

OFFICE OF THE MONITOR
NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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December 4, 2018

VIA ECF

The Honorable Laura T. Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)

Dear Judge Swain,

The Monitoring Team writes to provide an update on the operation of Horizon Juvenile Detention Center (“Horizon”). The Monitoring Team last shared a status update on October 31, 2018 (dkt. 318) (“October 31 Letter”). On November 2, 2018, the Court directed the Monitoring Team to provide a further report no later than December 4, 2018 (dkt. 319).

The Monitoring Team continues to closely monitor the operation of Horizon, routinely reviewing reports of use of force (“UoF”) incidents and corresponding video. The Monitoring Team is also frequently engaged with representatives from DOC and ACS. Since the last update, the Monitoring Team has also conducted additional visits to the facility to observe operations and speak with youth and staff from the Department of Correction (“DOC” or “Department”) and the Administration of Child Services (“ACS”).

As demonstrated in the chart below, compared to October 2018, the number of

UoF decreased in November 2018.¹ That said, the UoF rate is still significantly higher than the use of force rate of 38.4 for these same youth when housed at RNDC from January to June 2018. The Monitoring Team remains concerned about the serious risk of harm for youth and staff at Horizon.

	Average Daily Population	Rate of UOF	Total Number of Incidents	<i>Class A</i>	<i>Class B</i>	<i>Class C</i>
October 2018	86	97.67	84	2	46	36
November 2018	79	53.16	42	0	30	12

Use of force continued to be driven by youth-on-youth violence in November 2018. Overall, it appears that Staff are making genuine attempts to utilize interpersonal skills to de-escalate events. Force is generally used appropriately when those efforts fail, although staff's conduct appeared to be unnecessary and/or excessive in a few cases.² Additional staff are now responding to incidents more promptly to help defuse and contain the events, an improvement from October when staff were often outnumbered by youth during an incident. However, group disturbances continue to occur and youth occasionally arm themselves with makeshift weapons.

In an effort to help the facility reduce the frequency of youth violence, the Monitoring Team made a number of recommendations outlined in the Monitor's Sixth Report (see dkt. 317 at pgs. 158 to 162, or "Report") and the October 31 Letter. The Monitoring Team recommended an expansion of the State's 7-day waiver for the Department to use OC Spray with person-specific applications (*see Report at pgs. 158 to*

¹ The youth began to transition to Horizon in late September. While the youth transitioned to Horizon without incident, there were five UoF incidents on the last day of September.

² In at least one case, the Department took immediate action to suspend the staff member and re-assign the staff member to another facility.

162 and October 31 Letter). The Monitoring Team continues to view access to OC Spray as a viable tactical option to address and manage serious eruptions of collective violence. The Monitoring Team shared the October 31 letter and the Court's November 2 endorsement of that letter with the appropriate State regulators. As of the filing of this status update, they have not responded to the Monitoring Team's recommendations.

The Department reported it is working to address the Monitoring Team's recommendation to provide DOC staff with additional opportunities to practice Safe Crisis Management ("SCM") techniques in order to acquire the appropriate reflexes and confidence to intervene safely.³ The Department shared its initial plan with the Monitoring Team and is working toward its implementation. The Monitoring Team continues to strongly encourage the City to commit and provide the necessary resources to the Department to support this effort and ensure this additional training for staff can occur as soon as possible.

The Monitoring Team has offered extensive technical assistance to address the recommendations regarding developing a behavior management program and appropriate sanctions and consequences for misconduct.⁴ ACS has been actively engaged with DOC and the Monitoring Team to refine its behavior management program and to implement

³ The majority of Staff assigned to Horizon received the initial SCM training. Since the October 31, 2018 status letter, the Department identified approximately 40 Horizon Staff who had not received the initial SCM Training. DOC reported to the Monitoring Team that at least 15 Staff subsequently received the initial SCM training. The Monitoring Team is closely monitoring the situation to ensure all Staff assigned to Horizon receive this initial training as soon as possible.

⁴ Policies, procedures, and practices related to the behavior management program are subject to the Monitor's approval. *See* Consent Judgment § XVI. (Inmate Discipline), ¶ 3. Further, the Monitoring Team must be consulted on the development of implementation of systems, policies, and procedures for youth who commit infractions. *See id.*, ¶ 4.

sanctions for youth who engage in violence. ACS submitted multiple iterations of its behavior management program and has been very responsive to the Monitoring Team's recommendations for strengthening the model. The Monitoring Team has set reasonable timelines for several key tasks to ensure the behavior management program is developed and implemented with fidelity.⁵ The Monitoring Team continues to caution against prioritizing speed over quality. As such, the Monitoring Team is closely monitoring the situation and will adjust timelines if necessary to ensure there is sufficient time to create a quality product and training program to increase the likelihood of long-term success.

The Monitoring Team remains committed to applying its considerable expertise in operational transitions and best practices for juvenile offenders to guide the Department and ACS in this monumental task. The Monitoring Team will continue to monitor the level of violence at Horizon closely and confer with the Parties as necessary. The Monitoring Team respectfully recommends that it provide the Court with our next status update on the operation of Horizon by February 12, 2019.

Sincerely,

s/ Steve J. Martin
Steve J. Martin, Monitor

s/ Anna E. Friedberg
Anna E. Friedberg, Deputy Monitor

⁵ The City has advised the Monitoring Team that it must address a number of local laws and regulations regarding confidentiality before ACS can provide the Monitoring Team with certain information that has been requested to assess the City's efforts to achieve compliance with Consent Judgment § XVI. (Inmate Discipline), ¶ 3 and ¶ 4, § XV. (Safety and Supervision of Inmates Under the Age of 19), ¶ 5 (among others). The Monitoring Team intends to advise the Court no later than December 18, 2018 on the status of this issue and whether Court intervention may be necessary to ensure that the Monitoring Team has access to all information necessary to assess compliance.