THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

EMERGENCY EXECUTIVE ORDER NO. 625

July 27, 2024

WHEREAS, it is of utmost importance to protect the health and safety of all persons in the custody of the Department of Correction ("DOC"), and of all officers and persons who work in the City of New York jails and who transport persons in custody to court and other facilities, and the public; and

WHEREAS, over 80 provisions in the various Court Orders entered in *Nunez v. City of New York,* 11 CV 5845 (SDNY), require DOC to consult with, and seek the approval of, the *Nunez* Monitor ("Monitor") prior to implementing or amending policies on issues, including but not limited to, matters relating to security practices, the use of restraints, escorts, emergency lock-ins, de-escalation, confinement management of incarcerated individuals following serious acts of violence and subsequent housing strategies, and DOC may be held in contempt of court and sanctioned if it fails to appropriately consult with and obtain approval from the Monitor regarding policies in these areas; and

WHEREAS, the New York City Council ("City Council") has enacted Local Law 42 of 2024, as codified in the Administrative Code of the City of New York at section 9-167 ("Local Law 42"), which is to take effect on July 28, 2024; and

WHEREAS, Local Law 42 severely limits the use of restrictive housing, de-escalation confinement, restraints in movement and transportation, and emergency lock-ins, among other things, for persons in the custody of DOC, and significantly impacts operational procedures regarding, among other things, the management and housing of individuals following serious acts of violence; and

WHEREAS, prior to the passage of Local Law 42, DOC testified before City Council, conveying that terms of the proposed local law conflicted with the *Nunez* Court Orders with which DOC must comply and would remove key tools necessary to mitigate the risk of violence in DOC facilities, endanger DOC staff and persons in custody, and likely result in an increase in violence in DOC facilities; and

WHEREAS, on December 20, 2023, notwithstanding DOC's testimony and public safety concerns, the City Council voted to pass Local Law 42; and

WHEREAS, pursuant to the *Nunez* Court Orders, on January 5, 2024, DOC requested that the Monitor advise and provide feedback to DOC on how the requirements of Local Law 42 would impact DOC's ability to comply with the *Nunez* Court Orders; and

WHEREAS, on January 12, 2024, the Monitor expressed deep concerns about the proposed local law and assessed that implementing Local Law 42 "could impede the Department's ability to comply with the *Nunez* Court Orders," and "inadvertently undermine the overall goals of protecting individuals from harm, promoting sound correctional practice and improving safety for those in custody and jail staff" [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at p. 2]; and

WHEREAS, on January 19, 2024, the Mayor vetoed Local Law 42, citing the serious public safety concerns previously identified by DOC and the Monitor;

WHEREAS, despite DOC's good faith engagement with the City Council, on January 30, 2024, the City Council voted to override the Mayor's veto of Local Law 42; and

WHEREAS, on June 5, 2024, DOC, through its attorneys at the New York City Law Department, advised the Honorable Judge Laura T. Swain, Chief Judge of the United States District Court for the Southern District of New York, who is the judge presiding over *Nunez*, that because many of the requirements of Local Law 42 conflict with aspects of the *Nunez* Court Orders, the City intended to move for an order suspending the requirements of Local Law 42 until such time as the Monitor approves DOC policies and programs addressing those requirements. The letter also noted DOC's intent to meet and confer with counsel for the *Nunez* parties in advance of filing the motion [*see* 11 CV 5845 (SDNY) Dkt. No. 724]. On June 7, 2024, Judge Swain endorsed the June 5 letter and directed the parties to meet and confer [*see* 11 CV 5845 (SDNY) Dkt. No. 726]; and

WHEREAS, on June 25, 2024, pursuant to Local Law 42, the New York City Board of Correction ("BOC") adopted rules relating to the implementation of the law; and

WHEREAS, in addition to a meet and confer that took place with the *Nunez* parties, DOC met and conferred with the City Council on several occasions in an effort to reach an agreement to temporarily stay, or to extend outward, the effective date of Local Law 42 in order to allow for further consultation between the *Nunez* parties, the Monitor and the City Council regarding the intersection between Local Law 42 and the City's obligations under the *Nunez* Court Orders; and

WHEREAS, despite these efforts, and despite the existence of the *Nunez* Court Orders, on July 15, 2024, the City Council informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, on July 17, 2024, the Monitor assessed Local Law 42 and wrote to DOC [*see* 11 CV 5845 (SDNY) Dkt. No. 758-3]:

- That "attempting to implement L[ocal] L[aw] 42 at this time … would be dangerous and would subject incarcerated individuals and staff to further risk of harm" [Dkt. No. 758-3 at p. 2]; and that

- L[ocal] L[aw] 42 includes unprecedented provisions regarding the management of incarcerated individuals following serious acts of violence and eliminates necessary discretion by correctional management in a manner that could actually

result in an increased risk of harm to other incarcerated individuals and staff" [Dkt. No. 758-3 at p. 4]; and that

- "the requirements of [. . . Local Law 42] impose absolute prohibitions on correctional management that remove all discretion in a number of particularized circumstances where *some* degree of latitude and discretion in judgement to manage immediate threats to security are in fact necessary" [Dkt. No. 758-3 at p. 4, emphasis in original]; and that

- DOC is "at present not equipped to safely implement" Local Law 42; that the "truncated implementation timeline" for the significant changes required by Local Law 42 is "unreasonable"; and that the prospect of a rushed implementation of the Law "further heightens" concerns about the associated "risk of harm and the safety of those in the Department's custody and those working in the Department's facilities;" [Dkt. No. 758-3 at pgs. 5-6]; and that

- Local Law 42 would "drastically alter . . . [and] impact the Department's core strategy for addressing violent misconduct—its restrictive housing program" [Dkt. No. 758-3 at p. 8]; and that

- implementing the law as-is would "require[] changes that conflict with standard sound correctional practices … and therefore would be dangerous for those incarcerated and [who] work in the jails" [Dkt. No. 758-3 at p. 7]; and that

- approval from the Monitor "is necessary" because Local Law 42's requirements otherwise "could undercut the Department's ability to achieve compliance in *Nunez*" [Dkt. No. 758-3 at p. 9]; and that

- in the expert view of the Monitoring Team—which has "over 100 years' experience" in formulating "reasonable operational practices that ensure adequate protection from harm for incarcerated individuals and staff who work in carceral settings"—additional time and careful work are needed to evaluate which requirements of Local Law 42 could be implemented without violating the *Nunez* Court Orders [Dkt. No. 758-3 at p. 2, 10]; and that

- the task of "[f]ully understanding [. . . the Law's] requirements and the BOC's respective rules (which were only just passed) . . . and then comparing them to the respective requirements of the *Nunez* Court Orders is an exceedingly complicated undertaking"; and

WHEREAS, the Monitor therefore proposed:

- that, following the conclusion of the Monitor's analysis, the parties to the *Nunez* litigation, along with the Monitor and the counsel for the City Council, "must meet and confer" to determine how best to address any divergence between the

requirements of the *Nunez* Court Orders and Local Law 42 [Dkt. No. 758-3 at pgs. 9-10]; and

- that given that "the practices at issue have a direct impact on facility safety," the Monitor recommends that such work be undertaken between "now and October 24, 2024, at which time the Court can be updated on the status of these issues and the necessity for any potential motion practice" [Dkt. No. 758-3 at p. 10]; and

WHEREAS, DOC Commissioner Maginley-Liddie set forth to the *Nunez* Court, in a 17-page, detailed declaration dated July 22, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 758-1] why and how Local Law 42, if implemented as-is and at this time, would pose immediate dangers to public safety, including by:

- preventing DOC from transporting individuals to courts or hospitals in a safe manner because Local Law 42 places insurmountable burdens on DOC's ability to restrain incarcerated individuals during transport [Dkt. No. 758-1 at para. 34-40]; and

- preventing DOC from escorting individuals through jail, court, hospital and other public facilities in a safe manner Local Law 42 places insurmountable burdens on DOC's ability to use restraints during escorts [*id.*]; and

- preventing DOC and courthouse personnel from holding persons in custody at courthouses during lengthy court calendars that exceed several hours [Dkt. No. 758-1 at para. 22]; and

- preventing DOC from operating the Enhanced Supervision Housing Program, developed in close consultation with the Monitor for those individuals who have been found guilty after a disciplinary hearing of committing a violent offense, typically a slashing or stabbing or assault on staff [Dkt. No. 758-1 at para. 11-18]; and

- preventing DOC from holding restrictive housing hearings expeditiously by imposing additional requirements for such hearings that are likely to lead to delays in the completion of hearings and in placement of individuals [Dkt. No. 758-1 at para. 15-16]; and

- preventing DOC from providing adequate rehabilitative programming by limiting the time in such housing to 15 days as a general rule [Dkt. No. 758-1 at para. 15]; and

- preventing DOC from operating its Separation Status Housing Unit, which is used in those rare instances when a body scan reveals that an individual has secreted a weapon or drugs on their person and the individual refuses to relinquish the item [Dkt. No. 758-1 at para. 19-21]; and

- preventing DOC from exercising necessary discretion to maintain public safety during facility emergencies and housing area emergencies, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of emergency lock-ins to four hours and inflexibly mandates that individuals in custody be allowed to make phone calls during emergency lock-ins notwithstanding that such telephone access threatens to facilitate gang activity and violence within and outside the jails and poses significant safety and security risks [Dkt. No. 758-1 at para. 26-28]; and

- preventing DOC from employing lock-ins during searches, which undermines DOC's ability to perform safe and effective unannounced searches of the facilities, thereby eliminating an essential tool for DOC to rid its facilities of weapons and other contraband [Dkt. No. 758-1 at para. 29]; and

- preventing DOC from exercising necessary discretion in using effective de-escalation practices for the purpose of calming disruptive individuals and victims of violence, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of de-escalation confinement to four hours, even though circumstances sometimes arise in which a longer stay is necessary for safety, and it inflexibly mandates that persons in de-escalation confinement be allowed to make phone calls outside the facility, notwithstanding that it is dangerous and unsound correctional policy for a person who has engaged in a violent fight, particularly if the fight is gang-related, to be able to telephone their confederates to spread the word [Dkt. No. 758-1 at para. 30-33]; and

WHEREAS, Local Law 42 imposes significant other procedural requirements relating to the placement of individuals in restrictive housing and other jail operations that would pose a direct threat to the safety of incarcerated individuals and staff in DOC facilities and would, in the Monitor's assessment, "provide myriad opportunities for undue delay by the perpetrator of violence" before the Department could act to address the underlying conduct [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at 7], including procedural requirements that: restrict the use of de-escalation confinement in a manner that would prevent DOC from placing an individual in de-escalation confinement for their own protection when they have been the victim of a violent incident; prevent DOC from operating a safe and effective restrictive housing program by mandating an inflexible 14-hour out-of-cell requirement and limiting restrictive housing to no more than 30 consecutive days and no more than 60 days within any 12-month period; require DOC to immediately alert the public that a facility is on lock-down, notwithstanding that such a procedure would pose a significant threat to security in the facility; and require that an incarcerated individual be allowed to cross-examine witnesses during restrictive housing hearings, notwithstanding that such a procedure could place witnesses in danger; and

WHEREAS, DOC Commissioner Maginley-Liddie's declaration further states that DOC would be in an "inescapable bind" if Local Law 42 were to take effect at this time because "[u]nder the Court's Orders in the *Nunez* case, [DOC] cannot modify its policies on restrictive housing, de-escalation units, emergency lock-ins and restraints without submitting the modification to the Monitor and waiting for his approval. Yet Local Law 42, if implemented, would radically modify our policies in those areas without the Monitor's approval" and in a manner that is dangerous [Dkt. No. 758-1 at para. 41]; and

WHEREAS, on July 22, 2024 DOC, through its attorneys at the New York City Law Department, sent a letter to Judge Swain, providing a status update on the work that had been taking place regarding Local Law 42 since the June 5 letter referenced above and attaching the assessments by both the Monitor and DOC Commissioner of the dangers of implementing Local Law 42 [*see* 11 CV 5845 (SDNY) Dkt. No. 758], and on July 23, 2024 Judge Swain endorsed the July 22 letter and directed the *Nunez* Defendants and the Monitoring Team to continue their focused analytical work concerning compliance with Local Law 42, as outlined in the July 17, 2024 letter from the Monitoring Team, and further directed the *Nunez* Defendants to file a status update regarding this work by October 25, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 759]; and

WHEREAS, on July 23, 2024, DOC again reached out to the City Council to ask that the City Council stay the effective date of Local Law 42 until these serious issues could be resolved, but in response to an inquiry from legal counsel to DOC, the City Council again informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, as fully detailed in Emergency Executive Order 579 of 2024, DOC is already experiencing a significant staffing crisis, which poses a serious risk to the health, safety, and security of all people in custody and to DOC personnel; and

WHEREAS, certain sections of Title 40 of the Rules of the City of New York have already been suspended by Emergency Executive Order No. 279, dated November 1, 2021, and remain suspended pursuant to subsequent renewals of such Emergency Executive Order; and

WHEREAS, attempting to comply with many of the provisions of Local Law 42 and the new BOC regulations, such as transporting individuals to court without restraints, would require a massive increase in staff and other resources, which are not available; and

WHEREAS, even if DOC had such additional staffing and resources, that still would not obviate the direct threat to public safety posed by certain provisions of Local Law 42, nor would it obviate the fact that the Monitor has yet to approve implementation of those provisions as required by the *Nunez* Orders, nor would it obviate the fact that additional time would be needed to safely implement those provisions of Local Law 42 eventually approved by the Monitor, because, as the Monitor has expressly cautioned, the safe implementation of any new requirement or reform in DOC facilities requires planning time to "evaluat[e] the operational impact, update[e] policies and procedures, updat[e] the physical plant, determin[e] the necessary staffing complement, develop[] training materials, and provid[e] training to thousands of staff, all of which must occur before the changes in practice actually go into effect" [11 CV 5845 (SDNY) Dkt No. 758-3 at p. 61]; and

WHEREAS, to avert immediate dangers to public safety for the limited period while the Monitoring Team completes their work as directed by Judge Swain, and until DOC is in a position to meet both its obligations under the *Nunez* Court Orders and Local Law 42; and

WHEREAS, on July 27, 2024, I issued Emergency Executive Order No. 624, and declared a state of emergency to exist within the correction facilities operated by the DOC, and such declaration remains in effect;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby direct that beginning on July 28, 2024, the following provisions of section 9-167 of the Administrative Code of the City of New York are suspended or modified as indicated:

a. The definition of the term "de-escalation confinement" set forth in subdivision a is modified to allow the use of "de-escalation confinement" where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection.

b. The definition of the term "pre-hearing temporary restrictive housing" set forth in subdivision a is modified to allow the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public.

c. Subdivision b is modified to allow the DOC to place an incarcerated person in a cell in accordance with any restrictive housing program approved by the Monitor.

d. Paragraph 4 of subdivision c is suspended.

e. Paragraph 5 of subdivision c is modified to require that the DOC remove a person from de-escalation confinement as soon as practicable when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others.

f. The first sentence of paragraph 6 of subdivision c is modified to allow the DOC to hold a person in de-escalation confinement for more than four hours in exceptional circumstances as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security, or as approved by the Monitor.

g. The second sentence of paragraph 6 of subdivision c is suspended to remove the daily and weekly limits on de-escalation confinement.

h. Subdivision e is suspended to the extent that it imposes limitations on the DOC's use of restraints, provided that this suspension shall not affect the requirements of subdivision e that only the least restrictive form of restraints may be used and that the DOC is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

i. Subdivision f is modified to allow the department to place an individual in restrictive housing without a hearing in circumstances approved by the Monitor.

j. Subparagraph (i) of paragraph 1 of subdivision f is suspended.

k. Subparagraph (ii) of paragraph 1 of subdivision f is modified to provide that an incarcerated person shall not be allowed to cross examine witnesses, but shall be allowed to submit questions to be asked of witnesses and to respond to testimony of witnesses.

l. Subparagraph (v) of paragraph 1 of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for an incarcerated person written notice of the reason for a proposed restrictive housing placement and to the extent it requires the DOC to provide evidence supporting the incarcerated person's placement in restrictive housing in advance of the hearing.

m. Subparagraph (vi) of paragraph 1 of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for the incarcerated person adequate time to prepare for a restrictive housing hearing, provided however, that the DOC shall provide the incarcerated person adequate time to review the evidence presented, including adjourning the hearing, if needed.

n. The first sentence of subdivision h is modified to allow the DOC to use restrictive housing that complies with policies approved by the Monitor.

o. Paragraph 1 of subdivision h is suspended to the extent that it prohibits the DOC from placing an incarcerated person in restrictive housing for more than a total of 60 days in any 12 month period.

p. Paragraph 2 of subdivision h is modified to require the DOC to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed. The individual shall be present during the review, unless the review committee determines that safety concerns preclude their presence, and shall be promptly informed of its outcome.

q. Paragraph 3 of subdivision h is suspended.

r. Paragraph 4 of subdivision h is suspended.

s. Paragraph 6 of subdivision h is modified to provide that the DOC may use disciplinary sanctions only as a last resort in response to behavior that is not in compliance with program requirements.

t. Paragraph 1 of subdivision i is modified to allow the DOC to limit out-of-cell time pursuant to a restrictive housing program approved by the Monitor.

u. Paragraph 1 of subdivision j is modified to allow the DOC to employ emergency lock-ins during searches and to allow emergency lock-ins to last more than four hours when necessary to protect the safety of individuals in custody and DOC staff, as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security.

v. The second sentence of paragraph 2 of subdivision j is suspended.

w. Paragraph 3 of subdivision j is suspended to the extent that it requires the DOC to immediately notify the public of an emergency lock-in and modified to provide that the DOC shall, as soon as practicable, provide notice to the public on its website of the existence of circumstances at a facility that could result in restrictions on visits, phone calls, counsel visits or court appearances.

§ 2. I hereby direct that beginning on July 28, 2024, the following provisions of Title 40 of the Rules of the City of New York are suspended or modified as indicated:

a. Paragraph 2 of subdivision a of section 1-05 is suspended to the extent it would apply to de-escalation confinement, during emergency lock-ins, and with respect to any restrictive housing program approved by the Monitor.

b. Paragraph 3 of subdivision a of section 1-05 is suspended to the extent it would apply to de-escalation confinement, during emergency lock-ins, and with respect to any restrictive housing program approved by the Monitor.

c. Paragraph 2 of subdivision b of section 1-05 is modified to add an exception for restrictive housing programs approved by the Monitor.

d. The definition of the term "de-escalation confinement" set forth in section 6-03 is modified to allow the use of "de-escalation confinement" where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection.

e. The definition of the term "pre-hearing temporary restrictive housing" set forth in section 6-03 is modified to allow the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public.

f. Subdivision a of section 6-05 is modified to the extent necessary to allow the use of de-escalation confinement in circumstances allowed pursuant to section 1 of this emergency order.

g. Subdivision h of section 6-05 is suspended.

h. Subdivision j of section 6-05 is modified to provide that a person shall be removed from de-escalation confinement as soon as practicable following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others.

i. Paragraph 1 of subdivision j of section 6-05 is modified to allow the DOC to hold a person in de-escalation confinement for more than four hours in exceptional circumstances as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security, or as approved by the Monitor and to remove the daily and weekly limits on de-escalation confinement so as to allow holding an individual in de-escalation confinement when required by current circumstances, regardless of whether the

individual was recently held in de-escalation confinement as a result of prior circumstances.

j. Subdivision a of section 6-06 is modified to allow the DOC to employ emergency lock-ins during searches.

k. Subdivision e of section 6-06 is modified to allow emergency lock-ins to last more than four hours when necessary to protect the safety of individuals in custody and DOC staff, as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security.

l. Subdivision g of section 6-06 is suspended to the extent that it requires the DOC to immediately notify the public of an emergency lock-in and modified to provide that the DOC shall, as soon as practicable, provide notice to the public on its website of the existence of circumstances at a facility that could result in restrictions on visits, phone calls, counsel visits or court appearances.

m. Subdivision i of section 6-06 is suspended to the extent that it prohibits an emergency lock-in lasting more than four hours.

n. Subdivision k of section 6-06 is suspended.

o. Subdivision a of section 6-10 is modified to provide that the restriction does not apply to confinement in a restrictive housing program approved by the Monitor.

p. Section 6-13 is suspended.

q. Section 6-14 is modified to require the DOC to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed. The individual shall be present during the review, unless the review committee determines that safety concerns preclude their presence, and shall be promptly informed of its outcome.

r. Section 6-15 is modified to allow the DOC to limit out-of-cell time pursuant to a restrictive housing program approved by the Monitor.

s. Subdivision c of section 6-16 is suspended.

t. Subdivision d of section 6-16 is suspended.

u. Subdivision j of section 6-16 is suspended to provide that the DOC may use disciplinary sanctions only as a last resort in response to behavior that is not in compliance with program requirements.

v. Subdivision b of section 6-19 is suspended.

w. Subdivision f of section 6-19 is suspended to the extent it requires more hours of programming than the number of hours approved by the Monitor.

x. Paragraph 3 of subdivision a of section 6-27 is suspended to the extent it requires an individualized determination regarding use of restraints.

y. The first and second sentences of subdivision b of section 6-27 are suspended.

z. Subdivision d of section 6-27 is suspended to the extent that it imposes a limit on the time period for which restraints can be used.

aa. Subdivision l of section 6-27 is suspended.

bb. Subdivision m of section 6-27 is suspended.

§ 3. This Emergency Executive Order shall take effect immediately and shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.

Eric Adams
Mayor