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## #CLOSErikers: The Campaign to Transform New York City's Criminal Justice System

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# #CLOSERIKERS: THE CAMPAIGN TO TRANSFORM NEW YORK CITY’S CRIMINAL JUSTICE SYSTEM

*Janos Marton\**

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## INTRODUCTION

On March 31, 2017, following a year of intense pressure from the #CLOSERikers campaign, New York City mayor Bill de Blasio announced that closing the long-troubled Rikers Island jail complex (“Rikers Island”) would become city policy.<sup>1</sup> Since Rikers Island opened eight decades ago, it has been marked by violence,<sup>2</sup> corruption,<sup>3</sup> lawsuits,<sup>4</sup> and blue ribbon commissions seeking to reform

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1. J. David Goodman, *Mayor Backs Plan to Close Rikers and Open Jails Elsewhere*, N.Y. TIMES (Mar. 31, 2017), <https://www.nytimes.com/2017/03/31/nyregion/mayor-de-blasio-is-said-to-back-plan-to-close-jails-on-rikers-island.html> [<https://nyti.ms/2nH0LRL>].

2. Press Release, U.S. Attorney’s Office, Manhattan U.S. Attorney Finds Pattern and Practice of Excessive Force and Violence at NYC Jails on Rikers Island that Violates the Constitutional Rights of Adolescent Male Inmates (Aug. 4, 2014), <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-finds-pattern-and-practice-excessive-force-and-violence-nyc-jails> [<https://perma.cc/H2WW-YNYZ>].

3. John Surico, *How Rikers Island Became the Most Notorious Jail in America*, VICE (Jan. 11, 2016, 12:00 AM) [hereinafter Surico, *Most Notorious Jail*],

it.<sup>5</sup> Rikers Island’s imperviousness to reform is what led to the formation of the #CLOSErikers campaign in 2016.<sup>6</sup> From its outset, the #CLOSErikers campaign, led by JustLeadershipUSA (“JLUSA”), has focused not only on shuttering the jail complex, but also on dramatically reducing the number of New Yorkers in city jails and reimagining the criminal justice system in New York—work that has continued even after Mayor de Blasio’s announcement.<sup>7</sup> During the past year and a half, JLUSA has employed various strategies, such as community organizing,<sup>8</sup> coalition-building,<sup>9</sup> public demonstrations,<sup>10</sup> social media activism,<sup>11</sup> and policy advocacy,<sup>12</sup> to

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[https://www.vice.com/en\\_us/article/dp59yq/how-rikers-island-became-the-most-notorious-jail-in-america](https://www.vice.com/en_us/article/dp59yq/how-rikers-island-became-the-most-notorious-jail-in-america) [<https://perma.cc/6724-Q6EQ>]; see also Michael Schwirtz, *Corruption Sweep at Rikers Island Leads to 22 Arrests*, N.Y. TIMES (June 24, 2014), <https://www.nytimes.com/2014/06/25/nyregion/2-officers-and-20-inmates-are-arrested-in-corruption-sweep-at-rikers-island.html> [<https://nyti.ms/2paLKJ5>].

4. Ryan J. Farrick, *NYC Settles Lawsuit Against Rikers Island as Mayor Vows to Close Controversial Jail*, LEGAL READER (May 3, 2017), <http://www.legalreader.com/nyc-settles-lawsuit-rikers-island-mayor-close-jail/> [<https://perma.cc/Q672-VVMP>]; see also David Rohde, *City Settles Prison Health Care Lawsuit*, N.Y. TIMES (Sept. 9, 1998), <http://www.nytimes.com/1998/09/09/nyregion/city-settles-prison-health-care-lawsuit.html> [<https://nyti.ms/2hnxTxJ>].

5. *Independent Commission Behind Push to Close Rikers Island Jail Complex Issues Formal Report*, CBS N.Y. (Apr. 2, 2017, 11:56 PM), <http://newyork.cbslocal.com/2017/04/02/rikers-island-commission-report/> [<https://perma.cc/DR47-QRNF>].

6. *Take Action: Organizations*, #CLOSERIKERS, <http://www.closerikers.org/take-action/#organizations/> [<https://perma.cc/2BKY-KB5S>].

7. *Reimagining Criminal Justice*, #CLOSERIKERS, <http://www.closerikers.org/reimagining-criminal-justice/> [<https://perma.cc/9S6U-64LZ>].

8. *E.g.*, Angela Matua, *Rally Outside of LaGuardia Community College on Monday Will Call on Mayor to Close Rikers Island Jail*, QNS (Mar. 4, 2017, 10:45 AM), <http://qns.com/story/2017/03/04/rally-outside-laguardia-community-college-monday-will-call-mayor-close-rikers-island-jail/> [<https://perma.cc/BSD8-TTTJ>]; see also *Take Action: Organizations*, *supra* note 6.

9. See, *e.g.*, Press Release, #CLOSErikers, A Growing Number of Elected Officials and a Coalition of Representatives from 98 Advocacy Groups March to Demand Mayor de Blasio Close Rikers Island Jail Complex (Sept. 20, 2016), <http://www.closerikers.org/media/press/a-growing-number-of-elected-officials-and-a-coalition-of-representatives-from-98-advocacy-groups-march-to-demand-mayor-de-blasio-close-rikers-island-jail-complex/> [<https://perma.cc/599C-WY3P>]; see also *Take Action: Organizations*, *supra* note 6.

10. *E.g.*, Press Release, #CLOSErikers, Nearly 1,000 People March and Rally in Queens in Action to Close Rikers Island Jail Complex (Sept. 26, 2016), <http://www.closerikers.org/media/press/nearly-1000-people-march-and-rally-in-queens-in-action-to-close-rikers-island-jail-complex> [<https://perma.cc/UM9J-PYEB>].

11. *E.g.*, *Take Action: Tweet @NYCMayor*, #CLOSERIKERS, <http://www.closerikers.org/take-action/#tweet> [<https://perma.cc/FUD5-6ZAY>].

12. *E.g.*, Press Release, JustLeadershipUSA, Statement on the Passage of the Speedy Trial Bill in the New York State Assembly (June 2, 2016),

advance a highly sophisticated campaign that has changed the landscape of criminal justice in New York.

Mayor de Blasio's announcement of his administration's intent to close Rikers Island<sup>13</sup> was a major policy victory for the #CLOSErikers campaign that garnered national attention,<sup>14</sup> but it is just a first step. Successful closure of Rikers Island faces several obstacles, including a need to reduce the number of New Yorkers in jail,<sup>15</sup> reform criminal justice policies,<sup>16</sup> and navigate thorny land use issues that govern the process for siting the community jails intended to replace Rikers Island.<sup>17</sup> Further, Mayor de Blasio has endorsed a ten-year timeline for closure, which the #CLOSErikers campaign finds unacceptably long.<sup>18</sup>

This Essay will discuss issues related to the closure of Rikers Island, focusing on the advocacy role played by the #CLOSErikers campaign. Part I of this Essay will situate the Rikers Island jail

<https://www.justleadershipusa.org/statement-on-the-passage-of-the-speedy-trial-bill-in-the-new-york-state-assembly/> [<https://perma.cc/6KDK-8UGH>].

13. Michelle Chen, *How Closing a Jail Could Make New York City Stronger*, THE NATION (May 17, 2017), <https://www.thenation.com/article/how-closing-a-jail-could-make-new-york-city-stronger/> [<https://perma.cc/73AE-6KRG>].

14. *Closing Rikers Island: The End for New York's Most Famous Jail*, THE ECONOMIST (Apr. 12, 2017), <https://www.economist.com/news/united-states/21720666-plan-close-rikers-island-reflects-wider-improvement-end-new-yorks-most> [<https://perma.cc/9DG5-97BM>]; see also *#CloseRikers: Why Shutting the Most Infamous Jail in the US Matters*, AL JAZEERA: THE STREAM (July 25, 2017), <http://stream.aljazeera.com/story/201707251734-0025477> [<https://perma.cc/H94S-5NSG>]; Melanie Eversley, *NYC to Close Notorious Rikers Jail Complex*, USA TODAY (Mar. 31, 2017, 6:55 PM), <https://www.usatoday.com/story/news/2017/03/31/nyc-close-notorious-rikers-jail-complex/99886116/> [<https://perma.cc/5KU8-UA49>]; *New York City Mayor Announces Plan to Shut Rikers Island Jail*, NPR (Apr. 1, 2017, 8:04 AM), <http://www.npr.org/2017/04/01/522284679/new-york-city-mayor-announces-plan-to-shut-rikers-island-jail> [<https://perma.cc/G28Z-R7V6>].

15. INDEP. COMM'N ON N.Y.C. CRIMINAL JUSTICE & INCARCERATION REFORM, A MORE JUST NEW YORK CITY 14, 30, 36 (2017) [hereinafter A MORE JUST NEW YORK CITY], <https://static1.squarespace.com/static/577d72ee2e69cfa9dd2b7a5e/t/58e0d7c08419c29a7b1f2da8/1491130312339/Independent+Commission+Final+Report.pdf> [<https://perma.cc/X47U-RSXS>].

16. *Id.* at 30, 34; see also *Status Report: Smaller, Safer, Fairer: A Roadmap to Closing Rikers Island*, CITY OF N.Y. [hereinafter *Status Report: Closing Rikers Island*], <https://rikers.cityofnewyork.us> [<https://perma.cc/8VRT-FC9W>].

17. J. David Goodman & Michael Schwartz, *De Blasio Faces Tough Road Replacing Rikers with New Jails*, N.Y. TIMES (Apr. 12, 2017), <https://www.nytimes.com/2017/04/12/nyregion/rikers-island-replacements.html> [<https://nyti.ms/2ookxjG>].

18. Nicole Bode et al., *Mayor de Blasio Ambushed at Gym by 'Close Rikers' Protesters*, DNAINFO (June 30, 2017, 11:48 AM), <https://www.dnainfo.com/new-york/20170630/park-slope/de-blasio-close-rikers-protesters-gym> [<https://perma.cc/8LJE-RYMV>].

complex in the city's history. Part II will tackle the legislative and policy prescriptions required to reduce the city jail population in New York City to a level that is sufficient to effectively close Rikers Island. Specifically, this part will address reforms at the city,<sup>19</sup> state,<sup>20</sup> and court-system levels.<sup>21</sup> Part III will elucidate the strategies of #CLOSERikers, a campaign that was able to move its principal target, Mayor de Blasio, from initially opposing closure to supporting closure less than a year after the campaign launched. Part IV will analyze the land use issues triggered by the 420-acre jail complex's closure and the opening or renovating of community-based facilities across the five boroughs, including the politics behind New York City's fraught Uniform Land Use Review Procedure ("ULURP").<sup>22</sup> The Essay concludes by assessing whether the city is currently on a timely path to closure.

### I. RIKERS ISLAND: A HISTORY OF RACISM, VIOLENCE, AND CORRUPTION

The Rikers Island jail complex has been mired in controversy since it first opened.<sup>23</sup> As Rikers Island grew in size decade after decade, particularly during the rise of mass incarceration, problems of

19. *E.g.*, Office of the Mayor, *Mayor de Blasio Signs the Criminal Justice Reform Act*, CITY OF N.Y. (June 13, 2016), <http://www1.nyc.gov/office-of-the-mayor/news/530-16/mayor-de-blasio-signs-criminal-justice-reform-act> [https://perma.cc/5XKV-MHYP]; *see also* Press Release, N.Y.C. Council, Council to Vote on Reforming the Department of Correction Bail Process and on Enhancing Health Oversight in the Shelter System (June 21, 2017), <https://council.nyc.gov/press/2017/06/21/1431/> [https://perma.cc/H3YJ-K4Z6]; John Surico, *New York City is Creating a Bail Fund to Help People Get Out of Jail*, VICE (June 29, 2015, 11:30 AM) [hereinafter Surico, *Bail Fund*], [https://www.vice.com/en\\_us/article/8gkqp3/new-york-city-is-creating-a-bail-fund-to-help-people-get-out-of-jail-629](https://www.vice.com/en_us/article/8gkqp3/new-york-city-is-creating-a-bail-fund-to-help-people-get-out-of-jail-629) [https://perma.cc/4W8X-KBN6].

20. *E.g.*, Press Release, N.Y. State Assembly Speaker Carl E. Heastie, Assembly to Deliver Comprehensive Criminal Justice Reform (Feb. 14, 2017), <http://nyassembly.gov/Press/20170214/> [https://perma.cc/W5ZZ-P6SF]; *see also* Charise Frazier, "*Kalief's Law*" Aims to Reform Pretrial Detention After Honoree Spent 3 Years in Rikers Awaiting Trial, NEWSONE (June 13, 2016), <https://newsone.com/3458140/kaliefs-law-to-reform-pretrial-detention/> [https://perma.cc/6LWW-SC2Z].

21. *E.g.*, Office of the Mayor, *Mayor de Blasio and Chief Judge Lippman Announce Justice Reboot, an Initiative to Modernize the Criminal Justice System*, CITY OF N.Y. (Apr. 14, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/235-15/mayor-de-blasio-chief-judge-lippman-justice-reboot-initiative-modernize-the> [https://perma.cc/FY7X-267W].

22. *See* N.Y.C. CHARTER ch. 8, § 197-c (2006).

23. *Prison Group Fights Rikers Island Dump*, N.Y. TIMES (Nov. 24, 1938) [hereinafter *Prison Group*], <https://timesmachine.nytimes.com/timesmachine/1938/11/24/98870349.html?pageNumber=32> [https://nyti.ms/2DlyW73].

violence, poor conditions, and mismanagement only magnified. By the time the campaign to #CLOSErikers launched in 2016, the grievances that fueled the campaign were decades in the making.

Section I.A discusses Richard Riker and the racially charged history associated with the island's namesake.<sup>24</sup> Section I.B examines Rikers Island's troubled predecessor, the Blackwell's Island penitentiary ("Blackwell's").<sup>25</sup> Section I.C addresses the problems that arose in Rikers Island during its first fifty years, before the rise of mass incarceration. Section I.D recounts the first attempt to close Rikers Island during Mayor Koch's administration. Section I.E revisits Rikers Island during the 1990s and early 2000s, when the jail complex was at its most overcrowded and dangerous. Section I.F concludes with an overview of recent failed attempts at reform.

### A. Richard Riker

In 1664, the same year that the British seized the fledgling Dutch colony of New Amsterdam, Abraham Rycken, a wealthy Dutch merchant, purchased an eighty-seven acre island up the East River.<sup>26</sup> As the British cemented their local rule, the family name was anglicized to "Riker," and the island became known as Rikers Island.<sup>27</sup> It remained under family control until it was purchased by the City of New York in 1884.<sup>28</sup>

The family's most infamous descendant was Richard Riker,<sup>29</sup> whose history is particularly troubling given the deleterious impact of Rikers Island on New York City's communities of color. From 1815 to 1838, Riker served as the City Recorder, a judicial role that involved management of the city's criminal courts.<sup>30</sup> Riker was

24. ERIC FONER, *GATEWAY TO FREEDOM: THE HIDDEN HISTORY OF THE UNDERGROUND RAILROAD* 51–52 (2015).

25. *Before Rikers, Blackwell's Was DOC's Island Home*, N.Y. CORR. HISTORY SOC'Y, <http://www.correctionhistory.org/html/chronicl/nycdoc/html/blakwel1.html> [<https://perma.cc/Y826-ZKX7>].

26. Will Di Novi, *Across the 'Bridge of Pain'*, PAC. STANDARD (July 27, 2015), <https://psmag.com/across-the-bridge-of-pain-9985b40bf581#.g4f2mbi6m> [<https://perma.cc/BD9W-BEW2>]; see also SHARON SEITZ & STUART MILLER, *THE OTHER ISLANDS OF NEW YORK CITY: A HISTORY AND GUIDE* 177–87 (2001).

27. Surico, *Most Notorious Jail*, *supra* note 3.

28. *To Build a Bigger Jail: Some New Great Works of the Charities Commission*, N.Y. TIMES (Sept. 20, 1886) [hereinafter *To Build a Bigger Jail*], <http://query.nytimes.com/mem/archive-free/pdf?res=9804EFDD1E30E533A25753C2A96F9C94679FD7CF> [<https://perma.cc/UF8M-5T5X>]; see also Di Novi, *supra* note 26.

29. FONER, *supra* note 24, at 52.

30. *Id.* at 51–52. The City Recorder position no longer exists.

named a member of the “Kidnapping Club” by an abolitionist weekly newspaper, *The Emancipator*, which reported his involvement with a group that sold free black people to the South without due process.<sup>31</sup> Through a series of essays in the late 1830s, *The Emancipator* revealed Riker’s role in sending black families to the South without hearings or jury trials, and his reputation for locking up free blacks in jail for months without evidence.<sup>32</sup> In one case, Riker ignored the testimony of witnesses and an affidavit from a Maryland clerk attesting to a man’s free status.<sup>33</sup> A separate “vile and despicable outrage” involved the seven-year-old Henry Schoot, who was dragged out of his elementary school by a Virginia slave-owner, Richard Haxall, who claimed that Schoot was the property of Haxall’s late father.<sup>34</sup> Riker allowed the claim without proof of a will, jailing the child, who was eventually freed after a sustained multiracial campaign for his release.<sup>35</sup> In another instance, Riker ruled against a prominent abolitionist lawyer and for a Southern claimant, remarking, “I am glad the man has got his nigger again.”<sup>36</sup>

### B. Creating the Rikers Island Jail Complex

The island remained under control of the Riker family until its sale to the city in 1884 for \$180,000 for its planned use as a penitentiary.<sup>37</sup> By then it had already served as a jail once—during the Civil War it was used as a Confederate prisoner-of-war camp.<sup>38</sup> At that time, controversy had erupted not over the jail conditions, but the cramped, dilapidated, and freezing conditions of the Union’s 20th U.S. Colored Troops stationed there, for whom “[d]isease began to appear to an alarming extent, while there was no proper hospital in which to treat

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31. *Id.* Slavery in New York itself was fully outlawed in 1827. *Id.* at 44.

32. *Id.* at 60, 68–69.

33. *Id.* at 70.

34. *Id.* at 61.

35. *Id.*

36. *Id.* at 69. In August 2017, in the midst of a broader local and national conversation about Confederate monuments in public spaces, the #CLOSErikers campaign held a protest to remind New Yorkers of this history. See Jennifer Bain & Sara Dorn, *Protesters Want Rikers Closed for Its Name Tie to Slave-Catcher*, N.Y. POST (Aug. 26, 2017, 9:50 PM), <http://nypost.com/2017/08/26/protesters-want-rikers-closed-for-its-name-tie-to-slave-catcher/> [<https://perma.cc/FGH5-RZ4N>].

37. *To Build a Bigger Jail*, *supra* note 28; see also Di Novi, *supra* note 26.

38. *Civil War Camp Astor, Rikers Island: Union Army Base*, N.Y. CORR. HISTORY SOC’Y, [http://www.correctionhistory.org/html/chronic/cw\\_units/html/cw\\_rikers2.html](http://www.correctionhistory.org/html/chronic/cw_units/html/cw_rikers2.html) [<https://perma.cc/G5PE-35A4>].

it.”<sup>39</sup> These deplorable conditions were typical of jails at the time, including the predecessor to the Rikers Island jail complex, Blackwell’s.

Located on present-day Roosevelt Island, Blackwell’s had long faced challenges of administrative corruption and overcrowded facilities.<sup>40</sup> The 700 cells at Blackwell’s had been holding up to 1100 people at a given time, earning Blackwell’s its reputation as “the Alcatraz of the East.”<sup>41</sup> During the 1880s, the New York City Commissioners of Charities and Correction proposed that the city transfer its primary jail complex from Blackwell’s Island to Rikers Island,<sup>42</sup> setting in motion a gradual and partial process hastened by revelations that organized crime was running Blackwell’s facilities.<sup>43</sup>

When Rikers Island was first purchased from the Riker family, it constituted only 87.5 acres, with half of its land less than three feet above sea level.<sup>44</sup> Beginning in the 1880s, Correction Commissioners sent prison labor from Blackwell’s to pull up shoals from the East River marshes to expand and elevate the island.<sup>45</sup> These laborers also used metal, refuse, cinders, and dirt from subway excavations to enlarge the island.<sup>46</sup> The dumping of undesirable debris on the island did not go unnoticed.<sup>47</sup> In 1926, the *New York Times* reported that, “from the shores of Queens and the Bronx any day the smoking island looks like a volcano preparing for eruption.”<sup>48</sup> New York City Parks Commissioner Robert Moses stated the dumping policy was “stupid, costly, and barbaric” to the point that “no public official [could] survive it.”<sup>49</sup> Remarking on an outbreak of flies and rats,

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39. UNION LEAGUE CLUB, REPORT OF THE COMMITTEE ON VOLUNTEERING 13 (1864).

40. SEITZ & MILLER, *supra* note 26, at 159; *see also Prison Demolition Starts Next Week*, N.Y. TIMES (Dec. 21, 1935) [hereinafter *Prison Demolition*], <https://timesmachine.nytimes.com/timesmachine/1935/12/21/97151879.html?pageNumber=19> [<https://nyti.ms/2FWpZ5G>].

41. Surico, *Most Notorious Jail*, *supra* note 3; *To Build a Bigger Jail*, *supra* note 28.

42. *See To Build a Bigger Jail*, *supra* note 28; *see also* Surico, *Most Notorious Jail*, *supra* note 3.

43. Surico, *Most Notorious Jail*, *supra* note 3.

44. *To Build a Bigger Jail*, *supra* note 28.

45. *See id.*

46. FED. WRITERS’ PROJECT, NEW YORK CITY GUIDE 426–27 (1939), <https://archive.org/stream/newyorkcityguide00federich#page/426/mode/2up> [<https://perma.cc/J5CR-FRYK>].

47. Di Novi, *supra* note 26.

48. SEITZ & MILLER, *supra* note 26, at 202.

49. *Id.* at 203.

which the city combatted with an army of dogs and poison gas, the State Commission of Corrections urged the city to find a different location for the new jail,<sup>50</sup> but the city plowed ahead.

Then-Commissioner of Correction Richard C. Patterson Jr., later remembered as the “Father” of Rikers Island,<sup>51</sup> argued that, unlike Blackwell’s, the proposed new jail on Rikers Island would allow detainees to reenter society as “better citizens, with clear eyes, hard muscles and better mental and moral health.”<sup>52</sup> Mayor Fiorello LaGuardia’s administration hoped new facilities on Rikers Island would provide the space necessary to establish vocational training programs at the city’s main jail complex.<sup>53</sup> Thus, in 1934, the city invested \$10 million into the construction of the new facilities.<sup>54</sup> Unfortunately, with the construction nearly completed, the City Commissioner of Accounts suspended payments to the jail’s architect for constructing the jail so poorly: it was already leaking and showing signs of architectural decay, and Tammany Hall-related graft was alleged.<sup>55</sup> The new jail complex opened to great fanfare in 1935,<sup>56</sup> and by 1939, the island constituted 400 acres—and was still growing.<sup>57</sup>

### C. Problems Arise: Rikers Island Jail Complex from 1935–1980

The corruption and overcrowding issues that had plagued Blackwell’s soon found their way to Rikers Island. In 1936, just a year after the transfer of detainees from Blackwell’s, a riot broke out at Rikers Island in response to artwork displaying an extravagant feast in the cafeteria, a stark contrast to the detainees’ Depression-era diets.<sup>58</sup> In 1938, the Executive Committee of the Prison Association of New York lambasted the “cruel and inhumane” treatment of the 25,000 detainees then passing through the jail annually, referring to the “foul odors” generated by the decomposition of trash being dumped on the island, in piles as high as twelve feet.<sup>59</sup> A year later, a

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50. *Id.* at 202.

51. *Richard Cunningham Patterson, Jr.*, ARLINGTON NAT’L CEMETERY WEBSITE (last updated Jan. 9, 2008), <http://www.arlingtoncemetery.net/rcpatterson.htm> [<https://perma.cc/2UW2-2YU2>]; *see also* SEITZ & MILLER, *supra* note 26, at 200.

52. SEITZ & MILLER, *supra* note 26, at 200.

53. *See Prison Demolition*, *supra* note 40.

54. SEITZ & MILLER, *supra* note 26, at 200.

55. *Id.* at 203.

56. *Id.* at 200.

57. FED. WRITERS’ PROJECT, *supra* note 46, at 426–27.

58. *See* Di Novi, *supra* note 26.

59. *Prison Group*, *supra* note 23. The City stopped dumping on the island in 1943, moving its operation to the Great Kills Marsh in Staten Island. *1920s Scenes of*

report from the Federal Writers' Project, a New Deal program, concluded that the rapid population turnover in the jails rendered the administration unable to effectively monitor and control the population.<sup>60</sup> That same year, when twenty-three members of a Bronx grand jury inspected Rikers, they criticized the "cramped quarters, insanitary buildings, and inadequate facilities."<sup>61</sup> A report that the grand jury authored, which Justice Samuel Rosenman sent to city officials, lamented the corruption amongst the correction officers.<sup>62</sup>

An outlier in Rikers Island's history, the tenure of Correction Commissioner Anna Kross (1954–1966) marked a period of reform in the jail system.<sup>63</sup> Kross implemented rehabilitative programs, including social casework, psychotherapeutic treatment, constructive recreational activities, academic education, and vocational training.<sup>64</sup> Unfortunately, in the years that followed Kross's departure, the increase in the city's jail population and concurrent city budget problems all but eliminated her reforms.<sup>65</sup>

Commensurate with an increase in crime that hit New York City, the city's jail population grew steadily during the 1960s,<sup>66</sup> followed by

*Rikers Rising from the River*, N.Y. CORR. HISTORY SOC'Y <http://www.correctionhistory.org/html/chronicl/nycdoc/1920s-Rikers-landfill-photos/1920s-rikers-landfill-scenes-starter.html> [https://perma.cc/36HT-9K3B].

60. See FED. WRITERS' PROJECT, *supra* note 46, at 426.

61. *Grand Jury Scores Prisons of City*, N.Y. TIMES (Apr. 1, 1939), <http://query.nytimes.com/mem/archive-free/pdf?res=9B07E5D6133CE73ABC4953DFB2668382629EDE> [https://perma.cc/9XXU-89H9].

62. *Id.* For criminal court matters, Rikers Island is within the Bronx's jurisdiction. The original source does not explain why a grand jury was convened in this matter.

63. Philip Quarles, *Anna Kross, Commissioner of the New York City Department of Correction*, WNYC (Aug. 25, 2016), <http://www.wnyc.org/story/anna-kross-commissioner-new-york-city-department-corrections> [https://perma.cc/PL8P-D3JV].

64. See generally Zvi Hermon & Ruth Beloff, *Anna Kross*, in 12 ENCYCLOPEDIA JUDAICA 373 (Fred Skolnik & Michael Berenbaum eds., 2d ed. 2007). During her tenure, a number of detainees heroically saved passengers from a plane that crashed into the island during a blizzard. As a demonstration of the City's appreciation, more than half of those assisting the effort were released. See Lion Calandra, *60 Years Later, a Plane Crash and a Jail Prove 'a Blessing' for One Survivor*, FOX NEWS (Jan. 29, 2017), <http://www.foxnews.com/us/2017/01/29/60-years-later-plane-crash-and-jail-prove-blessing-for-one-survivor> [https://perma.cc/MQM5-JKV3].

65. See *Lindsay Press Conference [on Correction Appointments]*, WNYC (Nov. 24, 1970), <http://www.wnyc.org/story/lindsay-press-conference-on-correction-appointments> [https://perma.cc/V3PD-3E4B]. However, one of Kross's projects, establishing a bridge between Rikers and the mainland, did come to fruition. Jarrod Shanahan & Jack Norton, *A Jail to End All Jails*, URB. OMNIBUS (Dec. 6, 2017), <https://urbanomnibus.net/2017/12/jail-end-jails/> [https://perma.cc/FQ6B-UT86].

66. SAM ROBERTS, *A KIND OF GENIUS: HERB STURZ AND SOCIETY'S TOUGHEST PROBLEMS* 35 (2009); see also Di Novi, *supra* note 26.

an even larger increase upon the passage of the infamously punitive Rockefeller Drug Laws during the 1970s.<sup>67</sup> These laws exacerbated racial disparities in New York City's criminal justice system.<sup>68</sup> These disparities were visible in the demographic makeup of Rikers Island, which evolved from a jail population that was 85% white in 1930 to 35% white by 1970<sup>69</sup> to 92.5% people of color in 2015.<sup>70</sup> The demographic changes in Rikers Island's jail population during the 1960s were accompanied by an increase in interracial violence.<sup>71</sup>

As more New Yorkers, especially those of color, were being locked away at Rikers Island, the city budget was teetering on the precipice of bankruptcy<sup>72</sup> and the diversion of funds away from its jails exacerbated the already poor conditions.<sup>73</sup> At Rikers Island<sup>74</sup> and other jails around the city,<sup>75</sup> riots became more frequent over demands for basic necessities.<sup>76</sup> In 1974, Southern District of New York Judge Morris Lasker found in a series of rulings that conditions in the Manhattan Detention Center, also known as “the Tombs,”

67. Madison Gray, *New York's Rockefeller Drug Laws*, TIME (Apr. 2, 2009), <http://content.time.com/time/nation/article/0,8599,1888864,00.html> [https://perma.cc/K924-F57V]. In response to a heroin epidemic, Governor Nelson Rockefeller passed stringent mandatory minimum sentences of fifteen years to life—about the same sentence as for second-degree murder—for possession of four ounces of narcotics. On the eve of the laws' repeal in 2009, New York Governor David Paterson said in his State of the State address: “I can't think of a criminal justice strategy that has been more unsuccessful than the Rockefeller Drug Laws.” *Id.*

68. *Rockefeller Drug Laws Cause Racial Disparities, Huge Taxpayer Burden*, N.Y. CIV. LIBERTIES UNION (May 8, 2008), <https://www.nyclu.org/en/publications/rockefeller-drug-laws-cause-racial-disparities-huge-taxpayer-burden> [https://perma.cc/V5S9-TJBZ].

69. SEITZ & MILLER, *supra* note 26, at 205.

70. Dana Goldstein et al., *Inside Rikers Island, by the People Who Live It*, N.Y. MAG. (June 28, 2015, 9:00 PM), <http://nymag.com/daily/intelligencer/2015/06/inside-rikers-island-interviews.html> [https://perma.cc/2VYH-T26Q].

71. SEITZ & MILLER, *supra* note 26, at 206.

72. See Edward M. Gramlich, *The New York City Fiscal Crisis: What Happened and What Is to Be Done?*, 66 AM. ECON. REV. 415, 415–19 (1976); see also Di Novi, *supra* note 26.

73. See Di Novi, *supra* note 26.

74. *E.g.*, *12 Young Men Indicted in Riot at Rikers Island Jail Feb. 27*, N.Y. TIMES (Mar. 15, 1972), <http://www.nytimes.com/1972/03/15/archives/12-young-men-indicted-in-riot-at-rikers-island-jail-feb-27.html> [https://nyti.ms/2jgpPPN]; see also Di Novi, *supra* note 26.

75. *E.g.*, Ralph Blumenthal, *Overcrowding of Tombs Worse Than at 1970 Riot*, N.Y. TIMES (Sept. 6, 1971), <http://www.nytimes.com/1971/09/06/archives/overcrowding-of-tombs-worse-than-at-1970-riot-tombs-crowding-worse.html> [https://nyti.ms/2hPVveh].

76. See ROY J. CALDWOOD, *MAKING THE RIGHT MOVES* ch. 1 (2015) (describing the underlying motivations of these riots).

violated the U.S. Constitution, and mandated that the facility make certain improvements.<sup>77</sup> Instead of making the improvements, the city simply shut the jail down.<sup>78</sup> The Tombs' pretrial detainees were then transferred to Rikers Island, a move John Boston, the former Director of the Legal Aid Society's Prisoners' Rights Project, calls a "major transition in the history of Rikers."<sup>79</sup> Before the 1970s, almost all pre-trial detainees were held in borough facilities, with Rikers Island largely serving the "city-sentenced" population—those serving out guilty pleas to misdemeanors.<sup>80</sup> After the 1974 lawsuit, however, the city increasingly began to house its pretrial population on Rikers Island.<sup>81</sup>

#### D. Closing Rikers Island: The First Attempt

Mayor Ed Koch took office in 1978 with a pledge to restore order to the city, including Rikers Island. After celebrating a Christmas Day meal on Rikers Island with correction officers and detainees, he called on his Corporation Counsel, Allen Swartz, to settle Rikers Island-related litigation.<sup>82</sup> The Swartz settlements, which began that year, resulted in a judicial consent decree that covered thirty areas, from environmental health to punitive segregation.<sup>83</sup> While attempts to comply with the consent decree briefly led to an increase in

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77. The District Court held that conditions existing at one facility violated the Eighth Amendment and that the program at the detention centers did not furnish adequate treatment for children. *Martarella v. Kelley*, 349 F. Supp. 575, 603 (S.D.N.Y. 1972), *supplemented*, 359 F. Supp. 478 (S.D.N.Y. 1973). The District Court held that a detainee may not be deprived of the rights of other citizens beyond the extent necessary to assure his appearance at trial in the security of the institution to which he is confined, but detainees may not be confined under conditions more rigorous than a convicted prisoner; that the imposition of maximum security confinement on those detainees in whose cases it was not necessary violated their rights to due process; that the city could be required to provide contact visits; that the exercise and recreation programs did not meet constitutional standards; that the institution did not provide a tolerable living environment for detainees; and that the prisoners were entitled to certain due process rights with respect to discipline. *Rhem v. Malcolm*, 371 F. Supp. 594, 623–33 (S.D.N.Y. 1974), *supplemented*, 377 F. Supp. 995 (S.D.N.Y. 1974), *aff'd and remanded*, 507 F.2d 333 (2d Cir. 1974).

78. Interview with John Boston, Former Dir. of the Legal Aid Society's Prisoners' Rights Project (June 19, 2016).

79. *Id.*

80. *Id.*

81. Tom Goldstein, *Judge Says Rikers Violates Rights*, N.Y. TIMES (Feb. 21, 1975), <https://timesmachine.nytimes.com/timesmachine/1975/02/21/140220842.html?pageNumber=61> [<https://nyti.ms/2FVKIGN>].

82. JOHN DILULIO, JR., COURTS, CORRECTIONS, AND THE U.S. CONSTITUTION 153 (1990).

83. *Id.* at 154–55.

funding at the New York City Department of Correction (“DOC”), the reforms did not hold and litigation against Rikers continued throughout the Koch administration.<sup>84</sup>

To burnish his progressive image, Mayor Koch appointed Herb Sturz, known for his work modernizing New York City’s bail system and developing innovative reentry programs,<sup>85</sup> as deputy mayor.<sup>86</sup> Sturz recommended selling Rikers Island to the State of New York.<sup>87</sup> In light of the jail’s horrific conditions and inconvenient location, he called for the city to decentralize its main jail complex and create smaller detention facilities near borough courthouses.<sup>88</sup> Sturz estimated that the city’s cost for the initiative would roughly equal the expense of complying with the consent decree standards.<sup>89</sup> While Mayor Koch and Governor Hugh Carey initially agreed to Sturz’s proposal in 1979, Mayor Koch and other city stakeholders were concerned that tax-payers did not want their money to support “bad people.”<sup>90</sup> This was not the only opposition Sturz’s proposal faced. The Correction Officers Benevolent Association (“COBA”) publicly decried Sturz’s reform efforts, contending that Sturz’s conveniently-located borough jails were escape-prone, “experimental,” and “posh.”<sup>91</sup> Meanwhile, the city’s jail population was tripling due to rising crime and the city’s district attorneys increasing their indictment rate by roughly seventy-five percent between 1978 and 1983.<sup>92</sup> With a ballooning jail population, decentralization would have required more jail facilities, which would be even more politically challenging. Thus Mayor Koch quietly dropped the proposal as he prepared for re-election.<sup>93</sup> Shortly after Mayor Koch’s

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84. *Id.* at 155–59.

85. *Herbert Sturz*, VERA INST. OF JUSTICE, <https://www.vera.org/people/herbert-sturz> [<https://perma.cc/6ZFK-C4KL>].

86. ROBERTS, *supra* note 66, at 197.

87. *Id.* at 197–200.

88. *Id.* at 198.

89. *Id.*

90. *Id.*

91. *Id.*

92. Philip Shenon, *Jail Release: Why?*, N.Y. TIMES (Nov. 5, 1983), <http://www.nytimes.com/1983/11/05/nyregion/jail-release-why.html> [<https://perma.cc/U4KQ-SD8U>].

93. ROBERTS, *supra* note 66, at 199. Herb Sturz, who went on to found the renowned Vera Institute, remains active in New York City criminal justice reform. Now a senior advisor at the Open Society, Sturz was an early supporter of the #CLOSErikers campaign, joining the September 2016 March to Rikers. He is presently focused on an initiative to more quickly reduce the number of women on Rikers.

re-election, Judge Lasker ordered the city to reduce the number of pretrial detainees held on Rikers Island due to overcrowding.<sup>94</sup>

In order to comply with Judge Lasker's orders, the city was forced to release detainees from detention facilities, creating an uproar in the local newspapers.<sup>95</sup> The negative reaction to the 1983 detainee releases led to a physical expansion of city detention facilities, especially on Rikers Island, as a way to prevent further releases.<sup>96</sup> Temporary modular housing units were built on Rikers Island and then used far beyond their expiration date, posing serious security risks.<sup>97</sup> Old Navy brigs were purchased for use as detention facilities and shipped from as far away as New Orleans.<sup>98</sup> (As discussed, *infra* in Section IV.B, jail barges were attractive to the DOC because their use did not trigger the city's land use process.)<sup>99</sup> According to John Boston, these barges were "entirely unsuited to run a modern pretrial detention institution."<sup>100</sup> Rikers Island itself seemed increasingly unmanageable, especially following the introduction of a brutal Central Punitive Segregation Unit known as "the Bing."<sup>101</sup> In 1990, hundreds of correction officers rioted, blockading the only bridge to Rikers Island, keeping detainees from court, staff from going home, and ambulances from reaching the island over two days of violent demonstrations.<sup>102</sup>

### E. Violence Rises During the 1990s and 2000s

As dysfunctional as Rikers Island had become during the 1970s and 1980s, *VICE* journalist John Surico found that, "in numerous interviews, most subjects agreed: the 1990s was, by far, the worst time to be on Rikers Island."<sup>103</sup> During this time, gangs such as the Bloods

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94. Shenon, *supra* note 92.

95. Interview with John Boston, *supra* note 78; *see also* Shenon, *supra* note 92.

96. Interview with John Boston, *supra* note 78.

97. *Id.*

98. *Id.*

99. *See* discussion *infra* Section IV.B.

100. Interview with John Boston, *supra* note 78.

101. Selwyn Raab, *Rikers Maxi-Maxi Dungeon: Too Brutal?*, N.Y. TIMES (July 4, 1991), <http://www.nytimes.com/1991/07/04/nyregion/rikers-maxi-maxi-dungeon-too-brutal.html> [<https://perma.cc/S93R-Y8EJ>].

102. Jack Curry, *Guards, Angered by Assault by Inmates, Block Entrance to Rikers*, N.Y. TIMES (Aug. 14, 1990), <http://www.nytimes.com/1990/08/14/nyregion/guards-angered-by-assault-by-inmates-block-entrance-to-rikers.html> [<https://perma.cc/U7WQ-CWUK>].

103. Surico, *Most Notorious Jail*, *supra* note 3.

and Latin Kings emerged.<sup>104</sup> Mary Buser, a social worker at Rikers during that period, explained that people would join gangs fearing retaliation, and that there was no process by which individuals could renounce gang membership and transfer to other facilities.<sup>105</sup>

The 1990s were turbulent not only because of the emergence of gangs, but also because of extreme overcrowding.<sup>106</sup> In the early 1990s, New York City was jailing nearly 22,000 people daily,<sup>107</sup> most on Rikers Island. To deal with overcrowding, a jail barge was docked near the East River and makeshift jail tents known as “sprungs” popped up all over Rikers Island.<sup>108</sup> When the barges and sprungs were at full capacity, correction officers would send detainees to solitary confinement to free up beds for the general population.<sup>109</sup>

To manage violence, borne in part from overcrowding, Correction Commissioner Bernard Kerik hired more correction officers,<sup>110</sup> turned a blind eye towards more aggressive tactics,<sup>111</sup> and equipped officers with new weapons such as pepper spray, mace,<sup>112</sup> and electrified stun shields.<sup>113</sup> COBA President Norman Seabrook claimed that the new equipment allowed officers to do “certain things the way they’re supposed to be done.”<sup>114</sup> According to JLUSA President Glenn E. Martin, who served time on Rikers Island twice, the new gear included masks that allowed correction officers to conceal their identity, thereby reducing accountability for the increasingly brutal officer-on-detainee violence.<sup>115</sup> Correction

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104. Interview with John Boston, *supra* note 78.

105. Interview with Mary Buser, Former Social Worker at Rikers Island Jail (June 23, 2016).

106. *Id.*

107. Judith A. Greene & Vincent Schiraldi, *Better by Half: The New York City Story of Winning Large-Scale Decarceration While Increasing Public Safety*, 29 FED. SENTENCING REP. 22, 22 (2016).

108. Surico, *Most Notorious Jail*, *supra* note 3.

109. *Id.*

110. *Id.*

111. Michael Schwartz & Michael Winerip, *At Rikers Island, Union Chief's Clout Is a Roadblock to Reform*, N.Y. TIMES (Dec. 14, 2014), <http://www.nytimes.com/2014/12/15/nyregion/at-rikers-a-roadblock-to-reform.html> [<https://nyti.ms/2ouvxs>].

112. SEITZ & MILLER, *supra* note 26, at 177–87.

113. Michael Schwartz, *Why Violence Toward Inmates at NYC's Rikers Island Jail Grew*, BOS. GLOBE (Aug. 14, 2014), <https://www.bostonglobe.com/news/nation/2014/08/13/why-violence-toward-inmates-nyc-rikers-island-jail-grew/uCyiwnhjdoNWrl6DTsfiN/story.html> [<https://perma.cc/R2EE-LZHF>].

114. SEITZ & MILLER, *supra* note 26, at 177–87.

115. Interview by Chloe Kimball with Glenn E. Martin, Founder & Former President, JustLeadershipUSA (June 16, 2016).

officers also began conducting random raids at inhumane hours.<sup>116</sup> Buser explained that these “searches were brutal...some just cause[d] real terror in inmates.”<sup>117</sup>

Not only were these methods inhumane, they were also unsuccessful. Despite the increased number of security personnel, slashings rose 1000% from 1994 to 1999.<sup>118</sup> During his many years running COBA, Seabrook was labeled “the biggest obstacle to curb brutality and malfeasance at Rikers.”<sup>119</sup> He insulated his correction officer members from criticism by tirelessly cultivating personal relationships with high-profile politicians such as Mayor Michael Bloomberg and Governor George Pataki, while donating millions of dollars to political campaigns.<sup>120</sup> Early in 2016, Seabrook was indicted and removed from his union post for embezzling union funds.<sup>121</sup> His departure at the outset of the #CLOSERikers campaign proved fortuitous, removing a longtime opponent of reform at a crucial moment.<sup>122</sup>

During the 1990s, detainees not only suffered through unprecedented violence and overcrowding, but experienced greatly diminished healthcare services.<sup>123</sup> For years, Montefiore Medical Center managed healthcare on Rikers Island.<sup>124</sup> In 1998, Mayor Giuliani sold the contract to St. Barnabas at a rate that saved the city \$7.4 million a year.<sup>125</sup> Under the Montefiore contract, the city paid

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116. Interview with Mary Buser, *supra* note 105.

117. Surico, *Most Notorious Jail*, *supra* note 3.

118. Schwirtz, *supra* note 113.

119. Schwirtz & Winerip, *supra* note 111.

120. *Id.*

121. Nicole Gelinias, *Why New York Politicians Feared Norman Seabrook*, N.Y. POST (June 13, 2016), <http://nypost.com/2016/06/13/why-new-york-politicians-feared-norman-seabrook> [<https://perma.cc/Z9SQ-CSNV>]; see also Will Bredderman & Jilian Jorgensen, *The Power and Politics of Norman Seabrook's COBA*, OBSERVER (June 13, 2016, 4:03 PM), <http://observer.com/2016/06/the-power-and-politics-of-norman-seabrooks-coba/> [<https://perma.cc/RUZ8-78FM>]; *Head of Correction Officers Union Steps Down After Arrest*, WNYC (June 9, 2016), <http://www.wnyc.org/story/head-correction-union-steps-down-after-arrest/> [<https://perma.cc/G7FA-ZKHY>].

122. Seabrook's corruption case went to trial in October 2017. See Jan Ransom, *Corruption Trial for Jail Officers' Biggest Champion Is Set to Begin*, N.Y. TIMES (Oct. 22, 2017), <https://www.nytimes.com/2017/10/22/nyregion/norman-seabrook-fraud-charges-trial.html> [<https://nyti.ms/2zv7gdv>].

123. David Rohde, *Agency Report Hails Switch to Managed Care for Inmates*, N.Y. TIMES (Nov. 8, 1998), <http://www.nytimes.com/1998/11/09/nyregion/agency-report-hails-switch-to-managed-care-for-inmates.html> [<https://nyti.ms/2EE802j>].

124. *Id.*

125. Surico, *Most Notorious Jail*, *supra* note 3.

each time someone on Rikers Island was sent to a city hospital,<sup>126</sup> but under the new system, St. Barnabas was given a lump sum at the outset of their contract, which disincentivized patient care.<sup>127</sup> In the immediate wake of the switch to St. Barnabas, medical complaints at Rikers rose over 400%, leading to a slew of investigations.<sup>128</sup> At least four detainees died in their care in three years, among other “serious problems”;<sup>129</sup> according to Buser, St. Barnabas was “motivated by profit with absolutely no experience in correctional health care, a very unique type of medical care.”<sup>130</sup>

In 2000, following a series of Board of Correction<sup>131</sup> investigations and numerous lawsuits,<sup>132</sup> Mayor Giuliani capitulated to critics’ demands, and terminated the St. Barnabas contract.<sup>133</sup> The new Rikers contract went to the Prison Health Services of Nashville, later known as Corizon.<sup>134</sup> Corizon’s fifteen-year management of the DOC healthcare system featured its share of scandal and tumult, and after the city was unable to land even a bid to replace it, health management was passed to the City Health and Hospitals

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126. Interview with Mary Buser, *supra* note 105.

127. Katherine Eban Finklestein, *Complaints Prompt Scrutiny of St. Barnabas Hospital*, N.Y. OBSERVER (Aug. 31, 1998, 12:00 AM), <http://observer.com/1998/08/complaints-prompt-scrutiny-of-st-barnabas-hospital> [<https://perma.cc/S5KM-HMK6>].

128. Surico, *Most Notorious Jail*, *supra* note 3.

129. Eric Lipton, *New York Jails Pose Biggest Test for Health Firm with Mixed Past*, N.Y. TIMES (Sept. 25, 2000), <http://www.nytimes.com/2000/09/25/nyregion/new-york-jails-pose-biggest-test-for-health-firm-with-mixed-past.html> [<https://nyti.ms/2FyLNUN>].

130. Interview with Mary Buser, *supra* note 105.

131. Not to be confused with the Department of Correction, the Board of Correction is a non-judicial oversight board that regulates, monitors, and inspects the correctional facilities of New York City.

132. See *generally* *Elie v. St. Barnabas Hosp.*, 724 N.Y.S.2d 749 (N.Y. App. Div. 2001); *Small v. St. Barnabas Hosp.*, 726 N.Y.S.2d 260 (N.Y. App. Div. 2001); *Leacock v. City of New York*, No. 01 Civ. 2849(DLC), 2005 WL 323723 (S.D.N.Y. Feb. 10, 2005); *Murns v. City of New York*, No. 00 Civ. 9590(DLC), 2001 WL 515201 (S.D.N.Y. May 15, 2001).

133. Katherine E. Finkelstein, *Bronx Hospital to Drop Its Rikers Contract*, N.Y. TIMES (Mar. 1, 2000), <http://www.nytimes.com/2000/03/01/nyregion/bronx-hospital-to-drop-its-rikers-contract.html> [<https://nyti.ms/2EG3GQd>].

134. Daryl Kelley, *Quality of Jail Medical Care Questioned*, L.A. TIMES (Dec. 27, 2001), <http://articles.latimes.com/2001/dec/27/local/me-18313> [<https://perma.cc/8RR6-C7FD>].

Corporation,<sup>135</sup> a move seen as improving and ‘integrating’ care from the corrections system to the rest of the city’s hospital system.<sup>136</sup>

#### F. Modern Reform Failures

Mayor Michael Bloomberg preserved the tough-on-crime legacy of his predecessor, most infamously through increased use of stop-and-frisk policing, which a federal court deemed an unconstitutional form of racial profiling.<sup>137</sup> A steadily declining crime rate helped reduce the population at Rikers Island to below 12,000 by the end of his third term,<sup>138</sup> but conditions at the jail complex continued to deteriorate. According to Martin Horn, the DOC Commissioner from 2002 to 2010, “there was very little interest in expending political capital and financial capital on the jails.”<sup>139</sup> For example, Mayor Bloomberg cut over 3000 correctional positions, and when he proposed more cuts in 2008, Horn drafted a letter to the budget office warning that further cuts would be “impossible without compromising the safety of everybody in the jails.”<sup>140</sup> A number of the positions cut involved officers responsible for escorting detainees to mental health services.<sup>141</sup> To reduce the number of violent incidents, correctional officers increased the use of solitary confinement for detainees with mental health issues.<sup>142</sup>

Meanwhile, the *Village Voice* reported on a correction officer-run “Fight Club” at the Robert N. Davoren Complex, the Rikers Island facility that houses male detainees ages sixteen through seventeen.<sup>143</sup>

135. Michael Winerip & Michael Schwartz, *New York City to End Contract with Rikers Health Provider*, N.Y. TIMES (June 10, 2015), <https://www.nytimes.com/2015/06/11/nyregion/report-details-failings-of-corizon-rikers-island-health-provider.html> [https://nyti.ms/2qT39qt]. HHC manages the city’s public hospitals.

136. Maura Ewing, *Why New York Dropped Corizon*, THE MARSHALL PROJECT (June 11, 2015), <https://www.themarshallproject.org/2015/06/11/why-new-york-dropped-corizon> [https://perma.cc/T36M-MKPN].

137. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 540–41 (S.D.N.Y. 2013); see also Joseph Goldstein, *Judge Rejects New York’s Stop-and-Frisk Policy*, N.Y. TIMES (Aug. 12, 2013), <http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html> [https://nyti.ms/2k2lvyr].

138. Surico, *Most Notorious Jail*, *supra* note 3.

139. Schwartz, *supra* note 113.

140. *Id.*

141. *Id.*

142. Michael Winerip & Michael Schwartz, *For Mentally Ill Inmates at Rikers Island, a Cycle of Jail and Hospitals*, N.Y. TIMES (Apr. 10, 2015), <https://www.nytimes.com/2015/04/12/nyregion/for-mentally-ill-inmates-at-rikers-a-cycle-of-jail-and-hospitals.html> [https://nyti.ms/2jBuiYF].

143. Graham Rayman, *Rikers Fight Club: The Knockout Punch*, VILLAGE VOICE (Apr. 15, 2009) [hereinafter Rayman, *The Knockout Punch*],

What began as correction officers' use of young detainees to violently enforce discipline against other detainees, morphed into an elaborate extortion scheme.<sup>144</sup> High-ranking DOC officials were briefed about correction officers delegating their own responsibilities to detainees in a process known as "The Program," but did not take action.<sup>145</sup> In turn, those young people would control access to privileges such as phone use, leading to constant swells in violence, resembling "something out of the world of organized crime."<sup>146</sup> New York City's Department of Investigations Commissioner Rose Gill Hearn called it "the worst" scandal she had ever witnessed in city jails.<sup>147</sup>

Convinced, as Herb Sturz had been a generation ago, that the New York City jail system needed to be decentralized, Horn proposed a plan to close Rikers Island and replace the jails with modern facilities in the Bronx.<sup>148</sup> For Horn, Rikers was beyond reform, in part because "human waste bubbled into cells, overheated buildings put detainees and officers on edge; [and] gang members broke off pieces of the radiators and sharpened them into weapons."<sup>149</sup> Ultimately, pushback from community groups that did not want jails in their neighborhoods ended Horn's vision.<sup>150</sup> Horn stepped down after Mayor Bloomberg's second term, and problems only continued to mount, with officer-on-detainee violence increasing ninety percent during Mayor Bloomberg's final term.<sup>151</sup>

Even as city hall's administration transitioned to Mayor de Blasio, Rikers Island continued to exist in a state of dysfunction.<sup>152</sup> The incarceration and subsequent suicide attempt of Kalief Browder, held

<https://www.villagevoice.com/2009/04/15/rikers-fight-club-the-knockout-punch/> [<https://perma.cc/2BRM-LVXX>].

144. Graham Rayman, *Rikers Island Fight Club*, VILLAGE VOICE (Apr. 8, 2008), <https://www.villagevoice.com/2008/04/08/rikers-island-fight-club/> [<https://perma.cc/WEF4-ZBAX>].

145. Rayman, *The Knockout Punch*, *supra* note 143.

146. *Rikers Island: A Dark History of New York City's Forgotten Neighborhood*, #CLOSERIKERS, [http://www.closerikers.org/media/rikers-island-a-dark-history-of-new-york-citys-forgotten-neighborhood/#\\_ftn160](http://www.closerikers.org/media/rikers-island-a-dark-history-of-new-york-citys-forgotten-neighborhood/#_ftn160) [<https://perma.cc/J8J7-4V6H>].

147. Surico, *Most Notorious Jail*, *supra* note 3.

148. Timothy Williams, *The City Withdraws Its Proposal for a \$375 Million Jail in the South Bronx*, N.Y. TIMES (Mar. 4, 2008), <http://www.nytimes.com/2008/03/05/nyregion/05jail.html> [<https://nyti.ms/2qS2PZ8>].

149. Michael Schwartz & Michael Winerip, *Close Rikers Island? It Will Take Years, Billions and Political Capital*, N.Y. TIMES (Mar. 2, 2016), <https://www.nytimes.com/2016/03/03/nyregion/closing-rikers-island-despite-rhetoric-intractable-obstacles-remain.html> [<https://nyti.ms/2mBteWv>].

150. *Id.*

151. Schwartz, *supra* note 113.

152. See Press Release, *supra* note 2.

without trial for three years, brought renewed media attention to Rikers Island.<sup>153</sup> In 2014, Preet Bharara, the United States Attorney for the Southern District, released a highly-publicized Justice Department report detailing Rikers Island's "deep-seated culture of violence."<sup>154</sup> The report demonstrated Rikers Island's systematic deficiencies, such as inadequate staff discipline and widespread corruption.<sup>155</sup>

In response to the report, DOC Commissioner Joseph Ponte vowed to enact reforms.<sup>156</sup> His most significant achievement, ending solitary confinement for young people, has been criticized for its slow and incomplete roll out.<sup>157</sup> Ponte resigned following revelations that he had abused city vehicle policies.<sup>158</sup> The conditions and injustices of Rikers Island have remained in the headlines, including the recent case of Pedro Hernandez, a teenager held on Rikers Island pre-trial for more than a year on an extremely high bail despite overwhelming evidence of his innocence.<sup>159</sup>

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153. Jennifer Gonnerman, *Before the Law*, NEW YORKER (Oct. 6, 2014), <http://www.newyorker.com/magazine/2014/10/06/before-the-law> [<https://perma.cc/TZ7H-PWZD>].

154. U.S. ATTORNEY FOR THE S. DIST. OF N.Y., U.S. DEP'T OF JUSTICE, CRIPA INVESTIGATION OF THE NEW YORK CITY DEPARTMENT OF CORRECTION JAILS ON RIKERS ISLAND 3 (2014), <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf> [<https://perma.cc/4QPB-2VDK>]; see also Press Release, *supra* note 2.

155. *Id.*

156. Meredith Clark & Rachel Kleinman, *DOJ Finds 'Deep Seated Culture of Violence' at Rikers Island*, MSNBC (Aug. 05, 2014, 11:23 AM), <http://www.msnbc.com/msnbc/doj-violence-rikers-island> [<https://perma.cc/4935-432Y>].

157. Courtney Gross, *Board of Correction Raises Concerns After Rikers Officials Fail to Eliminate Solitary Confinement for Young Adults by June 30 Deadline*, N.Y. 1 (July 7, 2016), <http://www.ny1.com/nyc/all-boroughs/news/2016/07/7/board-of-correction-raises-concerns-after-rikers-officials-fail-to-eliminate-solitary-confinement-for-young-adults-by-june-30-deadline.html> [<https://perma.cc/K9LD-49KD>].

158. Denis Slattery et al., *Correction Commissioner Joseph Ponte to Resign from His Post*, N.Y. DAILY NEWS (May 12, 2017, 1:16 AM), <http://www.nydailynews.com/new-york/correction-commissioner-joseph-ponte-resign-post-article-1.3158212> [<https://perma.cc/GU8X-NNAM>].

159. Shaun King, *Pedro Hernandez Is Rikers Island's New Kalief Browder*, N.Y. DAILY NEWS (July 20, 2017), <http://www.nydailynews.com/new-york/king-pedro-hernandez-rikers-island-new-kalief-browder-article-1.3342107> [<https://perma.cc/G6Q2-V6SL>].

## II. POLICIES TO DECARCERATE NEW YORK CITY AND CLOSE RIKERS

Today there are approximately 9400 people being detained in New York City jail facilities.<sup>160</sup> Most of them, about 7500, are held on Rikers Island, with the balance detained in the city's three borough-based facilities.<sup>161</sup> Approximately 600 are women, housed at the Rose M. Singer facility.<sup>162</sup> Eighty-seven percent of the population of Rikers Island is Black or Latino, and while more than 1000 detainees are sent from courts in Brooklyn, the Bronx and Queens, Manhattan courts send easily the most people to Rikers Island, nearly a third of the total.<sup>163</sup> Most of the people on Rikers Island—seventy-eight percent—are held as pre-trial detainees, while another twelve percent are sentenced to terms of less than a year, and the remainder are held for alleged parole violations or holds from other courts.<sup>164</sup>

Early on in the #CLOSErikers campaign, the leadership heard a presentation from two former DOC Commissioners, Martin Horn and Michael Jacobson, who explained that the population of Rikers consists of two distinct groups: the “shallow end of the pool”—representing the thousands of New Yorkers who cycle through Rikers for a few days at a time; and the “deep end”—individuals who spend many months locked up waiting for trial.<sup>165</sup> That is why the #CLOSErikers campaign has focused extensively on bail and speedy trial reform, also adding discovery reform upon learning of its relationship to speedy trial issues.<sup>166</sup> Only by addressing these issues can the population be sufficiently driven down to a realistic size that would enable Rikers to close permanently.

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160. CITY OF N.Y., POPULATION DEMOGRAPHICS, FY17, QTR. 4 (2017) [hereinafter POPULATION DEMOGRAPHICS], [http://www1.nyc.gov/assets/doc/downloads/pdf/FY17\\_4th\\_QUARTER\\_LL\\_88\\_2015.pdf](http://www1.nyc.gov/assets/doc/downloads/pdf/FY17_4th_QUARTER_LL_88_2015.pdf) [<https://perma.cc/762F-DUC3>].

161. A MORE JUST NEW YORK CITY, *supra* note 15, at 13.

162. POPULATION DEMOGRAPHICS, *supra* note 160.

163. *Id.*

164. COUNCIL OF THE CITY OF N.Y., REPORT OF THE FINANCE DIVISION ON THE FISCAL 2018 PRELIMINARY BUDGET 27 (2017) [hereinafter REPORT OF THE FINANCE DIVISION ON THE FISCAL 2018 PRELIMINARY BUDGET], <http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/072-DOC.pdf> [<https://perma.cc/AHN5-CXV3>].

165. Meeting Notes from January 2016 #CLOSErikers Partner Meeting (on file with author).

166. *See* #FREEnewyork Campaign, JUSTLEADERSHIPUSA, <https://www.justleadershipusa.org/advocacy/#current-issues> [<https://perma.cc/89ZB-WF2C>].

The most common question received by the #CLOSErikers campaign is “where will the people go?”<sup>167</sup> The campaign has always answered that the goal of the #CLOSErikers campaign is not only to shutter the Rikers Island facility, but to reimagine the criminal justice system in New York City and dramatically reduce the number of people behind bars.<sup>168</sup> Thus, the campaign to #CLOSErikers has supported reforms that would decarcerate New York City and downsize the correctional system that replaces Rikers Island.<sup>169</sup> This view has been echoed by the 2017 Lippman Commission Final Report, which called for reducing the city’s jail population from 9500 to approximately 5000.<sup>170</sup>

Cutting the jail population in half sounds ambitious, but New York City has done it before: at the height of mass incarceration in New York City, in 1991, nearly 22,000 individuals were housed daily in New York City’s jails, well over double today’s population.<sup>171</sup> Yet, over the past twenty-six years, New York City dramatically reduced both crime and its jail population.<sup>172</sup> Significantly reducing New York City’s jail population is not only in line with the values of the #CLOSErikers campaign, but politically necessary, as fewer New Yorkers in jail means that fewer new jails will be required to be built in communities.

Section II.A describes the reforms that must be enacted by New York City’s municipal government to decarcerate New York City jails, including efforts to regulate police practices, expand alternatives to detention, and the creation of mayoral task forces. Section II.B explores three important policies that must be addressed by the New York State legislature, including bail, speedy trial, and discovery reforms. Section II.C describes the role of individual district attorneys representing the five boroughs in reducing the number of detained New Yorkers.

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167. Interview with Glenn E. Martin, Founder & Former President, JustLeadershipUSA (Oct. 23, 2017).

168. Road to City Hall, *Rivers Activist: Ten Years Too Long*, N.Y. 1 (Oct. 5, 2017, 9:57 PM), <http://www.nyl.com/nyc/all-boroughs/inside-city-hall/2017/10/06/rivers-activists--ten-years-is-too-long> [<https://perma.cc/U6ZB-PJEZ>].

169. *How Do We Close Rikers?*, #CLOSERIKERS, <http://www.closerikers.org/reimagining-criminal-justice> [<https://perma.cc/5AZZ-AJH9>].

170. A MORE JUST NEW YORK CITY, *supra* note 15, at 145.

171. Greene & Schiraldi, *supra* note 107, at 22.

172. *Id.*

### A. New York City Decarceration Policies

Rikers Island is a local detention facility, and the decision to shrink and close it is an administrative determination under the control of Mayor de Blasio.<sup>173</sup> Likewise, many of the policies to reduce the number of jailed New Yorkers must emanate from Mayor de Blasio's administration.<sup>174</sup> Because former New York City Council Speaker Melissa Mark-Viverito already passed many of the criminal justice legislative reforms within New York City's purview,<sup>175</sup> the city's remaining priorities for decarceration include reformed policing practices,<sup>176</sup> increased access to detention alternatives,<sup>177</sup> and demanding expedient results from the Task Force established by the city to focus on closure.<sup>178</sup>

#### 1. Policing

To decarcerate New York City and close Rikers, every part of the criminal justice system requires scrutiny, beginning with policing practices, as arrests represent a person's entry into the criminal justice system. Under Mayor de Blasio, the NYPD has continued the practice of "Broken Windows," which aggressively polices "quality of life" crimes in a manner that invariably generates extensive police records for young men of color in heavily policed communities.<sup>179</sup> Advocates such as Communities United for Police Reform (allies of the #CLOSErikers campaign) successfully pushed for significant changes to "stop and frisk" practices under Mayor Bloomberg<sup>180</sup> and

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173. Office of the Mayor, *Mayor de Blasio Announces "Smaller, Safer, Fairer: A Roadmap to Closing Rikers Island,"* CITY OF N.Y. (June 22, 2017) [hereinafter Office of the Mayor, *Mayor Announces*], <http://www1.nyc.gov/office-of-the-mayor/news/427-17/mayor-de-blasio-smaller-safer-fairer-roadmap-closing-rikers-island> [https://perma.cc/W5KB-ZM9L].

174. *Status Report: Closing Rikers Island*, *supra* note 16.

175. Gloria Pazmino, *With Little Debate, Mark-Viverito Finalizes Criminal Justice Reform Act*, POLITICO (May 25, 2016, 6:26 PM), <http://www.politico.com/states/new-york/city-hall/story/2016/05/with-little-debate-mark-viverito-finalizes-criminal-justice-reform-act-102188> [https://perma.cc/DB6P-QKKN].

176. A MORE JUST NEW YORK CITY, *supra* note 15, at 39.

177. *Id.* at 61.

178. *Status Report: Closing Rikers Island*, *supra* note 16.

179. Christopher Mathias, *How 'Broken Windows' Could Stand in the Way of Real Change for the NYPD*, HUFFINGTON POST (Aug. 1, 2014, 4:03 PM), [https://www.huffingtonpost.com/2014/08/01/broken-windows-policing-eric-garner\\_n\\_5642089.html](https://www.huffingtonpost.com/2014/08/01/broken-windows-policing-eric-garner_n_5642089.html) [https://perma.cc/M2XL-6YH6].

180. Seth Wessler, *How 'Stop-and-Frisk' (Not So) Quietly Became the Center of NYC Politics*, COLOR LINES (June 18, 2012), <https://www.colorlines.com/articles/how->

police accountability under Mayor de Blasio.<sup>181</sup> They are currently focused on passing the “Right to Know Act,”<sup>182</sup> which would require police officers to identify themselves and notify individuals of their Fourth Amendment rights.<sup>183</sup> Police reform advocates have similarly criticized the NYPD’s approach to marijuana arrests<sup>184</sup> and turnstile jumping,<sup>185</sup> examples of low-level offenses that could be addressed without criminal prosecution, as well as the lack of accountability for police shootings.<sup>186</sup>

While each of these police reforms bears little direct impact on the population of Rikers Island (few people are there solely due to turnstile jumping), refocusing police priorities would improve the efficiency of an overwhelmed criminal justice system and lessen the number of young people of color saddled with criminal records.<sup>187</sup> Finally, advocates claim that police accountability is necessary for a broader cultural shift away from punishment and towards responsiveness for community needs.<sup>188</sup> Even though Mayor de

stop-and-frisk-not-so-quietly-became-center-nyc-politics [<https://perma.cc/78DY-KJYS>].

181. Ben Max, *Bill de Blasio’s Police Accountability Problem*, GOTHAM GAZETTE (Dec. 29, 2016), <http://www.gothamgazette.com/city/6690-bill-de-blasio-s-police-accountability-problem> [<https://perma.cc/5G5G-7X8D>].

182. *Rally for the Right to Know Act*, CTR. FOR CONSTITUTIONAL RIGHTS, <https://ccrjustice.org/home/get-involved/events/rally-right-know-act> [<https://perma.cc/WPM8-Q8DE>].

183. *About the Right to Know Act*, CMTYS. UNITED FOR POLICE REFORM, <http://changethenypd.org/about-right-know-act-legislation> [<https://perma.cc/SYR9-RPHJ>].

184. Shayna Jacobs, *NYC Pot Arrests Continue Despite Decriminalization Push: Lawyers*, N.Y. DAILY NEWS (Aug. 21, 2017, 5:30 AM), <http://www.nydailynews.com/new-york/nyc-crime/nyc-pot-arrests-continue-decriminalization-push-lawyers-article-1.3428481> [<https://perma.cc/3GK6-D65R>].

185. Maura Ewing, *Will New York Stop Arresting People for Evading Subway Fares?*, THE ATLANTIC (Aug. 4, 2017), <https://www.theatlantic.com/politics/archive/2017/08/new-york-subway-fares/535866> [<https://perma.cc/8HCP-95VM>].

186. *Family of Delrawn Small Responds to Not Guilty Verdict Against NYPD Officer Wayne Isaacs Who Killed Small*, CMTYS. UNITED FOR POLICE REFORM (Nov. 6, 2017), <http://changethenypd.org/releases/family-delrawn-small-responds-not-guilty-verdict-against-nypd-officer-wayne-isaacs-who> [<https://perma.cc/2GL5-6AWU>].

187. James McKinley, Jr., *For Manhattan Fare Beaters, One-Way Ticket to Court May Be Over*, N.Y. TIMES (June 30, 2017), <https://www.nytimes.com/2017/06/30/nyregion/subway-fare-beating-new-york.html> [<https://nyti.ms/2urQNnM>]. When such offenses accumulate on a person’s criminal record, subsequent arrests may lead to more punitive bail dispositions.

188. As an example of progress in this area, a recent report showed that a year after passage of the Criminal Justice Reform Act, which was spearheaded by police reform advocates and former Speaker Mark-Viverito, criminal summonses for ‘quality of life’ crimes were down ninety percent from 2016 to 2017 over a studied period. See David Colon, *Mayor’s Office Announces 90% Drop in Criminal*

Blasio has not brought police reform into the conversation around closing Rikers Island, the increased collaboration between the #CLOSErikers campaign and police reform advocates will keep these issues in focus during Mayor de Blasio's second term.<sup>189</sup>

## 2. *Supporting and Expanding Alternatives to Detention*

In addition to reforms to policing practices that will result in fewer low-level arrests, there are significant opportunities to expand practices that divert people who are arrested from jail. The city's recently launched "Supervised Release" program diverts relatively low-risk individuals from pre-trial detention, and instead maintains steady contact with individuals (over the phone or in-person) while their cases are pending.<sup>190</sup> The #CLOSErikers campaign conditionally supports the expansion of supervised released, as long as it does not lead to "net widening," the practice by which such programs are steered towards low-risk individuals who might otherwise have been simply released on their own recognizance, rather than as a true alternative to jail.<sup>191</sup> Similarly, the #CLOSErikers campaign has an approving but guarded approach to initiatives like the HOPE Program, which has successfully re-routed Staten Islanders accused of certain drug offenses from jail into treatment,<sup>192</sup> one of many alternative court models in the city.<sup>193</sup>

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*Summonses for Quality of Life Crimes*, GOTHAMIST (Oct. 21, 2017), [http://gothamist.com/2017/10/21/mayors\\_office\\_announces\\_90\\_percent.php](http://gothamist.com/2017/10/21/mayors_office_announces_90_percent.php) [<https://perma.cc/DDC3-5P4A>].

189. The first major collaboration between the #CLOSErikers campaign and Communities United for Police Reform was a joint debate among New York City council speaker candidates that was held on November 14, 2017. See Erin Durkin, *Candidates Back Police Reform Bills at NYC Council Speaker Debate*, N.Y. DAILY NEWS (Nov. 14, 2017, 10:12 PM), <http://www.nydailynews.com/news/politics/candidates-back-police-reform-bills-nyc-council-speaker-debate-article-1.3633509> [<https://perma.cc/J58G-M5C7>].

190. *Program Profiles: CASES' Manhattan Supervised Release*, CASES (June 1, 2017), <https://www.cases.org/2017/06/01/program-profile-cases-manhattan-supervised-release> [<https://perma.cc/9P8Q-ZBE4>].

191. Christopher Bright, *Implementation Issues: Diversion or Net-Widening*, CTR. FOR JUST. & RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-5-implementation-issues/diversion-or-net-widening> [<https://perma.cc/GLJ4-TQXP>].

192. Caroline Lewis, *Staten Island's New Jail-Diversion Program for Drug Users Could Provide Citywide Model*, CRAIN'S (Apr. 17, 2017, 2:06 PM), [http://www.crainnewyork.com/article/20170417/HEALTH\\_CARE/170419893](http://www.crainnewyork.com/article/20170417/HEALTH_CARE/170419893) [<https://perma.cc/J5T3-DVY4>].

193. *Treatment Courts*, CTR. FOR COURT INNOVATION, <https://www.courtinnovation.org/areas-of-focus/treatment-courts> [<https://perma.cc/Y8UK-RCKG>].

These types of programs and alternative courts can turn lives around, but may also result in overly punitive outcomes for people who are unable to remain in treatment.<sup>194</sup>

Some organizations offer opportunities to receive mental health treatment and substance use support or address other needs as a mandated condition of release. New York City is home to successful diversion programs such as CASES,<sup>195</sup> the Fortune Society,<sup>196</sup> and Bronx Connect.<sup>197</sup> These programs can serve as “alternatives to detention”—steering an individual away from a New York City jail pending the resolution of their case, or “alternatives to incarceration”—disposing of a case in lieu of jail or prison time.<sup>198</sup> Over time they have developed sterling records; for example, young people who go through Bronx Connect’s programs have far lower re-arrest and recidivism rates than other youths in the New York City criminal justice system—figures that hold true for years after their completion of programming.<sup>199</sup> CASES is one of the few organizations in the city to divert people with mental health issues from jail, including individuals charged with violent felonies.<sup>200</sup> Another type of diversion practice that is emergent but growing in stature, “restorative justice,” works intensely with people charged with violent felonies to help them understand the impact of their actions on victims.<sup>201</sup>

Because alternatives to detention programs are often funded in whole or in part by the city, Mayor de Blasio can demonstrate the seriousness of his commitment to closing Rikers Island by investing more resources into programs with track records of helping people enmeshed in the criminal justice system. Unfortunately, these types of programs, whatever their level of success, become politically vulnerable when one of their participants land on the front page of a

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194. Interview with Glenn E. Martin, *supra* note 167.

195. *Mission*, CASES, <https://www.cases.org/about/mission> [<https://perma.cc/NUE4-FPPG>].

196. *Re-Entry: Coming Home*, FORTUNE SOC’Y, <https://fortunesociety.org/coming-home/> [<https://perma.cc/XC8R-64VB>].

197. *About*, BRONX CONNECT, <https://bronxconnect.org/about/> [<https://perma.cc/3ESH-QU4T>].

198. Greg Berman & Robert Wolf, *Alternatives to Incarceration: The New York Story*, 16 NYSBA GOV’T, LAW & POL’Y J. 36, 37 (2014).

199. *Stats*, BRONX CONNECT, <https://bronxconnect.org/#stats> [<https://perma.cc/3ESH-QU4T>].

200. *Manhattan CIRT*, CASES, <https://www.cases.org/manhattan-cirt/> [<https://perma.cc/TJH7-3E74>].

201. *Our Mission*, COMMON JUSTICE, <http://www.commonjustice.org/#mission> [<https://perma.cc/HG8D-CG4K>].

newspaper.<sup>202</sup> The #CLOSErikers campaign will maintain public pressure for these types of community supports, even while recognizing that some people who are kept out of jail may commit additional crimes. More tangibly, JLUSA will push for the 2018–2019 New York City budget to include more funding for diversion programs with demonstrated track records of success.

### 3. *Mayor de Blasio’s Roadmap and Task Force*

While Mayor de Blasio announced that closing Rikers would become city policy on March 30, 2017, the Office of the Mayor’s late June 2017 publication of *Smaller, Safer, Fairer: A Roadmap to Closing Rikers* (the “Roadmap”)<sup>203</sup> and its creation of the Justice Implementation Task Force (“Task Force”) represent more tangible commitments to closure.<sup>204</sup> The Roadmap details how the city can reduce its jail population through reforms that often align with the Lippman Commission and the #CLOSErikers campaign, such as improving case processing time, increasing alternative-to-detention programs, and providing more mental health resources outside of the jail system.<sup>205</sup> While the Roadmap shares the Lippman Commission’s view that reducing the jail population to 5000 is required to close Rikers Island, it argues that decreasing the population below 7000 “would require a seismic shift in culture and expectations by New Yorkers and the justice system.”<sup>206</sup> This rhetoric is consistent with Mayor de Blasio’s practice of playing down expectations around the closure of Rikers Island, even as he professes support for it.<sup>207</sup>

Mayor de Blasio’s intent is that the details for implementing the Roadmap will come from the Task Force, which is largely comprised of members of his own administration and other government

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202. J. David Goodman & Al Baker, *Prison Diversion Programs in New York Face New Scrutiny After Police Officer’s Killing*, N.Y. TIMES (Dec. 15, 2015), <https://www.nytimes.com/2015/12/16/nyregion/prison-diversion-programs-in-new-york-face-new-scrutiny-after-police-officers-killing.html> [https://nyti.ms/2p9GLYG].

203. Office of the Mayor, *Mayor Announces*, *supra* note 173.

204. *Id.*

205. OFFICE OF THE MAYOR, CITY OF N.Y., *SMALLER, SAFER, FAIRER: A ROADMAP TO CLOSING RIKERS ISLAND* 19–28 (2017) [hereinafter *SMALLER, SAFER, FAIRER*], <https://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/Smaller-Safer-Fairer.pdf> [https://perma.cc/3L3P-RZBP].

206. *Id.* at 28.

207. Katie Honan, *Mayor Releases ‘Long and Difficult’ Plan to Shutter Rikers in 10 Years*, DNAINFO (June 22, 2017, 9:44 AM), <https://www.dnainfo.com/new-york/20170622/east-elmhurst/rikers-island-closure-mayor-bill-de-blasio-plan-department-of-correction> [https://perma.cc/R9CZ-ZWGL].

officials.<sup>208</sup> The first set of named Task Force members also includes several re-entry representatives and academics, including three people representing organizations that support the #CLOSErikers campaign.<sup>209</sup> However, progress from the Task Force has been slow. At a September 6, 2017 meeting of the #CLOSErikers campaign, Task Force member Stanley Richards, an invited guest speaker, noted that neither his committee (Working Group on Design) nor most of the other committees had yet met.<sup>210</sup> The #CLOSErikers campaign expects to closely monitor the progress of the Task Force in the coming year.

## B. State Level Policies

Although New York City has more than eight million residents and a budget of over \$85 billion,<sup>211</sup> many of the laws that govern daily life, including criminal law, are set by the State, rather than the city. These include three of the priorities of the #CLOSErikers campaign: bail reform, speedy trial reform, and discovery reform.

### 1. Bail Reform

Reforming bail would significantly reduce the New York City jail population and facilitate the closure of Rikers Island. At Rikers Island, seventy-eight percent of the people held there are pre-trial detainees.<sup>212</sup> Of that group, the overwhelming majority is there because they cannot make bail.<sup>213</sup> As the Lippman Commission Final

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208. SMALLER, SAFER, FAIRER, *supra* note 205, at 5.

209. *Id.* The three organizations are the Osborne Association, Fortune Society, and Exodus Transitional Community.

210. Meeting Notes from #CLOSErikers Partner Meeting (Sept. 6, 2017) (on file with author).

211. Press Release, N.Y.C. City Council, New York City Council Adopts FY 2018 Budget (June 6, 2017), <https://council.nyc.gov/press/2017/06/06/1426/> [<https://perma.cc/6LJR-UQS7>].

212. REPORT OF THE FINANCE DIVISION ON THE FISCAL 2018 PRELIMINARY BUDGET, *supra* note 164, at 27.

213. Nick Wing, *NYC Spends \$116 Million a Year Jailing People Who Can't Afford to Pay Their Way Out*, HUFFINGTON POST (May 19, 2017, 6:18 PM), [https://www.huffingtonpost.com/entry/new-york-city-bail-audit\\_us\\_591f139ee4b034684b0bee48](https://www.huffingtonpost.com/entry/new-york-city-bail-audit_us_591f139ee4b034684b0bee48) [<https://perma.cc/DRG4-JSEQ>]. There are some individuals charged with very serious crimes who are remanded to pre-trial detention without the possibility of bail. However, the median bail amounts for felonies are \$5000, which demonstrates that for most individuals held pre-trial are there because they lack the financial resources to pay bail—an issue criminal justice reformers call the “criminalization of poverty.” INDEP. COMM’N ON N.Y.C. CRIMINAL JUSTICE & INCARCERATION REFORM, THE RIKERS REPORT: REVERSING THE CRIMINALIZATION OF SOCIETY 45 (2017), [https://www.nycourts.gov/ip/ethnic-fairness/The%20Rikers%](https://www.nycourts.gov/ip/ethnic-fairness/The%20Rikers%20Report)

Report noted, “[m]oney bail does not have a meaningful impact on appearance in court but it does serve to hold thousands of New Yorkers in jail without a strong public safety rationale.”<sup>214</sup> Among the thousands who wind up at Rikers Island each year due to bail, several stories have permeated coverage of the issue, including teenagers Kalief Browder<sup>215</sup> and Pedro Hernandez,<sup>216</sup> each of whom suffered tremendously while at Rikers Island. The Lippman Commission estimated that the average daily population at Rikers Island could be cut by more than 3000 if bail reform were implemented alongside supervised release and diversion.<sup>217</sup>

There are two paths to bail reform. First, because bail amounts are set during criminal court arraignment—assistant district attorneys ask for bail amounts that are either accepted, rejected, or modified by judges—the simplest solution is to alter prosecutor behavior, discussed *infra* at Section II.C. The second path is to pursue reform through state legislation.<sup>218</sup> Governor Cuomo has taken up the issue, proposing bail reform in his 2017 “State of the State” address.<sup>219</sup> While details of Governor’s Cuomo’s plan remain murky, advocacy

20Report,%20Reversing%20The%20Criminalization%20Of%20Poverty.pdf [https://perma.cc/H73Y-9HXT].

214. A MORE JUST NEW YORK CITY, *supra* note 15, at 45.

215. Alysia Santo, *No Bail, Less Hope: The Death of Kalief Browder*, THE MARSHALL PROJECT (June 9, 2015, 6:04 PM), <https://www.themarshallproject.org/2015/06/09/no-bail-less-hope-the-death-of-kalief-browder> [https://perma.cc/ATX5-NSRC].

216. Nick Malinowski, *Why Is the Bronx District Attorney Holding Pedro Hernandez at Rikers Island?*, INJUSTICE TODAY (July 24, 2017), <https://injusticetoday.com/pedro-hernandez-an-18-year-old-man-man-from-the-bronx-has-been-locked-up-on-rikers-island-waiting-3a0e48e93ec9> [https://perma.cc/D86X-6FTK]; see also Kate Pastor & Patrick Hedlund, *Bronx DA Drops Gun Case Against Pedro Hernandez*, DNAINFO (Sept. 6, 2017, 1:44 PM), <https://www.dnainfo.com/new-york/20170906/mott-haven/pedro-hernandez-case-charges-dismissed-bronx-district-attorney> [https://perma.cc/X9EB-WG8R].

217. A MORE JUST NEW YORK CITY, *supra* note 15, at 145.

218. James C. McKinley Jr., *State’s Chief Judge, Citing ‘Injustice,’ Lays Out Plan for Bail Reform*, N.Y. TIMES (Oct. 1, 2015), <https://www.nytimes.com/2015/10/02/nyregion/jonathan-lippman-bail-incarceration-new-york-state-chief-judge.html> [https://nyti.ms/2klsFy2]. There are also tangential approaches to bail reform that advocates see as necessary but insufficient, such as reforming commercial bail bonds practices. Press Release, Brooklyn Cmty. Bail Fund, *New Report Highlights Lack of Oversight of For-Profit Bail Industry* (June 14, 2017), <https://brooklynbailfund.org/press-release-new-report-for-profit-bond-industry/> [https://perma.cc/6GV6-6LET].

219. Office of the Governor, *Governor Cuomo Presents the 12th Proposal of the 2017 State of the State Agenda*, N.Y. STATE (Jan. 9, 2017) [hereinafter *Governor Cuomo Presents the 12th Proposal*], <https://www.governor.ny.gov/news/governor-cuomo-presents-12th-proposal-2017-state-state-agenda-launching-new-york-promise-agenda> [https://perma.cc/3WDB-55TB].

organizations such as JLUSA would oppose any bail reform measures that would separate arrested New Yorkers into broad categories such as “violent” or “dangerous,” especially given that the Browder and Hernandez cases demonstrate that the criminal justice system is liable to over-charge or falsely charge individuals with serious crimes.<sup>220</sup> Likewise, advocates oppose adding “dangerousness” to the New York statute as a factor for considering bail, and some advocates (including JLUSA) oppose the use of “risk assessment,” which would incorporate racially discriminatory practices (such as the age of a person’s first arrest) into the bail assessment system.<sup>221</sup>

## 2. *Speedy Trial Reform*

The second policy essential to reducing the New York City jail population and closing Rikers is speedy trial reform. Criminal cases move through the New York City criminal justice system at a glacial pace that has only gotten worse in recent years even as crime has gone down.<sup>222</sup> One reason for this is the case processing system driven by New York’s speedy trial law. An unusual statute and years of unhelpful case law have rendered ineffective the time limits that purportedly govern how fast a case must go to trial.<sup>223</sup> Unlike every other state, New York uses a “readiness rule” that calculates the time a defendant may be locked up pre-trial based on when a prosecutor is “ready” to try the case, rather than a discrete time limit, such as six months.<sup>224</sup> This issue received local and national prominence when the public learned about Kalief Browder, who was sent to Rikers at the age of sixteen for allegedly stealing a backpack.<sup>225</sup> For three years

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220. See Memorandum from JustLeadershipUSA on the Gold Standard Discovery Law Reform in N.Y. State (Oct. 20, 2017) [hereinafter Memorandum from JLUSA] (on file with author).

221. David Howard King, *‘Dangerousness’ Aspect of Cuomo’s Bail Plan Troubles Reformers*, GOTHAM GAZETTE (Jan. 22, 2016), <http://www.gothamgazette.com/index.php/government/6106-dangerousness-aspect-of-cuomos-bail-plan-troubles-reformers> [https://perma.cc/MY52-3KCU]. It bears mentioning that there is no mention here of the #CLOSERikers campaign’s position, as advocates who comprise the campaign are divided on the most effective and politically practical approaches to bail reform. For a more substantive critique of risk assessment tools, see Julia Angwin et al., *Machine Bias*, PRO PUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> [https://perma.cc/M9BZ-MF5L].

222. See generally A MORE JUST NEW YORK CITY, *supra* note 15.

223. Thomas M. O’Brien, *Eliminate Flaws in Speedy Trial Act*, N.Y. L.J. (June 3, 2016), <http://www.law.com/newyorklawjournal/almID/1202759143743/> [https://perma.cc/BR2T-ZV9V].

224. *Id.*

225. Gonnerman, *supra* note 153.

his case stalled through the court system, and by the time it was finally dismissed, he had spent two years in solitary confinement. Soon after coming home, he tragically took his own life.<sup>226</sup>

Outraged over the court processing component of the case, State Senator Daniel Squadron and Assemblymember Jeffrion Aubry sponsored “Kalief’s Law,” which sought to reform the prosecutorial practice of “out of court readiness” and make court congestion count towards the number of days an individual could be held before their case goes to trial.<sup>227</sup> In 2016, this legislation passed the New York State Assembly 138-2,<sup>228</sup> but stalled in the State Senate; the relevant committee, the Codes Committee, did not even meet that session due to the poor health of its chairman.<sup>229</sup> In 2017, an amended version of Kalief’s Law passed the Assembly unanimously.<sup>230</sup> Despite months of advocacy in the State Senate, the Codes Committee ultimately declined to take up the legislation, instead passing a weaker, bipartisan bill out of committee that was not put up for a full Senate vote.<sup>231</sup>

After being completely disengaged from the issue of speedy trial in 2016, in 2017 Governor Andrew Cuomo addressed the issue, advancing a version of speedy trial reform that never received traction in the legislature.<sup>232</sup> It is a well-known practice in Albany that legislation is easiest to pass through the Executive Budget rather than as stand-alone legislation, whether or not the issue has

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226. *Id.*

227. S.B.1998-A, 2017-18 Leg., Reg. Sess. (N.Y. 2017).

228. *Squadron Applauds Assembly Passing “Kalief’s Law” to Fix NY’s Speedy Trial Law*, N.Y. STATE SENATE (June 2, 2016), <https://www.nysenate.gov/newsroom/articles/daniel-l-squadron/squadron-applauds-assembly-passing-kaliefs-law-fix-nys-speedy> [https://perma.cc/MH88-KPMH].

229. Mike McAndrew, *NY Sen. Michael Nozzolio Announces He Won’t Seek Re-Election Because of Health*, SYRACUSE.COM (Feb. 2, 2016), [http://www.syracuse.com/state/index.ssf/2016/02/ny\\_sen\\_michael\\_nozzolio\\_announces\\_he\\_wont\\_seek\\_re-election\\_because\\_of\\_health.html](http://www.syracuse.com/state/index.ssf/2016/02/ny_sen_michael_nozzolio_announces_he_wont_seek_re-election_because_of_health.html) [https://perma.cc/6SEA-MT6P].

230. Press Release, N.Y. State Assembly Speaker Carl E. Heastie, Assembly to Deliver Comprehensive Criminal Justice Reform (Feb. 14, 2017), <http://nyassembly.gov/Press/20170214/> [https://perma.cc/W5ZZ-P6SF].

231. S.B. S6500, 2017-18 Leg., Reg. Sess. (N.Y. 2017); *see also Squadron Passes 1st Step in Speedy Trial Reform Through Codes Committee*, N.Y. STATE SENATE (June 6, 2017), <https://www.nysenate.gov/newsroom/articles/daniel-l-squadron/squadron-passes-1st-step-speedy-trial-reform-through-codes> [https://perma.cc/MK5B-WNQ2].

232. *See generally Ensure Access to a Speedy Trial: The 2017 Criminal Justice Reform Act*, N.Y. STATE, <https://www.ny.gov/2017-criminal-justice-reform-act/2017-criminal-justice-reform-act#ensure-access-to-a-speedy-trial> [https://perma.cc/AC58-2PFC].

significant budget implications.<sup>233</sup> Thus, JustLeadershipUSA and other #CLOSErikers supporters are pushing for Governor Cuomo to adopt a robust version of speedy trial reform in the 2018 Executive Budget, and short of that, push for its passage through the legislative process in the spring of 2018.<sup>234</sup>

### 3. *Discovery Reform*

Reform to New York's discovery laws are a necessary compliment to speedy trial reform. Discovery laws guide the process through which defense counsel receives evidence from the prosecution, but New York's laws put defendants at a considerable disadvantage. First, because the current law<sup>235</sup> allows the prosecution to withhold a large volume of evidence from the defense counsel until the eve of trial, discovery laws contribute further to case delays, as defense counsel seek adjournments to review the materials on which the trial will be determined.<sup>236</sup> Second, because nearly all criminal cases in New York are resolved through plea deals,<sup>237</sup> defense counsel are left to advise their clients without knowing the evidence (or lack thereof) marshalled against them. Third, New York is one of four states that do not provide defendants with the right to know their accuser,<sup>238</sup> and its broken discovery process results in defense counsel being unable to conduct independent investigations.

The "gold star" tenets of discovery reform to which JLUSA is committed include open-file discovery (already practiced in Brooklyn and thirty-five states), automatic disclosure, timely turnover of

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233. Rachel Silberstein, *With One-House Budgets Due, Key Points of Contention in Albany*, GOTHAM GAZETTE (Mar. 13, 2017), <http://www.gothamgazette.com/state/6801-with-one-house-budgets-due-key-points-of-contention-in-albany> [<https://perma.cc/E242-HQG9>]. In this budget, Raise the Age legislation, which is only tangentially related to the state budget, was a principle issue of contention.

234. Governor Cuomo included bail reform, speedy trial reform, and discovery reform in his 2018 State of the State. See Office of the Governor, *Governor Cuomo Unveils 22nd Proposal of 2018 State of the State: Restoring Fairness in New York's Criminal Justice System*, N.Y. STATE (Jan. 3, 2018), <https://www.governor.ny.gov/news/governor-cuomo-unveils-22nd-proposal-2018-state-state-restoring-fairness-new-yorks-criminal> [<https://perma.cc/9LNK-83MS>].

235. N.Y. CRIM. PROC. § 240.20 (McKinney 2017).

236. Memorandum from JLUSA, *supra* note 220 (contrasting civil cases, where both sides receive evidence early in the case process).

237. Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. REV. BOOKS (Nov. 20, 2014), <http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty> [<https://perma.cc/QPX3-WG7E>].

238. *Governor Cuomo Presents the 12th Proposal*, *supra* note 219. In response to concerns over witness intimidation, most legislative proposals have carve-outs allowing prosecutors to withhold information if this is a legitimate risk.

materials, and remedies for failure to turn over materials.<sup>239</sup> These tenets are broadly endorsed by the Lippman Commission,<sup>240</sup> N.Y. Assembly Bill 7292/N.Y. Senate Bill 6848<sup>241</sup> (also known as the “NYSBA Bill” after its support from the New York State Bar Association),<sup>242</sup> and the most far-reaching legislative proposal, N.Y. Assembly Bill 4360.<sup>243</sup> The primary opposition to these legislative proposals has been district attorneys who claim that these policies would endanger witnesses, though this has not appeared to be an issue in the forty-six states in which defendants know their accusers. A secondary challenge has been the inability of the advocacy community to coalesce around one bill and push a coherent narrative, a challenge that JLUSA and others hope to surmount in 2018.

### C. Role of District Attorneys

The power of district attorneys in the American criminal justice system has only begun to be fully examined.<sup>244</sup> If New York City is to significantly reduce the number of people in its jails, the city’s five district attorneys (one serving each borough) must play a crucial role. Turnover in those positions are rare; as the *New York Times* explained, “[t]he reasons are simple: politically, this is not a tricky job. The public tends to see the prosecutor as a crime fighter, while retaining a sense of wonder at the position’s technical intricacies.<sup>245</sup> However, a nascent national movement towards holding district attorneys accountable for criminal justice issues<sup>246</sup> and a rare competitive election in Brooklyn has thrust the role of district

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239. Memorandum from JLUSA, *supra* note 220.

240. A MORE JUST NEW YORK CITY, *supra* note 15, at 54–58.

241. A.B. 7292, 2017-18 Leg., Reg. Sess. (N.Y. 2017).

242. *See generally* N.Y. STATE BAR ASS’N, REPORT OF THE TASK FORCE ON CRIMINAL DISCOVERY.

243. A.B. 4360, 2017-18 Leg., Reg. Sess. (N.Y. 2017).

244. *See generally* JOHN F. PFAFF, LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION AND HOW TO ACHIEVE REFORM (2017); *see also* Adam Gopnik, *How We Misunderstand Mass Incarceration*, NEW YORKER (Apr. 20, 2017), <https://www.newyorker.com/magazine/2017/04/10/how-we-misunderstand-mass-incarceration> [<https://perma.cc/BYH3-QM97>].

245. Adam Nossiter, *Perfecting the Art of Political Longevity*, N.Y. TIMES (Nov. 7, 1995), <http://www.nytimes.com/1995/11/07/nyregion/perfecting-the-art-of-political-longevity.html> [<https://perma.cc/U8B5-LKWV>].

246. Maura Ewing, *The Progressive Civil-Rights Lawyer Philadelphia Wants for District Attorney*, THE ATLANTIC (May 16, 2017), <https://www.theatlantic.com/politics/archive/2017/05/philadelphia-district-attorney-election-reform/526812> [<https://perma.cc/AH7L-3VP3>].

attorneys into the political spotlight.<sup>247</sup> Many of the advocacy groups that comprise the #CLOSErikers campaign, including JustLeadershipUSA, have begun to incorporate political pressure on district attorneys as an essential component to criminal justice reform.<sup>248</sup>

These efforts have yielded positive results. In June 2017, Manhattan district attorney (“DA”) Cy Vance and Brooklyn acting DA Eric Gonzalez announced that they would no longer prosecute turnstile jumping cases (also known as “theft of services”).<sup>249</sup> While the number of individuals serving time at Rikers for such charges is minimal, the accumulation of charges and particularly open warrants for past unpaid fines can result in a person being detained for a minor offense. In August 2017, DA Vance, DA Gonzalez, Queens DA Richard Brown, and Bronx DA Darcel Clark agreed to collectively dismiss more than 640,000 warrants for minor offenses dated ten years or older, under the premise that such warrants did not promote public safety, but did risk entrapping someone accused of a new, minor offense, in the criminal justice system.<sup>250</sup>

Shortly before Brooklyn district attorney Ken Thompson’s death from cancer in 2016, he chose Eric Gonzalez as the acting district attorney, a position Gonzalez formally retained through subsequent appointment by Governor Cuomo.<sup>251</sup> The 2017 election prompted a flood of candidates to enter the race, and sensing the political mood of the city, argument over their reform credentials.<sup>252</sup> During one Democratic primary debate, candidates expressed their commitment to reducing the use of cash bail for misdemeanor cases (or eliminating the use of cash bail entirely), establishing an independent commission for wrongful convictions, eliminating mandatory minimum sentences in gun cases, having an outside agency review the district attorney’s

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247. Alan Feuer, *In Brooklyn’s District Attorney Race, the Focus Isn’t on Prosecuting Crime*, N.Y. TIMES (Sept. 7, 2017), <https://www.nytimes.com/2017/09/07/nyregion/in-brooklyns-district-attorney-race-fighting-crime-rarely-comes-up.html> [<https://nyti.ms/2gONFke>].

248. Interview with Glenn E. Martin, *supra* note 167.

249. McKinley, Jr., *supra* note 187.

250. Jennifer Peltz, *640,000 NYC Warrants for Old Summonses Tossed in 1 Day*, U.S. NEWS (Aug. 9, 2017), <https://www.usnews.com/news/best-states/new-york/articles/2017-08-09/640-000-nyc-warrants-for-unpaid-summonses-tossed-in-1-day> [<https://perma.cc/LGF5-RKYN>].

251. Erica Orden, *Kenneth Thompson’s Top Deputy to Lead Brooklyn District Attorney’s Office*, WALL ST. J. (Oct. 17, 2016), <https://www.wsj.com/articles/kenneth-thompsons-top-deputy-to-lead-brooklyn-district-attorneys-office-1476734452> [<https://perma.cc/XAY8-ERVM>].

252. Feuer, *supra* note 247.

office for bias, and ending the prosecution of “Broken Windows” cases.<sup>253</sup> Gonzalez prevailed in the 2017 Democratic Primary and general election, and has begun his own full term as district attorney, but he has now made commitments for which advocates will hold him accountable.<sup>254</sup>

Moving forward, advocates will also demand that the pledges made by Gonzalez around bail, case processing, diversion, and prosecuting “Broken Windows” be honored by New York City’s other district attorneys. Queens district attorney Richard Brown, who has held the position since 1989,<sup>255</sup> along with newcomers Bronx district attorney Darcel Clark,<sup>256</sup> and Staten Island district attorney Michael McMahon,<sup>257</sup> will face voters during the 2019 city elections, where advocates will bring these issues to the fore. While Manhattan district attorney Cy Vance faced only token opposition during his re-election campaign in November 2017,<sup>258</sup> controversy over a recent pair of scandals<sup>259</sup> leave him more vulnerable to political pressure than he has been in the past. In January 2018, Cy Vance announced that the Manhattan district attorney’s office will no longer seek bail in most misdemeanor cases.<sup>260</sup>

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253. See generally #OURBKDA, <https://www.ourbkda.org/> [<https://perma.cc/WV9C-MG54>].

254. Alan Feuer, *Eric Gonzalez Wins Primary Election for Brooklyn District Attorney*, N.Y. TIMES (Sept. 12, 2017), <https://www.nytimes.com/2017/09/12/nyregion/brooklyn-district-attorney.html> [<https://nyti.ms/2xYxaWf>]; see also Rob Abruzzese, *Eric Gonzalez Is No Longer ‘Acting’ Brooklyn DA*, BROOKLYN EAGLE (Nov. 8, 2017), <http://www.brooklyneagle.com/articles/2017/11/8/eric-gonzalez-no-longer-‘acting’-brooklyn-da> [<https://perma.cc/Y38H-7B26>].

255. Nossiter, *supra* note 245.

256. Yoav Gonen, *Demoted Prosecutor Gets a New Top Job Thanks to Bronx DA*, N.Y. POST (June 21, 2016), <http://nypost.com/2016/06/21/demoted-prosecutor-gets-a-new-top-job-thanks-to-bronx-da> [<https://perma.cc/99E3-XU9F>].

257. Jillian Jorgensen, *Democrat Michael McMahon Wins Staten Island District Attorney Race*, OBSERVER (Nov. 3, 2015), <http://observer.com/2015/11/democrat-michael-mcmahon-wins-staten-island-district-attorney-race> [<https://perma.cc/F5LM-5H4X>].

258. David Colon, *As Criticism of Cy Vance Mounts, a Former Brooklyn Prosecutor Announces Write-In Campaign for Manhattan D.A.*, GOTHAMIST (Oct. 12, 2017), [http://gothamist.com/2017/10/12/cy\\_vance\\_write-in\\_challenge.php](http://gothamist.com/2017/10/12/cy_vance_write-in_challenge.php) [<https://perma.cc/2LUA-PMC2>].

259. Jim Zarroli, *New York District Attorney on the Defense Over Handling of Weinstein Allegations*, NPR (Oct. 13, 2017), <http://www.npr.org/2017/10/13/557585831/new-york-district-attorney-on-the-defense-over-handling-of-weinstein-allegations> [<https://perma.cc/AW7V-7Y7L>].

260. Shayna Jacobs & Reuven Blau, *Cy Vance’s Office Will No Longer Seek Bail for Most Misdemeanors*, N.Y. DAILY NEWS (Jan. 10, 2018), <http://www.nydailynews.com/new-york/cy-vance-office-no-longer-seek-bail-misdemeanors-article-1.3746695> [<https://perma.cc/J5BR-ABW5>].

### III. THE #CLOSERIKERS CAMPAIGN

Given the enormous complexity of the criminal justice system, only an innovative and highly organized campaign could expect to persuade its many political stakeholders of the need for major reforms. Rikers Island had scarred generations of New York City's most incarcerated communities, and advocates had long sought changes to New York's criminal justice system, but in 2016 conditions were right to launch a dramatic campaign that would settle for nothing less than closure. That effort began with a single person, Glenn E. Martin.<sup>261</sup> Martin spent six years in New York State prison and a year on Rikers Island during the 1990s.<sup>262</sup> Upon returning home from prison he became involved in criminal justice reform, and after stints leading Legal Action's National Hire Network and the Fortune Society's Rothenberg Center for Public Policy, he founded JustLeadershipUSA.<sup>263</sup> The #CLOSErikers campaign was JLUSA's first significant advocacy campaign.<sup>264</sup> While Martin first proposed closing Rikers to Mayor de Blasio on his inauguration day in January 2014,<sup>265</sup> the campaign began in earnest in the spring of 2016, following months of strategy sessions and preparatory meetings.<sup>266</sup>

The #CLOSErikers campaign was designed with a multifaceted strategy to generate attention, shift public opinion, and pressure public officials.<sup>267</sup> The campaign would be centered in grassroots organizing—mobilizing the very people who had been most impacted by Rikers Island, while also partnering with the city's extensive group

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261. Benjamin Finegan, *'Cruel and Unusual' Punishment: Activist Calls for Change in U.S. Criminal Justice System*, CORNELL DAILY SUN (Oct. 3, 2016), <http://cornellsun.com/2016/10/03/cruel-and-unusual-punishment-activist-calls-for-change-in-u-s-criminal-justice-system/> [<https://perma.cc/C9N4-SJ76>].

262. Interview with Glenn E. Martin, *supra* note 167.

263. *About Us*, JUSTLEADERSHIPUSA, <https://www.justleadershipusa.org/about-us/> [<https://perma.cc/NA7K-L5F7>]. JLUSA is committed to cutting the U.S. correctional population in half by 2030, and believes that “those closest to the problem are closest to the solution.” The organization engages in membership-building of formerly incarcerated people, leadership trainings for formerly incarcerated leaders, and advocacy to end mass incarceration.

264. *Id.*

265. Zahara Hill, *This Former Inmate Wants to Close Rikers Island, and He Has the Mayor's Attention*, HUFFINGTON POST (Mar. 10, 2017), [http://www.huffingtonpost.com/entry/why-this-former-inmate-and-activist-is-fighting-to-close-rikers-island\\_us\\_58c182d7e4b0d1078ca4bf8e](http://www.huffingtonpost.com/entry/why-this-former-inmate-and-activist-is-fighting-to-close-rikers-island_us_58c182d7e4b0d1078ca4bf8e) [<https://perma.cc/2WY7-RKTU>].

266. Felipe De La Hoz, *Activists Launch #CLOSErikers Campaign to Close Rikers Island*, OBSERVER (Apr. 15, 2016), <http://observer.com/2016/04/activists-launch-closerikers-campaign-to-close-rikers-island/> [<https://perma.cc/YV5F-ZLAW>].

267. Interview with Glenn E. Martin, *supra* note 167.

of service providers and its advocacy community.<sup>268</sup> The campaign would create moments to shape the public narrative around Rikers Island and the people detained there, through actions large and small, in the streets and digitally.<sup>269</sup> The campaign would foster a political climate in which elected officials would feel compelled to signal their support for closure.<sup>270</sup> Finally, the campaign would align itself with a serious set of policies, many of which are outlined in Part II that would decarcerate New York City’s jails and allow for closure.<sup>271</sup> In this Essay, the “#CLOSErikers campaign” collectively refers to the dozens of directly impacted individual members and leaders, the hundreds of supporters who volunteered their time, and the 166 partner organizations that helped drive the work.<sup>272</sup>

Section III.A describes the grassroots organizing and grasstops organizing practices that provided the #CLOSErikers campaign its base of support. Section III.B reviews the public demonstrations and digital actions the campaign used to shape the narrative of the campaign. Section III.C analyzes the campaign’s relationship with various elected officials as part of the campaign’s insider strategy. Section III.D discusses the campaign’s relationship to and utilization of the Lippman Commission.

#### A. Organizing: Grassroots and Grasstops

Centering the #CLOSErikers campaign around people directly impacted by Rikers Island—people formerly detained there and people with loved ones detained there—was not only consistent with JLUSA’s values, but consistent with the basic tenets of community organizing.<sup>273</sup> Over the past few decades, groups across the United States, on a multitude of issues, have adopted variations of the Alinsky organizing model.<sup>274</sup> The Alinsky model involves community organizers identifying individual members affected by an issue and

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268. *Id.*

269. *Id.*

270. *Id.*

271. *Id.*

272. JLUSA leads the #CLOSErikers campaign, but is at times described distinctly from it, generally in reference to issues in which the organization shares a point of view that does not necessarily represent the entire campaign.

273. Mike Miller, *Alinsky for the Left: The Politics of Community Organizing*, DISSENT MAG. (2010), <https://www.dissentmagazine.org/article/alinsky-for-the-left-the-politics-of-community-organizing> [<https://perma.cc/Z3WC-FRTS>].

274. See generally Eli Goldblatt, *Alinsky’s Reveille: A Community-Organizing Model for Neighborhood-Based Literacy Projects*, 67 C. ENG. 274 (2005).

building those members into campaign leaders.<sup>275</sup> From the outset, the #CLOSErikers campaign sought to develop members, with support from the Katal Center, another new criminal justice advocacy organization.<sup>276</sup>

#CLOSErikers events always centered on people directly impacted by Rikers Island. This was as true at the campaign's kick-off rally in April 2016 as it was during the joyous anniversary rally on the steps of city hall a year later:<sup>277</sup> large campaign rallies always featured rosters that leaned heavily on formerly incarcerated speakers.<sup>278</sup> In fact, the campaign kickoff rally did not include a single elected official, an atypical and intentional decision to focus campaign attention on people with lived experience.<sup>279</sup> Much of what the campaign's members do is challenging behind-the-scenes work—street outreach, small protests, and meetings with local elected officials.<sup>280</sup> However, JLUSA hoped to elevate this work throughout the campaign, whether connecting members with the media to tell their stories,<sup>281</sup> connecting those stories to legislative campaigns,<sup>282</sup> or highlighting members' and leaders' work on prominent platforms.<sup>283</sup>

Recalling the reaction of local community groups to Commissioner Horn's failed decentralization plan, #CLOSErikers assiduously cultivated community-based partners from the campaign's outset.<sup>284</sup> Partners were also essential for turning out support to early events, before the campaign had a base of its own. The #CLOSErikers

275. SAUL D. ALINSKY, *RULES FOR RADICALS: A PRACTICAL PRIMER FOR REALISTIC RADICALS* 3–24 (Vintage Books ed., 1989).

276. *Our Work*, KATAL CTR., [http://www.katalcenter.org/our\\_work](http://www.katalcenter.org/our_work) [<https://perma.cc/4TRE-66LL>].

277. Erin Durkin, *De Blasio's Plan to Shutter Rikers Island Blasted as Too Slow by Critics*, N.Y. DAILY NEWS (Apr. 24, 2017), <http://www.nydailynews.com/new-york/de-blasio-plan-shutter-rikers-blasted-slow-article-1.3096168> [<https://perma.cc/X955-UWRV>].

278. Interview with Glenn E. Martin, *supra* note 167.

279. *Id.*

280. *Id.*

281. Jarrett Murphy, *Video: Violence in the City Jails and the Push to Close Rikers*, CITY LIMITS (Oct. 13, 2016), <https://citylimits.org/2016/10/13/video-violence-in-the-city-jails-and-the-push-to-close-rikers/> [<https://perma.cc/ST64-VFF3>].

282. Alice Speri, *Happy Sunday, Welcome to Rikers*, INTERCEPT (June 1, 2016), <https://theintercept.com/2016/06/01/amid-a-growing-movement-to-close-rikers-one-prisoner-approaches-six-years-without-trial/> [<https://perma.cc/2J6Z-SLBL>].

283. Zahara Hill, *John Legend on 10-Year Plan to Close Rikers: 'We Can Do It Faster'*, HUFFINGTON POST (May 9, 2017), [http://www.huffingtonpost.com/entry/john-legend-on-10-year-plan-to-close-rikers-we-can-do-it-faster\\_us\\_5911ef18e4b0a58297dfd2fc](http://www.huffingtonpost.com/entry/john-legend-on-10-year-plan-to-close-rikers-we-can-do-it-faster_us_5911ef18e4b0a58297dfd2fc) [<https://perma.cc/628Z-PXMK>].

284. See discussion *supra* Section I.F.

campaign counted on core support from criminal justice organizations such as VOCAL-NY<sup>285</sup> and re-entry organizations such as the Osborne Association and the Fortune Society.<sup>286</sup> One reason for this was the “Emerging Leaders” training for nearly fifty formerly incarcerated leaders that JLUSA conducted in 2015;<sup>287</sup> many of those leaders were instrumental in pushing for their organizations to endorse the #CLOSErikers campaign in 2016.<sup>288</sup> More than fifty organizations formally endorsed the campaign in time for its formal launch on the steps of city hall on April 15, 2016.<sup>289</sup> Over the course of 2016 and early 2017, many other organizations joined—as of the writing of this Essay, 168 are signed on.<sup>290</sup> These groups run the gamut from major base-building powerhouses such as Make the Road New York<sup>291</sup> and New York Communities for Change<sup>292</sup> to local organizations such as I Am My Community,<sup>293</sup> and now include faith groups<sup>294</sup> and labor<sup>295</sup> and public health organizations.<sup>296</sup> Having so many partner organizations is not only valuable for turning out supporters to #CLOSErikers events, but also for utilizing issue expertise and forging connections with stakeholders.<sup>297</sup> Since the beginning of the campaign, JLUSA has hosted bi-monthly partner meetings, which regularly bring sixty to eighty organizational representatives together to discuss campaign strategy.<sup>298</sup>

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285. *About VOCAL-NY*, VOCAL N.Y., [http://www.vocal-ny.org/?page\\_id=211](http://www.vocal-ny.org/?page_id=211) [<https://perma.cc/V257-JFGR>].

286. See Geo Geller, *Conversations on the State of Empathy & Beyond*, YOUTUBE (Apr. 25, 2016), <https://www.youtube.com/watch?list=PLQeMLZG5Cg2zfPUcWx8TK8DwkNLHZwW59&v=tms4xDvaf0Q> [<https://youtu.be/tms4xDvaf0Q>].

287. The following is a description of the Emerging Leaders training, as conducted in Austin, TX in 2016. *Emerging Leaders Training for Returning Citizens*, JUSTICE ROUNDTABLE, <https://justiceroundtable.org/opportunity-item/emerging-leaders-training-for-returning-citizens/> [<https://perma.cc/2MQY-MNWQ>].

288. *Leadership*, JUSTLEADERSHIPUSA, <https://www.justleadershipusa.org/leadership/> [<https://perma.cc/TDG3-N64F>].

289. Erin Durkin & Reuven Blau, *NYC Officials Quietly Reviewed Alternate Sites for Inmates in Possible Rikers Island Shutdown*, N.Y. DAILY NEWS (Apr. 14, 2016), <http://www.nydailynews.com/new-york/rally-city-hall-urges-pols-close-rikers-island-article-1.2601610> [<https://perma.cc/KEG9-AYWF>].

290. *Take Action*, #CLOSERIKERS, <http://www.closerikers.org/take-action> [<https://perma.cc/U3VF-WZSG>].

291. *Id.*

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. Interview with Glenn E. Martin, *supra* note 167.

298. *Id.*

## B. Changing the Narrative

Because of Rikers Island's infamous history, many communities had pre-set notions of the jail complex before the campaign started, a reality that cut both ways. For New Yorkers whose loved ones were detained there, or New Yorkers who had seen investigative reports on "60 Minutes"<sup>299</sup> or similar outlets, the depravity of Rikers Island and the need to close it were well understood.<sup>300</sup> In contrast, those who had read about the constant violence in the city's tabloids<sup>301</sup> or seen depictions of the jail complex in fictional settings such as "Law & Order" tended to view people detained there as dangerous,<sup>302</sup> leading to more concern around whether closing Rikers was safe.<sup>303</sup> Regardless of one's views of Rikers Island, however, most were initially skeptical that closing the jail complex was politically possible.<sup>304</sup> Thus, the #CLOSErikers campaign was tasked with changing the narrative around Rikers Island: who was detained there and why, how the jail complex might be closed, and what kind of criminal justice system could replace it. The approach to changing the narrative was multifaceted, and would involve public-facing actions, persuading policymakers, and shaping a solution grounded in well-researched policies.

### 1. *The Role of Actions in Shaping Narrative*

Actions, also known as protests, mobilizations, or demonstrations, are a staple of advocacy campaigns. A campaign can engage in smart policy work, high level discussions with policymakers, and sophisticated digital strategies, but actions demonstrate to stakeholders that people willing to take the streets for a cause, an essential component of demonstrating power. While actions represented one set of tactics among many in the #CLOSErikers campaign, they have provided some of the campaign's most

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299. *Rikers Island*, CBS NEWS (Apr. 16, 2016), <https://www.cbsnews.com/videos/rikers-island/> [<https://perma.cc/V6YW-ANX8>].

300. Interview with Glenn E. Martin, *supra* note 167.

301. Kirstan Conley & Max Jaeger, *Rikers Is So Dangerous It No Longer Meets Minimum Safety Standards*, N.Y. POST (May 5, 2017), <http://nypost.com/2017/05/05/rikers-is-so-dangerous-it-no-longer-meets-minimum-safety-standards/> [<https://perma.cc/4DSL-9Z3G>].

302. Mary Buser, *Law & Order v.s. Lockdown: The Truth Behind Rikers Island*, CRIMINALELEMENT.COM (Sept. 23, 2015), <https://www.criminalelement.com/blogs/2015/09/law-a-order-vs-lockdown-the-truth-behind-rikers-island-legal-wrangling-new-york-city-tv-mary-e-buser> [<https://perma.cc/QGM2-2C3V>].

303. Interview with Glenn E. Martin, *supra* note 167.

304. *Id.*

memorable moments.<sup>305</sup> The campaign's kick-off on the steps of city hall in April 2016 publicly introduced #CLOSErikers to New York City's political community.<sup>306</sup> The anniversary rally in April 2017 put 500 people on the steps of city hall only a few weeks after Mayor de Blasio's closure announcement, creating an environment of celebration tempered with a demand for a more serious commitment from the administration.<sup>307</sup> Collectively, the many actions, large and small, give #CLOSErikers its vibrancy, but there are several that bear mentioning due to their role in shaping the trajectory of the campaign.

*a. September 2016 March to Rikers*

Marches are a staple of political protest.<sup>308</sup> However, the many rallies, marches, protests, and parades that dot New York City's streets each year make each one less likely to stand out. The #CLOSErikers leadership felt that marching to Rikers Island itself would be unique.<sup>309</sup> There were few examples of similar actions in the past that were small in size.<sup>310</sup> A large group that would march through industrial Queens to the foot of the Rikers Island Bridge would provide the emotional intensity and visual optics to create a memorable event and a newsworthy story. At the time, the #CLOSErikers campaign had recently achieved a small win: Mayor de Blasio had made a commitment to move sixteen- and seventeen-

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305. During the June 2016 "Mass Story Lab," a former correction officer broke into tears describing the physical abuses she had witnessed while working on Rikers Island. Mark Chiusano, *Can a Story Help Close Rikers Island?*, AMNEWYORK (June 30, 2016), <https://www.amny.com/opinion/columnists/mark-chiusano/can-a-story-help-change-the-criminal-justice-system-and-close-rikers-island-1.11988628> [https://perma.cc/62R5-JB59].

306. De La Hoz, *supra* note 266.

307. Durkin & Blau, *supra* note 289.

308. Radio Interview by Lourdes Garcia-Navarro with Leah Wright Rigueur, Professor, Harv. Kennedy Sch. of Gov't (Jan. 22, 2017), <http://www.npr.org/2017/01/22/511048825/a-look-back-at-other-marches-in-history-and-what-they-accomplished> [https://perma.cc/HJ94-NXVC]; *see also* Shom Mazumder, *Yes, Marches Can Make a Difference. It Depends on These Three Factors.*, WASH. POST (Jan. 27, 2017), [https://www.washingtonpost.com/news/monkey-cage/wp/2017/01/27/yes-marches-can-really-matter-these-three-factors-make-the-difference/?utm\\_term=.bbba0d403cd1](https://www.washingtonpost.com/news/monkey-cage/wp/2017/01/27/yes-marches-can-really-matter-these-three-factors-make-the-difference/?utm_term=.bbba0d403cd1) [https://perma.cc/L5DG-XSNC].

309. Interview with Glenn E. Martin, *supra* note 167.

310. Chris Moore, *Protesters Turn Out to Shut Down Rikers Island*, MASS APPEAL (Oct. 23, 2015), <https://massappeal.com/protesters-turn-out-to-shut-down-rikers-island/> [https://perma.cc/NLD7-BTQL].

year-olds off of Rikers.<sup>311</sup> But the campaign was still young, and still faced significant skepticism of its ultimate goal.

With the assistance of the New York Civil Liberties Union, the #CLOSErikers campaign secured a permit to march for several blocks through downtown Astoria before entering the relatively quiet residential and industrial blocks that lead to the foot of the Rikers Island Bridge.<sup>312</sup> Despite resistance from the NYPD's local 114th precinct, the argument that marching to the Rikers Island Bridge was within the protections of the First Amendment prevailed in negotiations; as a compromise, the length of the march was shortened, and a sound permit was granted for the event.<sup>313</sup>

The event was a major success.<sup>314</sup> Roughly 1000 people turned out from dozens of organizations, marching and chanting energetically through Astoria.<sup>315</sup> Campaign members erected a stage across the street from the entrance to the Rikers Island Bridge and procured a sound permit, allowing for a raucous, multi-hour rally that included elected officials, celebrities, spoken word, a reading of messages from inside of Rikers, and most importantly, speeches from people who had served time at Rikers—all calling for the jail's closure.<sup>316</sup>

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311. William Neuman, *New York City Wants to Move 16- and 17-Year-Olds from Rikers Jail to Bronx Center*, N.Y. TIMES (July 20, 2016), <https://www.nytimes.com/2016/07/21/nyregion/rikers-jail-youths-bronx-center.html> [<https://nyti.ms/2kjN1aR>].

312. Razi Syed, *Hundreds March to Close Rikers Island*, PAVEMENT PIECES (Sept. 25, 2016), <http://pavementpieces.com/hundreds-march-to-close-rikers-island/> [<https://perma.cc/8PPV-URKP>].

313. Email from Janos Marton, Dir. of Pol'y & Campaigns, JustLeadershipUSA, to Aber (Sept. 14, 2016) (on file with author).

314. *Nearly 1,000 People March and Rally in Queens in Action to Close Rikers Island Jail Complex*, JUSTLEADERSHIPUSA (Sept. 26, 2016) [hereinafter JLUSA, *Nearly 1,000 People*], <http://www.closerikers.org/media/press/nearly-1000-people-march-and-rally-in-queens-in-action-to-close-rikers-island-jail-complex/> [<https://perma.cc/D7JZ-BGQV>].

315. Gabriel Sayegh, *1,000 People March and Rally in Queens in Action to Close Rikers Island Jail Complex*, POPULAR RESISTANCE (Sept. 28, 2016), <https://popularresistance.org/1000-people-march-and-rally-in-queens-in-to-close-rikers-island-jail-complex/> [<https://perma.cc/2WHX-CSVE>]; see also Domenick Rafter, *Protesters March in Astoria Demanding That the 'Hellhole' Called Rikers Island Be Closed*, QNS (Sept. 26, 2016), <http://qns.com/story/2016/09/26/protesters-march-astoria-demanding-hellhole-called-rikers-island-closed/> [<https://perma.cc/J579-LZ75>].

316. Glenn E. Martin & Anna Pantoressa, *Why We're Marching to Close Rikers*, GOTHAM GAZETTE (Sept. 23, 2016), <http://www.gothamgazette.com/city/130-opinion/6543-why-we-re-marching-to-close-rikers> [<https://perma.cc/QBT2-BN5N>].

The march was the turning point of the campaign; not only did the campaign receive numerous press hits that day,<sup>317</sup> but the very nature of conversations around the campaign began to shift.<sup>318</sup> Whether meeting with reporters, elected officials, or potential allies, questions that had previously demonstrated a bemused curiosity now turned to practical questions over how Rikers might close and how long it would take.<sup>319</sup> The campaign received more tangible evidence that its work was making an impact when Department of Correction Commissioner Joseph Ponte acknowledged at a city council hearing that the construction of a new jail on Rikers had been paused due to the activism of the #CLOSErikers campaign.<sup>320</sup>

*b. December 2016 Vigil*

Following the momentum generated by the march to Rikers, JLUSA collaborated with a nationally renowned media figure, Bill Moyers, to expand the reach of the campaign. Moyers had been watching the horrific stories coming out of Rikers Island for years and was struck by the dearth of media perspectives told specifically from the vantage point of those who had been incarcerated there.<sup>321</sup> During the fall of 2016, he released a new film, *RIKERS*, which told the story of Rikers Island solely from their perspective.<sup>322</sup> The film did not explicitly call for Rikers' closure, but the graphic and horrifying stories it told allowed it to be used as a valuable educational tool, particularly in communities of faith, which began

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317. Chauncey Alcorn & Denis Slattery, *Activists Rally in Queens for Call to Lock up Rikers Island and Throw Away the Key*, N.Y. DAILY NEWS (Sept. 24, 2016), <http://www.nydailynews.com/new-york/queens/activists-queens-lock-rikers-throw-key-article-1.2805022> [<https://perma.cc/JAV2-YFLZ>]; see also discussion *supra* Section I.B.

318. Interview with Glenn E. Martin, *supra* note 167.

319. Alcorn & Slattery, *supra* note 317.

320. Jason B. Nicholas, *Construction of New Rikers Jail Is Officially 'On Pause,'* VILLAGE VOICE (Nov. 18, 2016), <https://www.villagevoice.com/2016/11/18/construction-of-new-rikers-jail-is-officially-on-pause/> [<https://perma.cc/FAZ3-4K4U>]; see also Press Release, JustLeadershipUSA, #CLOSErikers Applauds DOC Decision to Halt Rikers Expansion (Nov. 15, 2016), <http://www.closerikers.org/media/press/closerikers-applauds-doc-decision-to-halt-rikers-expansion/> [<https://perma.cc/85BA-UMXY>].

321. *RIKERS: AN AMERICAN JAIL* (Schumann Media Center, Inc. 2016). Moyers makes this point in his introduction to the film.

322. *Id.*

screening the film.<sup>323</sup> The growing interest in the campaign from faith leaders led to the #CLOSErikers vigil.<sup>324</sup>

On December 4, 2016, nearly 300 #CLOSErikers members and allies braved the cold to march through Carl Schurz Park,<sup>325</sup> walking and singing past Gracie Mansion<sup>326</sup>—for the first time bringing the movement to Mayor de Blasio’s doorstep.<sup>327</sup> After the march, the campaign held a multi-denominational faith vigil across the street from Gracie Mansion.<sup>328</sup> Christian, Jewish, Muslim, and Native American faith leaders, as well as Kerry Kennedy, spoke to the moral failure of Rikers Island and the need for its closure.<sup>329</sup> The event was covered by several local television stations, a first for the campaign.<sup>330</sup>

*c. “Bird-dogging”: The Relentless Targeting of Mayor de Blasio*

Despite the success of the march and vigil, there was a sense among the campaign leadership that Mayor de Blasio was not personally feeling the intensity of the campaign. Thus, the campaign intensified its use of a tactic known as “bird-dogging,” defined as “observ[ing], follow[ing], monitor[ing] and/or seek[ing] out with persistent attention.”<sup>331</sup> This meant eschewing large-scale events, which require significant planning, in favor of small, First Amendment-protected protests that can be assembled on short notice and respond to last-

323. *Middle Organizes with #CloseRikers Campaign*, MIDDLE COLLEGIATE CHURCH (Nov. 11, 2016), <http://www.middlechurch.org/about/news/middle-organizes-with-closerikers-campaign-heres-how-you-can-help> [https://perma.cc/VRW8-WHX9].

324. *Why Multi-Faith Leaders Are Joining the Fight to #CloseRikers*, AUBURN SEMINARY (Nov. 4, 2016), <http://auburnseminary.org/why-multi-faith-leaders-are-joining-the-fight-to-closerikers/> [https://perma.cc/S8XY-LH4Q].

325. Kari Lindberg, *‘I Lost Four Years with My Father’: Protesters Renew Calls to Shut Down Rikers*, REWIRE (Dec. 8, 2016), <https://rewire.news/article/2016/12/08/lost-four-years-father-protesters-renew-calls-shut-rikers/> [https://perma.cc/S3AW-CZUE].

326. Sebastian Choe, *CloseRikers Vigil—12/4/16*, YOUTUBE (Mar. 31, 2017), <https://www.youtube.com/watch?v=GVrIEK-miYs> [https://youtu.be/GVrIEK-miYs].

327. *#CLOSErikers Vigil at Gracie Mansion (12/4/16)*, #CLOSERIKERS, <http://www.closerikers.org/media/photos/photos-closerikers-vigil-at-gracie-mansion-12416/> [https://perma.cc/4HNZ-URWA].

328. *Id.*

329. Danielle Tcholakian, *Kerry Kennedy to Speak at Gracie Mansion Vigil to Close Rikers Island*, DNAINFO (Dec. 3, 2016), <https://www.dnainfo.com/new-york/20161203/civic-center/kerry-kennedy-rikers-island> [https://perma.cc/L38U-DZNW].

330. Zachary Kiesch, *Protesters Call for Closing Rikers Island*, FOX 5 NEWS (Dec. 5, 2016), <http://www.fox5ny.com/news/221828680-story> [https://perma.cc/WVE8-6YSR].

331. *Bird-Dogging: A Tactic That Gets Candidates Talking*, SOA WATCH, <http://www.soaw.org/take-action/legislative/resources/709-bird-dogging-a-tactic-that-gets-candidates-talking-> [https://perma.cc/C7FY-JHBE].

minute information regarding the target's whereabouts.<sup>332</sup> These tactics, when well planned, can take advantage of anticipated media presence at events, or create media moments by being more innovative than typical protests.<sup>333</sup>

The timing of this tactic coincided with the beginning of Mayor de Blasio's re-election campaign, which would regularly draw him out of his residence at Gracie Mansion.<sup>334</sup> Fundraisers were a fertile place to protest, given the campaign's belief that Mayor de Blasio's donor base included people ideologically predisposed to supporting Rikers' closure.<sup>335</sup> From de Blasio's leafy political home base of Park Slope<sup>336</sup> to a swanky art gallery in SoHo, protesters became a regular presence at fundraisers. The goal was to offer #CLOSErikers literature to all attendees, sparking conversation outside a fundraiser that might continue inside. When introduced to a known member of the campaign who was a paying guest at one fundraiser, Mayor de Blasio insisted that he shared the same values as the campaign, but would not commit to closure.<sup>337</sup>

Similarly, when Mayor de Blasio launched his series of town forums, #CLOSErikers protesters would show up in healthy numbers ranging from a dozen to fifty people, establishing a presence both outside the forums, where they were usually physically limited by police barricades, and inside the forums, where a local supporter would ask a direct question about the need to close Rikers. The most

332. Bode et al., *supra* note 18.

333. These activities are all protected by the first amendment. *See, e.g.*, *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972). "In considering the right of a municipality to control the use of public streets for the expression of religious (or political) views . . . 'Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' Clearly, government has no power to restrict such activity because of its message." *Id.* (internal citations omitted). However, such a discussion of the constitutionality is outside the scope of this paper.

334. Madina Toure, *Bill de Blasio Launches 2017 Reelection Bid with First Union Endorsement*, OBSERVER (Nov. 14, 2016), <http://observer.com/2016/11/bill-de-blasio-launches-2017-reelection-bid-with-first-union-endorsement/> [<https://perma.cc/XB29-VT3R>].

335. J. David Goodman, *Mayor de Blasio Seeks Small Donations to Fill War Chest amid Inquiries*, N.Y. TIMES (Jan. 16, 2017), <https://www.nytimes.com/2017/01/16/nyregion/mayor-de-blasio-seeks-small-donations-to-fill-war-chest-amid-inquiries.html> [<https://nyti.ms/2jIa3eD>].

336. Cameron Luttrell, *Anti-Rikers Activists Crash de Blasio Fundraiser at Park Slope Brownstone*, PATCH (Jan. 11, 2017), <https://patch.com/new-york/parkslope/anti-riker-activists-crash-de-blasio-fundraiser-park-slope-brownstone> [<https://perma.cc/T73H-JQSV>].

337. The paying guest was the author.

prominent local event that the campaign targeted was the annual “State of the City,” held in February 2017 at the Apollo Theater.<sup>338</sup> More than 200 members and allies turned out in blisteringly cold conditions to chant across the street from the Apollo.<sup>339</sup>

Of all the “bird-dogging” protests, however, the coup de grace took place in Ft. Lauderdale, Florida. The campaign had learned that Mayor de Blasio was to headline a Florida Democratic Party fundraiser there on March 4, 2017.<sup>340</sup> The campaign sent two organizers, including a Miami-Dade native, to organize a #CLOSErikers protest in front of the event venue.<sup>341</sup> When Mayor de Blasio arrived, he was greeted by dozens of local activists, including members of the Dream Defenders and Black Lives Matter, chanting and holding #CLOSErikers signs.<sup>342</sup> Both Florida<sup>343</sup> and New York media covered the encounter.<sup>344</sup>

A year and a half after launching, the #CLOSErikers campaign continues to mix traditional protests with more creative actions. For example, in June 2017 the campaign responded to Mayor de Blasio’s claim that he had still not read the Lippman Commission Final Report by sending members to work out at the mayor’s local YMCA. As the mayor stretched on a yoga mat, a JLUSA member approached him to discuss the report and hand him a copy.<sup>345</sup> The video of the interaction and concurrent protest outside the YMCA were widely

338. Brendan Krisel, *Protesters Rally Outside Apollo Theater for de Blasio’s ‘State Of The City,’* PATCH (Feb. 14, 2017), <https://patch.com/new-york/harlem/protest-planned-de-blasios-state-city-speech-harlem> [<https://perma.cc/BCR4-WP7H>].

339. *Id.*

340. Amy Sherman, *New York City Mayor Bill de Blasio to Speak to Broward Democrats*, MIAMI HERALD (Feb. 8, 2017), <http://miamiherald.typepad.com/nakedpolitics/2017/02/nyc-mayor-bill-de-blasio-to-keynote-broward-democrats-dinner.html> [<https://perma.cc/W4H4-V855>].

341. Grace Rauh, *Mayor Crisscrosses Country on Fundraising Tour with Local Protesters in Hot Pursuit*, N.Y. 1 (Mar. 4, 2017), <http://www.ny1.com/nyc/all-boroughs/local-politics/2017/03/4/mayor-crisscrosses-country-on-fundraising-tour-with-local-protesters-in-hot-pursuit.html> [<https://perma.cc/4J8U-CKUA>]; *see also* Anthony Man, *Florida Democrats Strategize for 2018 in a World Dominated by Donald Trump*, SUN SENTINEL (Mar. 5, 2017), <http://www.sun-sentinel.com/news/politics/fl-reg-democrats-rally-regroup-20170301-story.html> [<https://perma.cc/L36H-L5D4>]; *Mayor Backs Plan to Close Rikers and Open Jails Elsewhere*, FAMM (Apr. 5, 2017), <http://famm.org/mayor-backs-plan-to-close-rikers-and-open-jails-elsewhere/> [<https://perma.cc/AC3U-P7R3>].

342. Rauh, *supra* note 341.

343. Man, *supra* note 341.

344. Road to City Hall, *The Fight to Close Rikers*, N.Y. 1 (Mar. 18, 2017), <http://www.ny1.com/nyc/all-boroughs/inside-city-hall/2017/03/7/ny1-online--the-fight-to-close-rikers.html> [<https://perma.cc/4X49-FZR9>].

345. Bode et al., *supra* note 18.

covered.<sup>346</sup> In September 2017, the campaign capitalized on the media ritual of filming candidates voting for themselves by protesting Mayor de Blasio outside of his polling location.<sup>347</sup> After the considerable attention the campaign's small protest generated during the September Primary Election,<sup>348</sup> #CLOSErikers planned a much larger presence for the November General Election. The larger action prompted Mayor de Blasio to avoid protesters and enter his polling location through a private back entrance, which again yielded notable media coverage.<sup>349</sup>

#### d. Digital Advocacy

Building broad campaign support required engaging people online and through social media, and from the outset, the #CLOSErikers campaign utilized a digital strategy. During one digital “day of action,” the campaign created a GIF that flashed various statistics on the horrors of Rikers and concluded with “Tell @nycmayor to #CLOSErikers!”<sup>350</sup> The tweet was strategically shared with a number of supportive influencers (celebrities, actors, writers, and political leaders), and within a day had been shared more than 17,000 times, completely shutting down the mayor's Twitter feed.<sup>351</sup> The campaign also conducted “Twitter Chats” between Glenn E. Martin and important influencers such as Russell Simmons and Angie Martinez.<sup>352</sup> The purpose of these chats was to convey the campaign's message to influencers' Twitter followers, many of whom would have been unlikely to otherwise see #CLOSErikers-related content. The campaign's digital advocacy was also frequently supported by John Legend, who provided the campaign an important live moment by

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346. *Id.*

347. Kevin Sheehan & Bruce Golding, *De Blasio Heckled While Voting for Himself in Dem Primary*, N.Y. POST (Sept. 12, 2017), <http://nypost.com/2017/09/12/de-blasio-casts-his-ballot-in-primary-against-long-shots/> [<https://perma.cc/RZ7Y-9YC9>].

348. *De Blasio Wins NYC Democratic Mayoral Primary*, CBS N.Y. (Sept. 12, 2017), <http://newyork.cbslocal.com/2017/09/12/nyc-primary-day-vote/> [<https://perma.cc/2GEY-AGWP>].

349. Matthew Chayes, *Mayor de Blasio Takes Back Door to Vote During Protest*, AMNEWYORK (Nov. 7, 2017), <https://www.amny.com/news/elections/election-day-de-blasio-protest-1.14799993> [<https://perma.cc/4DSR-Y2HC>].

350. See #CLOSErikers, #CLOSERIKERS, <http://www.closerikers.org/> [<https://perma.cc/NH2E-ECDH>].

351. *Id.*

352. Interview with Glenn E. Martin, *supra* note 167.

participating in a highly publicized #CLOSErikers event.<sup>353</sup> Finally, the campaign also launched a television ad on NY1 right before Mayor de Blasio's State of the City.<sup>354</sup>

Digital advocacy also allows for creative actions to earn subsequent media coverage even when press misses the initial action; for example, in August 2017, the campaign injected Rikers Island into a conversation about Confederate monuments roiling the city with an action highlighting Richard Riker's role as a slave-catcher.<sup>355</sup> Photos and video from the action circulating online drew media attention after the event was over.<sup>356</sup> The #CLOSErikers campaign anticipates that it will continue to evolve its digital strategies through partnerships with digitally-based advocacy organizations such as Change.org, Color of Change, and Fwd.US.<sup>357</sup>

## 2. *Elected Officials*

While the #CLOSErikers campaign focused on mobilizing communities most directly impacted by Rikers Island and changing the narrative around what change was possible in the criminal justice system, it also sought to exert an "inside-outside" approach that leveraged support from key members of the political establishment. Even though the decision to close Rikers Island is an executive decision at the discretion of the mayor of New York City, other elected officials did play, and can continue to play important roles in shaping the conversation to ensure that the vision becomes a reality. The #CLOSErikers campaign assiduously cultivated political stakeholders throughout the city to publicly voice their support for closure and other criminal justice reform as part of a calculated effort to isolate Mayor de Blasio in his opposition.<sup>358</sup>

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353. Liam Berry, *John Legend Rails Against Rikers Island and Mass Incarceration*, PEOPLE (May 10, 2017), <http://people.com/music/john-legend-rails-against-mass-incarceration-and-rikers-its-radically-terrible/> [<https://perma.cc/GWH6-5M4M>].

354. Reuven Blau, *TV Commercial Calls for Closing Rikers Island*, N.Y. DAILY NEWS (Feb. 12, 2017), <http://www.nydailynews.com/new-york/tv-commercial-calls-closing-rikers-island-article-1.2970861> [<https://perma.cc/FSZ9-WJXF>].

355. Bain & Dorn, *supra* note 36.

356. *Id.*

357. *See #CLOSErikers, supra* note 350.

358. Interview with Glenn E. Martin, *supra* note 167.

a. *Former Speaker of the City Council: Melissa Mark-Viverito*

There is no political stakeholder who did more to advance the cause of Rikers Island's closure than the former New York City council speaker, Melissa Mark-Viverito. Elected to council speaker in January 2014,<sup>359</sup> Mark-Viverito signaled her support for closing the jail complex during her "State of the City" remarks in early 2016.<sup>360</sup> In addition to pushing for legislation that would simplify New York City's bail practices and mandate greater city council oversight of the DOC, she announced the creation of a blue-ribbon commission to study the question of closing Rikers.<sup>361</sup> In March 2016, she unveiled the Independent Commission on New York City Criminal Justice and Incarceration Reform ("Lippman Commission" or "Commission"), to be chaired by former New York State Court of Appeals Chief Judge Jonathan Lippman.<sup>362</sup> During the year that the Commission was convened, Mark-Viverito commented little on Rikers Island or the #CLOSErikers campaign, seeking to not interfere with their work.<sup>363</sup> However, her office continued to push legislation that would facilitate reductions in the city jail population, such as legislation easing the bail payment process<sup>364</sup> and requiring the DOC to report on education and vocational programming and create discharge plans for detainees.<sup>365</sup> Recognizing the significance of Mark-Viverito's

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359. Michael M. Grynbaum & Kate Taylor, *Mayoral Ally Elected Speaker, Furthering City's Liberal Shift*, N.Y. TIMES (Jan. 8, 2014), <https://www.nytimes.com/2014/01/09/nyregion/mark-viverito-is-elected-city-council-speaker.html?mcubz=3> [<https://nyti.ms/2pmQdYR>].

360. Ben Max, *De Blasio Pulled to Rikers Closure by Mark-Viverito, Activists*, GOTHAM GAZETTE (Mar. 31, 2017), <http://www.gothamgazette.com/city/6846-de-blasio-pulled-to-rikers-closure-by-mark-viverito-activists> [<https://perma.cc/BXC6-SJTY>].

361. J. David Goodman, *Melissa Mark-Viverito, Council Speaker, Vows to Pursue New Criminal Justice Reforms*, N.Y. TIMES (Feb. 11, 2017), <https://www.nytimes.com/2016/02/12/nyregion/melissa-mark-viverito-council-speaker-vows-to-pursue-new-criminal-justice-reforms.html?mcubz=3> [<https://nyti.ms/2lxg6no>].

362. *Id.* This body became known as the "Lippman Commission."

363. This was the understanding of the campaign through private conversations with her staff.

364. Erin Durkin, *Council Speaker's Bail Bill Would Help Defendants Avoid Rikers*, N.Y. DAILY NEWS (Apr. 4, 2017), <http://www.nydailynews.com/new-york/council-speaker-bail-bill-defendants-avoid-rikers-article-1.3019321> [<https://perma.cc/6HWJ-KTKE>]. The bills themselves are Intros. *See, e.g.*, A.B. 1576, 2017-18 Leg., Reg. Sess. (Cal. 2017); A.B. 1541, 2017-18 Leg., Reg. Sess. (Cal. 2017); A.B. 1531, 2017-18 Leg., Reg. Sess. (Cal. 2017); A.B. 1561, 2015-16 Leg., Reg. Sess. (Cal. 2015); A.B. 1581, 2013-14 Leg., Reg. Sess. (Cal. 2013).

365. Office of the Mayor, *Mayor de Blasio Signs 12 Bills Strengthening Justice and Equity in New York City*, CITY OF N.Y. (Sept. 8, 2017), <http://www1.nyc.gov/office->

departure, the #CLOSErikers campaign spent 2017 meeting with all of the candidates seeking to replace her and, in November 2017, hosted a “Criminal Justice Forum” to put all of the speaker candidates on the record with respect to closing Rikers as well as other important policing and criminal justice issues.<sup>366</sup>

*b. New York City Comptroller: Scott Stringer*

Not only was New York City comptroller Scott Stringer one of three officials elected citywide, but as a rumored potential challenger to Mayor de Blasio in the 2017 election,<sup>367</sup> Stringer’s full-throated support of the #CLOSErikers campaign played an important role in moving the political conversation. Stringer first announced his belief that the jail complex should be closed during an event at the New School in November 2015,<sup>368</sup> at which he appeared on a panel alongside Glenn E. Martin. Stringer was also one of six elected officials to speak at the September 2016 March to Rikers event.<sup>369</sup> As comptroller, Stringer has little formal role in decision-making around criminal justice, but his report on the costs of Rikers made headlines<sup>370</sup> and reinforced the position of the #CLOSErikers campaign that Rikers Island was an economic failure as well as a moral one.<sup>371</sup> Stringer brought further attention to the campaign with

of-the-mayor/news/581-17/mayor-de-blasio-signs-12-bills-strengthening-justice-equity-new-york-city [https://perma.cc/7V63-RNWG].

366. Jeff Colton, *Missing Speaker Candidates in the Spotlight at Criminal Justice Forum*, CITY & STATE N.Y. (Nov. 14, 2017), <http://cityandstateny.com/articles/politics/campaigns-and-elections/missing-new-york-city-council-speaker-candidates-at-criminal-justice-forum.html#.Wlqy31Q-dWN> [https://perma.cc/3C2K-GMJK].

367. William Neuman & J. David Goodman, *Without Saying He’ll Challenge Mayor de Blasio, Scott Stringer Still Says Plenty*, N.Y. TIMES (Sept. 30, 2016), <https://www.nytimes.com/2016/10/01/nyregion/de-blasio-scott-stringer-new-york-mayor-2017.html> [https://nyti.ms/2EHg6aF]. Stringer ultimately chose to run for re-election as comptroller instead.

368. Reuven Blau & Graham Rayman, *City Controller Scott Stringer: Rikers Island Is an ‘Urban Shame’ That Should Be Shut Down*, N.Y. DAILY NEWS (Dec. 10, 2015), <http://www.nydailynews.com/new-york/scott-stringer-time-shut-rikers-island-article-1.2439552> [https://perma.cc/RQ6W-ZE3C].

369. Rafter, *supra* note 315.

370. *Comptroller Stringer: Violence in City Jails Continued to Soar, as Costs Climbed and the Inmate Population Dropped*, N.Y.C. COMPTROLLER (Nov. 28, 2016), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-violence-in-city-jails-continued-to-soar-as-costs-climbed-and-the-inmate-population-dropped/> [https://perma.cc/4E5V-N3QE].

371. Victoria Bekiempis, *New York City Jails Are Way Too Violent and Expensive: Report*, NEWSWEEK (Oct. 17, 2017), <http://www.newsweek.com/new-york-city-jails-are-way-too-violent-and-expensive-report-278070> [https://perma.cc/5KED-PVZ5].

a public visit to the JLUSA office, where WNYC recorded his conversation with campaign leaders.<sup>372</sup> More recently, during a re-election debate for comptroller, Stringer voiced his support for closing Rikers in three years, rather than the ten-year timeline proposed by Mayor de Blasio.<sup>373</sup>

*c. City Council Members*

Even though the decision to close Rikers was in the hands of the executive, it was crucial to impress the values of the #CLOSErikers campaign on members of the New York City council. Councilmembers play an important part in the city land use process and shaping the broader political discourse.<sup>374</sup> Early #CLOSErikers supporters such as Antonio Reynoso, Brad Lander, and Danny Dromm spoke at the September 2016 march and rally.<sup>375</sup> Others such as Karen Koslowitz and Steve Levin voiced their support to expand local facilities in their districts to make closure possible,<sup>376</sup> and the well-timed opinion editorial by highly respected moderate Dan Garodnick added to the momentum towards making closure the city's policy.<sup>377</sup> By the summer of 2017, all of the candidates to replace Mark-Viverito had publicly voiced their support for closing Rikers.<sup>378</sup> In October 2017, the politically moderate Queens delegation co-signed a letter supporting the opening of the Queens Detention

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372. Brigid Bergin, *De Blasio Campaigns Where Reality Meets Expectations*, WNYC NEWS (Dec. 20, 2016), <http://www.wnyc.org/story/de-blasio-campaigns-expectations-reality/> [<https://perma.cc/F87M-J2HJ>].

373. Erin Durkin, *Controller Scott Stringer Backs Closing Rikers Island Faster Than de Blasio's 10-year Plan*, N.Y. DAILY NEWS (Oct. 18, 2017), <http://www.nydailynews.com/news/politics/scott-stringer-backs-closing-rikers-faster-de-blasio-plan-article-1.3570228> [<https://perma.cc/LT85-R4BH>].

374. See *infra* Section IV.B.

375. JLUSA, *Nearly 1,000 People*, *supra* note 314.

376. Amy Zimmer, *Brooklyn House of Detention Could Expand to Aid Rikers Closure: Official*, DNAINFO (June 29, 2017), <https://www.dnainfo.com/new-york/20170629/boerum-hill/house-of-detention-boerum-hill-stephen-levin> [<https://perma.cc/93RM-L5QE>].

377. Daniel Garodnick, *Why I Came Around to Backing the Push to Close Rikers Island*, N.Y. DAILY NEWS (Mar. 24, 2017), <http://www.nydailynews.com/opinion/backing-push-close-rikers-island-article-1.3008161> [<https://perma.cc/Z5EK-6KZA>].

378. Erin Durkin, *City Council Speaker Candidates Say They Back Police Reform Bills, Vow to Override Possible Veto by de Blasio*, N.Y. DAILY NEWS (Nov. 14, 2017), <http://www.nydailynews.com/news/politics/candidates-back-police-reform-bills-nyc-council-speaker-debate-article-1.3633509> [<https://perma.cc/JP7F-Q8RG>].

Complex as part of the effort to close Rikers, giving a significant boost to the #CLOSErikers campaign.<sup>379</sup>

### 3. *The Role of the Lippman Commission in Closing Rikers*

The Lippman Commission, comprised of twenty-seven commissioners with diverse professional backgrounds, was established in the spring of 2016 to study the question of whether Rikers should be closed, as well as to study other city and state criminal justice policies.<sup>380</sup> To maintain its independence, the Commission was independently funded<sup>381</sup> and staffed not by government but by a trio of research organizations: the Vera Institute of Justice, the Center for Court Innovation, and the CUNY Institute for State and Local Governance.<sup>382</sup> From the Commission's outset, the #CLOSErikers campaign recognized the importance the Commission's conclusion would have to shaping the political discussion, and worked both publicly and behind the scenes to push for the Commission to adopt bold recommendations in its Final Report.

#### a. *Public Forum and Behind-the-Scenes Process*

When the Commission began holding high profile public hearings, #CLOSErikers members, supporters, and allies were a fixture. More than 300 members testified at six hearings across the five boroughs, which were held at Borough of Manhattan Community College, the Silberman School of Social Work, Medgar Evers College (Brooklyn), the Andrew Freedman Home (Bronx), LaGuardia College (Queens) and the College of Staten Island.<sup>383</sup> The hearings offered opportunities for the #CLOSErikers campaign to engage the community<sup>384</sup> and testify in the presence of Lippman Commission members.<sup>385</sup> In fact, after the format of the first two Commission

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379. Erin Durkin, *Queens City Council Members Support Site for New Jail in Their Borough During Rikers Shutdown Plan*, N.Y. DAILY NEWS (Oct. 1, 2017) <http://www.nydailynews.com/news/politics/queens-pols-support-site-new-jail-borough-article-1.3534882> [<https://perma.cc/FL78-XFXM>].

380. See Neuman & Goodman, *supra* note 367.

381. A MORE JUST NEW YORK CITY, *supra* note 15, at 9.

382. *The Commission*, MORE JUST NYC, <http://www.morejustnyc.com/about-us/> [<https://perma.cc/D5DW-RWQ7>].

383. *Community Roundtable: Staten Island*, MORE JUST NYC, <http://www.morejustnyc.org/events/#past-events> [<https://perma.cc/QT22-KTSP>].

384. Matua, *supra* note 8.

385. Susan Lunny Keag, *Commission for Criminal Justice Reform Seeks Input at Public Hearing*, STATEN ISLAND REAL-TIME NEWS (Mar. 14, 2017),

hearings limited public input, the #CLOSErikers campaign successfully pushed for the Commission to adopt an “open mic” format that allowed both #CLOSErikers members and other community participants to share their experiences with Rikers Island and other criminal justice issues.<sup>386</sup>

*b. Lippman Commission Report*

The Lippman Commission Report (“Lippman Report”) has three sections, each one significant to the #CLOSErikers campaign.<sup>387</sup> The first section, “Rethinking Incarceration,” details the city and state policies needed for New York City to reduce its jail population to 5000 individuals—the target number required to achieve the Commission’s goal of closing Rikers and limiting the number of jail facilities to one per borough.<sup>388</sup> The mayor’s Roadmap subsequently adopted the same population goal, for the moment aligning the long-term policy interests of #CLOSErikers activists and the administration.<sup>389</sup>

The second section, “The Future of Jails,” reimagines pre-trial detention facilities as rehabilitative, rather than punitive, creating an environment with far better results and greater safety for both people who are detained and people who work in jails.<sup>390</sup> The #CLOSErikers campaign was actively involved in this section of the report: Glenn E. Martin served on the relevant Commission committee, #CLOSErikers members testified to the issues addressed in the “Future of Jails” section, and JLUSA submitted a memorandum on reimagining detention that was incorporated into the report.<sup>391</sup>

The third section, “Reimagining the Island,” lays out possible future uses of Rikers Island.<sup>392</sup> One of the Commission’s directives was to deliver solutions that both generated public benefits for the city generally and neighborhoods harmed by jails specifically.<sup>393</sup> The report put to rest the notion that the city could build housing on

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[http://www.silive.com/news/2017/03/lippman\\_commission\\_to\\_host\\_pub.html](http://www.silive.com/news/2017/03/lippman_commission_to_host_pub.html)  
[<https://perma.cc/W5BU-NZ5E>].

386. Interview with Glenn E. Martin, *supra* note 167.

387. A MORE JUST NEW YORK CITY, *supra* note 15, at 33, 71, 99.

388. *Id.* at 34.

389. *See supra* Section II.A.3.

390. A MORE JUST NEW YORK CITY, *supra* note 15, at 71.

391. Interview with Glenn E. Martin, *supra* note 167.

392. A MORE JUST NEW YORK CITY, *supra* note 15, at 99.

393. *Id.*

Rikers.<sup>394</sup> The island's proximity to LaGuardia and the resulting flight paths would prevent tall construction, and the island's isolation from public transportation and jobs make it an unattractive place to live, as well as an unattractive place to develop without costly subsidies.<sup>395</sup> Instead, the report highlighted the positive impacts of expanding LaGuardia Airport,<sup>396</sup> or transferring undesirable facilities such as wastewater treatment plants away from waterfront neighborhoods and onto Rikers Island, which would double as development opportunities in those neighborhoods.<sup>397</sup> While the #CLOSERikers campaign has not taken a formal position on what should replace the jail complex on the island, it voiced its support for a community-driven process, a memorial acknowledging the history of harm on Rikers, and some way to tether development on the island to investments in communities that have been most affected by mass incarceration.<sup>398</sup>

Ultimately, the Lippman Report advanced the goals of the #CLOSERikers campaign. First, it reinforced the factual and policy arguments the campaign had made since its outset about why Rikers Island needs to be closed and how New York's criminal justice must be reformed. Second, the Commission's formation, hearings, and final report elevated New Yorkers' awareness of the issues at Rikers Island.<sup>399</sup> Third, the Lippman Report added political pressure to Mayor de Blasio, already the target of incessant bird-dogging at the time.<sup>400</sup> The Lippman Commission was set to unveil its report in early April with support from Public Advocate Tish James, District Attorneys Vance, Gonzalez, and Clark, and other elected officials, further isolating Mayor de Blasio in his position.<sup>401</sup>

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394. *Id.* at 121.

395. *Id.*

396. *Id.* at 108.

397. *Id.* at 108–12.

398. *Id.* at 101, 103.

399. Nicole Bode & Irene Plagianos, *This Is the Report that Spurred de Blasio to Close Rikers*, DNAINFO (Mar. 31, 2017), <https://www.dnainfo.com/new-york/20170331/elmhurst/rikers-island-jail-close-nyc-commission-jonathan-lippman> [<https://perma.cc/5PYZ-H3QT>].

400. *See supra* Section III.B.1.c.

401. Nick Pinto, *It's Put Up or Shut Up Time for Politicians Who Say They Want to Close Rikers*, VILLAGE VOICE (Apr. 4, 2017), <https://www.villagevoice.com/2017/04/04/its-put-up-or-shut-up-time-for-politicians-who-say-they-want-to-close-rikers/> [<https://perma.cc/82LJ-3FV2>].

When the *New York Post* leaked the findings of the Final Report,<sup>402</sup> Mayor de Blasio hastily called a press conference for the next morning, March 31, 2017.<sup>403</sup> The press conference at city hall was closed to the public, and #CLOSErikers members stood outside in the rain as Mayor de Blasio announced that closing Rikers would become city policy.<sup>404</sup> That the advocates who had fought so hard for that moment were excluded from standing with Mayor de Blasio ultimately inured to the campaign's benefit—when it became clear that the administration was not moving forward with urgency, the #CLOSErikers campaign resumed its outsider status as a vehicle for change.<sup>405</sup>

#### IV. CLOSING RIKERS: LAND USE CHALLENGES

Now that the closure of Rikers Island is officially city policy, discussion has turned to what system of jails will replace Rikers Island, and where those jails will be located.<sup>406</sup> There are currently nearly 8000 people detained on Rikers, and even if that number is reduced considerably by the criminal justice reforms proposed in the Lippman Report,<sup>407</sup> capacity would still be needed elsewhere in the city. The Lippman Commission wrestled with this question, and concluded that the best approach called for a single pretrial detention facility in each of the five boroughs: these facilities would be located in city centers near or adjacent to courthouses and in close proximity to public transportation. The new facilities would replace existing, dilapidated facilities in Brooklyn, Queens, and Manhattan, while city-owned land should be identified for new facilities in the Bronx and Staten Island.<sup>408</sup> The #CLOSErikers campaign generally supports this approach, provided these facilities are small, safe, and humane.<sup>409</sup> So long as jails remain in New York City, the most logical place for

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402. Rebecca Rosenberg et al., *Plan to Shut Down Rikers Island Revealed*, N.Y. POST (Mar. 30, 2017), <http://nypost.com/2017/03/30/plan-to-shut-down-rikers-island-revealed/> [https://perma.cc/8UDU-MXQ4].

403. Office of the Mayor, *Transcript: Mayor de Blasio, Speaker Mark-Viverito Announce 10 Year Plan to Close Rikers Island*, CITY OF N.Y. (Mar. 31, 2017), <http://www1.nyc.gov/office-of-the-mayor/news/196-17/transcript-mayor-de-blasio-speaker-mark-viverito-10-year-plan-close-rikers-island> [https://perma.cc/NB8P-K6LK].

404. Interview with Glenn E. Martin, *supra* note 167.

405. *Id.*

406. Goodman, *supra* note 1.

407. A MORE JUST NEW YORK CITY, *supra* note 15, at 13.

408. *Id.* at 17.

409. *Id.*

them is downtown near courthouses, so that the facilities are easily accessible to detainees' loved ones and their lawyers.<sup>410</sup>

Implementing the Lippman Commission recommendations would require the city to navigate two issues that often arise in New York City land use discussions: NIMBYism and ULURP. NIMBYism (which stands for "not in my backyard")<sup>411</sup> refers to the pattern of local opposition that arises in response to projects thought to affect neighborhood quality of life, opposition that is expected to emerge in the context of post-Rikers Island jail sitings.<sup>412</sup> ULURP, New York City's "Uniform Land Use Review Process,"<sup>413</sup> governs the official review process for changes in land use, and would be implicated in this instance by the siting or expansion of jail facilities.<sup>414</sup>

Section IV.A analyzes the presence of NIMBYism in city land use debates generally, and how it may adversely impact the closing of Rikers Island specifically. Section IV.B discusses the consequences of ULURP in dictating the timeline for renovating and opening the facilities that will replace Rikers Island.<sup>415</sup>

#### A. The Impact of NIMBYism in City Land Use Debates

NIMBY is so widespread in our discourse that it is an assumed challenge for closing Rikers Island. NIMBYism is driven by the fundamental contradiction between the needs of a functioning city and the deep concerns raised by local residents any time nearby property is put towards a use that may be deemed undesirable.<sup>416</sup> In New York City, these debates have arisen over power plants, sewage

410. In contrast, visiting Rikers Island, due to its geographical isolation and multiple layers of security, can take hours. This makes visiting extremely challenging for families and virtually impossible for defense attorneys with large caseloads.

411. Cindy Rodriguez, *The Origin and Iterations of 'Not in My Backyard'*, WNYC NEWS (Apr. 17, 2017), <http://www.wnyc.org/story/not-my-backyard-its-origin-and-iterations/> [<https://perma.cc/98KQ-VRQK>].

412. Zoe Rosenberg, *If Rikers Island Closes, NYC Neighborhoods May See More Jails Opening*, CURBED (Apr. 12, 2017), <https://ny.curbed.com/2017/4/12/15271152/rikers-island-closing-nyc-jails-locations> [<https://perma.cc/83VR-RV6U>].

413. *Status Report: Closing Rikers Island*, *supra* note 16.

414. See N.Y.C. CHARTER ch. 8, § 197-c (12)(c) (2004).

415. Before analyzing implementation of the Lippman Commission plan, it bears mentioning that Mayor de Blasio has stated that he will devise his own plan, though it is difficult to imagine a significantly different plan that is politically viable. Michael Schwartz, *De Blasio to Unveil Plan for Rikers While Warning It 'Will Not Be Easy'*, N.Y. TIMES (June 22, 2017), <https://www.nytimes.com/2017/06/22/nyregion/de-blasio-rikers-plans.html> [<https://nyti.ms/2tRDCMB>].

416. Rayman, *The Knockout Punch*, *supra* note 143.

plants,<sup>417</sup> waste transfer stations,<sup>418</sup> highways,<sup>419</sup> homeless shelters,<sup>420</sup> and, most relevant, over the siting of jails.<sup>421</sup> While NIMBYism is a widespread phenomenon in urban planning, it is acutely felt in New York City, where land is scarce, and even benign projects can engender fierce, even irrational opposition.<sup>422</sup>

NIMBYism works hand in hand with ULURP to strengthen the influence of local activists. As discussed *infra*, ULURP offers virtual veto power to individual councilmembers,<sup>423</sup> which means that a small but loud group of local activists can exert leverage against a project through their local representative. The most glaring example of this in recent New York City political discourse has been the debate over homeless shelters.<sup>424</sup> Despite the widespread consensus that New York City is experiencing increased homelessness,<sup>425</sup> local communities are adamant that their neighborhoods are not the proper places for homeless shelters. In one Queens neighborhood, opposing a homeless shelter became the prevailing local political

417. Sarah Maslin Nir, *To the City, a Pollution Fighter, to Some Residents, an Eyesore*, N.Y. TIMES (Mar. 23, 2017), <https://www.nytimes.com/2017/03/23/nyregion/bioswale-rain-gardens-new-york.html> [<https://nyti.ms/2mTBeBd>].

418. Mireya Navarro, *In Fight Against Trash Station, Upper East Side Cites Injustice*, N.Y. TIMES (June 30, 2011), <http://www.nytimes.com/2011/07/01/science/earth/01garbage.html> [<https://nyti.ms/2FAZAdv>].

419. Janette Sadik-Khan & Seth Solomonow, *What Would Jane Jacobs Do?*, CITYLAB (May 5, 2016), <https://www.citylab.com/design/2016/05/why-we-ask-ourselves-what-would-jane-jacobs-do/481422/> [<https://perma.cc/A63B-ZZCH>].

420. Nick Powell, *The Rise in Homelessness Mirrors the Koch and Dinkins Years. Will de Blasio Break the Cycle?*, CITY & STATE N.Y. (May 8, 2017), <http://cityandstateny.com/articles/politics/new-york-city/nyc-homelessness-koch-dinkins-de-blasio.html> [<https://perma.cc/XMH2-ZDCW>].

421. Joe Hirsch, *City Drops Plan for Hunts Point Jail*, HUNTS POINT EXPRESS (Aug. 12, 2010, 1:11 PM), <http://brie.hunter.cuny.edu/hpe/2010/08/12/no-new-jail-in-hunts-point-city-says/> [<https://perma.cc/T5JL-JCKA>].

422. David M. Herszenhorn, *Now It's 'Nothing in My Backyard'; Just Any Kind of Project Can Rile Homeowners*, N.Y. TIMES (Apr. 16, 2000), <http://www.nytimes.com/2000/04/16/nyregion/now-it-s-nothing-my-backyard-just-about-any-kind-project-can-rile-homeowners.html> [<https://nyti.ms/2FA8qYV>].

423. Konrad Putzier, *Council Member Threatens to Block \$250M Union Square Tech Hub*, REAL DEAL (Apr. 18, 2017, 11:05 AM), <https://therealdeal.com/2017/04/18/council-member-threatens-to-block-250m-union-square-tech-hub/> [<https://perma.cc/NQB8-4HY8>].

424. Samar Khurshid, *Bill de Blasio Versus NIMBYism*, GOTHAM GAZETTE (Oct. 7, 2016) <http://www.gothamgazette.com/city/6563-bill-de-blasio-versus-nimbyism> [<https://perma.cc/NQB8-4HY8>].

425. Melissa Russo, *Street Homelessness in NYC*, NBC N.Y. (July 5, 2017), <http://www.nbcnewyork.com/news/local/homeless-nyc-increase-40-percent-de-blasio-432688953.html> [<https://perma.cc/RQK7-KAKR>].

issue,<sup>426</sup> going so far as to displace a longstanding elected official for not fighting a shelter siting hard enough.<sup>427</sup>

There is a natural political assumption that NIMBYism will adversely affect closing Rikers Island, as local elected officials will not bear the political cost of a new jail being built in their districts.<sup>428</sup> However, this underestimates three factors. First, the political power built by the #CLOSERikers campaign affords more support for the process than typical projects that face NIMBY resistance.<sup>429</sup> Second, the Lippman Commission's specific recommendations to site one facility in each borough, near courthouses,<sup>430</sup> dulls the specter of jails being built randomly across the city. Third, at the time of this writing the councilmembers most relevant to land use discussions, those who represent courthouse districts targeted by the Lippman Commission, appear to support closing Rikers.<sup>431</sup>

### B. Navigating ULURP and Potential Jail Siting

Even if major criminal justice reforms were passed and NIMBYism was neutralized, closing Rikers Island and building an alternative criminal justice system would still require the city to navigate ULURP. A term little understood to the general public but warily familiar to New Yorkers involved in public policy, ULURP was added to the New York City Charter in 1975<sup>432</sup> in response to the megaprojects of Robert Moses that infamously disrupted

426. Emma Whitford, *Outraged Queens Residents Shout Down Homeless Shelter Proposal at Packed Meeting*, GOTHAMIST (Sept. 1, 2016, 9:42 AM), [http://gothamist.com/2016/09/01/maspath\\_homeless\\_shelter.php](http://gothamist.com/2016/09/01/maspath_homeless_shelter.php) [<https://perma.cc/3LXD-DYJC>].

427. Miriam Hall, *Plans for a Queens Homeless Shelter May Have Driven Primary Loss for Marge Markey*, REAL DEAL (Sept. 15, 2016, 10:01 AM), <https://therealdeal.com/2016/09/15/plans-for-a-queens-homeless-shelter-may-have-driven-primary-loss-for-marge-markey/> [<https://perma.cc/8B38-D4M6>].

428. Jillian Jorgensen & Erin Durkin, *De Blasio Tasks City Council with Finding Sites for Small Jails*, DAILY NEWS (June 22, 2017, 6:55 PM), <http://www.nydailynews.com/news/politics/de-blasio-tasks-city-council-finding-sites-small-jails-article-1.3270145> [<https://perma.cc/2MNJ-XWJE>].

429. Interview with Glenn E. Martin, *supra* note 167.

430. A MORE JUST NEW YORK CITY, *supra* note 15, at 3.

431. Gloria Pazmino & Conor Skelding, *De Blasio Moves on Rikers—But Hedges on Jail Relocations*, POLITICO (June 22, 2017, 5:12 PM), <http://www.politico.com/states/new-york/city-hall/story/2017/06/22/de-blasio-releases-a-rikers-shut-down-plan-still-hedging-on-jail-relocations-112986> [<https://perma.cc/7AWW-SZSL>].

432. David W. Dunlap, *Some Land-Use History Highlights*, N.Y. TIMES (Apr. 12, 1992), <http://www.nytimes.com/1992/04/12/realestate/some-land-use-history-highlights.html> [<https://perma.cc/99TT-5QLT>].

communities.<sup>433</sup> ULURP can be triggered by a variety of actions taken by private developers or government actors, and could be implicated with respect to closing Rikers Island when the Department of City Planning certifies the DOC applications to build new facilities or change the scope of existing facilities.<sup>434</sup>

Modern zoning practice began in New York City a century ago, and today the whole city is zoned for designated uses under a 1961 law, which restricts the types of buildings allowed on certain streets and avenues.<sup>435</sup> A jail cannot be sited simply anywhere in New York City—under the city’s land use laws, certain uses of property are only permitted in certain zoned areas of the city.<sup>436</sup> A jail is designated under “Use Group 8,” which means that it can be built in the following zones: Commercial-2, Commercial-4, Commercial-6, Commercial-8, Manufacturing-1, Manufacturing-2, and Manufacturing-3.<sup>437</sup> This represents all manufacturing districts in the city (common in downtown areas and along waterfronts) and most commercial districts in the city, which are mapped consistent with an interpretation that most residents would have of shopping areas.<sup>438</sup> Thus, jails may be sited in fairly broad swaths of the city, and building or renovating a facility next to one of the city’s courthouses would not require land to be rezoned.<sup>439</sup>

Even if a potential facility is zoned appropriately, a new building or a change in the use or scope of city property would trigger ULURP. ULURP consists of multiple steps involving separate stakeholders,

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433. Tom Angotti, *Land Use and the New York City Charter* (Aug. 10, 2010), <http://www.hunter.cuny.edu/ccpd/repository/files/charterreport-angotti-2.pdf> [https://perma.cc/3HCC-ESRJ] (unpublished policy paper).

434. See N.Y.C. CHARTER ch. 8, § 203 (2004); see also Kathryn Brenzel, *City Starts Land Use Review on Midtown East Rezoning Proposal*, REAL DEAL (Jan. 3, 2017, 3:23 PM), <https://therealdeal.com/2017/01/03/city-launches-land-use-review-on-midtown-east-rezoning-proposal/> [https://perma.cc/52HM-RYC7].

435. David W. Dunlap, *Zoning Arrived 100 Years Ago. It Changed New York Forever*, N.Y. TIMES (July 25, 2016) <https://www.nytimes.com/2016/07/26/nyregion/new-yorks-first-zoning-resolution-which-brought-order-to-a-chaotic-building-boom-turns-100.html> [https://nyti.ms/2jCqr0j]. A more robust discussion of zoning policy is outside the scope of this Essay. Worth noting, however, is that revisions to the City zoning code have been far more prevalent since Mayor Bloomberg’s administration, which conducted 140 neighborhood rezonings to modernize the City zoning code.

436. *Zoning*, DEP’T OF CITY PLANNING [hereinafter DEP’T OF CITY PLANNING], <https://www1.nyc.gov/site/planning/zoning/districts-tools/use-groups.page> [https://perma.cc/4S9M-MZJK].

437. *Id.*

438. *Id.*

439. *Id.*

each step governed by a prescribed timeline.<sup>440</sup> First, the Department of City Planning must certify an agency application.<sup>441</sup> After that, the local community board has sixty days to review the project and give an advisory opinion; this is the stage at which community members can first make their voices heard.<sup>442</sup> Following the issuance of the community board's advisory recommendation, the borough president has thirty days to similarly offer a non-binding recommendation.<sup>443</sup> The City Planning Commission then has sixty days to review and hold a hearing on the proposed ULURP, and must then issue a majority vote.<sup>444</sup> Once the vote is held, the city council must act within fifty days.<sup>445</sup> In practice, the full city council is deferential to the local councilmember, giving that member significant land use power within their own district.<sup>446</sup>

According to the city's website devoted to the Rikers Island closure process, the full timeline from a project's conception to completion includes nine months of design and feasibility studies and seven months of ULURP, followed by construction time, which "varies widely."<sup>447</sup> That said, Mayor de Blasio has set low expectations regarding ULURP, at one point claiming that a new youth facility in Hunts Point (which would house fewer than 150 teens) could take more than four years to complete.<sup>448</sup> Finally, projects of this size must submit Environmental Assessment Statements ("EAS") alongside ULURP applications, and following a determination over whether the impact of the project is significant enough, an Environmental Impact Statement ("EIS") may be

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440. N.Y.C. CHARTER ch. 8, § 197-c (12)(c) (2004); see also DEP'T OF CITY PLANNING, *supra* note 436.

441. DEP'T OF CITY PLANNING, *supra* note 436.

442. *ULURP Explained*, CITY LIMITS: ZONE IN, <https://citylimits.org/zonein/ulurp-explained/> [<https://perma.cc/G83T-5JVR>].

443. *Id.*

444. *Id.*

445. *Id.*

446. Putzier, *supra* note 423.

447. *Status Report: Closing Rikers Island*, *supra* note 16. Note that the Empire State Building was constructed in 13.5 months. *Empire State Building Fast Facts*, CNN (July 14, 2017, 10:11 AM), <http://www.cnn.com/2013/07/11/us/empire-state-building-fast-facts/index.html> [<https://perma.cc/8A37-VLFK>].

448. Neuman, *supra* note 311. There is also precedent for ULURP to take a long time even when a project is popular—the process for a new Queens police precinct took years. See Yoav Gonen & Linda Massarella, *New \$70M Queens Precinct Won't Be in Operation for Years*, N.Y. POST (July 17, 2017), <http://nypost.com/2017/07/17/new-70m-queens-precinct-wont-be-operational-for-years/> [<https://perma.cc/M48Y-QLN5>].

required for the project to commence.<sup>449</sup> Given the #CLOSERikers campaign's preference for smaller jails, the hope would be that this facet of the land use process would not be triggered at the Brooklyn or Manhattan sites.<sup>450</sup>

While ULURP provides the mandatory procedure with which any new DOC facility would be required to comply, equally important is the role of local politics. NIMBY-minded opponents may view each step of ULURP as an opportunity to criticize a project. The #CLOSERikers campaign is aware of this dynamic, which is why it has been both organizing directly impacted community members who can speak in support of projects as well as working with elected officials who will be implicated by ULURP at the likely sites.<sup>451</sup>

Before discussing the role each borough will play in the closing of Rikers Island, it is worth recalling the city's previous attempts to sidestep NIMBYism and ULURP in the context of jail sitings: its use of jail barges. During the 1980s, the Koch administration employed floating jail barges, each holding hundreds of detainees, to circumvent land use requirements and the attendant local criticism facilities engendered.<sup>452</sup> The city's fifth and largest barge was anchored off the coast of Hunts Point in 1992.<sup>453</sup> Arriving in New York City from Louisiana late and over-budget, the Vernon C. Bain Center, today known simply as "the Barge", has been holding as many as 800 detainees ever since.<sup>454</sup> Then Board of Correction chair William Booth remarked upon its opening, "[t]his should be our last barge. They're too expensive and uncertain."<sup>455</sup>

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449. DEP'T OF CITY PLANNING, *supra* note 436. An EIS "is very rigorous and demands findings on everything from traffic counts to sewage drain-off. It can take hundreds of pages, and it might take a year to complete." DANIEL L. DOCTOROFF, *GREATER THAN EVER: NEW YORK'S BIG COMEBACK* 74 (Public Affairs, ed. 2017).

450. Interview with Brian Cook, Assistant Comptroller for Economic Development N.Y.C. (Jan. 15, 2017).

451. Interview with Glenn E. Martin, *supra* note 167.

452. Selwyn Raab, *Bronx Jail Barge to Open, Though the Cost Is Steep*, N.Y. TIMES (Jan. 27, 1992), <http://www.nytimes.com/1992/01/27/nyregion/bronx-jail-barge-to-open-though-the-cost-is-steep.html> [<https://perma.cc/2G8C-EQMD>]. Yet even barges have not always been exempted from ULURP—in 1987 a judge found that locating a barge at a Lower East Side pier required ULURP because it would have restricted access to what had been public land and the impact the barge would have on the surrounding community. Kirk Johnson, *Judge Forbids Inmate Move to Jail Barge*, N.Y. TIMES (Oct. 30, 1987), <http://www.nytimes.com/1987/10/30/nyregion/judge-forbids-inmate-move-to-jail-barge.html> [<https://perma.cc/2228-Y4AM>].

453. Raab, *supra* note 452.

454. *Id.*

455. *Id.*

### 1. Manhattan

The Lippman Report's recommendation of locating a jail facility near each courthouse would be nothing new in Manhattan.<sup>456</sup> Manhattan already has a detention center, colloquially known as "The Tombs" due to the resemblance of its 1830s predecessor to an Egyptian mausoleum.<sup>457</sup> As discussed *supra*, Judge Morris Lasker presided over litigation brought by Legal Aid regarding the unconscionable living conditions in The Tombs, which included findings that, "[p]risoners slept on concrete floors without blankets and contended with roaches, body lice, and mice. Guards were frequently accused of brutality. A suicide was attempted every week."<sup>458</sup> The facility was renovated in the 1980s, and though it remains far from a model jail facility,<sup>459</sup> people who have worked and been detained there argue that the culture is very different from that on Rikers Island.<sup>460</sup> The Manhattan Detention Center is located across the street from the Manhattan Criminal Courthouse, easily accessible by major subway lines, and is largely surrounded by government and commercial buildings.<sup>461</sup>

Because the Manhattan Detention Center is an existing facility, there is political consensus for Manhattan's post-Rikers Island facility to be there, including support from local councilmember Margaret Chin.<sup>462</sup> This would obviate the need for any other facility in Manhattan. Manhattan Borough President Gale Brewer is considering establishing a task force comprised of Manhattan political stakeholders and advocacy groups to determine how to reduce the population of Manhattan detainees and reimagine the Manhattan Detention Center so that it is designed with best accepted practices for a modern facility.<sup>463</sup> The design process for renovating the Manhattan Detention Center could begin immediately, followed by

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456. A MORE JUST NEW YORK CITY, *supra* note 15, at 3; John Surico, *The Legacy of Violence at the Manhattan Jail Known as the 'Tombs'*, VICE (July 19, 2015) [hereinafter Surico, *Legacy*], [https://www.vice.com/en\\_us/article/yvx3pv/tales-from-the-tombs-the-legacy-of-violence-at-the-manhattan-detention-complex-719](https://www.vice.com/en_us/article/yvx3pv/tales-from-the-tombs-the-legacy-of-violence-at-the-manhattan-detention-complex-719) [https://perma.cc/E93E-SBBP].

457. Surico, *Legacy*, *supra* note 456.

458. *Id.*

459. *Id.*

460. Interview with Khalil Cumberbatch, Policy Associate for the Legal Action Center (Oct. 24, 2017).

461. *Manhattan Detention Complex*, MANHATTAN DET. CTR., <http://nycmdc.weebly.com/> [https://perma.cc/3H6L-PV3T].

462. Pazmino & Skelding, *supra* note 431.

463. Office of the Mayor, *Mayor Announces*, *supra* note 173.

ULURP, and then renovations. If the renovations require significant changes to the size and population of the Manhattan Detention Center, an EIS will be required, which could slow the process, but would be unlikely to derail it.<sup>464</sup> Because DA Vance sends more detainees to jail than any other district attorney,<sup>465</sup> the #CLOSERikers campaign will focus on implementing reforms that will allow the Manhattan Detention Center to be renovated with as few beds as possible.<sup>466</sup>

## 2. Brooklyn

Like Manhattan, Brooklyn already possesses a jail facility across the street from its local courthouse—the Brooklyn House of Detention (the “Brooklyn House”). The Brooklyn House originally opened in 1957 as a rehabilitative center for adolescents,<sup>467</sup> though it later became an adult facility for Brooklyn defendants.<sup>468</sup> At the peak of mass incarceration in New York City, Brooklyn even employed a second facility, a barge off the coast of the Brooklyn Navy Yard, which closed in 1995.<sup>469</sup> The Brooklyn House of Detention followed suit in 2003, though at its closure officials warned that it could re-open in the future.<sup>470</sup>

In 2006, plans moved forward to reopen the Brooklyn House in a manner more integrated with the community.<sup>471</sup> During this period, DOC Commissioner Horn sought alternative layouts for Brooklyn House, and one proposal that was completed after his tenure even

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464. Interview with Brian Cook, *supra* note 450.

465. See POPULATION DEMOGRAPHICS, *supra* note 160.

466. Interview with Glenn E. Martin, *supra* note 167.

467. *How Brooklyn House of Detention for Men 55 Years Ago Came to Open as NYC's 'Interim' Centralized Adolescent Remand Shelter*, N.Y. CORR. HISTORY SOC'Y, <http://www.correctionhistory.org/how-bkhdm-became-teen-jail/BkHDM-55-years-ago2.html> [https://perma.cc/66G2-DF4S].

468. *Id.*

469. Zachary Margulis, *Jail Barge Is Shuttered*, N.Y. DAILY NEWS (July 21, 1995), <http://www.nydailynews.com/archives/boroughs/jail-barge-shuttered-article-1.708026> [https://perma.cc/7KWK-349N].

470. Diane Cardwell, *Few Tears Shed for Closing of Brooklyn's Big House; Rikers Would Take Inmates in Consolidation Enabled by a Decline in People Behind Bars*, N.Y. TIMES (May 10, 2003), <http://www.nytimes.com/2003/05/10/nyregion/few-tears-shed-for-closing-brooklyn-s-big-house-rikers-would-take-inmates.html> [https://nyti.ms/2EEtix2].

471. Paul Von Zielbauer, *Brooklyn House of Detention Seen as Jail with Retail*, N.Y. TIMES (Mar. 10, 2006), <http://www.nytimes.com/2006/03/10/nyregion/brooklyn-house-of-detention-seen-as-a-jail-with-retail.html> [https://nyti.ms/2BCHLZu].

won a design award.<sup>472</sup> Despite initial pushback by some in the community, including one woman who lamented that she “took a gamble and lost on this neighborhood,”<sup>473</sup> in reality, real estate prices have continued to climb in the area.<sup>474</sup> According to local councilmember Steve Levin, the biggest complaint about the jail relates to parking,<sup>475</sup> and Glenn E. Martin is often fond of saying, “[i]f they were selling luxury condos on top of the Brooklyn House [of Detention], most New Yorkers would want to live there.”<sup>476</sup> Both Councilmember Levin and Brooklyn Borough President Adams are strong supporters of closing Rikers, and Levin has stated he is open to renovations of the Brooklyn House to accommodate Brooklyn defendants.<sup>477</sup>

There is a question as to whether ULURP would actually be required to add capacity to the Brooklyn House, if the structure of the building were not to change significantly, and the number of additional beds did not significantly alter the environmental impact of the Brooklyn House on the community.<sup>478</sup> Councilmember Levin, commenting on the “wear and tear” of the existing facility, has suggested a complete teardown and rebuild.<sup>479</sup> This would require a ULURP and EAS, and like the renovations in Manhattan, the displacement of the up to 800 people detained there<sup>480</sup> during the construction. As with Manhattan, the number of Brooklyn detainees would have to be reduced in order to rely on the footprint of the Brooklyn House,<sup>481</sup> and the #CLOSErikers campaign plans to remain

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472. *Brooklyn Detention Center*, 1100 ARCHITECT, <http://www.1100architect.com/projects/brooklyn-detention-center/> [<https://perma.cc/K9ET-9DU5>].

473. Liz Robbins, *As Neighborhood Thrives, No Warm Welcome for a Reopened Jail*, N.Y. TIMES (Feb. 3, 2012), <http://www.nytimes.com/2012/02/04/nyregion/reopening-of-brooklyn-house-of-detention-worries-neighbors.html> [<https://nyti.ms/2pPnSuV>].

474. *Real Estate Data for Boerum Hill*, TRULIA (Aug. 2017), [https://www.trulia.com/real\\_estate/Boerum\\_Hill-Brooklyn/5040/market-trends/](https://www.trulia.com/real_estate/Boerum_Hill-Brooklyn/5040/market-trends/) [<https://perma.cc/3Z6D-3SVZ>].

475. Goodman & Schwirtz, *supra* note 17.

476. Interview with Glenn E. Martin, *supra* note 167.

477. See Goodman & Schwirtz, *supra* note 17; see also Press Release, Office of the Brooklyn Borough President, BP Adams Statement on the Proposed Closure of Rikers Island (Mar. 31, 2017), <http://www.brooklyn-usa.org/bp-adams-statement-on-the-proposed-closure-of-rikers-island-2/> [<https://perma.cc/6FXR-BE8J>].

478. Interview with Glenn E. Martin, *supra* note 167 (referring to a May 2017 conversation during which Borough President Adams’s staff expressed uncertainty on this question).

479. Zimmer, *supra* note 376.

480. *Id.*

481. See POPULATION DEMOGRAPHICS, *supra* note 160.

focused on DA Gonzalez and other stakeholders to implement required policy changes.

### 3. Queens

Queens is the third borough with a logical facility to comply with the Lippman Report's recommendations. Nestled between Queens Borough Hall and the Queens Criminal Courthouse, a commercial district flanked by highways, few could argue that the Queens Detention Complex ("QDC") was an imposition on residential neighborhoods. Not to be confused with the Queens Detention Facility, a functioning federal prison located by JFK Airport,<sup>482</sup> QDC was opened in 1961, and housed as many 500 pre-trial detainees from Queens at its peak.<sup>483</sup> In 2002, citing operating costs and a declining overall jail population, the DOC closed the facility.<sup>484</sup> Presaging arguments by the #CLOSErikers campaign, a Legal Aid attorney countered at the time, "[f]rom a managerial point of view, to have a jail adjacent to the courthouse minimizes both transportation and operational costs."<sup>485</sup>

In October 2017, under the leadership of councilmember Karen Koslowitz and councilmember Liz Crowley, the Queens delegation of the city council signed a letter calling for the reopening of the QDC to facilitate closing Rikers.<sup>486</sup> The very next day, Mayor de Blasio acknowledged the viability of the site, noting the typical deference to local councilmembers in such a siting process.<sup>487</sup> Re-opening QDC will trigger ULURP, but the current political consensus clears a path for the design phase of the QDC remodeling to commence. Completion of a remodeled QDC would allow the DOC to move all people who are defendants in Queens off of Rikers Island.

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482. *Queens Detention Facility*, GEO GROUP, <https://www.geogroup.com/FacilityDetail/FacilityID/73> [<https://perma.cc/CC5B-RSFD>].

483. Robert Brodsky, *Last Rites for Queens Jail After 40 Years, Queens House of Detention Closes*, QUEENS CHRONICLE (Oct. 10, 2002), <http://www.qchron.com/editions/central/last-rites-for-queens-jail-after-years-queens-house-of/article.html> [<https://perma.cc/AV7T-EQF3>].

484. *Id.*

485. *Id.*

486. Durkin, *supra* note 379.

487. Erin Durkin, *Mayor de Blasio Eyes 'Ideal' Queens Site for New Jail as Rikers Shuts Down*, N.Y. DAILY NEWS (Oct. 2, 2017), <http://www.nydailynews.com/new-york/de-blasio-eyes-ideal-queens-site-new-jail-rikers-closes-article-1.3536725> [<https://perma.cc/DP72-3WRF>].

#### 4. *The Bronx*

Building a new facility in the Bronx will be more complicated than in Manhattan, Brooklyn, and Queens due to land use and political challenges.<sup>488</sup> The Bronx has a long history of underinvestment from the city,<sup>489</sup> which makes political leaders sensitive about facility sitings of any kind.<sup>490</sup> This sensitivity is heightened now that the Bronx is finally turning a corner economically.<sup>491</sup> Just a decade ago, local political leaders and community activists defeated Commissioner Marty Horn's attempt to build a 2000-bed facility in the South Bronx, unconvinced that a new jail would lead to long-term decarceration.<sup>492</sup> Finally, Bronx officials have expressed to the #CLOSErikers campaign that they would be doing their fair share by accepting a new youth facility.

One of the earliest wins of the #CLOSErikers campaign came in July 2016, when Mayor de Blasio announced that he would move sixteen- and seventeen-year-olds off of Rikers Island.<sup>493</sup> Early plans called for moving them to the Horizon ACS secure facility in Hunts Point, which currently houses a small number of children who would be moved to a Brooklyn facility.<sup>494</sup> But moving young people into a

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488. See Goodman & Schwirtz, *supra* note 17.

489. Matthew Purdy, *Left to Die, the S. Bronx Rises from Decades of Decay*, N.Y. TIMES (Nov. 13, 1994), <http://www.nytimes.com/1994/11/13/nyregion/left-to-die-the-south-bronx-rises-from-decades-of-decay.html> [<https://perma.cc/FNV5-YHB8>].

490. Goodman & Schwirtz, *supra* note 17. One councilmember lamented that his district was saturated with “shelters, group homes and centers for those with mental illness.” See also Patrick Wall, *South Bronx Still Fuming Over City's Garbage Plan*, DNAINFO (June 15, 2012), <https://www.dnainfo.com/new-york/20120615/hunts-point/south-bronx-still-fuming-over-citys-garbage-plan> [<https://perma.cc/D4KD-DC38>] (showing controversy over large number of waste transfer stations in the Bronx).

491. Katherine Clarke, *S. BRONX SIZZLE: Once a Symbol of Urban Blight, the Formerly Burned Out Neighborhood Is Now a Major Draw for Investors*, N.Y. DAILY NEWS (Apr. 8, 2015), <http://www.nydailynews.com/life-style/real-estate/south-bronx-real-estate-market-suddenly-burning-hot-article-1.2178095> [<https://perma.cc/DJZ9-RCA2>].

492. Williams, *supra* note 148.

493. Neuman, *supra* note 311. Approximately nine months later, the New York State Legislature passed “Raise the Age” legislation, a complicated compromise bill that will gradually raise the age of criminal responsibility to eighteen-years-old for some categories of criminal cases. The legislation also mandates that sixteen-year-olds must be removed from all New York State county jails, including Rikers Island, by October 1, 2018, and all seventeen-year-olds by October 1, 2019. See *Official Summary of 2017 N.Y. State Raise the Age Reform Bill*, RAISE THE AGE NY (June 2017) [hereinafter *Official Summary*], [http://raisetheagency.com/wp-content/uploads/2017/06/rta.billsummary.final\\_June-2017.pdf](http://raisetheagency.com/wp-content/uploads/2017/06/rta.billsummary.final_June-2017.pdf) [<https://perma.cc/7N3E-522B>].

494. Ben Fractenberg & Eddie Small, *City Moving 16-, 17-Year-Olds Off Rikers to New Bronx Facility, Mayor Says*, DNAINFO (July 21, 2016), <https://www.dnainfo.com/>

local detention facility triggers memories of Spofford, also known as the Bridges Juvenile Center, a Hunts Point youth jail that was run under appalling conditions for a half-century, and closed in 2011 after heavy protest from the community.<sup>495</sup> Complicating matters further was the wavering support of local councilmember Rafael Salamanca, who had the matter placed before him within a few months of winning his seat via special election.<sup>496</sup> Whether the process of moving sixteen- and seventeen-year-olds to Horizon ACS is moving fast enough to comply with statutory deadlines set by recent Raise the Age legislation remains in question.<sup>497</sup>

Putting aside political resistance, there is the question of where a Bronx facility would be located. The Bronx House of Detention, located across the street from Yankees Stadium, closed in 2000,<sup>498</sup> and was bulldozed for a shopping mall.<sup>499</sup> Thus, the option to renovate an existing facility is not available. The logical location for a new Bronx-based facility would be in the Grand Concourse/161st Street area, which is easily accessible by public transportation and already home to multiple courthouses,<sup>500</sup> hospitals,<sup>501</sup> re-entry programs,<sup>502</sup> and

new-york/20160721/melrose/city-moving-16-17-year-olds-off-rikers-new-bronx-facility-mayor-says [https://perma.cc/2UBT-H8A7].

495. Daniel Beekman, *Bronx's Notorious Spofford Shut Down*, N.Y. DAILY NEWS (Mar. 31, 2011), <http://www.nydailynews.com/new-york/bronx/bronx-notorious-spofford-aka-bridges-juvenile-center-finally-shut-article-1.119333> [https://perma.cc/6WQD-47Z6].

496. Eddie Small, *Salamanca Wins Bronx Special Election for City Council Seat*, DNAINFO (Feb. 24, 2016), <https://www.dnainfo.com/new-york/20160224/hunts-point/salamanca-wins-special-election-for-bronx-city-council> [https://perma.cc/H3BP-VCGM].

497. See Neuman, *supra* note 311; see also *Official Summary*, *supra* note 493.

498. Jose Martinez & Tara George, *It's Curtains for Bx. Jail Latest Closing a Sign of Good Times*, N.Y. DAILY NEWS (Aug. 26, 2000), <http://www.nydailynews.com/archives/news/curtains-bx-jail-latest-closing-sign-good-times-article-1.893852> [https://perma.cc/252M-3LT9]. Upon its closure, one correction officer reflected, “[i]t was fun to work here. A lot of inmates were from the Bronx, so they chilled out here. They were easy to handle.” One woman expressed concern about the challenges she would now face visiting her boyfriend at Rikers.

499. Jennifer Bleyer, *A Jail Break, but Not to Fear*, N.Y. TIMES (Jan. 28, 2007), <http://www.nytimes.com/2007/01/28/nyregion/thecity/28jail.html> [https://nyti.ms/2FD9ZWe].

500. BRONX FAMILY/CRIMINAL COURT HOUSE, [http://www.nyc.gov/html/dcas/html/about/bronx\\_family.shtml](http://www.nyc.gov/html/dcas/html/about/bronx_family.shtml) [https://perma.cc/NS7C-3WEK].

501. See, e.g., *Contact Us*, NYC HEALTH + HOSPITALS: LINCOLN, <https://www.nychealthandhospitals.org/lincoln/contact-lincoln-medical-center/> [https://perma.cc/LW9P-HRMC].

502. *Center for Alternative Sentencing and Employment Services (CASES)*, BRONX REENTRY WORKING GROUP, <http://bronxreentry.org/center-for-alternative-sentencing-and-employment-services-cases/> [https://perma.cc/H5LR-B77Q].

other ancillary services related to the criminal justice system. Councilmember Vanessa Gibson has not dismissed the idea of a facility coming to her district, which already houses several courts.<sup>503</sup> Should local political opposition or the city's failure to acquire the needed land hold up the construction of a new Bronx facility, people facing charges in the Bronx could theoretically be held on the Barge.<sup>504</sup> Conditions on the Barge are bleak, however, and the facility was meant to be taken offline years ago, which means the #CLOSErikers campaign will push for a new small, safe, and humane facility in the Bronx that would obviate the need for the Barge.<sup>505</sup>

### 5. Staten Island

Due to political considerations, building a facility in Staten Island may prove more challenging than any other borough, in part because Mayor de Blasio took it off the table at the very outset of his decision to support closure.<sup>506</sup> During his March 30, 2017 press conference, Mayor de Blasio said, "I have no intention of opening a jail in Staten Island," adding, "[w]e know that very few of our inmates come from Staten Island."<sup>507</sup> Mayor de Blasio's comments that Staten Island contributed little to the city jail population was technically accurate; with a population of less than 500,000 in a city of more than eight million, one would expect as much. However, there are more than 300 Staten Islanders in the DOC system presently.<sup>508</sup> Even if that number is cut in half through various reforms, it would still benefit those directly affected for Staten Island detainees to be housed on their home island, close to the Staten Island courthouse, rather than remotely in another borough.

The politics of this decision are easy to deduce. Mayor de Blasio was running for re-election, and actively seeking support in a borough

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503. See Goodman & Schwirtz, *supra* note 17.

504. See *supra* Section IV.B; see also Jen Carlson, *Did You Know About This Floating Prison on the East River?*, GOTHAMIST (Sept. 20, 2012), [http://gothamist.com/2012/09/20/did\\_you\\_know\\_about\\_this\\_floating\\_pr.php](http://gothamist.com/2012/09/20/did_you_know_about_this_floating_pr.php) [<https://perma.cc/2VG6-FZYS>].

505. Interview with Glenn E. Martin, *supra* note 167.

506. Nicholas Rizzi & Shaye Weaver, *De Blasio Won't Open Jail on Staten Island as Part of Rikers Replacement*, DNAINFO (Apr. 4, 2017), <https://www.dnainfo.com/new-york/2017/04/04/charleston/rikers-island-replacement-staten-island-jail> [<https://perma.cc/NS7C-3WEK>].

507. Chris Perez et al., *De Blasio Won't Open Staten Island Jail when Rikers Closes*, N.Y. POST (Apr. 3, 2017), <http://nypost.com/2017/04/03/de-blasio-wont-open-staten-island-jail-when-rikers-closes/> [<https://perma.cc/2QHR-BVK2>].

508. POPULATION DEMOGRAPHICS, *supra* note 160.

that rejected him four years earlier.<sup>509</sup> In response to de Blasio's initial comments, Council Speaker Mark-Viverito responded that she would prefer a Staten Island facility, consistent with the Lippman Commission report recommendations.<sup>510</sup> However, Mark-Viverito is term-limited,<sup>511</sup> and will not be in the council to implement this vision following the 2017 elections. In addition, like the Bronx, and unlike Manhattan, Brooklyn, and Queens, there is not an obvious location for such a facility near the borough's courthouse. Finally, a 1980s fight in which Staten Island residents successfully beat back the construction of a local jail may be in the minds of local elected officials.<sup>512</sup>

### C. Alternative Sites

During the spring of 2016, a document was leaked from city hall that listed possible jail facility sites, should Rikers Island be closed.<sup>513</sup> The commonality between the sites is that they were mostly city-owned property, which would theoretically simplify land use issues.<sup>514</sup> But the sites had other issues. The report listed two sites in Staten Island—one on Teleport Drive, and one on Arthur Kill Road, neither of which is easily accessible via public transportation.<sup>515</sup> The same is true of listed sites in Greenpoint and Ocean Park in Brooklyn, and in

509. William Neuman & J. David Goodman, *De Blasio Starts a Week on Staten Island with Little Contact with Staten Islanders*, N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/nyregion/bill-de-blasio-staten-island.html> [<https://nyti.ms/2omw9n9>]; see also James Yates, *Bill de Blasio Wins Mayor's Race, but Joe Lhota Takes Staten Island*, STATEN ISLAND REAL-TIME NEWS (Nov. 6, 2013), [http://www.silive.com/news/2013/11/joe\\_lhota\\_leading\\_on\\_staten\\_is.html](http://www.silive.com/news/2013/11/joe_lhota_leading_on_staten_is.html) [<https://perma.cc/A9RH-5ML8>].

510. Yoav Gonen & Michael Gartland, *Mark-Viverito Wants a Jail in Staten Island When Rikers Closes*, N.Y. POST (Apr. 6, 2017), <http://nypost.com/2017/04/06/mark-viverito-wants-a-jail-staten-island-when-rikers-closes/> [<https://perma.cc/7XCW-WSTZ>].

511. Gloria Pazmino, *Mark-Viverito, Speakership Winding Down, Steps Out to de Blasio's Left*, POLITICO (May 11, 2017), <http://www.politico.com/states/new-york/city-hall/story/2017/05/10/mark-viverito-steps-out-de-blasio-111971> [<https://perma.cc/BG6S-DJ9K>].

512. Anna Sanders, *Rikers Island to Close in 10 Years Under de Blasio Plan*, STATEN ISLAND REAL-TIME NEWS (Mar. 31, 2017), [http://www.silive.com/news/2017/03/rikers\\_island\\_de\\_blasio\\_close.html](http://www.silive.com/news/2017/03/rikers_island_de_blasio_close.html) [<https://perma.cc/4SG8-CTZG>].

513. James Fanelli & Jeff Mays, *City Hall Quietly Eyes Neighborhoods for New Jails to Replace Rikers Island*, DNAINFO (Mar. 31, 2016), <https://www.dnainfo.com/new-york/20160331/college-point/city-quietly-eying-sites-for-new-jails-replace-rikers-island-sources> [<https://perma.cc/KXZ3-SQSH>].

514. *Id.*

515. *Id.*

College Point in Queens.<sup>516</sup> The final location in the leaked memo was land adjacent to the Barge in the Bronx, on land rather than in the water.<sup>517</sup> The #CLOSErikers campaign does not support the construction of new jails in neighborhoods that are inaccessible to communities.<sup>518</sup> The opposition of both local community activists and criminal justice advocates makes it unlikely that the administration would end up siting jails in these locations.

### CONCLUSION

When the #CLOSErikers campaign began, that goal was described as unrealistic,<sup>519</sup> as fantasy.<sup>520</sup> Even close allies who supported the values behind it were dubious of its success.<sup>521</sup> Now it is city policy.<sup>522</sup> Governor Cuomo has been critical of Mayor de Blasio's plan to close Rikers Island in ten years,<sup>523</sup> arguing instead that it should close in three,<sup>524</sup> and State Senator Brian Benjamin has introduced legislation mandating that outcome.<sup>525</sup> One mayoral candidate belatedly even argued that Rikers Island should close in one year.<sup>526</sup> In January 2018, the de Blasio administration announced that the city's jail population had reached its lowest number in more than thirty years,

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516. *Id.*

517. *Id.*

518. Interview with Glenn E. Martin, *supra* note 167.

519. J. David Goodman, *De Blasio Says Idea of Closing Rikers Jail Complex Is Unrealistic*, N.Y. TIMES (Feb. 16, 2016), <https://www.nytimes.com/2016/02/17/nyregion/de-blasio-says-idea-of-closing-rikers-jail-complex-is-unrealistic.html> [<https://nyti.ms/2npoyGs>].

520. Jillian Jorgenson, *Is Shutting Down Rikers Island a Dream or a Fantasy?*, OBSERVER (Feb. 11, 2016), <http://observer.com/2016/02/is-shutting-down-rikers-island-a-dream-or-a-fantasy/> [<https://perma.cc/55PK-3NLT>].

521. Interview with Glenn E. Martin, *supra* note 167.

522. Goodman, *supra* note 1.

523. Nick Reisman, *Top Cuomo Admin Lawyer Blasts 10-Year Closure of Rikers*, STATE OF POLITICS (Aug. 24, 2017, 2:56PM), <http://www.nystateofpolitics.com/2017/08/top-cuomo-admin-lawyer-blasts-10-year-closure-of-rikers/> [<https://perma.cc/24LZ-4R35>].

524. Kenneth Lovett, *Gov. Cuomo Says He Favors Law that Closes Rikers Island Faster Than Mayor de Blasio's 10-Year Plan*, N.Y. DAILY NEWS (Apr. 27, 2017), <http://www.nydailynews.com/news/politics/cuomo-favors-bill-close-rikers-faster-de-blasio-plan-article-1.3105980> [<https://perma.cc/EWU3-QDM3>].

525. S.B.6747, 2017-18 Leg., Reg. Sess. (N.Y. 2017); Glenn Blain, *N.Y. Senator Pushes Bill Forcing NYC to Shut Down Rikers Island in Three Years*, N.Y. DAILY NEWS (June 15, 2017), <http://www.nydailynews.com/new-york/n-y-senator-pushes-bill-shut-rikers-island-3-years-article-1.3250804> [<https://perma.cc/ZM6D-EY9L>].

526. Bob Gangi, *Rikers Can Close in Less than a Year*, N.Y. DAILY NEWS (July 12, 2017, 5:00AM), <http://www.nydailynews.com/opinion/rikers-close-year-article-1.3318440> [<https://perma.cc/BAJ2-QABF>].

and that in the summer of 2018 they planned on closing the first of the Rikers Island jails.<sup>527</sup> These political shifts did not happen by accident. They were the product of a highly coordinated campaign with many allies and supporters.<sup>528</sup> They were the product of a campaign that deployed a diversity of tactics on its target.<sup>529</sup> Most importantly, the success of #CLOSErikers was driven by the leadership of those most directly impacted by Rikers Island, whose voice gave an unrelenting moral clarity to the campaign.<sup>530</sup>

In October 2017, JLUSA launched #FREEnewyork, an effort to similarly mobilize directly impacted people statewide to achieve meaningful criminal justice reform in Albany.<sup>531</sup> Earlier in the fall of 2017, a foundation announced support for JLUSA's plan to launch campaigns similar to #CLOSErikers in several other cities across the United States in 2018,<sup>532</sup> and JLUSA is already supporting decarceration campaigns in Milwaukee<sup>533</sup> and Los Angeles.<sup>534</sup> The lessons from all of these campaigns will inform each other, and help produce a new model of organizing to end mass incarceration.

Despite the exciting national work ahead, here in New York City many steps remain before the Rikers Island jail complex is shuttered for good.<sup>535</sup> Some of those steps will involve complicated questions around speedy trial reform,<sup>536</sup> land use,<sup>537</sup> and reforming pre-trial

527. See Office of the Mayor, *New York City to Close First Jail on Rikers Island by Summer 2018*, CITY OF N.Y. (Jan. 2, 2018), <http://www1.nyc.gov/office-of-the-mayor/news/002-18/new-york-city-close-first-jail-rikers-island-summer-2018> [<https://perma.cc/AE9A-QNAT>].

528. See *supra* Section III.A.

529. See *supra* Section III.B.

530. See *supra* Section III.A.

531. *JustLeadershipUSA Launches #FREEnewyork*, JUSTLEADERSHIPUSA, <https://www.justleadershipusa.org/justleadershipusa-launches-freenewyork/> [<https://perma.cc/N94R-3BWM>].

532. David Callahan, *Into Battle: The Chan Zuckerberg Initiative Steps Up Its Advocacy Giving*, INSIDE PHILANTHROPY (Sept. 19, 2017), <https://www.insidephilanthropy.com/home/2017/9/19/into-battle-the-chan-zuckerberg-initiative-steps-up-its-advocacy-giving-in-a-big-way> [<https://perma.cc/GY44-KCJQ>].

533. *EXPO Launches Campaign to Close Milwaukee Secure Detention Facility (MSDF)*, URB. MILWAUKEE (June 29, 2017), <http://urbanmilwaukee.com/pressrelease/expo-launches-campaign-to-close-milwaukee-secure-detention-facility-msdf/> [<https://perma.cc/VD8U-2KHT>].

534. Kirsten West Savalli, *JusticeLA Coalition: Patrisse Khan-Cullors, Black Lives Matter Co-Founder, Partners with Organizations to Halt Los Angeles Jail Expansion*, THE ROOT (Sept. 27, 2017), <http://www.theroot.com/justicela-coalition-patrisse-khan-cullors-black-lives-1818832421> [<https://perma.cc/N8WA-Y49E>].

535. See *supra* Section III.B.

536. See *supra* Section II.B.2.

detention systems<sup>538</sup>—none of which resonate like “#CLOSErikers.” Yet when a campaign’s moral center is around reimagining justice, each step towards ending mass incarceration is inspired.

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537. *See supra* Part IV.

538. *See supra* Section II.A.2.