

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARK NUNEZ, *et al.*,

Plaintiffs,

v.

THE CITY OF NEW YORK, *et al.*,

Defendants.

No. 11 Civ. 5845 (LTS)(JCF)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

THE CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF CORRECTION,

Defendants.

**NEW YORK CITY BAR ASSOCIATION AND VERA INSTITUTE OF JUSTICE'S
MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

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The New York City Bar Association (the “City Bar”) and the Vera Institute of Justice (“Vera”) (collectively, “amici”) hereby respectfully move this Court for leave to file the accompanying brief, attached hereto as Exhibit A, as amici curiae.¹ Amici write in response to the Court’s Contempt Order, which requested further briefing from the parties concerning proposals for the authority and structure of a receivership (including the process for appointing a receiver),² in order to advise the Court of the importance of appointing a receiver who is fully independent of New York City government (the “City”).

PRELIMINARY STATEMENT

Amici are nonprofit organizations dedicated to, among other things, upholding the rule of law and ensuring access to justice in support of a fair society and the public interest, and have devoted significant efforts toward ending mass incarceration in New York City. Amici previously filed one amicus brief in this proceeding to present their position that appointing a federal receiver

¹ No party’s counsel authored any portion of this brief. No party or party’s counsel contributed money intended to fund this brief’s preparation or submission. No person other than amici, their members, or their counsel contributed money that was intended to fund this brief’s preparation or submission.

The parties asked that amici include the following statements as to their positions on amici’s motion.

From Defendants: “Defendants take no position on the request to file an amicus brief on the condition that defendants are granted an opportunity [to] respond to the amici submission within ten business days of filing. A reasonable opportunity to respond is required by principles of due process and fundamental fairness. In the absence of an opportunity to respond, defendants oppose the submission.” (Defendants further confirmed they would not challenge the motion as untimely, as amici waited to file this motion at Defendants’ request pending Defendants’ response regarding their position on the motion.)

From Plaintiffs and the United States: “The position of Plaintiffs and the United States is as follows: They consent to the filing of this amicus brief and do not see a need for a response by the Defendants. Plaintiffs and the United States propose that after Defendants further review the brief (which they received yesterday), if there any specific issues in the amicus brief that Defendants believe require additional briefing they should identify such issues and seek permission to respond.”

² Opinion and Order on Motion for Contempt at 58, ECF No. 803.

is necessary to preserve the rule of law, and to emphasize that a receiver's work must be done in parallel with the Defendants' legal obligation to close Rikers Island.³ Amici now seek leave to brief the Court concerning the parameters of receivership and to emphasize the importance of appointing an independent receiver: someone who is free from political pressures, union influence, and any other outside interests that might complicate the receiver's efforts to bring DOC in line with the Court's orders.

As advocates for the rule of law in New York City, for maintaining and improving New York's justice systems, and for the closure of Rikers Island, amici have an interest in this action as it relates to the constitutional rights of people detained in New York City jails, the legislative mandate to close Rikers Island, and, ultimately, New York City's long-term public safety. Amici respectfully request the Court's leave to submit this brief in support of appointing a receiver that is fully independent of the City government.

ARGUMENT

Amici request the Court's leave to submit the accompanying brief, attached as Exhibit A, which addresses issues pertaining to the appointment of an independent federal receiver to aid the DOC and how such an appointment could advance the rule of law.

I. Legal Standard.

“Unlike the Supreme Court Rules and the Federal Rules of Appellate Procedure, the Federal Rules of Civil Procedure do not specifically provide for the filing of amicus curiae briefs at the district court level. Nevertheless, district courts possess the inherent authority to appoint

³ See Brief of Amici Curiae New York City Bar Association and Vera Institute of Justice at 2, ECF No. 646.

‘friends of the court’ to assist in their proceedings.”⁴ When exercising that authority, the Court has broad discretion in deciding whether to accept an amicus brief.⁵

“The primary role of the amicus is to assist the Court in reaching the right decision in a case affected with the interest of the general public.”⁶ Courts have accepted amicus briefs where helpful to ensure that the court receives “a complete and plenary presentation of difficult issues so that the court may reach a proper decision.”⁷ And as this Court has previously recognized,

[c]ourts regularly exercise their discretion to “err on the side of granting leave” to file the proposed amicus briefs because, if the Court finds the briefs to be “unhelpful” in its evaluation of the underlying motion, the Court can “simply disregard the amicus brief. . . . On the other hand, if a good brief is rejected, the Court will be deprived of a resource that might have been of assistance.”⁸

II. Amici Are Well-Positioned To Assist The Court.

As prominent advocates for the rule of law in New York City, and for justice in the administration of the City’s criminal legal system, both amici are well-positioned to participate as amici curiae in connection with the Court’s request for further briefing from the parties. Together,

⁴ *In re Bayshore Ford Trucks Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006).

⁵ *See Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. New York*, No. 19-CV-11285, 2020 WL 5667181, at *8 (S.D.N.Y. Sept. 23, 2020); *City of New York v. United States*, 971 F. Supp. 789, 791 n.3 (S.D.N.Y. 1997); *see also United States v. Hooker Chems. & Plastics Corp.*, 749 F.2d 968, 992 (2d Cir. 1984).

⁶ *Russell v. Bd. of Plumbing Examiners of Cnty. of Westchester*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999).

⁷ *Newark Branch, N.A.A.C.P. v. Town of Harrison, New Jersey*, 940 F.2d 792, 808 (3d Cir. 1991) (quoting *Alexander v. Hall*, 64 F.R.D. 152, 155 (D.S.C. 1974)); *accord S.E.C. v. Ripple Labs, Inc.*, No. 20 CIV. 10832, 2021 WL 4555352, at *5 (S.D.N.Y. Oct. 4, 2021); *see Commonwealth of the Northern Mariana Islands v. United States*, No. CIV 08-1572 PLF, 2009 WL 596986, at *1 (D.D.C. Mar. 6, 2009) (“The filing of an amicus brief should be permitted if it will assist the judge ‘by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties’ briefs.”) (quoting *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003)).

⁸ Order Granting Motions to File Amicus Briefs at 2, ECF No. 641 (quoting *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002)).

amici represent a wealth of experience and expertise about criminal justice and incarceration in New York generally and the crisis within DOC and at Rikers Island specifically.

A. The New York City Bar Association.

The City Bar was founded in response to public concerns about corruption in New York’s justice system, with a mission to promote reform of the law, and to uphold the rule of law and access to justice in support of a fair society and the public interest.⁹ To achieve this mission, the City Bar, which was founded in 1870 and has approximately 23,000 members, engages in social issues via policy initiatives, involvement in access-to-justice initiatives, and pro bono representation in many areas, including immigration, homelessness, and criminal justice. It achieves these goals through the efforts of multiple committees composed of expert practitioners in relevant fields, including its Task Force on Mass Incarceration, Corrections & Community Reentry Committee, Civil Rights Committee, Task Force on the Rule of Law, and others. Bar associations, including the City Bar, often present the perspectives of their membership to the courts as amici curiae, particularly in cases involving the administration of justice, the legal profession, and the rule of law.¹⁰ The City Bar is committed to rectifying the current “unacceptable conditions in City jails.”¹¹

⁹ See N.Y.C. Bar Ass’n, *About Us*, <https://www.nycbar.org/about-us> (last visited Jan. 21, 2025).

¹⁰ See, e.g., *CBF Indústria de Gusa S/A v. AMCI Holdings, Inc.*, 850 F.3d 58, 75 (2d Cir. 2017) (citing amicus brief of the City Bar); *Acosta v. N.Y.C. Dep’t of Educ.*, 946 N.E.2d 731, 731 (N.Y. 2011).

¹¹ N.Y.C. Bar Ass’n, *Statement in Support of Closing Rikers Island* (Oct. 15, 2019), <https://www.nycbar.org/media-listing/media/detail/closing-rikers-island-support-for-borough-based-jail-plan>; see N.Y.C. Bar Ass’n, *The Human Rights Crisis at Rikers Island: A Call to Action for All Justice System Stakeholders* (Feb. 3, 2022), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/rikers-island-humanitarian-crisis-a-call-to-action-for-all-justice-system-stakeholders>.

B. The Vera Institute of Justice.

Vera is an independent, nonprofit national research and policy organization founded in New York City. Since 1961, Vera has worked to end the overcriminalization and mass incarceration of people of color, immigrants, and people experiencing poverty. Vera extensively publishes research on national and state criminal legal systems,¹² and advocates for improvements to those systems that result in less criminalization and mass incarceration, and more justice and safety for all.¹³ Nonprofit civil liberties organizations like Vera routinely provide amicus curiae briefing to courts in this district.¹⁴

Vera's president and other leaders have played key roles on the Independent Commission on New York City Criminal Justice and Incarceration Reform (also known as the "Lippman Commission"), which studied New York City's criminal justice system, gathered testimony and interviewed experts, undertook a far-reaching community engagement process, and researched programs and practices from across the country and around the globe. The Lippman Commission crafted a closure plan, which the City later adopted, based on its determination that closing Rikers

¹² See, e.g., Jullian Harris-Calvin et al., *The Cost of Incarceration in New York State*, Vera Inst. of Just. (Oct. 31, 2022), <https://www.vera.org/the-cost-of-incarceration-in-new-york-state>; Lauren Jones et al., Vera Inst. of Just., *Empire State of Incarceration* (Feb. 18, 2021), <https://www.vera.org/downloads/publications/empire-state-of-incarceration.pdf>; Jaeok Kim et al., *Understanding the Impact of New York Bail Reform*, Vera Inst. of Just. (Nov. 2022), <https://www.vera.org/publications/the-impact-of-new-york-bail-reform-on-statewide-jail-populations>.

¹³ See, e.g., Mariam Gaye & Brian King, *2022-2023 New York State Policy Briefs*, Vera Inst. of Just. (Jan. 2022), <https://www.vera.org/publications/2022-new-york-state-policy-briefs>.

¹⁴ See, e.g., *Nat'l Coal. on Black Civic Participation v. Wohl*, No. 20 CIV. 8668, 2023 WL 2403012, at *33-34 nn.36-38 (S.D.N.Y. Mar. 8, 2023) (amicus brief submitted by the NY Civil Liberties Union); *Democratic Nat'l Comm. v. Russian Fed'n*, 392 F. Supp. 3d 410, 430 (S.D.N.Y. 2019) (brief by the Knight First Amendment Institute, Reporters Committee for Freedom of the Press, and the ACLU); *Ognibene v. Parkes*, No. 08 CIV. 1335, 2013 WL 1348462, at *1 (S.D.N.Y. Apr. 4, 2013) (Swain, J.) (brief by Citizens Union, the Brennan Center for Justice, Common Cause NY, the League of Women Voters of NYC and NY Public Interest Research Group); *Stern v. Cosby*, 645 F. Supp. 2d 258, 275 n.10 (S.D.N.Y. 2009) (brief by Lambda Legal Defense and Education Fund).

Island was the only path to ensuring that New York City operates a safe, humane jail system. Vera's president remains on the recently expanded Lippman Commission, and Vera continues to work with other research advocates and policymakers to realize the City's commitment to closing Rikers Island and moving closer to a City that delivers both justice and safety for all its residents.

III. The Proposed Amicus Brief Offers A Helpful Perspective.

Amici's proposed brief aims to equip the Court with a perspective on the pending motion not otherwise presented by the parties but well-supported by amici's experience and the record. Amici would explain how only an independent receiver, free from conflicting interests, pressures, and the instability that inevitably arises from changing administrations, will be able to bring the DOC into compliance with the rule of law. Moreover, amici would urge the Court to consider that only an independent receiver will be capable of meeting the legislatively enacted mandate to close the jail facilities on Rikers Island by August 2027. Amici are amply qualified to present this position, as upholding the rule of law has been an important area of study for Vera,¹⁵ and is a core mission of the City Bar and a focus of its work.¹⁶

CONCLUSION

For the foregoing reasons, amici respectfully ask the Court to grant them leave to file the attached amicus brief.

¹⁵ See, e.g., Jim Parsons et al., Vera Inst. of Just., *Developing Indicators to Measure the Rule of Law: A Global Approach* 1 (June 2008), https://vera-institute.files.svdcn.com/production/downloads/publications/Developing_Indicators_to_Measure_the_Rule_of_Law_Online_version2.pdf.

¹⁶ See, e.g., N.Y.C. Bar Ass'n, *About Us*, <https://www.nycbar.org/about-us> (last visited Jan. 21, 2025).

Dated: February 7, 2025

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CERTIFICATE OF COMPLIANCE PURSUANT TO CIVIL L.R. 7.1(C)

Pursuant to L.R. 7.1(c), the foregoing brief was prepared on a computer and complies with the word-count limitations as specified in L.R. 7.1(c). The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of authorities, or any authorized addendum is 2,073.

Dated: February 7, 2025

/s/ Jeremy M. Creelan
Jeremy M. Creelan

Counsel for Amici Curiae

EXHIBIT A

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**BRIEF OF AMICI CURIAE NEW YORK CITY BAR ASSOCIATION
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IN SUPPORT OF APPOINTMENT OF AN INDEPENDENT RECEIVER**

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INTERESTS OF AMICI

The New York City Bar Association and the Vera Institute of Justice (together, “Amici”) are not-for-profit institutions based in New York City (the “City”) that advocate for improvements to our justice systems.¹ Amici have long supported the closure of the Rikers Island jail complex (“Rikers Island” or “Rikers”).²

The New York City Bar Association (“City Bar”) is a voluntary association of approximately 23,000 lawyers and law students in New York City. Its mission is to promote reform of the law and uphold the rule of law and access to justice in support of a fair society and the public interest.³ To achieve this mission, the City Bar engages in social issues via policy initiatives, involvement in access-to-justice initiatives, and pro bono representation in many areas, including immigration, homelessness, and criminal justice. Multiple City Bar committees and task forces composed of experienced practitioners study and advocate for criminal justice reform.

Since 1961, the Vera Institute of Justice (“Vera”) has worked to end the overcriminalization and mass incarceration of people of color, immigrants, and people experiencing poverty. Vera’s president and other leaders played key roles on the Independent Commission on New York City Criminal Justice and Incarceration Reform, also known as the Lippman Commission. Vera continues to work with other advocates and policymakers to realize

¹ No party’s counsel authored any portion of this brief. No party or party’s counsel contributed money intended to fund this brief’s preparation or submission. No person other than Amici, their members, or their counsel contributed money that was intended to fund this brief’s preparation or submission.

² See, e.g., Press Release, N.Y.C. Bar Ass’n, Statement in Support of Closing Rikers Island (Oct. 15, 2019), <https://www.nycbar.org/media-listing/media/detail/closing-rikers-island-support-for-borough-based-jail-plan>; Insha Rahman, *Politics, Ambition, and the Hard Work of Making the Closure of Rikers Island a Reality*, Vera Inst. of Just. (July 13, 2017), <https://www.vera.org/news/politics-ambition-and-the-hard-work-of-making-the-closure-of-rikers-island-a-reality>.

³ See N.Y.C. Bar Ass’n, *About Us*, <https://www.nycbar.org/about-us/> (last visited Jan. 24, 2025).

the City’s commitment to closing Rikers Island and moving closer to a City that delivers both justice and safety for all its residents.⁴

SUMMARY

Amici respectfully submit this brief in support of the plaintiffs’ and the United States’ position concerning the parameters of receivership to emphasize the importance of appointing an independent receiver: someone who is free from political pressures, union influence, and any other outside interests that might impede progress toward implementation of the Court’s orders. The nearly ten-year history of the monitorship has shown that even New York City Department of Correction (“DOC”) Commissioners who expressed support for reform have been unable to reform the system under entrenched political, social, and legal constraints. Receivership is necessary, but it is a drastic, last-ditch measure, and maximizing its likelihood of success—along with minimizing its duration—requires that the receiver be singularly focused and loyal only to the rule of law.

ARGUMENT

Nearly ten years after the Consent Judgment,⁵ conditions at Rikers remain as dangerous and inhumane as ever. Though a recent report of the Court-appointed monitoring team (“Monitoring Team”) states that “some signs of progress exist,” it notes that the “[DOC] remains mired in dysfunction” and that reform efforts are advancing “at a glacial pace” and are “nowhere near what the urgency of the situation demands.”⁶ In its Contempt Order, the Court wrote that “the concrete evidence before the Court demonstrates that . . . Defendants made only half-hearted,

⁴ Amici previously filed one amicus brief in this proceeding to present their position that appointing a federal receiver is necessary to preserve the rule of law, and to emphasize that a receiver’s work must be done in parallel with the Defendants’ legal obligation to close Rikers Island. *See* Brief of Amici Curiae New York City Bar Association and Vera Institute of Justice at 2, ECF No. 646.

⁵ Consent Judgment, ECF No. 249 (entered on October 2, 2015).

⁶ Nov. 22, 2024 Status Report by the *Nunez* Independent Monitor at 2, 3, ECF No. 802 [hereinafter “Monitor’s Nov. 22, 2024 Rep.”].

inconsistent efforts to comply with Court orders designed to remedy consistently unconstitutional levels of violence and disorder in the jails.”⁷ The Court found DOC in contempt of court and instructed the parties to provide briefing on the appropriate framework for a receivership.⁸

The identity of any receiver is just as critical as the scope of receivership. As the Court observed in the Contempt Order, the history of the monitorship to date “leave[s] 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.”⁹ Therefore, the receiver must be someone free of any existing attachments to the power structures—city government and leaders, as well as labor unions—whose influence is always present and whose interests may conflict, at times, with the fundamental purpose of receivership:¹⁰ bringing DOC into compliance with the Court’s orders by keeping everyone at DOC’s facilities safe. Prior Commissioners, even when

⁷ Opinion and Order on Motion for Contempt at 50, ECF No. 803 [hereinafter “Contempt Order”].

⁸ *Id.* at 58.

⁹ *Id.* at 55. This Court further observed 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.” Contempt Order at 55-56, ECF No. 803 (emphasis added).

¹⁰ *See, e.g.*, Amici Curiae Brief of Former New York City Officials with Oversight for New York City’s Jails in Support of Appointment of a Receiver at 7-14, ECF No. 642 [hereinafter “Oversight Officials Brief”]; *see also* Jan Ransom, *Jail Unions Gain a Powerful Supporter: The New Mayor*, N.Y. Times (Jan. 14, 2022), <https://www.nytimes.com/2022/01/14/nyregion/rikers-jail-unions-eric-adams.html>; Reuven Blau, *Correction Officers’ Union Donated to Council Members Who Oppose Rikers Receivership*, The City (Aug. 9, 2023), <https://www.thecity.nyc/2023/08/09/correction-union-donations-rikers-receiver>; Chris Glorioso & Kristina Pavlovic, *Documents Show NYC Correction Officers Skipped Work for 4-8 Months At a Time*, NBC N.Y. (Feb. 18, 2022), <https://www.nbcnewyork.com/investigations/i-team-jail-documents-show-nyc-correction-officers-skipped-work-for-4-8-months-at-a-time/3560214/> (discussing firing of Deputy Commissioner Sarena Townsend, who was praised—including by the Monitor—for her handling of disciplinary matters, but was criticized by correction officers’ unions); Michael Schwirtz & Michael Winerip, *At Rikers Island, Union Chief’s Clout Is a Roadblock to Reform*, N.Y. Times (Dec. 14, 2014), <https://www.nytimes.com/2014/12/15/nyregion/at-rikers-a-roadblock-to-reform.html>.

acting in good faith, have proven unable to provide constitutionally-required safety to those incarcerated. Indeed, since the Monitoring Team began its work, the City has appointed five different DOC Commissioners. Each time, the Monitor expressed optimism, but by the end of each Commissioner's tenure, progress was insufficient or nonexistent.¹¹

Only an independent receiver, free from conflicting interests, pressures, and the instability that inevitably arises from changing administrations¹² will be able to bring the DOC into compliance with the rule of law.

I. Independence From Existing Stakeholders Will Be The Hallmark Of A Successful Receivership.

The “pattern” of DOC Commissioners’ failures to date, together with press reporting around a purported effort by City political officials to have the current Commissioner appointed as the receiver (reportedly dubbed “Operation Lynelle”),¹³ demonstrate that “sustainable progress in achieving the transformative change necessary to bring [the DOC] into compliance with court orders”¹⁴ is currently stymied by DOC insiders’ allegiances and internal pressure from DOC stakeholders. The Monitor has observed improvements in DOC leadership’s “transparency and

¹¹ Cf. Memorandum of Law in Reply to Defendants’ Opposition to Plaintiffs’ Motion for Contempt and Application for Appointment of a Receiver at 9-10, ECF No. 716 (describing purported reforms touted by Defendants that in fact have not come to pass).

¹² New York City will hold a mayoral election this year. As the Court has previously observed, “[r]estarting the clock on reform because a new administration has taken office . . . can’t be the answer.” Apr. 26, 2022 Status Conference Tr. at 8:14-16, ECF No. 456.

¹³ See, e.g., Graham Rayman, *As federal takeover of Rikers looms, NYC scrambling to keep current leadership in charge*, N.Y. Daily News (Dec. 11, 2024), <https://www.nydailynews.com/2024/12/11/as-federal-takeover-of-rikers-looms-nyc-scrambling-to-keep-current-leadership-in-charge>; N.Y. Daily News Ed. Bd., *Rikers needs new leadership: Keeping current commissioner as federal receiver defeats the purpose*, N.Y. Daily News (Dec. 13, 2024), <https://www.nydailynews.com/2024/12/13/rikers-needs-new-leadership-keeping-current-commissioner-as-federal-receiver-defeats-the-purpose>. In its January 24 submission, the City in fact proposed retaining the present Commissioner in both her current role and a new role as “Compliance Director.” Defendants’ Memorandum In Support Of Their Proposal To Establish A Court-Appointed Compliance Director at 8, ECF No. 811-12.

¹⁴ Contempt Order at 42, ECF No. 803.

initiative” under new DOC Commissioner Lynelle Maginley-Liddie.¹⁵ However, as this Court has recognized, “prior DOC Commissioners earned similar praise from the Monitoring Team early in their tenures but ultimately did not succeed in effecting improvements in compliance with the court orders.”¹⁶ Unfortunately, even a truly well-intentioned leader cannot force change if they are beholden to interests that may be opposed to that change.¹⁷ Independent decision making, free from the influence of the DOC and City political power, is therefore critical for the receiver’s success.¹⁸

For example, the Monitoring Team has stated that “staffing is the essential element to reform.”¹⁹ DOC employs more correction officers than the number of people it incarcerates, yet still suffers from a lack of coverage.²⁰ Nevertheless, and notwithstanding other improvements under Commissioner Maginley-Liddie’s leadership, the Contempt Order makes clear that DOC has remained unable to correct these chronic staffing issues—and in fact has failed to “compl[y] with any of the staffing provisions of the Action Plan.”²¹ Therefore, any meaningful attempt to bring the chaos at DOC into order will require tackling this problem head-on, including disregarding longstanding staffing practices that prioritize favoritism and seniority over sound

¹⁵ Monitor’s Nov. 22, 2024 Rep. at 49, ECF No. 802.

¹⁶ Contempt Order at 42, ECF No. 803.

¹⁷ *Cf.* Status Report by the *Nunez* Independent Monitor at 17, ECF No. 811 (observing that the receiver will need to make decisions that “may be unpopular with various stakeholders, including political actors such as those in City Hall or the legislature, as well as staff, the unions that represent them, advocates, and others,” and therefore “must be prepared to make difficult decisions despite strong, and perhaps persistent, opposition or pressure from various stakeholders.”).

¹⁸ *See* July 10, 2023 Special Report by the *Nunez* Independent Monitor at 143, ECF No. 557 [hereinafter “Monitor’s July 10, 2023 Rep.”] (noting that the pace of reform cannot accelerate to the appropriate level “within the confines of current structures”).

¹⁹ Apr. 18, 2024 Status Report by the *Nunez* Independent Monitor at 17, ECF No. 706 (emphasis in original).

²⁰ Contempt Order at 31, ECF No. 803.

²¹ *Id.* at 32 (emphasis added).

correctional practices. Ultimately, this means the receiver will doubtless face confrontation with labor unions and other stakeholders who favor the old, less safe, and less effective ways of staffing the jails that only an independent receiver will be able to effectively resolve.²²

Among other things, the Action Plan requires DOC to limit the use of awarded posts “so that [such posts] are primarily utilized for those positions in which a particular skill set is required,”²³ in no small part because awarded posts currently appear to be used as perks allowing experienced staff to take less-challenging roles—thus placing “less experienced personnel in the more volatile settings.”²⁴ Yet DOC apparently has not reduced the number of awarded posts *at all*, and the Commissioner vaguely stated in a sworn declaration that this was because “awarded posts have benefit[s]” and claimed “the requirement to reduce them ‘may warrant modification.’”²⁵ In a development perhaps not unrelated to the City’s position on this topic, the powerful Correction Officers Benevolent Association has made securing awarded posts a priority.²⁶

Additionally, and in spite of the Court’s orders, DOC has apparently made no meaningful effort to change the “4 by 2” work schedule (four days on the job followed by two days off) contemplated by the union’s collective bargaining agreements.²⁷ As the Monitor has recognized,

²² See Oversight Officials Brief at 11, ECF No. 642 (describing City as “either unwilling or unable to accomplish” negotiations with the unions that would allow compliance with the Monitor’s orders).

²³ Order: Action Plan at 10, ECF No. 465.

²⁴ Contempt Order at 32, ECF No. 803.

²⁵ *Id.* (quoting Decl. of Lynelle Maginley-Liddie ¶ 62, ECF No. 689-1).

²⁶ May 24, 2024 Update by the *Nunez* Independent Monitor at 26, ECF No. 712 (noting that COBA had publicly claimed that its newly negotiated contract—which had been kept from the Monitor—would include “guaranteed and contractually protected post awards” . . . for the first time in COBA’s history.”).

²⁷ Aug. 7, 2023 Special Report by the *Nunez* Independent Monitor at 16-17, ECF No. 561; Memorandum of Law in Support of Plaintiffs’ Motion for Contempt and Application for Appointment of a Receiver at 41-42, ECF No. 603; Monitor’s Nov. 22, 2024 Rep. at 20-21, ECF No. 802; Contempt Order at 33 & n.32, ECF No. 803.

these labor agreements “contribute to [DOC’s] continued inability to properly staff its facilities,”²⁸ and DOC leaders are severely hobbled in their efforts to right the ship.²⁹ And as the Court has noted, it does not appear that DOC has discussed the changes needed to the union agreements, nor has DOC “sought a waiver of relevant legal requirements” necessary to effect the scheduling change.³⁰ While the Commissioner declared in March 2024 that she was “likely to exercise” her ability to seek such waivers to effect the necessary changes, this never came to pass.³¹ The technical ability to effect a policy change does not equate to practical willingness to do so.

History has shown that non-independent leadership has struggled and will inevitably continue to struggle to bring DOC into compliance with constitutional standards and this Court’s orders.³² The receiver must be independent from DOC and City political power.

II. An Independent Receiver Can Ensure Adherence To Local Laws, Rules, And Regulations Governing Jail Operations And Conditions Of Confinement.

Consistency in authority is also necessary to bring DOC into adherence with local laws, rules, and regulations which City officials have passed in an effort to stem violence at Rikers. As this Court has recognized, the “glacial” pace of reform to date can be explained in part by the revolving door of DOC leadership, which has changed materially a number of times over the life of the Court’s orders.³³ This has resulted in initiatives being created, changed or abandoned, and

²⁸ Aug. 7, 2023 Special Report by the Nunez Independent Monitor at 17, ECF No. 561; *see also* Sara Norman et al., *Can A Receiver Bring Enduring Change for the Better?*, Vital City (Oct. 16, 2024), <https://www.vitalcitynyc.org/articles/can-a-receiver-bring-enduring-change-for-the-better> (opinion of Zachary Carter).

²⁹ *See e.g.*, Monitor’s July 10, 2023 Rep. at 144-45, ECF No. 557; July 30, 2024 Proposed Findings of Fact in Support of Plaintiffs’ Motion for Contempt and Appointment of a Receiver ¶¶ 1057-80, ECF No. 762-2 (describing a list of failed, never-instituted, or ineffective DOC initiatives over the various monitoring periods).

³⁰ Contempt Order, ECF No. 803 at 33 n. 32.

³¹ Declaration of Lynelle Maginley-Liddie ¶ 65, ECF No. 689-1.

³² *See* Contempt Order at 55, ECF No. 803.

³³ *Id.* at 43.

then reimagined as ‘new’ ideas by later leadership.³⁴ As noted by the Monitoring Team, this “[p]erpetual[] restarting [of] the clock is antithetical to advancing reform and accelerating progress.”³⁵ An independent receiver will have the power to institute and enforce the consistent policies necessary to effectuate meaningful reform.

A. An Independent Receiver Is Necessary To Ensure The Closure Of Rikers, A Step That Is Both Required By Law And Critical To Changing The Present Culture Of Violence And Dysfunction.

As Amici previously argued to the Court, it is both within the Court’s inherent power and consistent with the Prison Litigation Reform Act for this Court to craft an order instructing the receiver to act consistently with the City’s obligation to close Rikers by August 31, 2027.³⁶ Doing so will help address the unconstitutionally violent conditions that prevail at Rikers today, while also protecting the rights of future incarcerated people and respecting elected officials’ determination to bring the City’s jails into compliance with constitutional requirements over the long term.

There is a real danger that a receiver beholden to DOC officials, city political leaders, or labor unions, will have conflicting interests in moving that process forward. For example, correction officers’ unions have expressed opposition to closing Rikers (perhaps because fewer

³⁴ *Id.* at 47.

³⁵ Monitor’s July 10, 2023 Rep. at 144, ECF No. 557.

³⁶ Brief of Amici Curiae New York City Bar Association and the Vera Institute of Justice at 11-12, ECF No. 646. Given the City’s lack of urgency over the past years in taking the necessary preliminary actions to allow for Rikers to close, it may now be practically unrealistic to stop using the facility as a jail altogether by August 2027 in accordance with City law. But the difficulty of meeting that deadline serves only to emphasize that the receiver’s mandate must include the transition out of Rikers Island.

officers may be needed to staff the future borough-based jails),³⁷ and political figures may feel powerful pressure to avoid conflict with those unions.

A receiver who is beholden to the City’s power structures may in fact be unable to protect the interests of the full class—specifically, the future DOC detainees who are part of the class—because closing Rikers (and opening new borough-based jails, which are designed to reduce violence³⁸) is an important step toward preventing future constitutional violations. If the receiver’s actions were to in any way substantially delay or undercut the closure of Rikers, future detainees’ interests and rights could be substantially harmed, and current detainees would continue to suffer.

B. Independence Will Afford The Receiver A Realistic Opportunity To Bring DOC Into Compliance With Other Laws And Regulations.

The unwillingness of certain executive-branch City stakeholders to advance the timely closure of Rikers is only one example of political intransigence placing DOC out of compliance with legal requirements aimed at reducing violence and human suffering. An independent receiver can overcome that intransigence and implement long-needed and legally-mandated reforms.

For example, DOC was required by City law to largely stop all use of solitary confinement as of July 28, 2024.³⁹ The City Council enacted this legislation upon finding that solitary confinement resulted in “inhumane” risks of mental and physical harm, increased violence, and death.⁴⁰ However, the present mayoral administration has expressed opposition to this legislation

³⁷ See, e.g., Michael Gartland, *Rikers Island closure a ‘land grab’ for developers: union head*, N.Y. Post (Jan. 14, 2018), <https://nypost.com/2018/01/14/rikers-island-closure-a-land-grab-for-developers-union-head/>.

³⁸ See *Closing Rikers: What is the NYC Borough-Based Jail System?*, NYC: A Roadmap to Closing Rikers, <https://rikers.cityofnewyork.us/what-is-the-borough-based-jail-system/>.

³⁹ N.Y.C. Admin. Code § 9-167.

⁴⁰ Press Release, N.Y.C. Council, *New York City Council Votes to Ban Solitary Confinement in City Jails* (Dec. 20, 2023), <https://council.nyc.gov/press/2023/12/20/2532/>; Meg Anderson, *New York City Council votes to ban most instances of solitary confinement*, NPR (Dec. 20, 2023), <https://www.npr.org/2023/12/20/1220789824/new-york-city-council-votes-to-ban-most-instances-of-solitary-confinement>.

(which the City Council passed by a wide margin over the Mayor’s veto).⁴¹ Obviously, eliminating the use of solitary confinement would require practical adjustments and the implementation of policies and practices that could replace this punitive and inhumane measure.⁴² But in an echo of the administration’s slow-walking of steps required to timely close Rikers,⁴³ DOC declined outright to implement policies and practices necessary to comply with the law ahead of the deadline.⁴⁴ And on July 27, 2024—just before the ban was to take effect—the Mayor issued an “Emergency Executive Order” purporting to indefinitely suspend the ban, effectively re-vetoing

⁴¹ Press Release, N.Y.C. Council, *New York City Council Overrides Mayor’s Vetoes on Legislation to Support Police Transparency and Ban Solitary Confinement* (Jan. 30, 2024), <https://council.nyc.gov/press/2024/01/30/2554/>.

⁴² In correspondence to the Mayor’s office, the Monitor expressed some concern that certain parts of the relevant legislation could too abruptly limit the DOC’s ability to appropriately supervise certain incarcerated individuals “with a demonstrated propensity for serious violence,” particularly as DOC works “to address the current dangerous conditions” in its facilities. Monitor’s January 12, 2024 Communication to DOC Commissioner, ECF No. 802 at 272-73 (attached as Appendix F to Monitor’s Nov. 22, 2024 Rep.). In particular, the Monitor voiced concern that immediate compliance with aspects of the law would be difficult because “the Department does not have the necessary foundation to support the *basic* reforms required by the *Nunez* Court Orders.” Monitor’s July 17, 2024 Letter re: LL42 at 309, ECF No. 802 (attached as Appendix G to Monitor’s Nov. 22, 2024 Rep.). The Monitor’s letters did *not* indicate opposition to banning solitary confinement—in fact, the Monitor explicitly acknowledged that this was a “necessary and important” step, *id.* at 268, and “an important expression of the value the City places on all of its residents,” *id.* at 277—or general opposition to the legislation, which the Monitor acknowledged contained “important requirements” *id.* at 271. However, current political leadership appears to have taken the Monitor’s letter as warrant to ignore the legislation outright and continue the use of solitary confinement without so much as a gesture at abatement.

⁴³ See generally Michael Rempel, *Despite undeniable obstacles, Rikers Island can still be closed*, City & State New York (Jan. 14, 2025), <https://www.cityandstateny.com/opinion/2025/01/opinion-despite-undeniable-obstacles-rikers-island-can-still-be-closed/402160/> (“New York City law mandates closing Rikers by Aug. 31, 2027. Yet the Adams administration has failed to schedule the opening of needed replacement jails in the Bronx, Brooklyn, and Queens until 2031, and it still has not finalized a contract for building the fourth jail slated for Manhattan.”).

⁴⁴ See, e.g., Reuven Blau & Katie Honan, *Rikers Officials Never Took Basic Steps to Comply With Solitary Ban*, The City (July 29, 2024), <https://www.thecity.nyc/2024/07/29/rikers-solitary-confinement-ban-adams-executive-order/>.

the bill in defiance of the City Council's override.⁴⁵ A receiver beholden to the present administration would be under immense pressure to maintain that administration's policy favoring solitary confinement at the expense of the rule of law. An independent receiver, however, can set aside City politics and work toward the implementation of the ban on solitary confinement in its current form, or, if the receiver believes adjustments are needed, in an amended form worked out with the City Council.

An independent receiver will also be able to restore required programming that has been slashed by DOC. City law requires DOC to provide every person "incarcerated for more than 10 days a minimum of five hours per day of incarcerated individual programming or education."⁴⁶ Compliance with this City law is not only required to uphold the rule of law but also represents a common-sense step to minimize violence at Rikers, as such programming can significantly reduce violence in carceral settings.⁴⁷ DOC, however, has consistently failed to put in place sufficient programming to comply with the law.⁴⁸ Not only that, in 2023 DOC terminated its contracts with the nonprofits that were providing the limited programming DOC previously *did* make available,⁴⁹

⁴⁵ N.Y.C. Office of the Mayor, Emergency Executive Order No. 625 (July 27, 2024), <https://www.nyc.gov/office-of-the-mayor/news/625-003/emergency-executive-order-625>.

⁴⁶ N.Y.C. Admin. Code § 9-110.

⁴⁷ See Amanda Pompoco et. al., *Reducing Inmate Misconduct and Prison Returns with Facility Education Programs*, 16 *Criminology & Pub. Pol'y* 515, 534-38 (May 22, 2017), <https://doi.org/10.1111/1745-9133.12290>.

⁴⁸ See, Jacob Kaye, *Jail programming suffers a year after DOC cut nonprofit contract*, *Queens Daily Eagle* (May 20, 2024), <https://queenseagle.com/all/2024/5/20/jail-programming-suffers-a-year-after-doc-cut-nonprofit-contract>.

⁴⁹ See Sam Mellins, *Rikers Programs Suffer After Cuts, Despite Mayor's Promises*, *N.Y. Focus* (Sept. 28, 2023), <https://nysfocus.com/2023/09/28/rikers-eric-adams-budget-cuts-courses>; Matt Katz, *Mayor Adams cuts classes and re-entry services at Rikers to save \$17 million in NYC budget*, *Gothamist* (May 16, 2023), <https://gothamist.com/news/mayor-adams-cuts-classes-and-re-entry-services-at-rikers-to-save-17-million-in-nyc-budget>.

leaving those incarcerated at Rikers “isolated and idle” and risking further increases in violence.⁵⁰

While the administration later announced that it would restore a portion of the funding previously dedicated to programming,⁵¹ the City remains far from compliant with its clear-cut legal obligation to provide at least five hours of programming to every detainee. An independent receiver will be empowered to direct DOC’s resources toward this critical programming.⁵²

These two examples are emblematic of a City administration whose actions and inaction necessitate the appointment of a receiver. An independent receiver will, as part of its efforts to bring DOC into compliance with this Court’s orders, have the power to enforce laws passed by the City Council that serve the same ends.

CONCLUSION

Amici respectfully submit that any receiver appointed to manage DOC must be fully independent of City power structures, including DOC officials, City government, leaders, and

⁵⁰ See Jessie Edwards, *Rikers detainees are isolated and idle after programming budget cuts, advocates tell NYC Council*, Gothamist (Oct. 4, 2023), <https://gothamist.com/news/rikers-detainees-are-isolated-and-idle-after-programming-budget-cuts-advocates-tell-nyc-council>; see Jacob Kaye, *Jail programming suffers a year after DOC cut nonprofit contract*, Queens Daily Eagle (May 20, 2024), <https://queenseagle.com/all/2024/5/20/jail-programming-suffers-a-year-after-doc-cut-nonprofit-contract>.

⁵¹ Press Release, N.Y.C. Office of the Mayor, *Mayor Adams Announces Progress to Improve Care and Services for People in Custody, Advances Plans for Future Uses of Rikers Island* (Mar. 4, 2024), <https://www.nyc.gov/office-of-the-mayor/news/164-24/mayor-adams-progress-improve-care-services-people-custody-advances-plans>; Graham Rayman, *NYC poised to restore Rikers, jails counseling funding slashed in 2023*, N.Y. Daily News (Mar. 7, 2024), <https://www.nydailynews.com/2024/03/07/nyc-poised-to-restore-rikers-jails-counseling-funding-slashed-in-2023/>.

⁵² See, e.g., Lois M. David et al., Rand Corp., *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults* xviii-xix (2013), https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/RAND_Correctional-Education-Meta-Analysis.pdf; Sheila A. French & Paul Gendreau, *Reducing Prison Misconduct: What Works!*, 33 *Crim. Just. & Behavior* 185, 200, 208 (2006); Wendy Erisman & Jeanne Bayer Contardo, Inst. for Higher Ed. Pol’y, *Learning to Reduce Recidivism: A 50-State Analysis of Postsecondary Correctional Education Policy* v-vii (Nov. 2005), <http://www.ihep.org/sites/default/files/uploads/docs/pubs/learningreducerecidivism.pdf>.

labor unions. Any lesser step would risk a failure to transcend the dysfunction and retrenchment that have characterized defendants' response to this Court's orders.

Dated: February 7, 2025

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EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARK NUNEZ, *et al.*,

Plaintiffs,

v.

THE CITY OF NEW YORK, *et al.*,

Defendants.

No. 11 Civ. 5845 (LTS)(JCF)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

THE CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF CORRECTION,

Defendants.

**[PROPOSED] ORDER GRANTING MOTION FOR LEAVE
TO FILE AMICUS CURIAE BRIEF**

The New York City Bar Association and the Vera Institute of Justice (collectively, “amici”) brought this motion for leave to file a brief as amici curiae in response to the Court’s Opinion and Order on Motion for Contempt, ECF No. 803, and the parties’ submissions in response thereto. This Court, having considered the instant motion and all other relevant factors, hereby GRANTS amici’s motion. Amici are directed to promptly file the brief, in the form that accompanied their application for leave, on the docket in this matter.

IT IS SO ORDERED.

Dated: _____, 2025

By: _____
The Honorable Laura Taylor Swain
United States District Judge