

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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November 22, 2021

The Honorable Michael McMahon
Richmond County District Attorney
130 Stuyvesant Place
Staten Island, NY 10301

Dear District Attorney McMahon:

We write to request a briefing from your office on the use of money bail in the New York City court system and its impact on the health, safety, and civil rights of New Yorkers. We have grave concerns that excessive bail amounts are leading to unnecessary pretrial detention and contributing to a humanitarian crisis in New York City's jail system, particularly on Rikers Island. Fourteen people have died this year in the custody of the New York City Department of Correction (DOC).¹

There are currently over 5,400 people in custody in New York City's jails—a steep increase from the 3,809 people in detention in April 2020—largely due to the increase in the number of pretrial detainees.² More than three-quarters of individuals in custody have not been convicted of any crime and are confined in unsafe conditions simply because they cannot afford cash bail.³ According to DOC, nearly 1,000 detainees have been in custody awaiting trial for

¹ *N.Y.C. Jail Deaths Climb to 14 as Detainee Is Taken off Life Support*, New York Times (Oct. 18, 2021) (online at www.nytimes.com/2021/10/18/nyregion/rikers-death-toll.html).

² Vera Institute of Justice, *People in Jail in New York City: Daily Snapshot* (online at <https://greaterjusticenyc.vera.org/nycjail/>) (accessed Nov. 8, 2021); Center for Court Innovation, *One Year Later: Bail Reform and Judicial Decision-Making in New York City* (Apr. 2021) (online at www.courtinnovation.org/sites/default/files/media/document/2021/One_Year_Bail_Reform_NYS.pdf); Vera Institute of Justice, *Empire State of Incarceration*, (Feb. 18, 2021) (online at www.vera.org/empire-state-of-incarceration-2021).

³ *An "Absolute Emergency" at Rikers Island as Violence Increases*, New York Times (Oct. 11, 2021) (online at www.nytimes.com/2021/08/24/nyregion/rikers-island-emergency-chaos.html).

over 600 days.⁴ Faced with long periods of incarceration before their cases are resolved, many of these individuals reportedly accept plea deals, even if they are innocent.⁵

Approximately 4,800 detainees—more than 85% of the detainees in New York City—are held on Rikers Island, a severely understaffed complex of eight buildings.⁶ Over the last few months, conditions on Rikers Island have deteriorated dramatically, raising concerns about the safety and security of staff and detainees. Overcrowding and staffing shortages on the island have led to violent incidents within Rikers Island facilities, calling into question whether anyone can be safely held there without immediate changes.⁷ On September 27, 2021, we wrote to Mayor Bill de Blasio and DOC Commissioner Vincent Schiraldi, detailing our concerns about the collapse of basic jail operations on Rikers Island and urging them to address the overcrowding and inhumane conditions by releasing low-level offenders into supervised programs.⁸

The overcrowding in New York City’s jails is due, in part, to prosecutors who continue to seek excessive cash bail, resulting in increased rates of incarceration, particularly for low-income defendants.⁹ According to reports, prosecutors—including those in your office—often fail to take into consideration defendants’ ability to pay when deciding whether to request cash bail.¹⁰ For example, one prosecutor reportedly sought \$5,000 dollars bail for a defendant charged with stealing a sandwich and three drinks from a grocery store.¹¹ In 2020, 85% of people detained pretrial in New York City jails could not afford bail at arraignment.¹² High bail

⁴ *Rikers Wrath: Families, Advocates Demand Mayor Immediately Reduce Prison Population*, AM New York (Aug. 31, 2021) (online at www.amny.com/news/rikers-wrath-families-a-advocates-demand-mayor-immediately-reduce-prison-population/).

⁵ *Can’t Buy Freedom: Pols, Justice Activists Call on DAs to End Cash Bail System for Low-Level Offenders*, AM New York (Oct. 6, 2021) (online at www.amny.com/new-york/manhattan-da-protest-cash-bail-system/).

⁶ *Inside Rikers: Dysfunction, Lawlessness and Detainees in Control*, New York Times (Nov. 8, 2021) (online at www.nytimes.com/2021/10/11/nyregion/rikers-detainees-correction-officers.html).

⁷ *Id.*

⁸ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, et al., to Mayor Bill de Blasio, New York City, and Commissioner Vincent Schiraldi, New York City Department of Correction (Sept. 27, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-09-27.CBM%20JR%20AOC%20to%20de%20Blasio%20Schiraldi-NYC%20re%20Rikers%20Island%20Conditions.pdf>).

⁹ *As Rikers Crisis Persists, Prosecutors Continue to Request High Bail*, New York Focus (Sept. 24, 2021) (online at www.nysfocus.com/2021/09/24/rikers-crisis-prosecutors-bail/).

¹⁰ Vera Institute of Justice, *A Means to an End: Assessing the Ability to Pay Bail* (Dec. 2019) (online at www.vera.org/downloads/publications/a-means-to-an-end-assessing-the-ability-to-pay-bail.pdf).

¹¹ *New York’s Most Desperate Caught Up in ‘Crimes of Poverty’*, The City (Oct. 14, 2019) (online at <https://www.thecity.nyc/justice/2019/10/14/21210757/new-york-s-most-desperate-caught-up-in-crimes-of-poverty>).

¹² Brooklyn Community Bail Fund, *Breaking Down the New York City Punishment Machine* (Aug. 2021) (online at https://static1.squarespace.com/static/5a21b2c1b1ffb67b3f4b2d16/t/611d6293b70904730ab70496/1629315731303/au+2021_Courtwatch_Zine.pdf).

amounts lead to a two-tiered system of justice, with those who can afford bail being able to escape the inhumane conditions at pretrial detention facilities such as Rikers Island while those who cannot afford bail are forced to remain.¹³

We urge you, the top law enforcement officer in the Bronx, to direct prosecutors in your office to seek new bail hearings for, and consent to the release of, all detainees who are charged with misdemeanors or non-violent felonies, as well as those who face significant health risks due to the coronavirus. Condemning thousands of individuals to languish in an environment plagued by persistent overcrowding and mounting violence as they await trial is not acceptable and risks violating the federal civil rights of these individuals.¹⁴ If these conditions are not addressed, federal intervention may be necessary to protect detainees from additional harm.¹⁵

We request that your office provide a briefing for Committee staff by December 10, 2021, to address the following questions:

1. What steps did your office take to reduce the jail population in New York City in 2020?
2. What steps has your office taken to reduce the jail population in New York City since January 2021?
3. What criteria does your office use to determine whether a defendant is eligible for supervised release?
4. How does your office handle cases for defendants with significant health risks?
5. What is your office doing to address case processing delays and to promote disposition of cases within six months?
6. How many people being prosecuted by your office have been held in pretrial detention for more than six months?
7. How many people being prosecuted by your office have been held in pretrial detention for more than a year?
8. What guidelines does your office use to inform bail recommendations?

¹³ Center for Court Innovation, *One Year Later: Bail Reform and Judicial Decision-Making in New York City* (Apr. 2021) (online at www.courtinnovation.org/sites/default/files/media/document/2021/One_Year_Bail_Reform_NYS.pdf).

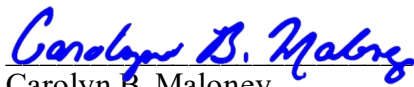
¹⁴ See, e.g., *Staffing Dysfunction and Unsafe Conditions Lead to Crisis on Rikers Island*, Spectrum News NY1 (Sept. 9, 2021) (online at www.ny1.com/nyc/all-boroughs/public-safety/2021/09/10/rikers-island-staffing-issues-correction-officers-calling-out-unsafe-conditions-what-happened).

¹⁵ See Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997a (authorizing the Department of Justice to bring federal enforcement actions to protect individuals' civil rights that are violated by patterns or practices of "egregious or flagrant conditions" in state and local institutions).

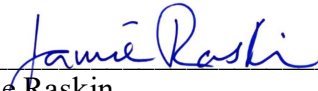
9. What steps is your office taking to limit bail requests for defendants who pose no flight risk?
10. What steps is your office taking to release people serving jail sentences of less than a year into the 6-A Early Release Program?

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties



Alexandria Ocasio-Cortez
Member of Congress

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Nancy Mace, Ranking Member
Subcommittee on Civil Rights and Civil Liberties