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The New York City Board of Correction
1 Centre Street
Room 2213
New York, N.Y. 10007
Via email

I am Kelly Grace Price, the founder of Close Rosie's. I wish to thank Board of Corrections Chair, Jennifer Jones Austin, for her stewardship of this agency and specifically for the friendship you have extended me over the years. We have very few female role models to look up in NYC and I hope you know how many of us look up to you and model our behavior, our advocacy and our hopes for the future off of you and your professionalism and grace.

You are missed already.

I thank the board for allowing me the chance to present testimony ref the proposed scheme to transport women, girls, trans, intersex gender non-conforming people and all people in categories that elide the former. Close Rosie's is adamant that this move should not be undertaken for a variety of reasons:

I. **The scheme is unconstitutional under the XIVth Amendment's Equal Protection Clause.**

II. **The scheme is in violation of TItle IX.**

III. **The scheme is in violation of New York State Law: under NYS Correction Law, Section 93, jurisdictions within NYS are not allowed to transfer non-sentenced people, even in an emergency.**

IV. **There is a rule-change process that this very entity, the NYC Board of Correction is the steward of which has been blatantly ignored by the engineers of this illegal, sexist and unconstitutional transfer scheme**.

V. **Sexual Violence at Bedford is out of control and the prison's management has done nothing to quelch the epidemic of rape in the prison.**

VI. **<u>The BOC does have organizational standing to sue in Federal Court to stop these transfers.</u>**

I. **<u>The scheme is unconstitutional under the XIVth Amendment's Equal Protection Clause.</u>**

Transporting women, girls, trans, intersex and gender-non conforming people to theBHCF, outside of the custody of the DOC, to upstate New York is a violation of the EqualProtection Clause of the Constitution as stated in the Fourteenth Amendment.

II. **<u>The scheme is in violation of TItle IX:</u>**

The Federal Civil Rights case Jeldness[1] held that Title IX and its regulations protected detained and incarcerated students in vocational programs. The court found that even though carcarel facilities aren't traditional educational institutions, that they are required to follow Title IX and that "penological necessity" does not always forsake facilities from adherence to Title IX. Title IX is a federal civil rights law that was passed as part of the Education

[1] (Jeldness, 30 F.3d at 1229–1230) linked October 15, 2021; https://casetext.com/case/jeldness-v-pearce

Amendments of 1972 . Title IX applies to institutions that receive federal financial assistance from USED, including state and local educational agencies such as the NYC DOC and virtually every other metropolitan jail system that runs vocational rehabilitation and educational programs which are funded in whole or in part by the USED and run by the local municipal departments of education. Educational programs and activities that receive ED funds must operate in a non-discriminatory manner: "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to[2] discrimination under any education program or activity receiving Federal financialassistance."

Later, the Ninth Circuit stated in Jeldness "that the provisions of Title IX applied to prison educational and vocational programs, because these programs were federally funded and not explicitly exempt after a class of female prisoners in Oregon brought action alleging discrimination in six educational and vocational training programs in the Oregon penal system: prison industries, a forest camp, a farm annex, apprenticeships, vocational programs, and college courses.
Some key issue areas in which recipients have Title IX obligations include: counseling; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment et al.

The current plan to put women/girls in the BHCS some 50 miles north of New York City flies in the face of federal Title IX standards and the Fourteenth Amendment's Equal Protection Clause effectively ensuring that

[2] (Jeldness, 30 F.3d at 1229–1230) linked October 15, 2021; https://casetext.com/case/jeldness-v-pearce

women and girls will be dislocated from their home- borough support systems in NYC.

Over 60% of women detained or incarcerated are the primary caretakers of their children at home under the age of 16. Under the current BHCS transfer scheme here, parents who are students and are women/girls detained in BHCS will suffer higher barriers to accessing their children than their male counterparts who are still housed within theRikers Island Correctional Institution.

Not being in one's own home city will create barriers to accessing support systems,attorneys and witnesses to prepare for defense. A person's ability to secure freedom affects their access to education. Any hindrances to preparing a robust defense to a criminal prosecution are barriers to education -- which women/girls will suffer if we are all shoved into a corner Westchester as we await trial for our alleged crimes-- that men will not have to suffer.

Physically, women and girls will have to be transported from Westchester to NYC for all court appearances- time that will detract from their opportunity to attend educational and rehabilitative programming.

It will be more difficult for families, friends and loved ones to visit women and girls inBHCF then visits men who are in NYC on Rikers and other City Jails such as the Bargein the Bronx or the Edgecombe Correctional Facility. This scheme would further place people in jeopardy of being isolated and vulnerable and more likely to be targets ofsexual assault while they are

detained then men...Currently the rate of sexual assault reported at BHCF is already higher than in the other state facilities.

Pregnant and new mothers will not have the support of their communities in raising their children if they utilize the jail's nursery program.

III. The scheme is in violation of New York State Law: under NYS Correction Law, Section 93, jurisdictions within NYS are not allowed to transfer non-sentenced people, even in an emergency.

Under NYS Correction Law, Section 93, persons who are not non-sentenced are not allowed to be transferred into NY State Prisons: even in an emergency:[3]

"Whenever a state of emergency shall be declared by the chief executive officer of a local government pursuant to section two hundred nine-m of the general municipal law , the chief executive officer of the county in which such state of emergency is declared, or where a county or counties are wholly within a city the mayor of such city, may request the governor to remove all or any number of sentenced inmates from institutions maintained by such county or city. Upon receipt of such request, if the governor is satisfied that the public interest so requires, the governor may, in his discretion, authorize and direct the state commissioner of corrections and community supervision to remove such inmates."

However, non-sentenced persons are not allowed to be transferred: even in a state of emergency. THIS IS A DANGEROUS PRECEDENT TO SET AND THE BOARD SHOULD BE SHUTTERSHOCKED AND FIGHTING TOOTH AND NAIL AGAINST IT.

[3] **https://codes.findlaw.com/ny/correction-law/cor-sect-93.html**

IV. **There is a rule-change process that this very entity, the NYC Board of Correction is the steward of which has been blatantly ignored by the engineers of this illegal, sexist and unconstitutional transfer scheme**.

New York City Charter ("the Charter,") imbues one body, the New York City Board of Correction ("BOC") with the authority to make decisions governing the care and custody of people detained or imprisoned in New York City Jails:

"The board shall establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of the department; and it shall promulgate such minimum standards in rules and regulations after giving the mayor and commissioner an opportunity to review and comment on the proposed standards, amendments or additions to such standards."

However, the BOC had no involvement nor was there any BOC rule-making process or DOC Rule change process initiated to properly effectuate this behemoth change in the care, custody and control of people currently detained or imprisoned on Rosie's NOR how service providers, mental health practitioners, medical professionals, advocates and attorneys will transition their services. Most of these people don't even have security clearances for Bedford!

But the recent announcement that all persons who reside on Rosie's will be moved to BHCF has not been approved by theBOC: in fact the entire rule-making process has been thwarted. Instead, a sudden announcement by

defendendents that all female and female-identifying persons on Rosie's will be transferred into an upstate maximum security prison has been made and the proper mechanisms for changing the rules under which the care and custody of persons detained and incarcerated by NYC have been ignored.

V. Sexual Violence at Bedford is out of control and the prison's management has done nothing to quelch the epidemic of rape in the prison at Bedford.

Rates of sexual violence at BHCF are skyrocketing. and recently another federal complaint has been filedin the SDNY[4] vs virtually every member of the management team at BHCF. Allegations in the complaint clearly state that sexual violence is out of control and increasing despitepreviously litigation by the Legal Aide Society on behalf of womena and girls at BHCF. I have appended the entire complaint to the end of my testimony. The allegations in the complaint involve "Jane Smith" and "Jane Doe": both women who were previously sexually abused and raped on Rikers and then moved to Bedford to serve their sentences. Their cases were widely-reported in the NYC press when they were assaulted on Rikers. It boggles the mind that DOCCS and Bedford administrators and management didn't do a thing to protect these women.

Here is an excerpt from the complaint:

[4] JANE SMITH, MARY DOE, Plaintiffs, -against- ANTHONY. ANNUCCI, ActingCommissioner of the New York State Department of Corrections and Community Supervision, etal: Southern District of New York: 5/21/21: 1:21-CV-01715-RA-OTW [rel.1:17-CV-07954-RA-OTW].

“203. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that correction officers at BHCF were repeatedly accused, charged and criminally convicted of sexually abusing female inmates.

204. At the time of the events at issue, Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that correction officers at BHCF routinely carried on sexual relationships with inmates, which was also known to
the inmate population.

205. Defendant Velez knew from Ms. Smith’s prison file that she was at high risk of sexual harassment, exploitation and abuse given her history of being a victim of sexual exploitation, psychological conditions and small build.

206. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez nevertheless failed to implement or enforce policies to protect Ms. Smith, Ms. Doe or other inmates at BHCF from sexual abuse and harassment by correction officers and higher-level staff.

207. At the time of the events at issue, Defendant Sergeant B was known to have engaged in sexual relationships with inmates. Despite that, Defendants Kaplan, Daye and Velez failed to prevent him from interacting with inmates or from being alone with inmates without adequate camera coverage or supervision.

208. As of May 21, 2019, Defendant Officer C had been accused of forcing Ms. Smith to perform oral sex and yet, Defendants Kaplan, Daye and Velez failed to prevent Defendant Officer C from being able to have access to Ms. Smith.

209. Through their acts and omissions, Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez created a custom and implicit

policy authorizing BHCF staff to deliberately ignore evidence of sexual misconduct and sexual
assault on the part of correction officers against female inmates.
210. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were deliberately indifferent to the serious risk of sexual violence and
harassment of female inmates at the hands of correction officers at BHCF."

VII. The BOC does have organizational standing to sue in Federal Court to stop these transfers.

To establish standing, an organization bears the burden of showing: (1) an imminent injury in fact to itself as an organization rather than to its members, that is distinct and palpable; (2) that its injury is fairly traceable to an act of defendants; and (3) that a favorable decision would redress its injuries. *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104 (2d Cir. 2017).

Please consider this tactic if we are not successful in our action to stop these transfers (Price v De Blasio et al: SDNY 21CV-8540.)

Thank you for taking the time to read and internalize my testimony.

Kelly Grace Price
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October 19, 2021