



COLUMBIA LAW SCHOOL

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October 14, 2018

Mr. Howard Fiedler
New York City Department of Correction
75-20 Astoria Boulevard, Suite 160
East Elmhurst, New York 11370

Via e-mail: boroughplan@doc.nyc.gov

Re: Draft Scope of Work for Environmental Impact Statement
New York City Borough-Based Jail System
CEQR No. 18DOC001Y

Dear Mr. Fiedler:

This comment on the Draft Scope of Work for the Environmental Impact Statement (EIS) for the New York City Borough-Based Jail System is submitted on behalf of the Sabin Center for Climate Change Law of Columbia Law School.

We are limiting ourselves to just one comment: the EIS should discuss the impact that increasing temperatures will have on the health and safety of the prisoners and employees in the new jails, and should set forth options to protect against heat impacts, preferably air conditioning.

In August 2015 the Sabin Center issued a report, *Heat in US Prisons and Jails: Corrections and the Challenge of Climate Change*. The report is attached and is incorporated into this comment by reference. The report documents that heat in prisons and jails causes many deaths in the incarcerated populations if air conditioning is not provided, especially since many of the individuals start with poor health status. The report also cites the many judicial decisions that have found excessive heat in prisons and jails can be a violation of the Eighth Amendment prohibition against cruel and unusual punishment.

In 1991 the Supreme Court recognized warmth an essential human need and observed that “a low cell temperature at night combined with a failure to issue blankets” could amount to a violation of the Eighth Amendment.¹ Since then numerous federal courts have applied the same logic to excessive heat, finding potential violations of the Eighth Amendment as well as of the Americans With Disabilities Act of 1990 and the Rehabilitation Act of 1973.²

Texas prisons have received particular attention. More than 20 state prisoners died from the heat between 1998 and 2017.³ In 2017 a federal judge found that state officials had been “deliberately indifferent” to the heat in a prison for elderly inmates,⁴ and in 2018 he approved a settlement under which air conditioning will be provided.⁵

A report issued in 2015 by the New York City Panel on Climate Change documented the projected increase in heat waves in New York City as a result of climate change. That report, by Radley Horton et al. was published in the *Annals of the New York Academy of Sciences*. An accompanying report by Patrick Kinney et al. discussed the adverse health effects of extreme heat in New York City. Both of these reports are attached and incorporated by reference. The Horton et al. report states:

The total number of hot days, defined as days with a maximum temperature at or above 90°F or 100°F, is expected to increase as the 21st century progresses (Table 1.2). By the 2020s, the frequency of days at or above 90°F may increase by more than 50% relative to the 1971 to 2000 base period; by the 2050s, the frequency may more than double; by the 2080s, the frequency may more than triple. Although 100°F days are expected to remain relatively rare, the percentage increase in their frequency of occurrence is projected to exceed the percentage change in days at or above 90°F.

In recognition of these projections, the OneNYC plan released by Mayor De Blasio in 2015 indicated that mitigating the risks of heat would be a priority for New York City sustainability efforts. Office of the Mayor, *One New York: The Plan for a Strong and Just City*, pages 228-229, available at <https://onenyc.cityofnewyork.us/wp-content/uploads/2018/04/OneNYC-1.pdf>.

Chapter 18, “Greenhouse Gas Emissions and Climate Change,” of the CEQR Technical Manual discusses the projections of increased temperatures in New York City, and states that future climate projections and mitigation of their impacts should be considered in New York City environmental impact reviews. This chapter is available at https://www1.nyc.gov/assets/oec/technical-manual/18_Greenhouse_Gas_Emissions_2014.pdf.

In view of these official projections of more extreme heat events in New York City, the dangers that these events pose to prisoners and employees in jails, and the constitutional significance of these dangers, the EIS for the Borough-Based Jail System should disclose heat risks and set forth measures to mitigate them.

Sincerely,



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Attachments

¹ Wilson v. Seiter, 501 U.S. 294, 304 (1991).

² E.g., Walker v. Schult, 717 F.3d 119, 128 (2d Cir. 2013); Blackmon v. Garza, 484 F. App'x 866, 870–72 (5th Cir. 2012); Hathaway v. Holder, 491 F. App'x 207, 208 (2d Cir. 2012); Graves v. Arpaio, 623 F.3d 1043, 1049 (9th Cir. 2010); Vasquez v. Frank, 209 F. App'x 538, 541 (7th Cir. 2006); Hearn v. Terhune, 413 F.3d 1036, 1043 (9th Cir. 2005); Chandler v. Crosby, 379 F.3d 1278, 1294 (11th Cir. 2004); Gates v. Cook, 376 F.3d 323, 340 (5th Cir. 2004).

³ Maurince Chammah, “Cooking Them to Death” The Lethal Toll of Hot Prisons, Marshall Project, October 11, 2017.

⁴ Keith Cole v. Bryan Collier, Civ. Action No. 4:14-CV-1698 (July 19, 2017).

⁵ Gabrielle Banks, Judge approves deal to air condition Texas geriatric prison, Houston Chronicle, May 8, 2018.