

KEENAN & BHATIA, LLC

90 Broad Street, Suite 200
New York, NY 10004
Tel: (917) 975-5278

929 Walnut Street, Suite 5107
Kansas City, MO 64106
Tel: (816) 809-2100

www.keenanbhatia.com

BY CM/ECF

February 9, 2021

The Honorable Katherine Polk Failla
United States District Judge
Southern District of New York

RE: *Azor-El, et al. v. City of New York, et al.*, 1:20-cv-03650-KPF (and related cases)
Supplemental Information Regarding Staff Testing at Rikers and Housing Density

Dear Judge Failla:

This firm represents various Plaintiffs in this pending set of consolidated cases regarding conditions at Rikers Island. Plaintiffs filed their Motion for Preliminary Injunction. (Doc. 65 in *Azor-El*.) The Court has entered a briefing schedule and scheduled a hearing for tomorrow, February 10, 2021. (Doc. 68 in *Azor-El*.)

In advance of the hearing, Plaintiffs would like to present the Court with supplemental information regarding Defendants' COVID-19 testing strategy for staff which Plaintiffs' team has just recently had the opportunity to review, including a Board of Correction video from today.

The New York City Board of Correction ("BOC") holds public meetings each month. On January 12, 2021, DOC Deputy Commissioner Feeney and DOC Commissioner Brann attended the meeting and made statements relevant to this case. The Court can access the recording of this meeting at: <https://www1.nyc.gov/site/boc/meetings/january-12-2021.page>. The portion of the meeting relevant to this letter is at time marks 1:17:30 through 1:21:27.

Board Member Steven Safyer, MD, raised a question about the DOC's lack of regular staff testing. He stated, "We should be blowing the tests out of the park for everybody's safety." In response, Commissioner Brann stated, "I don't disagree with you. However, I think we would probably step right into some labor issues..." Commissioner Brann immediately added that she is not a labor law attorney or an expert on labor issues.

Right after this exchange, another question was asked regarding the DOC's policies surrounding staff who are identified through DOC/CHS contact-tracing as having had close contact with someone who has COVID-19. Deputy Commissioner Feeney answered the question as follows: "If staff members are asymptomatic and are essential City personnel, they continue to come to work." After someone sitting with Deputy Commissioner Feeney whispered the words "and

encouraged to be tested,” she repeated “and encouraged to be tested.”

DOC representatives were then asked a follow-up question about staff: “There is not mandatory testing required for that group, where we know that they have been exposed, or there is no period of time that they are out post-exposure to identify whether symptoms develop?” Deputy Commissioner Feeney responded: “No, not at this time.”

In other words, even if Defendants have identified and *are aware* that a staff member has been exposed to COVID-19, Defendants do not mandate that this staff member get tested, but do not even require the staff member to quarantine/stay home from work. Thirty percent of people with COVID are asymptomatic,¹ and fifty percent of COVID cases may be transmitted by asymptomatic carriers.² Plaintiffs believe that the City’s admission to knowingly allowing exposed staff members, who may or may not have COVID, to keep working without testing or quarantine, shows deliberate indifference.

Today, February 9, 2021, the BOC held another public meeting. The Court can access the recording of this meeting at: <https://www1.nyc.gov/site/boc/meetings/february-9-2021.page>. The portion of the meeting relevant to this letter is at time marks 1:18:20 through 1:22:10.

In this meeting, DOC admitted that it does not have any policy mandating that NIC capacity remain below 50 percent.

Plaintiffs respectfully request that the Court take note of this supplemental information in its consideration of Plaintiffs’ Motion for Preliminary Injunction. (Doc. 65 in *Azor-El*.)

Respectfully submitted,

KEENAN & BHATIA, LLC

By: /s/ E.E. Keenan

Attorney for Plaintiffs

Cc: Counsel of Record (by ECF)

¹ <https://hartfordhealthcare.org/about-us/news-press/news-detail?articleid=29806&publicId=395>

² <https://www.northwell.edu/news/in-the-news/over-half-of-covid-transmission-may-occur-via-asymptomatic-people>