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**STATEMENT OF
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**BEFORE
THE CENTER FOR COMMUNITY ALTERNATIVES**

**FOR A PEOPLE’S HEARING
CONCERNING COVID-19 IN JAILS AND PRISONS**

**PRESENTED
AUGUST 19, 2020**

1. Introduction

Good morning, my name is Albert Fox Cahn, and I serve as the Executive Director of the Surveillance Technology Oversight Project (“S.T.O.P.”). S.T.O.P. advocates and litigates for New Yorkers’ privacy, fighting discriminatory surveillance. I commend the Center for Community Alternatives for organizing today’s People’s Hearing, and I am grateful for the opportunity to discuss the effect of COVID-19 on incarcerated populations.

When the COVID-19 crisis descended on the United States, criminal justice advocates instantly identified New York’s jails as a potential hotbed for the virus. And they were right. COVID-19 has raged out of control in the City’s jails.

Even as New York City re-opens and New Yorkers return to work, restaurants, and bars, the situation in the City’s jails remains grim. As of July 31st, the rate of infection among people held by the Department of Corrections in New York City is at 7.1%, according to tracking maintained by the Legal Aid Society.¹

But the actual infection rate may be higher than what is reported. One alarming data point is that the rate of infection among Department of Corrections’ staff is nearly twice as high – at almost 13%, as of July 31st – and there have been reports that staff members are working while ill, without easy access to tests.² Since those waiting for their day in court are frequently rotating in and out of detention, many with COVID-19 will be exposed but never tested.³ Even worse, dozens have been denied testing despite symptoms.⁴ Tracking the infection rate in transient population is impossible without constant testing of all detainees, regardless of symptoms. This could mean that the staff’s higher positivity better reflects the true scale of the problem in New York’s jails.⁵

As New Yorkers have sat down at restaurants for the first time in months, many have succumbed to the temptation to look away from the crisis inside jails. But this isn’t just a jails problem; it’s an everyone problem. Since April 1st, every day, an average of 34 incarcerated people are released from the Department of Corrections, and an average of 27 people are admitted.⁶ These New Yorkers re-enter communities having been sickened by a “justice” system that has failed them only to then infect their parents, children, coworkers, and neighbors. As one inmate told Vice News about his life outside of Rikers: “If I catch it, and I go home,

¹ *Analysis of COVID-19 Infection Rate in NYC Jails*, THE LEGAL AID SOCIETY (Jul. 31, 2020), https://legaidnyc.org/wp-content/uploads/2020/08/7_31_Analysis-of-COVID-19-Infection-Rate-in-NYC-Jails.pdf.

² Jan Ransom, *Virus Raged at City Jails, Leaving 1,259 Guards Infected and 6 Dead*, THE NEW YORK TIMES (May 20, 2020) <https://www.nytimes.com/2020/05/20/nyregion/rikers-coronavirus-nyc.html>.

³ *Analysis of COVID-19 Infection Rate in NYC Jails*, *supra* note 1, at 3.

⁴ NYC Board of Correction *Analysis of COVID-Related Grievances Received by Department of Corrections’ Office of Constituent and Grievance Services (OCGS), March 5th to April 30th, 2020*, Board of Correction City of New York (June 8, 2020) https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/June/BOC%20Analysis%20of%20COVID-Related%20Complaints_clean%20version_6.8.20%20_final.pdf.

⁵ See: PBS NewsHour, *US Prisons are Crowded, Dirty and Opaque. COVID-19 is Running Rampant.*, YOUTUBE (May 14, 2020), <https://youtu.be/FCi9qYClhJg?t=455> (“When you see, for instance, cases among staff going up up up up up up up, but you see no testing or no positive cases among detained people, you have to wonder what’s going on. It’s probably not that nobody who’s detained actually has the virus.”).

⁶ *Analysis of COVID-19 Infection Rate in NYC Jails*, *supra* note 1.

my mom is a little over 50, my grandma is 75, my sister is pregnant.”⁷ and he sees himself as a health threat to them upon his release. This further isolates those incarcerated individuals from their support systems as they either must stay away from their loved ones or risk infecting them.

Why are things so much different inside NYC jails than outside? Incarceration often prevents those being held from following the same protocols that everyone is being urged to follow by health authorities. Public health officials have told us time and time again to wash our hands and stay away at least six feet (if not more) from each other. New Yorkers in jails have limited access to cleaning supplies and a complete inability to maintain a social distance. The former chief medical officer of the Rikers Island jail complex himself admitted that bathrooms are often shared by many people, and sinks are often broken, or lacking in soap.⁸ Rikers Island staff are reportedly discouraged from wearing masks⁹, creating a potent vector of transmission.

Even the precautions New York’s jails have taken have been poorly executed. On August 7, 193 individuals were still incarcerated for “technical parole violations” – non-criminal violations of one’s conditions of release, such as drinking, breaking curfew, or seeing friends or family with supposed “gang affiliations.”¹⁰ 32 of those individuals were over 50 years old, a group that for whom COVID-19 is frequently a matter of life and death.¹¹ The City needs to put a blanket moratorium on admissions to City jails on technical parole violations – particularly for those over 50. Anything else will betray the City’s efforts to keep those in jails safe as half-hearted at best.

Without further steps to release vulnerable populations, minimize intake of those who are most likely to get very ill, and protect incarcerated individuals from already-ill staff, New York will backslide into the early and terrifying days of the virus. New York has guaranteed it.

2. Policing New Yorkers Cannot Cure COVID-19

New York’s leaders can’t resist exacerbating problems by sending the police after them, and the COVID-19 crisis has been no exception.

Most recently, we’ve seen Mayor de Blasio roll out his plan for check points at New York City’s in-bound bridges and tunnels, in which the sheriff will be randomly stopping cars to check if they have been to any of the high-community-spread states which are on the Governor’s quarantine list. And before that, we saw the NYPD have to roll back mask enforcement after tackling a young woman with her child to the ground for

⁷ VICE News, *Inside Rikers During the Coronavirus Outbreak*, YOUTUBE (Apr. 8, 2020), https://youtu.be/MFarfOMp_J4?t=96 (“I don’t want any of the ladies in my family to contract this virus and then them get sick and pass away because I was in jail.”).

⁸ See: Keri Blakinger, Beth Schwartzapfel, *When Purrell is Contraband, How Do You Contain Coronavirus?*, THE MARSHALL PROJECT (Mar. 6, 2020), <https://www.themarshallproject.org/2020/03/06/when-purrell-is-contraband-how-do-you-contain-coronavirus>; PBS NewsHour, *supra* note 5 (“The way they’re run – these facilities – the way there’s a high tolerance for squalor, for filth – where the idea of infection control is really antithetical to what you see inside these places with trash, and garbage, and lack of attention to keeping the places clean. The operational standards in these places really promote the spread of this disease.”).

⁹ Jan Ransom, *supra* note 2.

¹⁰ See: *New York City Board of Correction Weekly COVID-19 Update, Week of August 1 – August 7, 2020*, NYC BOARD OF CORRECTION (Aug. 11, 2020), <https://www1.nyc.gov/assets/boc/downloads/pdf/covid-19/BOC-Weekly-Report-08-01-08-07-2020.pdf>.

¹¹ *New York City Board of Correction Weekly COVID-19 Update, Week of August 1 – August 7, 2020*, *supra* note 12.

not wearing her mask properly¹² and engaging in such racist enforcement of mask-wearing that the effort was compared to stop and frisk.¹³

Our biased policing practices are amplifying health disparities for communities of color, with the vast majority of New Yorkers who are stopped, frisked, and arrested being Black or Latinx. And for over-policed communities of color, being charged with a low-level crime can amount to a death sentence.¹⁴ More than 16 years after New York's death penalty was struck down, the pandemic has brought it roaring back.¹⁵ The first New Yorker condemned to die in custody was 53-year-old man held for missing a meeting with his parole officer.¹⁶ He forgot one appointment, and we took his life. And there will be countless more, so long as New Yorkers are detained.

But for those released after being infected, not only does it mean a potential death sentence for themselves, it means a deadly threat to their families. Returning home brings the risk that others will get sick.¹⁷ Not only does this violate the protections against cruel and unusual punishment, it almost amounts to corruption of the blood, punishing children for the alleged crimes of their parent.

New York must take further steps to protect New Yorkers in jails. It is beyond belief that as Mayor de Blasio begs New Yorkers to wear masks, maintain a social distance, and wash their hands, New York's incarcerated are unable to do so much of this. The former chief medical officer of Rikers Island admitted: jails lack the resources or systems necessary to adequately treat sick people before the pandemic.¹⁸ Until those resources are provided, until older and at-risk individuals are released, the incarcerated population will suffer yet another injustice at the hands of the system that claims to want to help.

¹² *Mom Arrested After Confrontation with NYPD Officers Over Face Mask*, NBC4 NEW YORK (May 14, 2020) <https://www.nbcnewyork.com/news/local/mom-arrested-after-confrontation-with-nypd-officers-over-face-mask/2416440/>.

¹³ Ashley Southall, *Scrutiny of Social Distance Policing as 35 of 40 Arrested are Black*, THE NEW YORK TIMES (May 7, 2020) <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html>.

¹⁴ The New York Times, *Coronavirus in Jail: Why An Outbreak Puts an Entire City at Risk* | NYTNNews, YOUTUBE (Apr. 8, 2020), <https://youtu.be/b11oIVO9SJU?t=39>.

¹⁵ See: *People v. LaValle*, 3 N.Y.3d 88 (2004).

¹⁶ CBS News, *NYC inmate's death after testing positive for COVID-19 raises questions about conditions in jails...*, YOUTUBE (Apr. 9, 2020) <https://youtu.be/N92eXZ7JSIU?t=44>.

¹⁷ See: Daniel Parra, *More Questions Than Answers About the Racial and Ethnic Skew in COVID-19 Deaths*, CITYLIMITS (Apr. 25, 2020), <https://citylimits.org/2020/04/25/more-questions-than-answers-about-the-racial-ethnic-skew-in-covid-19-deaths/> (The fact of this overexposure has led to significantly more deaths; by mid-Aprils, 127 per 100,000 Black people were dying of COVID-19. For white people, the number was only 64 per 100,000.).

¹⁸ *PBS NewsHour*, *supra* note 5.