received current and accurate mental health information.
 - Improving access to and the delivery of suicide prevention care through appropriate treatment.
 - Reducing opportunities for, and lethality of, self-directed violence by tracking and reporting the use of restrictive housing, lockdowns, single-cell placement, and illicit substances and contraband.
 - Using data and research to refine suicide prevention policies by developing data-driven recommendations and encouraging institutional reviews following suicides or suicide attempts.
- **Improved recruitment and retention.** After decades of stagnant and declining employment levels, increased overall staffing from 85% to 93% in just 2.5 years.
- **Prioritized employee wellness.** Recognizing the toll corrections work takes on staff—with an average lifespan of 58 years after 20 years of service, high rates of PTSD, and widespread health issues—expanded the role of Crisis Support Teams to include ongoing and proactive wellness efforts. Enhanced Employee Assistance Program (EAP) services to include retirees and mandated counselor certification. Created the Chief Employee Wellness Administrator role to oversee wellness initiatives nationwide.
- **Addressed the \$3 billion maintenance and repair backlog.** Developed 5-, 10-, and 15-year strategic plans to manage infrastructure deficiencies that have left employees and individuals in custody working and living in dilapidated conditions.
- **Closed or turned around underperforming units and entire facilities.** Closed or restructured institutions that failed to meet standards of correctional excellence—some of which were plagued by criminal and inhumane conduct.
- **Promoted accountability and transparency.** Held individuals accountable and worked to create safer, more humane environments across the agency in partnership with DOJ's Office of Inspector General. Established the position of National Chief Inspector to internally mirror the oversight functions of the Office of the Inspector General, using data to proactively address cultural decline, contraband, and criminal misconduct.
- **Implemented the First Step Act (FSA).** In less than 5 years, facilitated 175,000 individuals to complete more than 600,000 evidence-based programs and productive activities. Released nearly 40,000 individuals to supervision through earned FSA time credits within 2 years, resulting in substantially lower recidivism rates (12.4%) compared to the national average return rate to federal, state, or local custody (49%).



HEALTH CARE SERVICES

May 1, 2025



STATUS AND PRIORITIZATION OF COLEMAN REMEDIES

Remedies	Status and Prioritization
Staffing Shortages (1995 Order and Special Master's 22 nd Monitoring Round Report)	CDCR continues to have difficulty hiring and retaining mental health clinicians. Because staffing shortages negatively impact many other remedies, they are a significant focus of the Action Plan. <i>See</i> Goal 2.
Suicide Prevention (1995 Order and Special Master's 22 nd Monitoring Round Report)	Suicide rates among are higher now than they were in 1995. Since CDCR has not fully implemented its suicide prevention program, it is prioritized in the Action Plan. <i>See</i> Goal 4.
Quality Assurance (1995 Order and Special Master's 22 nd Monitoring Round Report)	The Court has identified development of a quality assurance program as the key to ending court oversight in <i>Coleman</i> . The Action Plan prioritizes full implementation of a quality assurance program. <i>See</i> Goal 5.
Administrative Segregation (1995 Order and Special Master's 22 nd Monitoring Round Report)	CDCR has implemented changes to its administrative segregation policies and practices. However, it continues to struggle with some aspects of providing adequate levels of mental health care to those in administrative segregation. The Action Plan emphasized increased adherence to existing policies. <i>See</i> Goal 3.
Significant delays in access to mental health care throughout the system. (1995 Order and Special Master's 22 nd Monitoring Round Report)	CDCR has implemented changes to improve access to mental health care. However, patients continue to experience delays in receiving treatment, often due to staffing shortages. The Action Plan will address delays in care through a focus on staffing and quality assurance. <i>See</i> Goals 2 and 5.
Lack of systemic program for screening and evaluating inmates for mental illness (1995 Order)	CDCR has implemented changes to improve screening and evaluation of inmates for mental illness. However, staffing shortages at some institutions result in patients not seeing clinicians in a timely manner. The Action Plan addresses this through a focus on staffing and quality assurance. <i>See</i> Goals 2 and 5.

Inadequate supervision of the use of medication (1995 Order)	CDCR has implemented changes to improve supervision of the use of medication. Monitoring of these issues will be through the quality assurance program. <i>See</i> Goal 5.
Several deficiencies in the availability and utilization of involuntary medication (1995 Order)	CDCR has implemented changes to address deficiencies in the availability and utilization of involuntary medication. Monitoring of these issues will be through the quality assurance process. <i>See</i> Goal 5.
Absence of any adequate systemwide procedures for use of mechanical restraints on seriously mentally disordered inmates. (1995 Order)	CDCR has implemented systemwide changes to its use of mechanical restraints. Monitoring of these issues will be through the quality assurance process. <i>See</i> Goal 5.
Inadequate training of custodial staff “in the identification of signs and symptoms of mental illness” (1995 Order and Special Master’s 22 nd Monitoring Round Report)	CDCR has made changes to address this deficiency, including adopting Custody and Mental Health Partnership Plans. Full implementation of those policies is uneven. <i>See</i> Goal 3.
Use of tasers and 37mm guns against class members without considering whether the behavior leading to use of the weapon was caused by mental illness, or the impact of such weapon’s use on that illness. (1995 Order)	CDCR has made changes to address use of force. Full implementation is uneven. The Action Plan emphasized increased adherence to existing policies. <i>See</i> Goal 3.
An “extremely deficient” medical records system. (1995 Order and Special Master’s 22 nd Monitoring Round Report)	CDCR adopted an electronic health records system (EHRS). As explained on pages 14-15, once the court approves the final CQIT indicators (that rely on data from EHRS), we anticipate recommending that the court find that CDCR has fully remediated its medical records system. <i>See</i> pages 14-15 and Goal 5.
Complete construction of mental health treatment space and beds. (Special Master’s 22 nd Monitoring Round Report)	CDCR has nearly completed this construction initiative. As explained on pages 14-15, once the last construction project is complete in spring 2026, we anticipate recommending that the court find that

	CDCR has fully implemented this remedy. <i>See</i> pages 14-15 and Goal 5.

Appendix D Estimated Costs for Implementation of Action Plan

	<u>FTE</u>	<u>Rate</u>	<u>Total</u>	<u>Notes</u>
<u>Receiver's Office Employees (Estimated)</u>				
Receiver	1	\$ 390.76	\$ 812,784	
Deputy Receiver (WWL)	1	\$ 336.80	\$ 700,552	
Deputy Receiver (KTT)	1	\$ 330.71	\$ 687,883	
Senior Advisor (MH)	1	330	\$ 686,400	
Senior Advisor	1	300	\$ 624,000	
Attorney	1	300	\$ 624,000	
Analyst/Paralegal	1	195	\$ 405,600	
Analyst/Paralegal	1	195	\$ 405,600	
Analyst/Paralegal	1	195	\$ 405,600	
Admin support	1	150	\$ 312,000	
Subtotal			\$ 5,664,419	
<u>Subject Matter Experts/Consultants (Estimated)</u>				
HR	1	380	\$ 790,400	
Custody	0.5	380	\$ 395,200	
Data scientist	0.5	380	\$ 395,200	
MH	1	380	\$ 790,400	
Communications	0.05	380	\$ 39,520	
Employee engagement/wellness expert	0.25	380	\$ 197,600	
Programming	0.25	380	\$ 197,600	
Consultant	0.05	375	\$ 39,000	
Subtotal			\$ 2,844,920	
<u>Other Receivers Office Costs (Estimated)</u>				
Outside counsel - partner	0.05	495	\$ 51,480	
Outside counsel - associate	0.1	345	\$ 71,760	
Travel			\$ 216,000	
Office space			\$ 100,000	
Supplies, etc.			\$ 25,000	

Subtotal				\$ 464,240
TOTAL RECEIVER'S OFFICE COSTS				\$ 8,973,579

IMPLEMENTATION COSTS (ESTIMATED)

Resource Teams

1 team per PIP (currently 5 PIPs).				\$ 5,750,000
Amend project manager (team trainer)	0.75		\$	200,000
Amend senior leadership for oversight	0.4		\$	125,000
Travel			\$	15,000
Amend admin time classroom organizing and materials			\$	50,000
Subcontract for external evaluators			\$	325,000
			\$	715,000
UC indirect rate (on all but team salary costs (line 39))	0.3		\$	214,500
Amend Subtotal			\$	929,500
Total Resource Team Cost			\$	6,679,500

<u>Making Bonuses Permanent</u>				\$ 25,300,000

Staffing Challenges Assessment

Consultant (30 institutions @ 10 hours @ 2ppl)	0.30	380	\$	237,120

Clinician Fear

Consultant	0.05	380	\$	39,520

Programming

Consultant to recommend plan to expand and centralize evidence-based programming	0.05	380	\$	39,520

Suicide Prevention

Expert advice (OSM)	0.05	380	\$	39,520

COIT

Expert advise (OSM)	0.05	380	\$	39,520

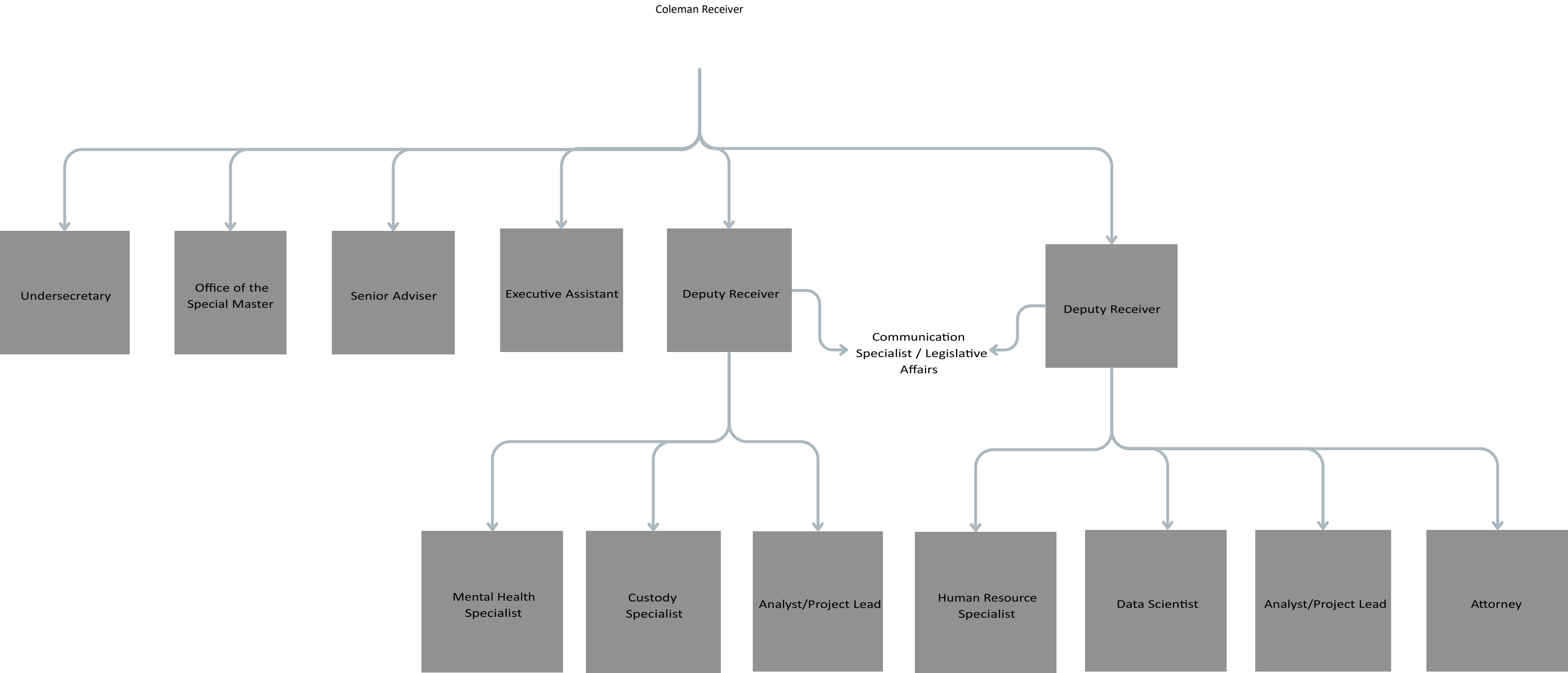
Accreditation

Consultant	0.05	380	\$	39,520

TOTAL IMPLEMENTATION COSTS

\$ 32,414,220

APPENDIX E - OFFICE OF THE RECEIVER - COLEMAN
ORGANIZATION CHART



RECEIVER-NOMINEE ACTION PLAN													
	NOTES: Unless otherwise described, target timeframes are to days/months/years following appointment. Metrics in this chart are based on available data and information. If the court approves the Action Plan and appoints a Receiver, additional metrics will be developed as information and data becomes available.	Immediate (First 6 months after appointment)				Short-Term (6 months to 2 years)			Medium-Term (3 to 4 years)		Long-Term (5 to 7 years)		
Goal 1	Improve Mental Health Care Delivery Through Culture and Effective Management	Establish baseline measure for employee views/knowledge about Coleman				Employees views improve by X per year			Demonstrable improvement in employee views and understanding of Coleman		Increased adherence to Program Guide and other remedies		
Objective 1.1	Communication, transparency, and accountability	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 1.1.1	Communications strategy												
Action 1.1.2	MHSDS Policy Process/Program Guide												
Action 1.1.3	Share best practices												
Objective 1.2	Streamline and clarify the MHSDS management structure.	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 1.2.2	Centralize and streamline mental health reporting structure												
Goal 2	Achieve and Retain a Well-Qualified Mental Health Workforce.	Plans are developed and critical positions are filled				90% of positions are filled			95-100% positions filled		Demonstrate durability by maintaining fill rates of at least 90%		
Objective 2.1	Adopt a focused, leadership-driven approach to hiring and retention of mental health employees.	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 2.1.1	Timely identify and fill all mental health vacancies.												
Action 2.1.2	Staffing levels for new units												
Action 2.1.3	Triage plans												
Action 2.1.4	Onboarding												
Action 2.1.5	Resources to support recruitment, hiring, and retention												
Objective 2.4	Use sophisticated recruitment strategies to increase staffing	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 2.2.1	Clinical internship programs												
Objective 2.3	Increase retention by addressing working environments and compensation	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 2.3.1	Assess factors of fear and identify strategies for addressing												
Action 2.3.2	Assess compensation concerns												
Action 2.3.3	Adequate work and treatment space												
Action 2.3.4	Expand hybrid and flexible work options												
Action 2.3.5	Time spent on non-clinical tasks												
Objective 2.4	Increase use of data analytics	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 2.4.1	Develop and expand systems	Dependent on status of each project											
Action 2.4.2	Use data to assess recruitment and hiring												
Goal 3	Provide Adequate Care	Plans developed; baseline measure of employee satisfaction				Employee engagement scores			Mental health providers		Attrition decreases and		
Objective 3.1	Expand policies and procedure	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 3.1.1	Resource Teams												
Objective 3.2	Reduce interactions contributing to deterioration	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 3.2.1	Increase compliance with existing remedies regarding AD SEG												
Action 3.2.2	Increase compliance with existing policies regarding use of force												
Objective 3.3	Expand use of evidence-based programs	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 3.3.1	Develop process for assessing programs												
Goal 4	Fully implement suicide prevention program	Plan and goals developed				Increase compliance each year.			Achieve minimal compliance at all institutions.		Demonstrate durability		
Objective 4.1	Special Master's Recommendations	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 4.1.1	Address outstanding suicide recommendations.												
Action 4.1.2	Complete transition of annual suicide reporting to CDCR.												
Action 4.1.3	Evaluate the QIP process.												
Goal 5	Quality Assurance Program	Test CQIT				Final measures and thresholds approved			??		CDCR begins self-monitoring		
Objective 5.1	Recommend final CQIT indicators and thresholds to Court	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 5.1.1	Test CQIT data and functionality.												
Action 5.1.2	Recommend final indicators and compliance thresholds to Court.												
Action 5.1.3	CQIT dashboards												
Objective 5.2	Field monitoring and recommending that CDCR has fully implemented a remedy.	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 5.2.1	Implement a revised field monitoring process.												
Action 5.2.2	Pre- and post-field monitoring process.												
Action 5.2.3	Process to recommend that CDCR has fully implemented a remedy.												
Goal 6	Ensure Sustainability and Durability of Remedies												
Objective 6.1	Seek outside accreditation for MHSDS	Up to 30 days	31-60 days	61-90 days	90-180 days	6 - 12 months	12-18 months	18 - 24 months	25-36 months	37-48 months	48 - 84 months		
Action 6.1.1	Partner with outside expert to assess feasibility												

Exhibit 10

(California - Coleman)

1
2
3
4
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6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 RALPH COLEMAN, et al.,
12 Plaintiffs,
13 v.
14 GAVIN NEWSOM, et al.,
15 Defendants.
16

No. 2:90-cv- 0520 KJM SCR P
ORDER APPOINTING RECEIVER

17 For three decades, this court has overseen defendants' efforts to fully and durably
18 implement the court-ordered remedies necessary to deliver constitutionally adequate mental
19 health care to the plaintiff class, now numbering approximately 35,000 adults in custody in
20 California state prisons. In doing so, the court has exercised substantial deference to defendants,
21 and has been exceedingly patient, if not too patient. It has issued more than 250 substantive
22 orders, at times providing direction, at others prodding or cajoling, sometimes memorializing
23 progress, sometimes reprimanding or threatening contempt, all with the goal and the hope that
24 defendants would achieve compliance with the remedies on their own, without further court
25 oversight. Since 2007, the court's current Special Master and his team of experts have provided
26 guidance and conducted monitoring of defendants' levels of compliance, while defendants have
27 remained in the driver's seat with the freedom to manage the prison mental health care system,
28 holding the keys to termination of court oversight. Defendants have made some progress, but

1 they also have resisted much of the way, reflexively appealing eighteen times in the last eight
2 years alone, achieving delays but no material change in the remedy. *See* Attachment A.
3 Recently, the court formally found defendants in contempt with respect to the critically central
4 mental health staffing component of the remedy, and imposed civil sanctions now amounting to
5 more than \$100 million in fines to date in order to advance compliance. Defendants appealed this
6 order too, which the circuit court affirmed in all material respects. But the appeal bought at least
7 another five months of delay and only in the last few months have funds generated by the
8 sanctions begun to be expended to address persistent staffing shortfalls.

9 All of the court's experience with the case demonstrates that defendants are not able to or
10 are not going to fully and finally correct the constitutional violations underlying the court-ordered
11 remedies, without more than the kind of close supervision the court has provided for so long.
12 Therefore, more than a year ago, the court put the parties on notice in an order to show cause of
13 its tentative plan to appoint a receiver, for as long as needed, to ensure the long-deferred remedies
14 are final implemented, durably so. A receivership, with authority as a fully-empowered arm of
15 the court to effect the remedy directly, is a well-recognized tool available to this court, drawing
16 on its equitable powers, to fully address "otherwise uncorrectable" constitutional violations.

17 The court has now given all the parties a chance to respond to its order to show cause, and
18 has entertained a deliberate and extended process to consider the parties' responses and to
19 identify possible candidates to serve as receiver. The court has carefully considered the parties'
20 positions, and identified a highly qualified candidate to serve as receiver, who has submitted a
21 viable Receiver's Action Plan. The court now confirms its tentative conclusions set forth in the
22 order to show cause and issues this order to appoint Colette S. Peters as the receiver in this case.
23 In doing so, as explained more fully below, the court makes the required findings, including that
24 there is "a grave and immediate threat" and "actuality of harm" to the plaintiff class that a
25 receivership will address, and the use of "less extreme measures of remediation ha[s] been
26 exhausted."

27 As the court also explains below, this is the first of four orders the court issues to effect
28 the appointment and the fully effective functioning of the receivership.

I. BACKGROUND

While the court has many times before reviewed the background of this case, it provides an essential summary here as factual support for confirming the tentative conclusions it reached in the order to show cause why a receiver should not be considered, and through formal proceedings, appointed. *See* July 12, 2024 Order and Order to Show Cause, ECF No. 8330.

In 1995, the court found defendants in violation of their Eighth Amendment obligation to provide seriously mentally ill inmates confined in the California Department of Corrections and Rehabilitation (CDCR) (then the California Department of Corrections (CDC)) with access to constitutionally adequate mental health care. *Coleman v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995). Specifically, “[t]he plaintiff class consists of all inmates with serious mental disorders who are now, or who will in the future be, confined within the [CDCR].” Jul. 23, 1999 Stip. & Order at 3, ECF No. 1054. Early on, the court appointed a Special Master to “provide expert advice to defendants” in their development of a plan to remedy the constitutional violations and, thereafter, “[t]o monitor defendants’ implementation of and compliance with” any court-ordered remedial plan. Dec. 11, 1995 Order of Reference at 3-4, ECF No. 640. The core remedial plans that emerged from this process are the CDCR Mental Health Services Delivery System (MHSDS) Program Guide (Program Guide), ECF No. 7333-1, and the Compendium of Custody Related Remedial Measures (Compendium), ECF No. 7333-1. The court has ordered development and implementation of several other remedial measures in aid of implementation of these core remedial plans, as well as specific suicide prevention measures. *See* Sept. 3, 2020 Order at 4-6, ECF No. 6846.

In the 2024 order to show cause, the court reviewed the history of the work performed by the Special Master as an arm of the court, without the powers accorded a receiver:

[T]he remedial phase of this action has proceeded under a “carefully constructed process supervised by a Special Master that was designed to moderate court intrusion in defendants’ own remedial efforts and is arguably more respectful of defendants’ knowledge of their operations and their management prerogatives than a process whereby oversight is transferred to a receivership; it is also more hopeful that defendants can best determine how to meet their constitutional obligations to the seriously mentally ill inmates in their

1 custody.” *Coleman v. Newsom*, 424 F. Supp. 3d 925, 929 (E.D. Cal.
2 2019). The [current] Special Master has served the court since his
3 appointment in February 1996, and he and his team of experts have
4 extensive knowledge of this action and the many obstacles to
5 compliance that have plagued the remedial process for almost three
6 decades. Notwithstanding the deference and respect afforded
7 defendants by the process the court and the Special Master have
8 relied on to date, in at least three [critical] areas [] defendants have
9 not achieved the required remediation.

10 ECF No. 8330 at 3. More than a year later, defendants still have not achieved the required
11 remediation in the areas addressed in the July 12, 2024 order and order to show cause, as
12 reviewed below.

13 **A. Mental Health Staffing in Institutional Programs**

14 The first critical area relates to persistent staffing shortfalls in the prisons’ mental health
15 care programs. These programs are found at three of the four levels of CDCR’s MHSDS:
16 Correctional Clinical Case Management System (CCCMS), Enhanced Outpatient Programs
17 (EOPs) and Mental Health Crisis Beds (MHCBs). In March 2024, following evidentiary
18 proceedings held in late 2023 developing the record with respect to staffing, the court issued a
19 tentative ruling finding defendants in contempt of the court’s prior orders. Mar. 8, 2024 Bench
20 Order, ECF No. 8147. The court deferred its tentative ruling pending ultimately unsuccessful
21 mediation efforts supervised by a Ninth Circuit Mediator. Mar. 8, 2024 Minutes, ECF No. 8146.
22 Then in June 2024, the court confirmed its tentative ruling, formally finding three defendants in
23 contempt of court for failing to comply with the court’s orders to come into full compliance with
24 defendants’ 2009 institutional mental health staffing plan and the court-ordered ten percent
25 vacancy rate. *See generally* June 25, 2024 Order, ECF No. 8291. The court ordered defendants
26 to pay substantial civil fines. *See generally id.* On July 12, 2024, the court ordered the parties to
27 meet and confer under the supervision of the Special Master and to submit a proposed plan for
28 expenditure of those fines “to remedy ongoing mental health understaffing” in CDCR’s
29 institutional programs. *See* ECF No. 8330 at 15. The parties timely submitted that plan, and on
30 August 29, 2024, the court approved the plan and ordered defendants to implement it. Aug. 29,
31 2024 Joint Submission & Order, ECF No. 8381. The defendants then obtained a stay from the

1 court of appeals, Nov. 12, 2024 Order, ECF No. 8462, during their pursuit of a largely
2 unsuccessful appeal, *see generally Coleman v. Newsom*, 131 F.4th 948 (9th Cir. 2025), which
3 delayed expenditure of funds generated by the fines. In the meantime, as reflected in defendants'
4 regular reports to the court institutional mental health staffing fill rates improved incrementally
5 but neither fully nor durably, and defendants remain out of compliance with the required
6 institutional staffing remedy. *See* Attachment B, Chart 1.

7 Shortly after the court of appeals issued its decision affirming the court in material part
8 but before the mandate issued, the court approved on April 1, 2025, a stipulation of the parties
9 designed to address understaffing issues by authorizing the use of Marriage and Family
10 Therapists (MFTs) and Professional Clinical Counselors (PCCs) as primary clinicians at the
11 CCCMS, EOP and MHCB levels of care. Apr. 1, 2025 Stip. & Order, ECF Nos. 8587, 8587-1.
12 Subsequently, after the court of appeals issued its mandate, the court approved a further
13 stipulation of the parties to address continuing staffing shortfalls by amending the categories
14 defendants assign to the various mental health classifications in the staffing vacancy reports they
15 file monthly, adding categories for Chief and Senior Psychologists and for Supervising Social
16 Workers, and grouping the remaining psychologist and social worker positions into a new
17 category identified as Primary Clinicians, which also includes the MFT and PCC positions.¹ Jun.
18 30, 2025 Stip. & Order, ECF No. 8688. The most recent reporting shows the addition of new
19 classifications to serve as primary clinicians has provided a boost to the previous staffing deficits,
20 but full and durable compliance still remains a goal rather than a reality. *See* Attachment B,
21 Chart 2.

22 Defendants have also now implemented, on a temporary basis, payment of bonuses
23 provided for in the Staffing Expenditure Plan, ECF No. 8381. The court will order those bonuses
24 be made permanent.

25 /////

¹ The court ordered defendants to begin filing monthly vacancy reports in February 2018. Feb. 15, 2018 Order at 4, ECF No. 5786. Though styled as “vacancy” reports, the percentages contained in the reports represent the percentage of authorized positions filled in each of the categories.

1 In sum, while the court's contempt findings and imposition of civil fines may have
2 focused minds and motivated some improvements, defendants' inability to achieve compliance
3 with the court-ordered staffing ratios persists with no solution identified to effect the remedy
4 sooner rather than later, other than appointment of a receiver.

5 **B. Mental Health Staffing in CDCR PIPs**

6 The second critical area the court identified in the order to show cause relates to staffing
7 and other matters in CDCR PIPs. The court summarized the recent history of its actions on this
8 front as follows:

9 [O]n October 11, 2023, the court ordered defendants to come into
10 complete compliance with the CDCR PIP Staffing Plan, subject to a
11 maximum ten percent vacancy rate, within six months. ECF No.
12 8009. On June 24, 2024, the court issued an order finding defendants
13 out of compliance with the October 11, 2023 order and setting a fine
14 schedule enforceable through civil contempt if compliance is not
15 achieved within four months. ECF No. 8301. The four-month period
16 started on July 1, 2024. *Id.* at 2.

17 ECF No. 8330 at 4. As defendants' monthly vacancy reports show, defendants have not met the
18 thresholds required to avoid the accrual of fines as provided by the June 24, 2024 order. *See*
19 Attachment B, Chart 3.

20 Also related to the PIPs, on July 28, 2025, plaintiffs requested leave to file a motion
21 regarding defendants' plan to deactivate numerous licensed PIP beds, ECF No. 8710, for which
22 defendants had provided notice on July 2, 2025, Second Am. Mehta Decl. at 2, ECF 8728-1. On
23 July 29, 2025, defendants filed an opposition to the request, although the court had not granted
24 plaintiffs' leave to file the motion. ECF No. 8711.² On August 4, 2025, the court directed the
25 parties to "provide information comparing the current fill rates" in the PIPs "with the fill rates
26 that would exist upon defendants' proposed" deactivation of inpatient beds and directed
27 defendants to include that information in their monthly staffing vacancy reports going forward.
28 Aug. 4, 2025 Order at 2-3, ECF No. 8721. The information defendants have now provided
29 suggests, on its face, that if the planned deactivations went forward defendants would remain out

² Defendants have amended their opposition twice. ECF Nos. 8719, 8728.

1 of PIP staffing compliance only with respect to psychology positions. Muhammad Decl. ¶ 4 &
2 Exs. A-B, ECF No. 8739-2. On August 21, 2025, the court stayed the planned deactivation for a
3 period of fourteen days, given the unanswered questions it raises. Aug. 21, 2025 Order, ECF No.
4 8747. Those unanswered questions include whether the deactivation of the beds can be reversed
5 promptly if they are needed again, and whether the lack of need for the beds reflects problems
6 with patient referrals. ECF No. 8710 at 4-5. Even if the planned deactivations are appropriate,
7 taking account of all the relevant considerations, defendants would still not be in full compliance
8 with the court-ordered PIP staffing requirements, although they might be closer to compliance.
9 The noncompliance here as well supports the appointment of a receiver, subject to analyzing the
10 applicable factors as the court does below.

11 At the special status hearing on August 22, 2025, the court advised the parties of its
12 intention to refer the issues raised by the planned deactivation to the Receiver for consideration
13 upon the effective date of her appointment. *See generally* RT 8/22/2025.

14 **C. Suicide Prevention**

15 The third critical area of noncompliance called out by the court in the order to show cause
16 relates to suicide prevention. It is established in this action “[w]here, as here, defendants know
17 that they house prison inmates at risk for suicide, they are required to take all reasonable steps to
18 prevent the harm of suicide.” *Coleman v. Brown*, 938 F.Supp.2d 955, 975 (E. D. Cal. 2013). The
19 court has clearly identified the reasonable steps defendants must take; those steps still are not
20 fully implemented despite the passage of many deadlines and the extreme seriousness of the
21 problem of high suicide rates among the plaintiff class.

22 In early 2015, without objection from either party, the court ordered defendants to adopt
23 thirty-two suicide prevention measures in CDCR’s institutional mental health programs;³ the
24 measures were recommended by the Special Master’s suicide prevention expert, Lindsay M.
25 Hayes, and defendants were ordered to work with Mr. Hayes and the Special Master to implement
26 them. *See generally* Feb. 3, 2015 Order, ECF No. 5271. In 2018, at Mr. Hayes’ recommendation

³ Initially referred to as “recommendations,” the court now refers to these as measures.
See ECF No. 8330 at 4 n.3.

1 the court withdrew three of the previously ordered measures, leaving twenty-nine measures to be
2 implemented. Jan. 25, 2018 Order at 3, ECF No. 5762. Since then, Mr. Hayes has conducted
3 four additional compliance re-audits, for a total of seven audits including the original audit and
4 six re-audits. *See* Jan. 6, 2023 Order at 3-5, ECF No. 7696 (discussing original audit report and
5 reports on first through fifth re-audits); *see also* ECF No. 8143-1 (sixth re-audit report). He
6 currently is completing his seventh re-audit.

7 In January 2020, the court set the first deadline for defendants to fully implement the then-
8 outstanding suicide prevention measures, requiring completion by the end of Mr. Hayes' fourth
9 re-audit. Jan. 7, 2020 Order, ECF No. 6441. In September 2020, the court set a second deadline,
10 requiring defendants to complete outstanding work before the start of Mr. Hayes' fifth re-audit.
11 ECF No. 6846 at 21-22. In February 2023, the court set a third deadline. ECF No. 7743. In that
12 order, the court signaled that ongoing violations of its orders to fully implement these measures
13 would be enforceable through civil contempt proceedings and payment of coercive fines. *Id.* at 4-
14 5. Defendants have not met any of the court's deadlines. *See id.*; *see also* ECF Nos. 8414, 8433
15 (ruling on defendants' objections to Special Master's Expert's Sixth Re-Audit Report).

16 The threat of contempt proceedings and the court's order to show cause why a receiver
17 should not be appointed have not spurred defendants to full compliance. Prior to Mr. Hayes'
18 current re-audit, defendants were still out of compliance with thirteen suicide prevention
19 measures. *See* RT 9/30/24, ECF No. 8433; Nov. 27, 2024 Order, ECF No. 8478; June 24, 2025
20 Order at 13, ECF No. 8682. The court understands the pending re-audit report will show
21 defendants still remain out of full compliance.⁴ This track record with respect to a critical aspect
22 of the *Coleman* remedy bolsters the court's conclusion that it has "no option but to entertain a
23 receivership." ECF No. 8330 at 10. While the court could initiate the contempt proceedings that

⁴ Relatedly, on January 6, 2023, the court ordered defendants to implement sixteen recommendations for the development of corrective action plans in the CDCR PIPs on a schedule to be proposed by the parties jointly. ECF No. 7696 at 2; Mar. 7, 2023 Order, ECF No. 7754. The court is currently awaiting a further report from the Special Master and Mr. Hayes on the status of these corrective action plans, *see* Jul. 1, 2025 Minute Order, ECF No. 8692, and anticipates referring this report to the Receiver.

1 are now ripe, that approach to enforcement has in the past led to an escalation in litigation and
2 inevitable appeals, in the vicious adversarial cycle that has plagued this case to date.
3 Appointment of a receiver promises to be a more efficient and effective mechanism for finally
4 achieving compliance with respect to the suicide component of the remedy as well.

5 **D. Other Aspects of Remedy As Yet Unfulfilled**

6 In addition to the three critical areas discussed above, the court has issued several orders
7 related to data and quality, as the July 12, 2024 order to show cause also noted. These issues bear
8 on the court's decision to appoint a receiver in this action, too. In the order to show cause, the
9 court noted that "finalization of defendants' quality assurance process and the Continuous Quality
10 Improvement Tool (CQIT), and completion of data remediation required by defendants' knowing
11 presentation of misleading evidence to the court and the Special Master, *see generally, Coleman*
12 *v. Newsom*, 424 F. Supp. 3d 925, *supra*, are unduly delayed without reasonable justification."
13 ECF No. 8330. As the court has explained in several orders,

14 CQIT . . . is the comprehensive tool defendants will ultimately use
15 when they assume the monitoring responsibilities the Special Master
16 has borne to date. *See generally*, July 1, 2021 Order, ECF No. 7216;
17 *see also* January 4, 2023 Order, ECF No. 7695, at 2. "The 'key
18 indicators' in CQIT 'signify the material provisions of the Program
19 Guide and the Compendium that must be durably implemented' in
20 order to satisfy the Eighth 17 Amendment." ECF No. 7216 at 4
21 (additional citations omitted).

22 May 24, 2023 Order at 3, ECF No. 7847. Full data remediation is critical to finalization and
23 implementation of CQIT and, more broadly, defendants' quality assurance process. *See*
24 *generally, e.g.*, ECF No. 7847. While the court now, just earlier this month, has been able to find
25 the provisionally approved key indicators for CQIT have been remediated, Aug. 4, 2025 Order,
26 ECF No. 8724, much work remains to finalize the CQIT tool and, more broadly, the required
27 quality assurance and quality improvement processes essential to full remediation. As the court
28 previously has explained,

29 [a]n adequate quality management system is a required part of the
30 remedy in this action. *See id.* at 2 (citing *Coleman v. Wilson*, 912 F.
31 Supp. 1282, 1308 14 (E. D. Cal. 1995)). "Quality assurance and
32 quality improvement are components of an adequate quality

management system: quality assurance focuses on quantification of system performance, while quality improvement focuses on the quality of that same system's performance." ECF No. 6996 at 2 (citing ECF No. 4205 at 74-75); *see also* May 24, 2023 Order, ECF No. 7847, at 2 (quoting August 30, 2012 Order, ECF No. 4232, at 5, for proposition improved quality improvement process will enable defendants to "address issues with the quality of care that is delivered").

Nov. 16, 2023 Order at 2, ECF No. 8069. Completion of this remedial work is essential for defendants to "'achieve and maintain compliance' with constitutional requirements [and] 'transition . . . into self-monitoring and . . . *eventual removal of federal court oversight.*'" ECF No. 7847 at 5 (emphasis in original) (quoting Aug. 30, 2012 Order at 4-5, ECF No. 4232) (other citations omitted).

The protracted delays in finalizing the key indicators to get to this stage of the essential quality assurance assessment also support appointment of a receiver, to bring a laser focus to ensuring this aspect of the remedy moves forward now expeditiously.

II. PROCEDURAL HISTORY

This order is the culmination of more than a year during which the court has followed a careful, deliberative and transparent process. At each step of the way, the parties have had extensive opportunities to be heard. As noted, on July 12, 2024, the court first issued the order and order to show cause requiring the parties to show cause in writing "why the court should not initiate formal proceedings to appoint a receiver to assume responsibility, with this court's oversight, for completion of all tasks necessary to implementation of the remedy in this action." ECF No. 8330 at 15. The court set the order to show cause on for hearing on August 20, 2024. *Id.* On August 2, 2024, the parties filed a response to the order to show cause, jointly proposing appointment of the Receiver in *Plata v. Newsom*, Case No. 01-1351 JST (N.D. Cal.) as the temporary Receiver in this action. ECF No. 8347. The court held show cause hearings on August 20, 2024 and August 21, 2024. ECF Nos. 8360, 8364. At the latter hearing, the court discussed with the parties its intention to "appoint an outside technical advisor to advise and help the court with specific questions arising from the parties' joint proposal" to appoint the *Plata* Receiver as temporary receiver in this action. Aug. 22, 2024 Order at 1, ECF No. 8368. The

1 court identified its candidate to serve as technical advisor and gave the parties an opportunity to
2 file objections to the appointment. *Id.* Neither party filed objections, and on August 27, 2024,
3 the court appointed Eric Douglas of Leading Resources, Inc. as an outside technical advisor.
4 Aug. 27, 2024 Order, ECF No. 8377.

5 In September 2024, the *Plata* Receiver withdrew his name from consideration as
6 temporary receiver in this action. Sept. 24, 2024 Order at 1, ECF No. 8406. The court informed
7 the parties it would “continue to move forward with identifying and hiring a receiver for this
8 action . . .,” *id.*, and, to that end, held a further status conference on September 30, 2024, *id.* at 2;
9 *see also* Sept. 30, 2024 ECF No. 8414. As the court authorized, ECF No. 8433 at 8-10, on
10 October 14, 2024, the parties filed a second joint statement concerning appointment of a
11 temporary receiver. ECF No. 8430. The parties reported they had identified two possible
12 candidates and would provide a further update to the court by October 25, 2024. *Id.* at 1-2. On
13 October 25, 2024, the parties filed a joint statement nominating a second candidate while
14 agreeing to keep the individual’s identity confidential. ECF No. 8442. The court reviewed the
15 resume of the proposed candidate, ECF No. 8443, sought input from its technical advisor, ECF
16 No. 8444, and met with the proposed candidate, subsequently identified as Martin Hoshino, Nov.
17 15, 2024 Minute Order, ECF No. 8463. Mr. Hoshino advised the court he was unavailable to
18 serve as temporary receiver but offered his assistance to the court in finding another candidate.
19 *Id.* The court authorized Mr. Hoshino to confer with counsel for plaintiffs and defendants “in an
20 effort to identify additional candidates and if possible a new candidate or candidates the parties
21 agree upon.” *Id.*; *see also* Nov. 22, 2024 Minute Order, ECF No. 8471.

22 On December 5, 2024, the court held a further status conference with the parties, ECF No.
23 8482, and thereafter scheduled an *in camera* meeting with proposed candidate Michael Wilkening
24 “subject to the presentation of a plan for a Receivership prior to appointment.” Dec. 6, 2024
25 Minute Order, ECF No. 8483. On December 23, 2024, the court informed the parties Mr.
26 Wilkening was “not prepared to be considered as a candidate for Receiver in this action.” Dec.
27 23, 2024 Minute Order, ECF No. 8501. The court further informed the parties it was “consulting
28 with its technical advisor and will further advise the parties soon on the next steps it will take to

1 move forward with appointment of a Receiver.” *Id.* On January 15, 2025, the court notified the
2 parties “it is having its technical advisor make initial, confidential inquiries to a short list of
3 possible” receiver candidates. Jan. 15, 2025 Courtesy Notification, ECF No. 8515.

4 On February 25, 2025, the court held an *in camera* hearing with the parties on the status of
5 appointment of a receiver, ECF No. 8551, and on March 18, 2025, the court held a further *in*
6 *camera* hearing with the parties followed by a public hearing at which it identified a new
7 candidate it had identified as the proposed receiver, Colette S. Peters. ECF No. 8572. At the *in*
8 *camera* portion of the latter hearing, as the court confirmed in a subsequent order, “the parties
9 agreed Ms. Peters is qualified and did not identify any other reason counseling against her
10 appointment, while the defendants preserved their objection to appointment of a receiver in the
11 first instance.” Mar. 19, 2025 Order and Order to Show Cause at 2, ECF No. 8574. Thereafter,
12 the court “confirmed its intent to move forward toward appointment of a receiver by providing for
13 a next phase during which Ms. Peters will serve as Receiver-nominee and work collaboratively
14 with the parties, while also coordinating with the Special Master, to develop a detailed
15 Receivership Action Plan” to be presented to the court within a four month period. *Id.* The court
16 set out the proposed powers and duties of the Receiver-nominee and directed the parties to
17 respond with a joint statement. *Id.* at 3-8.

18 The parties filed the required joint statement on March 28, 2025. ECF No. 8583. On
19 April 2, 2025, after considering the joint statement, the court issued an order appointing Colette S.
20 Peters as Receiver-nominee with the powers and duties set out in that order. Apr. 2, 2025 Order
21 and Order Appointing Receiver-Nominee, ECF No. 8589. The court directed the Receiver-
22 nominee to develop and present to the court a “detailed Receivership Action Plan” (hereafter
23 Plan) within four months, *id.* at 2, as a prerequisite to the court’s consideration of her appointment
24 as Receiver in this action. The court also authorized the Receiver-nominee to appoint two Deputy
25 Receiver-nominees, William W. Lothrop and Kathleen T. Toomey, and Mr. Hoshino as a Senior
26 Advisor. ECF No. 8589 at 3; May 1, 2025 Order, ECF No. 8625. The Receiver-nominee timely
27 submitted the proposed Plan. *See* Aug. 4, 2025 Order, ECF No. 8721; *see also* Plan, ECF No.
28 8722. As directed by the court, ECF No. 8721 at 1, the parties have filed responses to the Plan

1 and supplemental briefs on their current positions regarding appointment of a Receiver. ECF
2 Nos. 8735, 8737 (plaintiffs' response and supplemental response), 8736, 8739 (defendants'
3 responses). The court held a special status conference on August 22, 2025 to clarify certain
4 matters and hear from the parties concerning their respective positions. Aug. 19, 2025 Minute
5 Order, ECF No. 8744; *see also* ECF No. 8748 (Minutes).

6 **III. LEGAL STANDARDS**

7 The court set out the relevant legal standards in the July 12, 2024 order and order to Show
8 Cause, and confirms those here:

9 “[I]f [the] (sic) government fails to fulfill [its] obligation to [provide
10 adequate mental health care], the courts have the responsibility to
11 remedy the resulting Eighth Amendment violation. . . . Courts faced
12 with the sensitive task of remedying unconstitutional prison
13 conditions must consider a range of available options. . . .” *Brown v.*
14 *Plata*, 563 U.S. 493, 511 (2011). As this court explained in its June
15 25, 2024 order:

16 State officials have “primary responsibility for curing”
17 constitutional violations in the scope of their jurisdiction.
18 *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978) (citing
19 *Milliken v. Bradley*, 433 U.S. 267, 281 (1977)), *abrogated*
20 *on other grounds by Dep’t of Agric. Rural Dev. Rural Hous.*
21 *Serv. v. Kirtz*, 601 U.S. 42 (2024). Where those officials
22 “fail in their affirmative obligations . . . judicial authority
23 may be invoked.” *Id.* (quoting *Swann v. Charlotte-*
24 *Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971)). Where a
25 court has issued orders to remedy identified constitutional
26 violations and those orders remain disobeyed, the court has
27 “ample authority to go beyond earlier orders” and enter an
28 order necessary to “bring an ongoing violation to an
29 immediate halt.” *Id.* at 687 & n.9.

30 ECF No. 8291 at 29. Indeed, the court is required to take further
31 action where unconstitutional conditions remain. *Brown*, 563 U.S.
32 at 511. Several equitable tools are available to a court to obtain
33 obedience to its orders and bring continuing constitutional violations
34 “to an immediate halt.” *Hutto*, 437 U.S. at 687 & n.9. These tools
35 include contempt proceedings, *see, e.g., Shillitani v. United States*,
36 384 U.S. 364, 370 (1966), appointment of a special master or
37 appointment of a receiver, *see, e.g., Brown v. Plata*, 563 U.S. 493,
38 511 (2011). Each of these is a distinct remedy to which different
39 standards apply. *Cf., e.g., Morgan v. McDonough*, 540 F.2d 527, 533
40 (1st Cir. 1976) (affirming appointment of receiver where “more usual

remedies contempt proceedings and further injunctions were plainly not very promising, as they invited further confrontation and delay”). ECF No. 8330 at 8-9.

“[R]eceiverships are recognized equitable tools available to the courts to remedy otherwise uncorrectable violations of the Constitution or laws.” *Plata v. Schwarzenegger*, 603 F.3d 1088, 1093-94 (9th Cir. 2010) (collecting cases). In assessing whether to ultimately appoint a receiver in this action, the court has applied the “multi-pronged test” set out by the trial court in *Plata v. Schwarzenegger*, 2005 WL 2932253, slip op. at *23 (N.D. Cal. 2005). The test has seven elements, the first two of which are given predominant weight, as follows:

(1) Whether there is a grave and immediate threat or actuality of harm to plaintiffs;

(2) Whether the use of less extreme measures of remediation have been exhausted or prove futile;

(3) Whether continued insistence that compliance with the Court’s orders would lead only to confrontation and delay;

(4) Whether there is a lack of leadership to turn the tide within a reasonable period of time;

(5) Whether there is bad faith;

(6) Whether resources are being wasted; and

(7) Whether a receiver is likely to provide a relatively quick and efficient remedy.

Id. (quoted in ECF No. 8330 at 11).

IV. DISCUSSION

A. Defendants’ Remaining Opposition

As noted, on August 4, 2025, the court ordered the parties to file a short statement “of whether their positions on appointment of a Receiver have changed since briefing on that question was completed and, if so, how their positions have changed.” ECF No. 8721 at 1. In their response, defendants represent they “continue to maintain that they do not believe the legal standards governing the appointment of a receiver have been and can be met”; they also state, however, they are encouraged by “several parts of the Receiver-Nominee’s Receiver’s Action

1 Plan” but “[w]ithout further direction from the Court on the scope and authority of a receiver, the
2 reporting structure, the legal status of the Special Master if a receiver is appointed, and the status
3 of contempt fines if a receiver is appointed [their] position remains unchanged.” ECF No. 8736
4 at 1, 2.

5 The court has carefully considered the parties’ positions and in particular the four issues
6 raised by defendants, which it reviewed with the parties at the special status on August 22, 2025.
7 *See* RT 8/22/2025 at 24-42, ECF No. 8751. For the reasons explained below, the court finds the
8 legal standards for appointment of a receiver are met. Concurrently with this order, the court
9 issues a separate order on the Receiver’s authority. To the extent defendants have specific issues
10 about the reporting structure within the receivership, they recognize that flexibility will be
11 required as the Plan is actualized, *see* ECF No. 8739 at 5; the court directs them to address any
12 concerns to the Receiver in the first instance, once her appointment is effective September 1. As
13 discussed with the parties at the August 22, 2025 status conference, the court is directing
14 preparation of a focused plan to clarify the role of the Special Mastership going forward; the
15 court’s directive in this respect is included in the court’s concurrent order approving the
16 Receiver’s Action Plan. Below, the court makes certain orders clarifying the status of contempt
17 fines and prospective contempt proceedings.

18 **B. Factors Informing Appointment of Receiver**

19 Each of the relevant factors supports the court’s appointment of the Receiver.

20 **1. Grave and Immediate Threat or Actuality of Harm to Plaintiffs**

21 This court already has found the record “replete with evidence of both threatened and
22 actual harm to members of the plaintiff class as a result of the defendants’ ongoing non-
23 compliance with” key remedial measures. ECF No. 8330 at 12. As discussed in Section I above,
24 necessary remedial work remains unfinished and the harm to the plaintiff class, both threatened
25 and actual, continues.

26 /////

2. **Exhaustion/Futility of Other Tools Used by the Court to Obtain Remediation**

The court also previously has surveyed its remedial efforts to date:

The court's appointment of a Special Master thirty years ago deployed one of the available tools. The Special Master's role has been to supervise development and implementation of plans required to remedy the extensive constitutional violations identified at the trial of this matter and in the court's September 13, 1995 order, *Coleman v. Wilson*, 912 F.Supp. 1282 (E.D. Cal. 1995). *See* Dec. 11, 1995 Orders, ECF Nos. 639, 640. The first Special Master was J. Michael Keating, Jr.; his successor, Matthew A. Lopes, Jr., was appointed to the Special Master's team in early 1996 and succeeded Mr. Keating as Special Master in November 2007, *see* Apr. 24, 2024 Order at 8-9. Both successfully supervised defendants in the development of the remedial framework for this action, which consists of primary remedial plans developed by defendants and approved by the court, as well as other additional remedial measures in aid of implementation of defendants' primary remedial plan for the delivery of mental health care, the Program Guide. *See* Sept. 3, 2020 Order at 2-6. The Special Master has continued to supervise implementation through now thirty rounds of monitoring.

ECF No. 8330 at 8-9 (footnote omitted). The record shows this court's predecessor issued more than one hundred substantive orders approving the remedies developed by defendants, both in aid of and requiring implementation of those remedies. *See Coleman*, 938 F.Supp.2d at 972-73 (over seventeen years court had "issued over one hundred . . . substantive orders to defendants . . . focused on core issues including but not limited to staffing, bed planning, suicide prevention, and access to inpatient care."). Since this court assumed responsibility for supervision of this action in August 2014, *see* Aug. 29, 2014 Order, ECF No. 5213, it has issued over one hundred twenty-five substantive orders related to implementation and enforcement of the remedy.⁵ Some of those orders were issued more than five years ago, and they contain details and great specificity about the required remedies and implementation tasks that then remained. *See, e.g.*, Jul. 9, 2019 Order, ECF No. 6214; *see also* ECF No. 6846. These prior orders are incorporated here by reference.

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⁵ This number does not include numerous procedural and other orders the court has issued over the past decade in managing this complex action.

1 Notwithstanding the court's substantial effort, as reviewed in Section I above, the work is
2 unfinished, the progress too slow and no end in sight if the current framework remains in place.

3 **3. Efficacy of Continued Insistence on Compliance with the Court's**
4 **Orders**

5 Despite the court's issuance of over 250 orders in thirty years, this case remains rife with
6 conflict and delay. Among those orders was the order in 2023, initiating proceedings to
7 determine whether to hold defendants in contempt to finally remedy chronic mental health care
8 understaffing, one of the most critical and longstanding parts of the ongoing Eighth Amendment
9 violation in this action. Defendants strenuously resisted a finding of contempt, had a full
10 opportunity to present evidence to demonstrate a contempt finding was not justified, and were not
11 able to identify a mediated resolution using the services of the Ninth Circuit Mediator made
12 available by the court to avoid final findings of contempt after the court previewed its tentative
13 findings. Defendants then appealed, unsuccessfully, but in appealing delayed implementation of
14 many of the remedial steps required by the court's contempt order for almost a year.

15 Even if there are finally a few signs of progress with respect to staffing, defendants do not
16 appear close to achieving completion of the staffing remedy, let alone durably. *See* Section IA
17 above; *see also* Attachment B. And staffing is but one aspect of the remedy long unfulfilled.
18 Particularly if the court must continue to rely on contempt proceedings to obtain compliance with
19 its orders, there is no indication defendants' reflexive practice of appealing the court's orders will
20 cease.

21 **4. Bad Faith**

22 Whether there is bad faith is a factor to consider in determining whether a receiver is
23 warranted. At the same time, "[a] finding of bad faith is not required to institute a receivership."
24 *Nunez v. N.Y.C. Dep't of Correction*, No. 11-5845, 2025 WL 1374584, at *13 (S.D.N.Y. May 13,
25 2025) (quoting *United States v. Hinds County*, No. 16-489, 2023 WL 1186925, at *12 (S.D. Miss.
26 Jan. 30, 2023)), *appeal filed*, No. 25-1723 (July 15, 2025). "And, as observed by the *Plata* Court,
27 the question of motive is complicated." *Id.* (alteration omitted) (quoting *Hinds County*, 2023 WL

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1 1186925, at *12, in turn quoting *Plata v. Schwarzenegger*, No. 01-1351, 2005 WL 2932253, at
2 *29 (N.D. Cal. Oct. 3, 2005)).

3 The record in this action over the past twelve years supports a finding of bad faith by at
4 least some defendants and some counsel at various junctures. As the court set out in the July
5 2024 order to show cause,

6 Over the past dozen years defendants or their counsel have
7 (1) violated ethical rules meant to constrain counsel, *see Coleman v.*
8 *Brown*, 938 F. Supp. 2d 955, 962-69 (E.D. Cal. 2013) and, more
9 recently, (2) knowingly presented misleading information to the
10 court and the Special Master, *see generally Coleman v. Newsom*, 424
11 F. Supp. 3d 925. This deeply disappointing conduct itself has caused
12 unnecessary delays. Most recently, the court has had to signal it will
13 impose monetary sanctions on defense counsel if the “recurring
14 pattern of defendants’ disregard for this court’s orders, which
15 appears to be either willful or a significant derogation of duty on the
16 part of counsel” continues. May 16, 2024 Order at 6, ECF No. 8239.
17 *See also* ECF No. 8212 at 5-7 (noting “at least one serious
18 inconsistency” between position taken by defendants on paper versus
19 position on same issue taken in open court and observing that
20 “defendants’ strategy for ending [judicial] oversight appears focused
21 primarily on litigation rather than expedited compliance with . . .
22 longstanding remedies in this action,” which “inevitably delay[s]
23 progress toward the end of judicial oversight”; ECF No. 8069, *supra*;
24 Apr. 13, 2023 Order at 7, ECF No. 7808 (noting defendants’ false
25 contention that Special Master failed to identify source of data relied
26 on and defendants’ failure to acknowledge Special Master’s
27 response to their objection); Apr. 12, 2023 Order at 10, ECF No.
28 7807 (defendants cannot ignore existing court orders and must,
29 instead, seek relief if warranted); Feb. 20, 2019 Order at 4-7, ECF
30 No. 6096 (reminding defense counsel of ethical obligations under
31 Rule 11 given their “selective quoting” of hearing transcript,
32 disregard of prior court orders, and “treatment of potentially
33 privileged information during . . . independent investigation”; Nov.
34 16, 2017 Order, at 7, 9-10, ECF No. 5726 (discussing defendants’
35 disregard for law of the case and prior relevant court orders).

36 ECF No. 8330 at 13-14. Even the foregoing findings by the court did not bring an end to
37 defendants’ non-compliance with its orders. *See, e.g.*, May 15, 2025 Minute Order, ECF No.
38 8638 (ordering defendants to show cause why the court should not impose monetary sanctions for
39 non-compliance with April 22, 2025 order); Jun. 6, 2025 Order at 3, ECF No. 8668 (discharging
40 order to show cause “with a cautionary reminder that the court expects all its orders to be

1 complied with promptly, absent a stay”); Jun. 24, 2025 Order at 9, ECF No. 8682 (again
2 cautioning defendants court expects full compliance with its orders).

3 While the court finds this factor satisfied, it also notes that even if it were not, a receiver
4 would be warranted given that the court need not “make a finding as to whether Defendants have
5 acted in bad faith.” *Nunez*, 2025 WL 1374584, at *13.

6 5. Absence of Leadership

7 In the Plan, the Receiver-nominee identifies multiple failures of leadership as a root cause
8 of defendants’ failure to achieve compliance. *See* ECF No. 8722 at, e.g., 3, 8-9. These include a
9 “complex leadership structure” that does not clearly identify “who is ultimately responsible for
10 delivery of constitutionally adequate mental health services”; “poor communication and lack of
11 information” about what is required by the established remedies in this action; and “no
12 uniform . . . mechanism for sharing best practices and lessons learned across institutions.” *Id.*
13 at 9.

14 The Plan cogently describes the leadership required to turn the tide and includes steps for
15 the Receiver to take immediately to bring that leadership to bear. Ms. Peters’ resume, attached as
16 Attachment C, shows the depth and breadth of her experience in correctional settings. The parties
17 acknowledge her qualifications, ECF No. 8574 at 2, and the court is persuaded she has the
18 credentials and the vision to fill the leadership void promptly. Ms. Peters proposes to appoint Mr.
19 Lothrop and Ms. Toomey as Deputy Receivers and Mr. Hoshino as Senior Advisor, and the court
20 hereby approves her proposal, given the work Ms. Peters and this team have performed to date,
21 demonstrating their qualifications, commitment to clear communication and collaboration, work
22 ethic, solid understanding of the task at hand and proven leadership capabilities. The resumes of
23 Mr. Lothrop, Ms. Toomey and Mr. Hoshino also are attached to this order. *See* Attachments D-F.

24 Fundamentally, Ms. Receiver’s Action Plan not only describes how and why an absence
25 of leadership supports the appointment of a receiver, but also offers the best chance to fill the
26 leadership vacuum strategically and constructively assuming the defendants – and all parties –
27 give the Receiver and the Plan a chance. *See* ECF No. 8722 at 16.

1 6. **Waste of Resources**

2 It cannot reasonably be disputed that the amount of money being spent on the contentious
3 litigation that has plagued remediation in this action for more than a decade is a significant waste
4 of public resources, given that the litigation has not effected any material change in the court-
5 ordered remedy but rather only served to delay implementation and the end of federal court
6 oversight. In fiscal year 2022/2023, publicly available documents indicated defendants paid more
7 than \$2.5 million dollars for their lawyers alone. *See* Cal. Dep’t of Corrections & Rehab., Class
8 Action Capital Outlay Annual Legis. Rep. at 10 (FY 22/23).⁶ This amount, spent three years ago
9 now, is more than the combined annual compensation Ms. Peters seeks for herself and two
10 Deputy Receivers today. *See* Receiver’s Action Plan, Appendix D, ECF No. 8722-4
11 (\$812,784.00 for Receiver; \$700,552.00 for Deputy Receiver Lothrop, \$687,883.00 for Deputy
12 Receiver Toomey); *see also* Order Re Compensation of Receiver and Deputy Receivers
13 (equalizing compensation for Deputy Receivers at \$700,552.00 each) (filed concurrently).

14 This factor, like all the rest reviewed above, supports appointment of the Receiver.

15 7. **Whether a Receiver is Likely to Provide a Relatively Quick and**
16 **Efficient Remedy**

17 The Receiver-nominee estimates it will take five to seven years to bring this action to a
18 conclusion, and notes this assumes the Receiver can move forward immediately to implement the
19 Plan. ECF No. 8722 at 15. The Receiver-nominee notes continuing litigation would prolong that
20 timeline. *Id.* at 8. Assuming no further litigation, with adequate resources and cooperation of the
21 parties, the court is persuaded the Plan contains an “aggressive, flexible, and realistic” timeline
22 that will ensure as timely completion of the remedy in this action as reasonably possible. In
23 reaching this conclusion the court notes the five to seven years must be evaluated against the
24 backdrop of the long-running remedial phase of this case, which has taken thirty years so far, with
25 some progress as noted above but no durable end otherwise in sight.

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⁶ https://www.cdcr.ca.gov/wp-content/uploads/2024/02/FY-22-23_Class-Action-Budgetary-Report_SB154_01-31-24_FINAL.pdf at 5 (last visited Aug. 26, 2025).

1 This factor, in light of the details of the Plan the court approves concurrently, weighs in
2 favor of appointment of a Receiver to implement the Plan.

3 **8. Conclusion**

4 Taken together, all of the relevant factors, weighed in light of the totality of the record
5 before the court, favor appointment of a Receiver. Plaintiffs continue to suffer actual and
6 threatened harm while necessary and durable remediation of ongoing Eighth Amendment
7 violations elude defendants. The Receiver's Action Plan's clear-eyed assessment of the current
8 leadership vacuum describes persuasively defendants' inability, on their own, to complete the full
9 and durable remediation required in this action. Ms. Peters as Receiver is the best person to carry
10 out the Action Plan now. The court finds the remaining option available to it—practically
11 speaking the only remaining viable option—is to appoint a receiver to ensure defendants meet all
12 of their constitutional obligations to the plaintiff class in a reasonable time.

13 **C. Prison Litigation Reform Act Requirements**

14 To order prospective relief, the court must find “that such relief is narrowly drawn,
15 extends no further than necessary to correct the violation of the Federal right, and is the least
16 intrusive means necessary to correct the violation of the Federal Right.” 18 U.S.C. § 3626(a)(1).
17 This test requires that prospective relief “must be proportional to the scope of the violation,
18 and . . . must extend no further than necessary to remedy the violation.” *Brown v. Plata*, 563 U.S.
19 493, 531 (2011). Appointment of a receiver in this action also meets these requirements. The
20 scope of the constitutional violation is substantial: defendants' ongoing failure to fully implement
21 the remedies for more than thirty years harms, actually and in addition potentially, all of the
22 nearly 35,000 seriously mentally ill individuals in California's prisons. As set out in this order,
23 the court has issued hundreds of orders, appointed the Special Master and a team of experts to
24 provide guidance and monitoring, and overseen contempt proceedings, among many, many other
25 efforts to manage this case to conclusion. All the court's less intrusive measures have not
26 effected the requisite constitutional compliance in a timely way. The record fully supports the
27 court's conclusion that a receivership is the only remedial tool left to the court, practically
28 speaking.

V. STATUS OF FURTHER PROCEEDINGS

A. Contempt

As discussed with the parties at the August 22, 2025 status conference, effective immediately the court on its own motion stays further use of the contempt remedy. The stay will remain in effect so long as defendants cooperate fully and in good faith with the Receiver, and ensure she is provided with adequate resources to implement the Plan, as approved in a separate order. Should defendants take an appeal from this order, this stay will be lifted immediately upon the filing of a notice of appeal and the court will initiate the contempt proceedings it has previously identified and others as appropriate to ensure there is no delay in the court's efforts to enforce the remedy in this case.

B. Fines

Defendants seek clarification of the status of contempt fines if a receiver is appointed. ECF No. 8739. The court first provides a brief summary of the current state of those fines. In its order affirming this court's June 25, 2024 contempt findings and the base amount of civil sanctions this court imposed as fines, the United States Court of Appeals remanded the matter for further factfinding and analysis on the court's decision to "increase the fines to double the amount of the State's monthly salary 'savings'" *Coleman v. Newsom*, 131 F.3d at 965. On April 17, 2025, the court deferred consideration of this issue presented by the remand and, instead, held that under the monthly savings calculations for the base sanctions amount before doubling:

- \$95,691,570.50 in fines had accrued through March 28, 2025;
- Defendants had deposited a total of \$155,177,434.00 in accumulated fines into the Special Deposit Fund for such fines as of April 10, 2025;
- The difference between total deposits to the fund and the amount of funds then available to fund the Staffing Spending Plan equaled \$59,485,863.50 and that amount would not be "available to fund the Staffing Spending Plan unless and until the court issues a clarifying order on remand to support the doubling";
- Fines would continue to accumulate at the non-doubled rate until further order of the court; and

- The excess amount of \$59,485,863.00 would remain in the fund and be credited toward newly accumulated fines.

Apr. 17, 2025 Order at 2-5. As of defendants' last monthly mental health staffing vacancy report, a total of \$114,696,759 has accumulated in non-doubled fines, ECF No. 8715 at 28, leaving \$40,480,675.00 in excess fines to be credited against newly accumulating fines,⁷ even while expenditures are now being made from the Special Deposit Fund. On August 11, 2025, defendants reported expenditures from the Special Deposit Fund to date of \$19,807,762.00, most of which was spent on the temporary bonuses, and a total balance in the fund of \$135,369,672.00. ECF No. 8729 at 5-6. Defendants also represented that expenditures made in July 2025 from the state's general fund would "be reimbursed from the Special Deposit Fund and reflected in future reports." *Id.* at 4. The amount of those expenditures is not included in the August 11, 2025 report. Monthly fines averaged approximately \$3,578,000.00 for the months of March, April, and May 2025, and declined to \$2,391,448.00 in June 2025. *See* ECF Nos. 8621 at 24, 8656 at 24, 8690 at 27, 8715 at 28. At the current rate, without further order of court and assuming some fines continue to accrue, defendants would be likely to continue to credit fines in lieu of deposits for some period of time, unless and until expenditures deplete the Special Deposit Fund.

Moreover, the court has not yet held contempt proceedings or ordered payment of fines accumulating for understaffing in the PIPs, *see* ECF No. 8301, or for non-compliance with its orders requiring implementation of outstanding suicide prevention measures, *see* ECF No. 7743.

The court also on its own motion stays further accumulation of fines effective September 1, 2025. As of September 1, 2025, authority to direct expenditure of the remaining fines is transferred to the Receiver, with the Receiver's full authority conferred by an order issued concurrently with this order. The stay and transfer of authority will remain in effect so long as defendants cooperate fully and in good faith with the Receiver, and ensure she is provided with adequate resources to implement her Action Plan, as approved in a separate order. Should defendants take an appeal from this order, this stay will be lifted immediately upon the filing of a notice of appeal, fines will restart, and initiate the contempt proceedings it has previously

⁷ \$155,177,434.00 - \$114,696,759.00 = \$40,480,675.00.

1 identified and others as appropriate to ensure there is no delay in the court's efforts to enforce the
2 remedy in this case.

3 Should defendants choose to appeal this order, the suspension of fines and transfer of
4 authority to the Receiver for expenditure of those fines will be suspended immediately upon the
5 filing of a notice of appeal and the court's prior orders governing fines and administration of
6 expenditures from the Fund to implement the Staffing Expenditure Plan will go back into effect.

7 **C. Deactivation of Inpatient Beds**

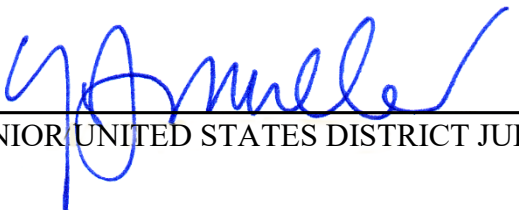
8 The court's appointment of a receiver will be effective September 1, 2025. On that date,
9 the Receiver will assume responsibility, among other matters, for all matters related to operation
10 of inpatient beds in the CDCR PIPs. All questions presented by defendants' proposed
11 deactivation of certain inpatient bed licenses are referred to the Receiver effective September 1,
12 2025. Plaintiffs' July 28, 2025 request is therefore moot.

13 **VI. CONCLUSION**

14 Good cause appearing, IT IS HEREBY ORDERED that:

- 15 1. Colette S. Peters is appointed as Receiver in this action, effective
16 September 1, 2025;
- 17 2. Receiver Peters is authorized to appoint in this action William W. Lothrop
18 and Kathleen T. Toomey as Deputy Receivers and Martin Hoshino as
19 Senior Advisor, also effective September 1, 2025;
- 20 3. All further use of the contempt remedy is stayed until further order of the
21 court;
- 22 4. As of September 1, 2025, authority to direct expenditure of the amounts in
23 the Special Deposit Fund is transferred to the Receiver;
- 24 5. All questions presented by defendants' proposed deactivation of certain
25 inpatient bed licenses are referred to the Receiver effective September 1,
26 2025; and
- 27 6. Plaintiffs' July 28, 2025 request is denied as MOOT.

28 DATED: August 27, 2025.



SENIOR UNITED STATES DISTRICT JUDGE

Attachment A

Appeal Number	Court of Appeals Docket Number	Date Docketed	Date of Judgment/ Dismissal	Date of Mandate	Disposition
1	95-17039	10/30/95	11/14/96	12/06/96	Dismissed
2	97-15667	04/18/97	05/22/97	06/13/97	Dismissed
3	97-16622	09/02/97	12/17/98	12/17/98	Stipulated dismissal
4	97-17014	10/23/97	12/17/98	12/17/98	Stipulated dismissal
5	00-17107	11/01/00	02/16/01	03/12/01	Dismissed
6	06-16077	06/15/06	07/26/06		Voluntary dismissal
7	07-16361	08/02/07	09/11/07	10/09/07	Dismissed
8	10-17546	11/08/10	04/22/11	05/16/11	Affirmed
9	13-15931	05/07/13	05/21/15	05/21/15	Stipulated voluntary dismissal
10	13-16637	08/14/13	01/14/15	01/14/15	Stipulated voluntary dismissal
11	14-16691	09/04/14	01/14/15	01/14/15	Stipulated voluntary dismissal
12	17-16080	05/24/17	11/28/18	12/20/18	Dismissed
13	17-17328	11/16/17	11/28/18	02/14/19	Affirmed
14	18-16445	08/02/18	12/14/19	01/15/20	Dismissed
15	19-15006	01/02/19	01/14/20		Voluntary dismissal
16	20-16062	06/01/20	10/09/20	10/09/20	Voluntary dismissal
17	20-16734	09/09/20	01/05/22	10/27/22	Dismissed
18	21-15039	01/07/21	05/17/21	05/17/21	Voluntary dismissal
19	21-16884	11/05/21	10/12/22	10/12/22	Voluntary dismissal
20	22-15065	01/14/22	02/28/22	02/28/22	Voluntary dismissal
21	22-15369	03/11/22	10/12/22	10/12/22	Voluntary dismissal
22	22-15570	04/19/22	08/17/22	08/17/22	Voluntary dismissal
23	23-15755	05/17/23	09/26/24	10/18/24	Vacated and Remanded
24	23-2485	09/29/23	08/30/24	09/23/24	Affirmed
25	24-2263	04/11/24	05/30/25	06/23/25	Dismissed for lack of jurisdiction; Judge Bress would affirm KJM on merits
26	24-2938	05/08/24	05/27/25	06/18/25	Dismissed
27	24-3707	06/13/24	04/15/25	06/06/25	Affirmed
28	24-4023	07/01/24	03/19/25	04/10/25	Affirmed in part, Vacated in part, and Remanded
29	25-2920	05/06/25	Opening brief due 8/25/25; motion to consolidate filed		

			7/23/25; motion to extend time to file opening brief filed 8/15/25		
30	25-4400	07/16/25	Opening brief due 10/6/25; motion to consolidate filed 7/23/25; amended notice of appeal received 8/13/25		

Filing Number	Court of Appeals Docket Number	Type of Filing	Date Docketed	Date of Disposition	Disposition
1	92-70244	Emergency Mandamus/Request for Stay	04/22/92	04/23/92	Denied
2	96-70640	Petition for Writ of Mandamus	08/08/96	12/24/96	Denied
3	18-72816	Petition for Writ of Mandamus	10/16/18	10/18/18	Withdrawn
4	19-71493	Emergency Petition for Writ of Mandamus	06/14/19	06/19/19	Denied

*All appeals and mandamus petitions were filed by defendants unless otherwise noted

**Chart includes all appeals filed by plaintiffs or defendants in this action since its inception.
Chart does not include appeals filed from orders by the three-judge court convened by order of

Chief Judge Schroeder on July 23, 2007, ECF No. 2328, nor does it include appeals filed by individuals or entities other than plaintiffs or defendants.

***Motion to consolidate appeals 29 and 30 filed July 23, 2025.

Attachment B

CHART 1: FILL RATES FROM MAY 2024-APRIL 2025 (Compliant Levels in Black; Noncompliant Levels in Red)

	Psychiatrists	Psychologists	Social Workers	Medical Assistants	Recreation Therapists
May 2024	87%	60%	76%	64%	87%
June 2024	85%	61%	77%	73%	87%
July 2024	91%	63%	83%	55%	95%
Aug 2024	91%	62%	84%	58%	98%
Sep 2024	89%	63%	87%	59%	99%
Oct 2024	93%	64%	91%	62%	101%
Nov 2024	90%	64%	90%	64%	99%
Dec 2024	92%	66%	92%	67%	98%
Jan 2025	90%	64%	92%	59%	96%
Feb 2025	86%	64%	91%	60%	96%
Mar 2025	89%	66%	93%	65%	97%
Apr 2025	90%	66%	94%	67%	98%

ECF No. 8305 at 5-9; ECF No. 8345 at 5-9; ECF No. 8384 at 5-9; ECF No. 8413 at 5-9; ECF No. 8450 at 5-9; ECF No. 8477 at 5-9; ECF No. 8508 at 5-9; ECF No. 8533 at 5-9; ECF No. 8559 at 5-9; ECF No. 8585 at 7-11; ECF No. 8621 at 6-10; ECF No. 8656 at 6-10.

CHART 2: FILL RATES MAY 2025-JUNE 2025 (Compliant Levels in Black; Noncompliant Levels in Red)

	Psychiatrists	Chief and Senior Psychology Positions	Supervisory Social Worker Positions	Primary Clinicians	Recreation Therapists	Tele-Presenter Positions
May 2025	92%	82%	95%	76%	96%	70%
June 2025	88%	83%	89%	77%	97%	72%

ECF No. 8690 at 7-12; ECF No. 8715 at 7-12; Jun. 30, 2025 Stip. & Order, ECF No. 8688.

CHART 3: CDCR PIP FILL RATES NOVEMBER 2024-JUNE 2025 (Compliant Levels in Black; Noncompliant Levels in Red)

	Psychiatrists	Psychologists	Social Workers	Recreation Therapists	Medical Assistants
Nov 2024	72%	68%	63%	82%	---
Dec 2024	74%	59%	65%	85%	---
Jan 2025	74%	61%	68%	87%	---

Feb 2025	73%	57%	65%	81%	---
Mar 2025	75%	58%	67%	88%	---
Apr 2025	81%	60%	72%	92%	---
May 2025	77%	59%	69%	95%	---
June 2025	81%	62%	82%	101%	---

ECF No. 8508 at 11-15; ECF No. 8533 at 11-15; ECF No. 8559 at 11-15; ECF No. 8585 at 13-17; ECF No. 8621 at 12-16; ECF No. 8656 at 12-16; ECF No. 8690 at 14-18; ECF No 8715 at 13-17.

Attachment C

COLETTE S. PETERS

HIGHLIGHTS OF QUALIFICATIONS

- Experienced executive with proven ability to lead change, strengthen organizational performance, and effectively partner to achieve results while addressing highly complex issues.
- Effective at building rapport and trust through transparency, clear communication, and authentic engagement.
- Results-oriented, strategic thinker, skilled at empowering decision-making.
- Accomplished in working across functions, cultures, and diverse groups to build coalitions and achieve a shared purpose while solving complex problems.

PROFESSIONAL EXPERIENCE

United States Department of Justice, Federal Bureau of Prisons, Washington, DC
Director

2022-2025

Responsibilities

- Appointed by the U.S. Attorney General to lead the Federal Bureau of Prisons, one of the largest law enforcement components of the Department of Justice and the nation's largest correctional agency.
- Upheld the constitution while achieving the agency's dual-purposed mission to foster a humane and secure environment and ensure public safety by preparing individuals for successful reentry into our communities.
- Oversaw the complex operations of the Bureau with nearly 40,000 employees and managing to more than an \$8 billion budget.
- Responsible for the care and custody of approximately 150,000 adults housed in 122 federal prisons, 178 community-based facilities and on home confinement managing to all of their physical, behavioral health, and programmatic needs.
- Educated and informed Congress of the long-standing challenges at the Bureau in order to garner policy support and additional funding to improve recruitment and retention as well as the agency's long-standing \$3 billion maintenance and repair backlog.
- Through our National Gang Unit, Counter Terrorism Unit and Intelligence Office, collaborated with federal and local law enforcement to gather intelligence and ensure safe and secure prisons and communities around the globe.
- Worked closely with our National Union Leadership to ensure appropriate resources were available to our employees.

Colette S. Peters

-2-

Accomplishments

- Improved our recruitment and retention efforts and after decades of stagnant and declining employee base moved overall staffing levels from 85% to 93%
- Established a 5, 10 and 15 year plan to manage the \$3 billion maintenance and repair backlog which plagues the FBOP, leaving employees and adults in their care working and living in dilapidated facilities.
- Collaborated with the Office of the Inspector General and the Government Accountability Office to hold people accountable and root out misconduct. Inherited the agency during a time of great turmoil including allegations of inhumane and criminal activity.
- Created a National Chief Inspector that internally mirrors the work of the Office of the Inspector General and uses data to get out in front of culture decline, contraband, and criminal misconduct.
- Launched an effective communication strategy that brought transparency to the agency and built up trust with the Justice Department, Congress, the media, stakeholders, and advocates.
- Implemented significant cultural changes and created better working environments and safer prisons through the principles of normalcy and humanity.
- Improved the use of evidence-based practices to address individual criminal risk factors and to implement programs, policies, and procedures.
- Created a National Chief of Employee Wellness and expanded employee wellness activities and resources to combat the low average life expectancy of 58 years of age and negative physical and behavior health that contribute to that outcome.

Oregon Department of Corrections, Salem, Oregon
Director

2012-2022

Responsibilities

- Appointed by the Governor and confirmed by the Senate to lead the state agency responsible for providing custody, rehabilitation, and treatment services. DOC employed 4,700 employees and operated with a \$2 billion budget.
- Oversaw the operations and policies of an evidenced-based corrections agency with 12,000 people in 14 state prisons and individuals on supervision in two state-run county community corrections offices.
- Developed effective partnerships with individual state-funded county community corrections agencies that manage the local supervision of more than 32,000 people on probation, parole, and post-prison supervision.
- Advocated for public safety reform, justice reinvestment, and practices that increased and enhanced adult in custody's engagement with family and friends.
- Worked collaboratively with external partners and labor unions to promote public safety by holding people accountable for their actions and to reduce the risk of future crime and victimization.

Colette S. Peters

-3-

Accomplishments

- Implemented significant cultural changes and improved outcomes through the use of research and data to drive decision-making, improve outcomes, increase agency efficiency and effectiveness, and promote employee wellness both in Oregon, nationally, and internationally.
- Improved the use of evidence-based practices to address individual criminal risk factors and to implement programs, policies, and procedures.
- Improved organizational outcomes regarding the operation of safe and secure prisons, accountability, and rehabilitation.
- Ensured those in custody received appropriate interventions based on risk and need so they returned home, became tax-paying citizens, and productive members of their families and communities.
- Enrolled the agency in the Amend Program at the University of California San Francisco, together studied the Norwegian model, and ultimately developed the “Oregon Way.” The goal to improve employee health and wellness, and reduce the use of segregation, by transforming prison environments for those who live and work in prison as well as community corrections interactions through the concepts of normalization and humanization.
- Implemented a performance-based management system that created increased transparency and accountability.
- Increased employee awareness of wellness issues impacting those doing corrections work. Lead national efforts to increase awareness of the detriment of corrections work and push for employee wellness resources.

Oregon Youth Authority, Salem, Oregon
Director

2009-2012

Responsibilities

- Appointed by the Governor and confirmed by the Senate to lead the state agency responsible for providing custody, rehabilitation and treatment services to youth ages 12 through 24 who committed crimes prior to their 18th birthday. At the time OYA employed approximately 1,100 employees and operated with a \$312.1 million budget. The agency served approximately 2,000 youth.
- Provided oversight of 11 close custody youth correctional facilities with capacity to serve 900 youth. Oversaw community services provided to approximately 1,100 youth through statewide parole and probation services, youth foster care, residential services, and individualized treatment services tailored to meet the needs of youth committed to OYA.
- Appointed by the Governor to serve as a member of the Juvenile Corrections Forecast Advisory Committee and the Governor’s Re-Entry Council.

Accomplishments

- Rebuilt the agency’s reputation internally and externally with all stakeholders. Inherited the agency during turbulent times during great scrutiny following corruption findings.
- One of the first agencies in the country to implement Positive Youth Development theory.
- Ensured that services provided to youth are fully coordinated and integrated throughout the state’s juvenile justice and social service systems.

Colette S. Peters

-4-

Oregon Department of Corrections, Salem, Oregon
Assistant Director for the Public Services Division and Inspector General

2006-2008

Responsibilities

- Shared the department's responsibility for more than 14,000 adults housed statewide in 14 state prisons, as well as 35,000 people on supervision. At the time, the biennial budget was \$1.2 billion, DOC had 4,400 employees and hundreds of contractors and volunteers.
- Served as a cabinet-level member of the DOC Policy Group. Contributed to the long-range strategic planning and operational management of the Department.
- As Inspector General, Supervised the Department's Chief Investigators responsible for the Special Investigations and Security Threat Management units. Provided the agency oversight function with administrative review of Discrimination Complaint Appeals, Use of Force Actions, and Disciplinary Hearings.

As Legislative Director, supervised the Administrator of Public Affairs and collaboratively advised the Governor's Office, DOC Director and Deputy Director, Policy Group and other public safety stakeholders on potential and actual legislation as well as possible impacts on the Department and its programs.

- Planned, designed, developed, and coordinated agency strategies statewide to educate the legislature, news media, opinion leaders, the general public, and all stakeholders regarding the mission and activities of the Department. This includes overall mission and direction of the agency, daily operations, contract operations, crisis control, and creating and promoting a unified Department image and public policy.
- Collaborated with union leadership, and all stakeholders to provide information and receive feedback around department strategy, budget planning, employee issues, and other related matters.

Accomplishments

- Provided agency-assists, including an investigation of OYA, resulting in corruption findings.
- Successfully lead an outstanding group of managers and employees within six offices of the division. The division provided direction, planning, open communication and accountability to and for DOC's internal and external stakeholders in an efficient manner.

Oregon Department of Corrections, Salem, Oregon
Director of Public Affairs

2004-2006

Responsibilities

- Approved rules, policies, and procedures, developed the Department's strategic plan, developed performance measures, prepared and helped manage the department's \$1.2 billion budget, established objectives and strategies in support of the Department's mission and the Oregon Accountability Model. Worked with DOC institutions and other public safety entities to develop and implement statewide plans of action. Represented the Department in local, state, regional and national forums.
- Advised DOC Director and fellow Policy Group and executive team members on potential and actual legislation and possible impacts on the Department and its programs. Served as principle liaison with the Legislative Assembly, The Governor's Office and the Department of Justice.

Colette S. Peters

-5-

Accomplishments

- Successfully worked to bring stakeholders together to resolve complex and often highly charged and complex issues.

Colorado Legislative Council, Denver, Colorado
Research Associate

1998-2003

Responsibilities

- Provided nonpartisan research, analysis and recommendations to Colorado legislators with an expertise in criminal justice, public safety, public and state departmental policy, pending legislation, fiscal notes, fiscal and budget items, capital construction requests, and the Colorado Department of Corrections bed needs.
- Staffed the House and Senate Judiciary Committees and the Capital Development Committee.
- Intimately understood and applied state and federal criminal laws in research and decision-making. Analyzed state departments' annual reports and budget requests including capital construction requests.
- Researched and subsequently wrote publications, such as *An Overview of Community-Based Corrections in Colorado*, and conducted studies. One study focused on criminal restitution in Colorado and involved working closely with a task force made up of experts in the field.

Victim Assistance Unit (VAU), Denver Police Department, Colorado
Victim Advocate and Crisis Mediator

1995-1998

Responsibilities

- Provided crisis intervention and victim advocacy on crime and disaster scenes aiding victims, both crime and non-crime related. Coordinated on-scene with various law enforcement agencies including local police, sheriff, and fire departments, the Bureau of Alcohol Tobacco and Firearms, and the FBI.
- Managed 10 VAU employees who responded on crime scenes after-hours.
- Worked within the felony arraignment courtroom to assist in upholding the domestic violence statutes and the Crime Victim Rights Act by representing victims and the Police Department, interpreting, and applying statutes, making bond recommendations to the presiding judge, and ensuring the issuance of statutorily mandated restraining orders.

Accomplishments

- Developed a new branch of the VAU within the Denver Fire Department, Fire Investigation Bureau to serve arson victims' crisis needs more effectively and efficiently. Secured funding, established operating procedures, trained VAU team members and fire department personnel, and coordinated operations and administration.
- Trained police department cadets on victim-related issues. Developed a VAU training program including curriculum, classroom instruction, on-scene drills, and external department rotations.
- Developed and conducted extensive assessment of the VAU to evaluate the effectiveness of the unit.

Colette S. Peters

-6-

Breck Preparatory School, Minneapolis, Minnesota

1994-1995

Assistant to the Director of the Lower School

Accomplishments

- Improved curriculum organization, worked with behavioral issues, planned activities, and collaborated with the academics to efficiently manage the preparatory school.

Freeport West, Inc.; Legacy Shelter for Boys, Minneapolis, Minnesota

1994

Youth Counselor

Responsibilities

- Counseled youth with criminal behavior histories and monitored their living environment. Collaborated with the youth, their probation officers, psychologists, psychiatrists, and families to enhance their future.

St. John's University, Collegeville, Minnesota 1993-1994

Assistant Coordinator, Learning Enhancement Service

Responsibilities

- Coordinated details for various activities and events and managed the \$500,000 budget for the learning enhancement at the College of St. Benedict and St. John's University. Ensuring ongoing professional development of all academics.

Mount Carmel High School, Belize, Central America

1993

Teacher

Responsibilities

- Taught English and reading in a small village on the border of Guatemala to 50 environmentally challenged High School students.

Youth Homes of Mid-America, Johnston, Iowa

1992

Youth Counselor Responsibilities

- Collaborated with psychiatrists, psychologists, probation officers, and caseworkers. Worked direct care, case management, and supervised youth.

Colette S. Peters

-7-

PROFESSIONAL AFFILIATIONS

American Correctional Association (ACA)

Member, 2012 – Present

- Chair, Staff Wellness Committee, 2015 - Present
- Co-Chair, Professional Development Committee, 2019 - Present

Association of Women Executives in Corrections (AWEC)

Member, 2012 - Present

- Wellness Committee Consultant

Correctional Leaders Association (CLA) formerly (ASCA) Member, 2012 - 2022

- Vice President, 2018 - 2020
- Treasurer, 2016 - 2018
- Northwest Regional Representative, 2014 – 2016

Council on Criminal Justice (CCJ)

Advisory Board Trustee, 2019 - Present

- Member National Commission on COVID-19 and Criminal Justice

DPSST Law Enforcement Memorial Board

Member, 2012 – 2022

- Chair, January 2021 - 2022

Governor's Re-Entry Council

Member, 2009 - 2022

- Chair, 2012 - Present

Governor's Prison Population Forecast Advisory Committee

Member, 2012 - 2022

International Corrections and Prisons Association

Member, 2017 - Present

National Institute of Corrections Advisory Board

Appointed Member by USAG Eric Holder, 2013 - 2025

- Advisory Board Chairperson, June 2018 - 2022
- Subcommittee on Wellness Chairperson, January - June 2015

Oregon Department of Public Safety Standards and Training (DPSST) Board Member, 2012 - 2022

PDX BizWomen

Member, 2019 - 2022

Past memberships include:

Colette S. Peters

-8-

Children's Justice Alliance Board of Directors, Council of Juvenile Correctional Administrators (CJCA) Board, Secretary, Positive Youth Outcomes Committee, Chair, Governor's Commission on Public Safety, Juvenile Corrections Forecast Advisory Committee, Juvenile Justice Leadership Network, Center for Juvenile Justice Reform, Georgetown University, Juvenile Justice System Symposium Steering Committee, Legislature's Full-Day Kindergarten Implementation Committee, National Partnership for Juvenile Services Editorial Board, National Center for Youth in Custody and Oregon Juvenile Department Directors Association Executive Committee, The Equitas Project, National Advisor.

PROFESSIONAL AWARDS

Michael Francke Career Achievement Award Recipient

2020

- The national award is named after the late director of the Oregon corrections department who was murdered outside his office in Salem on Jan. 17, 1989. It was created to recognize a Director who has given exceptional service to their agency or agencies in honor and memory of Francke. Director Francke was a visionary man and an outstanding correctional director. He put Oregon on the path to becoming a progressive, cutting-edge agency, making advancements, and leading the way in all areas of corrections. He was a progressive leader whose legacy has and will forever influence future generations of corrections professionals striving to make a difference. And, his untimely death serves as a solemn reminder of the dangers that those of us in corrections and public safety face every day.

PUBLICATIONS

"Lack of healthier food alternatives can compromise inmate health," Firth, Caislin L., Drach, Linda, Maher, Julie E., and Peters, Colette S., *American Journal of Public Health*, June 2015.

"Juvenile recidivism - Measuring success or failure: Is there a difference?" Peters, Colette S., and Myrick, Shannon, *Corrections Today*, February/March 2011.

"Police Decision Making: A Justice-Theoretical Model"

Smith, Michael R., and Peters, Colette S., *American Society of Criminology*, November 1996.

EDUCATION

Master's Degree in Criminal Justice

Graduate School of Public Affairs, University of Colorado, Denver, Colorado

Bachelor of Arts in Psychology

College of Saint Benedict, Saint Joseph, Minnesota

International Study - History, Arts, and Language in Greece, Turkey, and Italy

Attachment D

WILLIAM W. LOTHROP

Wesley Chapel, Florida

✉ Bill1001@icloud.com

EXECUTIVE SUMMARY

Accomplished correctional executive with over 32 years of progressive leadership within the Federal Bureau of Prisons, including tenure as Deputy Director appointed by the U.S. Attorney General. Demonstrated expertise in high-level corrections administration, public safety policy, crisis response, and institutional reform. Adept in managing large-scale federal operations, overseeing multi-billion-dollar budgets, and leading diverse, multidisciplinary teams across the country. Recognized for pioneering strategic initiatives that enhance operational efficiency, reduce recidivism, and drive sustainable system-wide reform.

CORE COMPETENCIES

Executive Leadership & Organizational Strategy
Federal Law Enforcement Operations
Correctional Systems Reform & Innovation
Budget Oversight & Fiscal Accountability (>\$8B)
Workforce Development & Talent Management
Emergency Preparedness & Crisis Leadership
Legislative Engagement & Government Affairs
Reentry Programming & Rehabilitation
Security Risk Assessment & Mitigation
Public Safety Program Implementation
Diversity, Equity & Inclusion Leadership
Interagency & Community Partnership Development

PROFESSIONAL EXPERIENCE

Deputy Director (Retired)

Federal Bureau of Prisons – Washington, D.C. | 03/2022 – 02/2025

- Appointed by U.S. Attorney General to oversee strategic direction of 122 federal institutions and 38,000 employees.
- Managed an \$8 billion operating budget and guided reform-based transformation of national corrections operations.
- Developed and executed national policy changes enhancing correctional programming, safety, and staff efficiency.

- Led pandemic response coordination, minimizing service disruption while maintaining staff and inmate safety.
- Represented the Bureau before Congressional members, DOJ leadership, and national task forces on criminal justice reform.
- Spearheaded data-driven initiatives to measure program effectiveness and improve public accountability.

Regional Director – Southeast Region

Atlanta, GA | 10/2021 – 02/2025

- Directed operations for 20+ facilities, overseeing regional security, staffing, and compliance initiatives.
- Decreased turnover through staff engagement programs and succession planning models.
- Implemented regional disaster response strategies, including hurricane preparedness and pandemic protocols.
- Improved institutional performance metrics through rigorous training, audits, and compliance enforcement.

Warden (Senior Executive Service)

Phoenix, AZ | 11/2017 – 10/2021

- Managed dual-complex facility operations (high-security male and low-security female populations).
- Supervised and provided training for medical crisis' and suicide prevention protocols.
- Expanded reentry services and vocational training programs aligned with labor market needs.
- Oversaw infrastructure modernization, surveillance upgrades, and pandemic resilience measures.
- Improved safety and compliance by leading targeted staff development and oversight.

Warden

Honolulu, HI | 04/2016 – 11/2017

- Reinforced security and compliance in a complex correctional environment.
- Strengthened community reentry partnerships for post-release employment and housing services.
- Modernized facility emergency operations and engaged local authorities for mutual aid planning.

Associate Warden

Victorville, CA | 01/2014 – 04/2016

Lompoc, CA | 07/2010 – 01/2014 |

- Coordinated institutional audits and drove performance improvements in facility operations.
- Acted as Warden during leadership transitions, ensuring continuity and operational integrity.
- Implemented workforce development strategies and staff conflict resolution systems.
- Supervised medical and psychological care for an incarcerated population.

Captain

Atwater, CA | 10/2007 – 07/2010

Englewood, CO | 11/2002 – 10/2007 |

- Directed tactical response and facility-wide security operations.
- Reduced contraband incidents by modernizing intelligence collection and surveillance protocols.
- Enhanced staff training in use-of-force procedures and emergency drills, such as suicide prevention, medical crises, and response techniques.
- Supervised and trained a team officers and lieutenants in institutional operations, crisis negotiations, and advanced leadership skills.

Lieutenant – Special Operations Response Team Leader

Raybrook, NY | 04/2000 – 11/2000

- Led critical incident responses, including international treaty transfers and post-9/11 operations.
- Coordinated with federal marshals during inmate transfers, ensuring secure and efficient operations.
- Trained rapid response teams for high-risk inmate scenarios.
- Conducted after-action reviews to revise procedures, contributing to decrease repeat incidences.
- Mentor, new officers and safety protocols and de-escalation techniques, improving team, cohesion, and performance.

Correctional Officer

Lewisburg, PA | 11/1992 – 04/2000

- Served in high-security environments; operator on Special Operations Response Team (SORT).
- Conducted daily security, inspections, identifying and mitigating risk such as contraband structural vulnerabilities.
- Maintained order and safety through consistent enforcement of policies and procedures.
- Monitored and managed inmate activities across a population of 1500 enforcing regulations and reducing violations.

EDUCATION

Architectural Engineering Studies
State University of New York – Orange | 1993–1994

Additional Executive Training:

- Department of Justice Senior Executive Leadership Program
- National Institute of Corrections Executive Leadership Program
- Emergency Management Institute – FEMA Executive Courses

KEY ACHIEVEMENTS

- Orchestrated nationwide reform initiatives enhancing inmate rehabilitation and agency efficiency.
- Saved millions annually through strategic reallocation of resources and policy reform.
- Elevated staff development programs; over 100 mentees promoted into leadership roles.
- Delivered zero-casualty emergency operations across multi-state regions.
- Authored internal policy manuals and federal guidelines on institutional safety and reform.

Attachment E

KATHLEEN TOOMEY

SUMMARY

Skilled executive and attorney who excels at using innovation, creativity, research, and data analysis to solve complex organizational challenges. Over 10 years of experience managing operations at the most senior levels of legal and law enforcement organizations. Effective communicator who routinely engages with senior leaders, Congress, oversight entities, and stakeholders.

PROFESSIONAL EXPERIENCE

United States Department of Justice (DOJ)

Associate Deputy Director
Federal Bureau of Prisons

October 2023 – Present

With over 36,000 employees and an \$8.7 billion annual budget, BOP is responsible for maintaining safe and secure facilities and providing reentry programming to more than 155,000 individuals in custody at 95 locations across the United States.

Recruited to newly created leadership position to tackle chronic operational challenges, including a severe staffing shortage, a \$3 billion modernization and repair backlog, and significant oversight from Congress, DOJ Office of Inspector General, and Government Accountability Office (GAO). Oversee HR, Finance, Facilities, Procurement, IT, Congressional and Public Affairs, and Oversight.

- **Increased BOP staffing levels from 89% to 93% in 12 months.** Implemented new initiatives that resulted in net gain of 1200 new employees, the largest increase at BOP in over a decade.
- **Oversaw development of Five-Year Capital Investment Plan** to address \$3 billion modernization and repair backlog.
- **Reduced FY2024 expenditures by \$400M** to absorb unfunded mandates, including 5% pay raise.
- **Created and led multi-disciplinary team to address widespread criticisms of conditions at Metropolitan Detention Center (MDC) Brooklyn.** In 12 months, significantly increased staffing and employee compensation, launched a telehealth initiative, and completed extensive facility upgrades, resulting in decreased uses of force, inmate-on-inmate violence, and use of overtime.
- **Increased effectiveness of First Step Act (FSA) implementation** by establishing dedicated office to foster internal coordination and maximize use of \$409 million in dedicated funding. In first year, FSA office increased investment in medication assisted treatment for opioid use disorder, residential reentry centers, programming, and maintenance and repair of programming space.

SKILLS

- Solving Complex Organizational Problems
- Organizational Transformation
- Change Management
- Public Speaking
- Employee Development and Training
- Oversight
- Risk Management

EDUCATION

- **Juris Doctorate, cum laude,** Boston College Law School, Boston, MA 1999
- **Bachelor of Arts,** American University, Washington, DC 1992

BAR MEMBERSHIP

- Admitted to practice law in District of Columbia and Massachusetts since 1999

Executive Secretary

September 2022 – September 2023

Office of the Executive Secretariat

Served as DOJ's first Executive Secretary. Responsible for evaluating OES on behalf of Deputy Attorney General and recommending a plan to dramatically improve its ability to provide professional services to Department leadership.

- Developed proposal to transform OES from a small correspondence office to a standalone component reporting directly to the Office of the Deputy Attorney General. Incorporated customer and employee interviews, external benchmarking, data analysis, and historical research.
- Led execution of plan to establish OES as a stand-alone component. Coordinated with Department leadership to obtain approval from Office of Management and Budget and Congress.
- Restructured OES staff to support plan execution. Grew OES from 21 to 32 positions in six months.

Senior Counsel

May 2021 – August 2022

Acting Chief of Staff

May – July 2022

Office of the Deputy Attorney General

Led five-person team responsible for analyzing complex management challenges across the Department and recommending innovative approaches to address those challenges. As Acting Chief of Staff, advised Deputy Attorney General on range of issues involving management, policy, Congressional and public affairs. Led hiring process for new Director of the Federal Bureau of Prisons.

Director of Operational Management

August 2016 - May 2021

Chief of Staff

April 2014 - June 2017

Civil Rights Division

Responsible for strategic and operational management of 700+ person law enforcement organization with budget of ~\$170 million. Advised Assistant Attorney General on legal, operational, and management issues, including restructuring Division activities and sections to promote strategic priorities, responding to significant oversight matters, and managing CRT relationships with internal and external stakeholders. Developed and executed plan to consolidate 500 employees from four buildings to a single facility, saving \$55M over 10 years.

PREVIOUS EXPERIENCE**Civil Rights Division, US Department of Justice**

Deputy Director, Professional Development

11/2008 - 4/2014

Senior Trial Attorney, Employment Litigation Section

02/2001 - 11/2008

Webster, Fredrickson & Brackshaw

Associate

10/1999 – 01/2001

Attachment F

RESUMÉ

MARTIN N. HOSHINO

PROFESSIONAL EXPERIENCE:

ADMINISTRATIVE DIRECTOR

Judicial Council of California – October 2014 to Present

Lead and execute the policy direction of the Judicial Council—the policymaking body for California’s courts—to improve the statewide administration of justice in the largest court system in the nation. Serve as principal advisor to the Chief Justice and the council on major policy and operations issues affecting the court system and access to justice.

Initiate, direct, and lead statewide programs and initiatives that provide support to all levels of court to improve and enhance services that meet the diverse current and future needs of court users and ensure accountability for the effective and efficient use of public resources.

Serve as primary administrative advocate for the judicial branch. Engage and build support and consensus on judicial branch issues and reforms among the leadership of the judicial branch and the state executive and legislative branches and key justice system partners and stakeholders.

Oversee and provide the highest-level policy, strategic, operational, and programmatic leadership for the Judicial Council’s staff organization serving courts, justice partners, and the public in the areas of: criminal and civil justice; fiscal, human resources, legal, and technology services; audits; court construction and facilities management; judicial and court administrator education; research; public affairs and governmental affairs.

Major Accomplishments

Working with California’s Chief Justice and the Judicial Council governing body on foundational issues of equal access to justice: Advanced pretrial detention reform to help correct socioeconomic inequities inherent in a money bail system; expedited a rule of court to notify those with traffic tickets that they can appear for arraignment and trial without deposit of bail; and supported development of a statewide ability-to-pay calculator for courts relative to fines and fees.

In the area of civil justice reform: extended court interpreter services for critical civil cases; and doubled state funding to expand self-help services for unrepresented litigants.

Placed a heightened focus on statewide court data reporting and analytics as a means to improve court operations and strengthen advocacy for judicial branch priorities.

Spearheaded a multi-year budget strategy to secure adequate, stable, and sustainable funding for the judicial branch, including working to shift the branch from unstable and

MARTIN N. HOSHINO

declining revenue sources such as criminal fines/fees/assessments, and securing a series of General Fund increases resulting in \$3.4 billion in new funding for trial courts between 2013–14 and 2022–23, and for the first time, increasing the average funding for all trial courts from 55 percent of workload need in 2012–13 to 92 percent in 2022.

UNDERSECRETARY

Operations

California Department of Corrections and Rehabilitation (CDCR) – March 2013 to September 2013. Oversee and direct the activities and operations of the department’s \$10 billion budget, 60,000 employees, 34 prisons, fire camps, juvenile facilities, in state and out of state contract facilities, field offices, parole programs, rehabilitation programs, 120,000 offenders and 50,000 parolees. Formulate, advocate and implement statewide criminal justice policies and initiatives in collaboration with other state/local/federal agencies, the state Legislature and state/federal courts.

In collaboration with the Undersecretary, Administration and Offender Services, plan, organize, and direct all California Department of Corrections and Rehabilitation (CDCR) operational and administrative functions and services for offenders committed to the state, including adult inmates and juvenile wards; adult and juvenile parolees; and various other functions. Organize, and direct all of CDCR administrative and offender services, including the Division of Administrative Services (Budgets, Fiscal, Accounting, Human Resources, Procurement, Regulations and Policy); Correctional Health Care Services; Internal Oversight; Facility Planning, Construction and Management; Labor Relations; Enterprise Information Services; Research, Internal Audits and Internal Affairs; and various other functions.

Organize the directors, assistant secretaries, and others, as appropriate, to support and coordinate the daily operations of the Department; formulate and oversee the implementation of the Department’s organizational development and strategic plans; advise the Secretary and Governor on major policy, program, and organizational issues, and represent the Secretary on administrative matters with the Legislature, Governor’s Cabinet, Department of Finance, other state and federal agencies, local government, and constituent groups; represent the Secretary on fiscal and other administrative policy matters in responding to press inquiries, the State Legislature, and other public

MARTIN N. HOSHINO

inquiries; and, on behalf of the Department, negotiate agreements and commit the Department to action within the limits of statutory and administrative authority.

Major Accomplishments:

Played a central leadership role in Public Safety Realignment reforms to close the revolving door of low-level inmates cycling in and out of state prisons (by safely reducing the number of inmates in the state's 34 prisons from 176,000 to 123,000 and parole population from 130,000 to 35,000 in 24 months); creating a blueprint to revert use of prison gyms, classrooms, and dayrooms to their intended purpose of offender services, education and rehabilitation; and solving CDCR's \$750 million recurring structural deficit.

UNDERSECRETARY

Administration and Offender Services

California Department of Corrections and Rehabilitation – May 2011 to March 2013

Develop, organize, and direct all California Department of Corrections and Rehabilitation (CDCR) operational and administrative functions and services for offenders committed to the state, including adult inmates and juvenile wards; adult and juvenile parolees; and various other functions. Organize and direct all of CDCR administrative and offender services, including the Division of Administrative Services (Budgets, Fiscal, Accounting, Human Resources, Procurement, Regulations, and Policy); Correctional Health Care Services; Internal Oversight; Facility Planning, Construction and Management; Labor Relations; Enterprise Information Services; Research, Internal Audits, and Internal Affairs; and various other functions.

Organize the directors, assistant secretaries, and others, as appropriate, to support and coordinate the daily operations of the Department; formulate and oversee the implementation of the Department's organizational development and strategic plans; advise the Secretary on major policy, program, and organizational issues, and represent the Secretary on administrative matters with the Legislature, Governor's Cabinet, Department of Finance, other state and federal agencies, local government, and constituent groups; represent the Secretary on fiscal and other administrative policy matters in responding to press inquiries, the State Legislature, and other public

MARTIN N. HOSHINO

inquiries; and, on behalf of the Department, negotiate agreements and commit the Department to action within the limits of statutory and administrative authority.

EXECUTIVE DIRECTOR

Board of Parole Hearings

California Department of Corrections and Rehabilitation – February 2008 to May 2011

Manage and direct the Board of Parole Hearings operations and personnel, including Commissioners, Deputy Commissioners, peace officers, psychologists, attorneys, and support staff (approximately 520 employees, \$115 million budget, 4 parole regions, 20 plus locations). Manage California's program for hearing adult parole violations (approximately 90,000 annually), life term prisoner suitability hearings (approximately 5,000 annually), sexually violent predator screenings, mentally disordered offender hearings, and civil addict program.

Organize functions and coordinate activities with Federal, State, and local agencies. Develop and implement parole system reforms and remedial plans ordered in Rutherford/Lugo and Valdivia class actions.

Administer and coordinate California's Foreign Prisoner Transfer program with the United States Department of Justice. Coordinate regulatory actions and pardons, commutations, and sentence recall recommendations with Board Commissioners.

ASSISTANT SECRETARY, CHIEF AND ASSISTANT DIRECTOR

Office of Internal Affairs

California Department of Corrections and Rehabilitation – November 2003 to February 2008

Oversee, manage, and direct a statewide internal affairs and employee discipline program consisting of approximately 140 employees (peace officers and administrative staff) with a budget of \$16.5 million. Provide central oversight of internal affairs investigations and disciplinary matters conducted at 33 prisons, 8 juvenile facilities, 4 parole regions, and 50 fire and conservation camps. Serve as top management advisor

MARTIN N. HOSHINO

on employee misconduct and discipline issues for the Secretary, other executives, and managers for a department of 60,000 employees, of which 32,000 are sworn peace officers.

Develop, manage, and implement statewide employee disciplinary reforms to restore integrity and fairness to the department's internal justice system as ordered by the Federal Court and Special Master in Madrid v. Woodford (post Powers Remedial Plan). The Madrid class action and federal oversight was terminated as a result.

CHIEF ASSISTANT INSPECTOR GENERAL

California Office of the Inspector General – August 2000 to November 2003

Manage a statewide public safety and regulatory compliance program of high interest. Advise the Inspector General (OIG) and executive management staff on all policy decisions and issues related to the office. Provide policy direction and define scope of audits, investigations, and reviews. Supervise and provide strategic advice on the most sensitive and controversial audits and investigations performed by the office. Review laws, policies, regulations, and procedures affecting the functions of the office.

Coordinate the daily internal activities of the Office of Inspector General and liaison with the Governor's office staff, legislative bodies, media, employee labor unions, and interest groups.

Coordinate interagency activities with the Department of Corrections, California Youth Authority, Board of Prison Terms, Youthful Offender Parole Board, Board of Corrections, Prison Industry Authority, Correctional Peace Officers Standards and Training, other law enforcement agencies, and other government regulatory agencies. Serve as department's Ethics Officer.

ASSISTANT INSPECTOR GENERAL

California Office of the Inspector General – June 1999 to August 2000

Assist management staff in planning, recruiting, and staffing a major expansion of the independent Office of the Inspector General. Develop and revise OIG statutory authorities and mandates and shepherd same through the California Legislature. Create,

MARTIN N. HOSHINO

oversee, and implement the programs and procedures to fulfill the responsibilities of the OIG. Advise the Inspector General and management team members on policy and program issues emanating from the operation of the OIG and departments of the California Youth and Adult Correctional Agency. Coordinate and direct all external affairs and legislative activities.

PROJECTS MANAGER

California State Controller's Office – December 1996 to June 1999

For the Administration Division – Fiscal and Business Operations, provide advice and consultative services to the Controller, Deputy Controllers, and key staff members on current issues, technological changes and business trends affecting the operational work environment and functions in the areas of lease management, facility negotiations, space utilization, and communications. Implement the Controller's statewide reorganization and consolidation project.

AGENCY TELECOMMUNICATIONS REPRESENTATIVE

California State Controller's Office – 1992 to 1996

In Administrative Services, serve as departmental authority on delivery of services and systems for operational and long range communications requirements and objectives. Manage and provide oversight for deployment and use of the department's communication networks.

STAFF ANALYST

California State Controller's Office – 1988 to 1992

Provide analytical support for general administrative functions.

MARTIN N. HOSHINO

EDUCATION:

M.A. University of California, Davis, 1990 – Political Science

B.A. Lewis and Clark College, OR, 1986 – Political Science

MEMBERSHIPS, ACTIVITIES, AFFILIATIONS formerly, or presently:

Conference of State Court Administrators Board 2018 – present Vice President

Board of Directors, National Center for State Courts, 2022 to Present

National Task Force on Bail Reform, Fines, Fees, and Assessments – Co-Chair

Child Welfare Council

Governor's Appointment with Senate Confirmation – 2013

Governor's Appointment with Senate Confirmation – 2011

Governor's Appointment with Senate Confirmation – 2008

Governor's Appointment – 2006

Governor's Appointment – 2005

Governor's Appointment – 2003

Information Technology Executive of the Year for Leadership and Innovation

Governor and Chief Justice's California Trial Court Funding Workgroup

Technology Services Board

California Information Technology Advisory Board

California Rehabilitation Oversight Board

California Victims Advisory Board

Association of Parole Authorities International

Association of Inspectors General

MARTIN N. HOSHINO

American Correctional Association

CDCR Executive Emergency Management Committee, Chair

Prison Industries Board, Interim Chair

Chief Negotiator, Plata vs. Brown Transition

Peace Officer, PC 830.2, State of California

Trainer and Lecturer, Internal Affairs Investigators and Employment Law Attorneys

Exhibit 11

(California - Coleman)

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 RALPH COLEMAN, et al.,
12 Plaintiffs,

13 v.

14 GAVIN NEWSOM, et al.,
15
16

No. 2:90-cv- 0520 KJM SCR P
ORDER APPROVING
RECEIVER’S ACTION PLAN

17 On April 2, 2025, the court issued an order appointing Colette S. Peters as Receiver-
18 nominee with the powers and duties set out in that order. Apr. 2, 2025 Order and Order
19 Appointing Receiver-Nominee, ECF No. 8589. The court directed the Receiver-nominee to
20 develop and present to the court a “detailed Receivership Action Plan” (hereafter Plan) within
21 four months, *id.* at 2, as a prerequisite to the court’s consideration of her appointment as Receiver
22 in this action. The Receiver-nominee timely submitted the proposed Plan. Aug. 4, 2025 Order at
23 1, ECF No. 8721; Plan, ECF No. 8722. The parties have filed responses to the Plan, as directed
24 by the court. ECF No. 8721 at 1 (court order); ECF Nos. 8735 (plaintiffs), 8739 (defendants).
25 The court held a status conference on August 22, 2025 to clarify certain issues raised by the
26 parties’ respective positions concerning the Plan. Aug. 19, 2025 Minute Order, ECF No. 8743;
27 Reporter’s Transcript of Proceedings (RT 8/22/25), ECF No. 8751.

28 /////

1 Concurrently with this order, the court has appointed Colette S. Peters to serve as
2 Receiver in this action. By this order, the court approves the Receiver's Action Plan with certain
3 clarifications and instructions.¹ This order also incorporates by reference all findings and rulings
4 made by the court at the status conference on August 22, 2025. *See generally* RT(8/22/25), ECF
5 No. 8751.

6 The Plan includes an Executive Summary followed by two sections setting out,
7 respectively, an overview of this action and the steps taken and considerations brought by the
8 Receiver-nominee and her team in developing the Plan. ECF No. 8722 at 3–16.² The Executive
9 Summary provides a succinct and helpful overview of the substance of the Plan. ECF No. 8722
10 at 3 (Section 1). Section 2 of the Plan, entitled “Overview of *Coleman*,” *id.* at 4–7, demonstrates
11 the Receiver-nominee has gained more than adequate knowledge of the complex history and
12 remedial requirements of this action to assume the responsibilities vested in her by her
13 appointment as Receiver. The Plan does not include an exhaustive list of court orders governing
14 the remedies in this action. *See, e.g.*, Appendix C, ECF No. 8722-3 (citing Special Master's 22nd
15 Round Monitoring Report, but not including, *e.g.*, Sept. 3, 2020 Order, ECF No. 6846). The
16 court is satisfied, however, that the Receiver-nominee recognizes the universe of court orders in
17 place that define the parameters of her work, that she has full access to all relevant orders, and
18 that she is alert to the potential need to return to the court to seek modification of orders as she
19 deems necessary to complete implementation of the remedy in this action and achieve the
20 remedy's durability.

21 Section 3 of the Plan, entitled “Development of the Action Plan,” ECF No. 8722 at 7–16,
22 details the extraordinary four-month effort by the Receiver-nominee and her two deputies to gain
23 necessary knowledge and involve all stakeholders while maintaining the independence necessary

¹ The Plan estimates costs for its implementation, including compensation for the Receiver and two Deputy Receivers. ECF No. 8722-4. The court addresses the issue of compensation for the Receiver and two Deputies by separate order issued concurrently.

² Citations to page numbers in documents filed in the Court's Electronic Case Filing (ECF) system are to the page number assigned by ECF and located in the upper right-hand corner of the page.

1 to develop the Plan objectively. In this section, the Plan cogently identifies several dynamics that
2 have interfered with full and durable implementation of the remedies in this action, including, but
3 not limited to: an ineffective management and organizational structure in the California
4 Department of Corrections and Rehabilitation (CDCR) Mental Health Services Delivery System
5 (MHSDS); ongoing mental health staffing shortages; differences between CDCR’s medical and
6 mental health care programs that negatively impact the delivery of mental health care, particularly
7 the disproportionate use of “triage plans” to limit mental health care; the absence of a centralized
8 approach to developing consistent mental health programming and ensuring accountability for
9 delivering the programming; and the absence of a “headquarters-driven approach to improving”
10 responses to inmate suicide. *Id.* at 8–12. The Plan also acknowledges the importance of the
11 continuous quality improvement tool (CQIT), its role in monitoring and quality assurance, and the
12 broader need for adoption of a quality assurance/improvement program. *Id.* at 13–14. Next, it
13 reviews the Receiver-nominee’s considerations in prioritizing the remedies in this action and
14 prioritizes them. *Id.* at 14. It also discusses considerations unique to this action that the
15 Receiver-nominee recognizes and has accounted for in developing the Plan. *Id.* at 14-15.

16 Finally, and importantly, the Plan identifies three conditions the Receiver-nominee
17 observes must be met in order to meet the aggressive timeline set out in the Plan: first, the parties
18 must be willing to focus on a collaborative approach marked by constructive dialogue and to turn
19 away from litigation; second, the parties must be willing “to focus on implementing existing
20 remedies and ensuring they are durable,” *id.* at 16; and third, the Receiver must have “the
21 resources necessary to implement the *Coleman* remedies,” *id.*

22 The court is encouraged that the Receiver-nominee has laid a very strong foundation for
23 her assumption of the role of Receiver in this action, a foundation she is prepared to build on with
24 the energy and leadership she has exhibited since her appointment as Receiver-nominee at the
25 beginning of April this year.

26 In its discussion of considerations unique to this action, the Plan recognizes several key
27 steps. *Id.* at 14–16. One step involves the Receiver-nominee’s proposal to provide “near-term
28 role clarity as to the Receiver and Special Master, while timely integrating key personnel and

1 experts as well as functions of the Office of the Special Master into a single, consolidated office
2 supervised by the Receiver.” *Id.* at 15. Defendants raise questions concerning the “legal status”
3 of the Office of the Special Master, taking the position that the court cannot have both a Special
4 Master and a Receiver in the same action. *See, e.g.*, ECF No. 8739 at 7; *see also*, RT 8/22/25 at,
5 *e.g.*, 32–33, ECF No. 8751. The court need not resolve that question at this time. The Receiver-
6 nominee is committed to working closely with the Special Master upon her appointment as
7 Receiver to address the issues related to the integration the Receiver’s Action Plan contemplates,
8 and the Special Master is committed to working with the Receiver to this end as well. The court
9 will direct the Receiver, after consultation with the Special Master, to present to the court within
10 sixty days of the effective date of the Receiver’s appointment a focused plan describing the
11 responsibilities the Special Master has borne that will transfer to the Receiver and addressing how
12 to most effectively and efficiently carry out ongoing field monitoring in the state’s prisons in the
13 context of the Receivership, as well as the deployment of CQIT in the next round of monitoring.³
14 The court will review this plan promptly and make such further orders as it deems necessary to
15 clarify the organizational structure of the Receiver’s Office and to modify the December 11, 1995
16 Order of Reference, ECF No. 640. To this end, the Receiver, in consultation with the Special
17 Master, may include with the plan required by this order a proposal regarding modifications to the
18 Order of Reference. In the meantime, during the first sixty days of the Receivership, the Special
19 Master will finish his current monitoring round, which is now in the report-writing phase and is
20 expected to conclude on or about the end of November. By the end of the sixty days, the Special
21 Master will provide the court and the Receiver with executive summaries of his current
22 monitoring round, aiming to provide his full reports to the court and the Receiver by the end of
23 November, to memorialize the information already gathered by the Special Master and his team.

24 /////

³ As the Receiver-nominee indicated at the status hearing on August 22, 2025, subject to her appointment as Receiver, she anticipates the next round of monitoring will begin in January 2026. By that time, the court will have clarified the way in which monitoring will proceed. RT 8/22/25 at 35, ECF No. 8751.

1 The Plan also notes that the coordination agreements with the *Plata*⁴ Receiver and
2 *Armstrong*⁵ Court Expert “should be revisited if the court approves a *Coleman* Receiver,” given
3 that “circumstances have changed since those agreements were entered.” ECF No. 8722 at 9. As
4 the court indicated at the status hearing on August 22, *see* RT 8/22/25 at 43–44, it anticipates the
5 Receiver will meet and confer with the *Plata* Receiver and *Armstrong* Court Expert. The court
6 now directs that, within thirty days of the effective date of her appointment, the Receiver propose
7 modifications to the coordination agreements for this court’s consideration in consultation with
8 the *Plata* and *Armstrong* courts as well.

9 The court notes plaintiffs’ request that the Plan “encompass Plaintiffs’ continued
10 monitoring, including but not limited to interviewing class members in person and conducting site
11 visits, to assess progress and identify problems.” ECF No. 8735 at 18–19. Neither plaintiffs nor
12 defendants have played formal monitoring roles in this action, though each have been permitted
13 to accompany the Special Master on monitoring tours. For the sake of clarity, the court declines
14 to adopt the term “monitoring” to refer to any of the work performed by counsel for any party.
15 Plaintiffs’ counsel will retain the right and ability to meet with their clients as necessary to the
16 performance of their role as counsel.

17 The Action Plan itself, ECF No. 8722 at 17–26, contains adequate vision and mission
18 statements, as well as six strategic goals with specific objectives and associated actions. It
19 identifies milestones and sets out an aggressive timeline, one that is realistic if the parties
20 promptly transition from litigation to collaboration with the Receiver and if defendants focus on
21 implementation and durability while timely providing the resources identified by the Receiver as
22 necessary to accomplish her work. The Receiver-nominee has requested that the timelines set out
23 in the Plan formally commence sixty days after her appointment, to give her time to implement all
24 the details necessary to establishing the Office of the Receiver as contemplated by the Plan. The
25 court grants that request.

26 /////

⁴ *Plata v. Newsom*, Case No. 01-1351 JST (N.D. Cal.)

⁵ *Armstrong v. Newsom*, Case No. C 94-2307 CW (N.D. Cal.)

1 The court specifically finds the prioritization of specific actions as reflected in the Plan are
2 reasonable under the circumstances, and is satisfied the Receiver-nominee recognizes the urgency
3 attendant in all the remaining work that must be accomplished. To ensure that any momentum
4 initiated by the court's enforcement of the staffing remedy to date is maintained, and as the court
5 indicated at the special status hearing on August 22, 2025, the court will order the temporary
6 staffing bonuses the court previously approved be made permanent and the Receiver to effect
7 their permanency promptly. The court also will order that the Receiver generally expend the
8 funds in the defendants' Special Deposit Fund accrued based on the contempt fines affirmed by
9 the Ninth Circuit Court of Appeals to address continuing staffing shortfalls. The Receiver
10 otherwise shall direct the expenditure of the balance of the funds in the Special Deposit Fund to
11 implement her Plan according to the priorities she has identified.

12 In sum, the court finds the Plan provides a savvy, practical and workable framework that
13 takes account of the custodial environment in which constitutionally adequate mental health care
14 must be delivered in full to the plaintiff class. The Plan has sufficient detail with clear milestones
15 to chart the path forward and reflects the Receiver-nominee's collaborative approach with
16 specific proposals for continuing that collaboration. At the same time, the Plan demonstrates the
17 Receiver-nominee's understanding that as Receiver she must maintain the independence
18 necessary to make difficult decisions as they may arise. The Plan also reflects a commitment to
19 maximum transparency and a robust communications strategy, exhausting problem-solving with
20 all parties at the table, and moving aggressively to finally achieve compliance with the remedy in
21 a durable manner and end court supervision.

22 The court approves the Receiver's Action Plan and directs the Receiver to begin
23 implementing it immediately upon the effective date of her appointment.

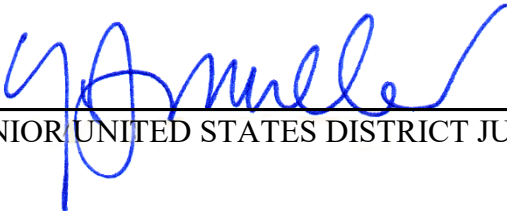
24 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 25 1. The Receiver's Action Plan, ECF No. 8722, is APPROVED with clarifications as
26 contained in this order and reflected in the Reporter's Transcript of Proceedings from
27 the August 22, 2025 Status Conference, ECF No. 8751;

28 /////

2. Consistent with the priorities identified in the Receiver's Action Plan, the temporary staffing bonuses are made permanent and the Receiver shall effect their permanency promptly. The Receiver generally shall direct the expenditure of funds in the defendants' Special Deposit Fund accrued based on the contempt fines affirmed by the Ninth Circuit Court of Appeals to address continuing staffing shortfalls, and otherwise shall direct the expenditure of the balance of the funds in the Special Deposit Fund to implement the Plan according to the priorities she has identified.
3. Within sixty days from the effective date of her appointment, the Receiver, after consultation with the Special Master, shall present to the court a plan providing the details necessary to clarify and implement the integration of the Special Master's office and members of his team into the Office of the Receiver, as contemplated by the Receiver's Action Plan; and
4. All timelines in the Receiver's Action Plan will start to run on November 1, 2025;
5. The Special Master will provide executive summaries of the result of his current monitoring round to the court and the Receiver within sixty days of September 1 and shall aim to complete his full monitoring report by the end of November 2025.

DATED: August 27, 2025.



SENIOR UNITED STATES DISTRICT JUDGE