



OFFICE OF THE DISTRICT
ATTORNEY
RICHMOND COUNTY

MICHAEL E. MCMAHON
DISTRICT ATTORNEY

December 15, 2021

Via Email and First Class Mail

Representative Carolyn B. Maloney
Representative Jamie Raskin
Representative Alexandria Ocasio-Cortez
Congress of the United States
House of Representatives
Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: Steps to Address the Crisis at Rikers Island

Dear Rep. Carolyn B. Maloney, Rep. Jamie Raskin, and Rep. Alexandria Ocasio-Cortez:

I am in receipt of your email and attached letter from you as Subcommittee Chairs of the U.S. House of Representatives' Committee on Oversight and Reform regarding the ongoing issues at Rikers Island. Let me say at the outset, that I was deeply disappointed to have received a press inquiry within twenty minutes of receiving your staff member's email. When I served in Congress, we did not govern by press release or try to feed the beast of social media advocacy with posts and tweets to satiate its hunger. Sadly, it appears that has changed. Quite honestly, the life and death issues I deal with every day in my office, and that affect your constituents, are too important to play "gotcha" politics with. Perhaps by my imparting some wisdom from my experience to you on the critical issues you choose to politicize so blatantly you can find solutions, not social media hits.

So, regarding the ongoing conditions at Rikers Island, I certainly share the concerns of this Committee for the safety of both those who work in our City's jails as well as those incarcerated there. To that point, I toured the facilities at Rikers Island along with some of my fellow District Attorneys and other prosecutors, and the conditions we witnessed were simply unacceptable. While I am in full agreement that immediate steps must be taken to address this crisis, I must voice my extreme disappointment in this Committee's attempt to use this emergency as an opportunity to push the false narrative that prosecutors are to blame for the tragic loss of life and deteriorating situation unfolding inside Rikers.

As mentioned, I am a former member of Congress, and I am saddened over how this Committee and other elected officials have used their positions of power to completely disregard public safety and victims of crime in an effort to appeal to their baseline supporters. This misinformed and transparent attempt to cling to "progressive bonafides" is especially offensive when all 5 NYC DA's have repeatedly called for meaningful reforms like ending cash bail in favor of a system that actually promotes public safety. I am at a loss as to why so much of your ire is directed towards us when the larger issue has been the inaction of the State Legislature to grant judges discretion to consider whether a person poses a threat to public safety in deciding whether to hold them.

Moreover, after my visit to Rikers, I urgently called on the Mayor and other City officials to adequately fund and staff the Department of Corrections in terms of both staffing and physical conditions. To be clear, that is where the lion's share of responsibility for creating and fostering a safe environment on Rikers Island lies — not with prosecutors, not with the defense bar, and not with the courts. It is incumbent upon them to execute their responsibilities in maintaining a safe and humane environment for those incarcerated at Rikers Island, as well as the Department of Corrections staff who serve there. Perhaps you should focus your attention there, and work to provide resources to make conditions better.

With respect to my office's bail practices, my ADAs have been trained to formulate bail recommendations at arraignment only after a careful evaluation of the facts, proof, and circumstances of the crimes for which the defendant stands accused, and a review of the law and the defendant's risk of flight. They are fully aware of the new regime after the enactment of the criminal justice reform package from January 2020 as well as the amendments made thereafter. It is my firm belief, and our practice, that we should not automatically ask for bail merely because a top-charge is "bail eligible." In fact, I can report that approximately 93 percent of all individuals my office is currently prosecuting are at liberty, either because they were ROR'd at arraignment, were placed on supervised release or electronic monitoring, or made bail when the Court deemed bail to be appropriate. And, contrary to the impression given by your letter, prosecutors are not filling Rikers with individuals accused of low-level crimes. Of the individuals currently at Rikers

on pending Staten Island cases, 99% are charged with felonies and many have multiple open cases. The remaining 1%, or 3 cases, include: a domestic violence case where our office requested supervised release instead of bail and has agreed to offer a mental health alternative to incarceration program on multiple occasions, pending screening of the defendant. The judge declined to offer supervised release and Defense has failed to send their client for the requisite screening over the course of several months. The second is a case where the defendant was offered a treatment diversion offer but failed to appear at the treatment facility on multiple occasions, which led the judge to make the decision to remand them. And, the third is a case that is pending the results of a 730 exam of a defendant who is alleged to have forcibly touched a 15-year old girl, a stranger, on public transportation, among other related charges.

Rest assured that rather than hardline policies that ignore the particular facts and circumstances of each individual matter, I have always encouraged constructive dialogue between defense counsel and my ADAs regarding the specific equities of a particular case. These conversations have a variety of outcomes, but I believe it is always healthy for my ADAs to hear different perspectives presented to them as they formulate their recommendations and decisions. As prosecutors, it is our sworn duty to pursue the facts of a case in order to deliver justice for victims of crime. This Committee's notion that my office seeks excessive bail without weighing any other facts or circumstances of a case is entirely false and deeply offensive to the dedicated men and women of this office who work tirelessly every day to make Staten Island and New York City a safer place to live.

It is difficult to even take this Committee's letter seriously when it misrepresents the facts of a case that appeared before my office, while also entirely ignoring that the sole purpose of bail in New York is to ensure a defendant returns to court. Regarding the case in question, bail was requested because the defendant on three separate occasions failed to appear in court. As was also conveniently omitted in your letter, the Legal Aid Society allowed their client in this case to plead guilty to the top count, an A-misdemeanor, without making any request to connect this defendant with services or other alternative to incarceration programs, of which my office offers over thirty different programming options. As I said publicly at the time, it is a shame that so-called criminal justice reformers have resorted to willfully distorting the truth to fit their predetermined narrative, and it appears that little has changed in the two years since this case was adjudicated, which by the way, was prior to the implementation of the existing bail laws and post-pandemic conditions at Rikers. Your citation of this case sensationalizes false narratives and misinformation, and honestly makes me question whether you simply inserted language in your letter proffered to you by uninformed advocates or Twitter without fact checking. If this is true, it is shameful and unworthy of your office.

With respect to bail and sentencing, I am proud to report that approximately forty percent of all of my office's dispositions involve defendant enrollment in a wide array of diversion programming, which I have established in my nearly 6 years as District Attorney. These programs include the HOPE Program, HOPE 2.0, Project Reset, OAR, Staten Island Treatment Court, Veterans Treatment Court, Mental Health Court, the Driver Accountability Program, the Theft Accountability Program, Restitution, Community Service, and the Anger Management Program, to name but a few. These programs exist because we recognize that addressing the underlying causes of criminal behavior is often a better path forward than incarceration. My ADAs are encouraged to evaluate each case on the merits and equities, and to consider these alternative to incarceration programs pre-arraignment, post-arraignment, as well as at sentencing. To be sure, we could use federal dollars to support and expand the services these programs offer.

Ultimately, it is the goal of every actor in our criminal justice system to ensure justice is achieved by moving cases toward their speediest possible resolution while not sacrificing fairness or a thorough review of the facts. As we continue to move past the COVID era, I can report my office has tried 7 felony cases to verdict in the past few months, 2 of which were murder cases, and a 3rd which involved the sexual assault of young children. My ADAs have been and remain ready to try even more cases as we turn the corner into the new year. I deeply disagree with, and would challenge any assertion that delays in moving cases through the criminal justice system fall at the feet of my office. In fact, if you knew the criminal justice system, you would know that prosecutors do not seek to delay!

I thank you and the Committee Chairs again for your concerns relating to the conditions on Rikers, but I refuse to accept the assertion that the only solution to this crisis is the wholesale release of all incarcerated individuals. This outlandish proposal ignores the rights of crime victims and poses a serious threat to public safety at a time when shootings and other violent crime continue to impact too many communities, especially those of the poor and of people of color. We remain ready, willing, and committed to sitting down with all relevant stakeholders to chart a better course forward for victims of crime, the public, defendants, and all New Yorkers, as we emerge from the pandemic into a brighter future.

Sincerely,



Michael E. McMahon
District Attorney
Richmond County

Encl.

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

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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).

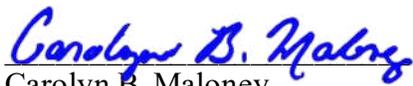
¹⁴ See, e.g., *Staffing Dysfunction and Unsafe Conditions Lead to Crisis on Rikers Island*, Spectrum News NY1 (Sept. 9, 2021) (online at www.ny1.com/nyc/all-boroughs/public-safety/2021/09/10/rikers-island-staffing-issues-correction-officers-calling-out-unsafe-conditions-what-happened).

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.

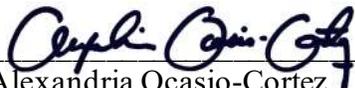
Sincerely,



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