



COLUMBIA LAW SCHOOL

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July 14, 2019

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

Dear Mr. Fiedler:

This comment on the Final Scope of Work for the Environmental Impact Statement (EIS) and Draft Environmental Impact Statement (DEIS) 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 primarily limiting ourselves to the same comment we submitted on October 14, 2018 for the Draft Scope, which was not adequately addressed in the Final Scope or DEIS: 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 to our comments on the Draft Scope and is thus part of the record, 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.ⁱⁱ

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

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.^{vi}

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.

The Final Scope and DEIS do not address or disclose heat risks and their effects on detained populations, or suggest measures to protect detained populations from these risks. The Final Scope’s response to our initial comment (Comment 197) stated, on p. A-111:

Consistent with the *City Environmental Quality Review (CEQR) Technical Manual*, the GHG and Climate Change task will address the resiliency of the proposed project to global climate change. This includes wide-ranging effects on the environment, including rising sea levels, increases in temperature, and changes in precipitation levels. A review will be performed of New York City recommended strategies for addressing climate change resilience and the proposed project’s consistency with these recommendations.

The DEIS briefly references the use of air conditioning in its discussions of water and sewer infrastructure, noise, and greenhouse gas emissions with respect to each proposed jail. However, these references are focused on the water and energy demands, and noise and wastewater impacts, of any air conditioning that is provided, and do not discuss possible health and safety risks to detained populations in these jails. Nor do they make clear whether air conditioning will be provided in the jail cells and other areas where prisoners are detained, or only in the offices and other areas utilized exclusively by jail officers and staff. The Final EIS and the Findings Statement should state explicitly what commitments are made to provide and maintain air conditioning for prisoner areas.

Temperature control in jails in New York City received attention in January 2019 when an electrical failure at the Metropolitan Correctional Center in Brooklyn disabled the heating system during a cold snap and left more than a thousand inmates stuck in freezing cells, an extremely unhealthy condition. See Annie Correal, “No Heat for Days at a Jail in Brooklyn Where Hundreds of Inmates Are Sick and ‘Frantic,’” *New York Times*, February 1, 2019, linked [here](#). While that is a federal facility, it highlights the importance of emergency back-up power to the health of inmates during both hot and cold conditions. The Final EIS should discuss the provisions for back-up power at the proposed jails and how long they would be operable during an extended outage, as occurred at the Metropolitan Correctional Center. Additionally, if air conditioning will be provided, the final EIS should discuss whether the windows will be built such that they could be opened during a power failure to provide some natural ventilation; if they are not at all openable, truly dangerous conditions could arise in sealed cells during a power failure that occurs during a heat wave.

In view of the 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 final EIS for the Borough-Based Jail System should disclose heat risks and set forth measures to mitigate them.

A final comment arises from a development that occurred subsequent to the issues of the draft EIS. In June 2019 the New York State Legislature enacted the Climate Leadership and Community Protection Act. Governor Andrew Cuomo has announced that he will sign it. This new statute requires a reduction of statewide greenhouse gas emissions below 1990 levels of 40% in 2030 and 85% in 2050. Any new facility should be designed and built so as to achieve the 2050 target. The final EIS should discuss how the proposed jails would meet this target.

Sincerely,



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

ⁱⁱ See, 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).

ⁱⁱⁱ Maurice Chammah, “Cooking Them to Death”” *The Lethal Toll of Hot Prisons*, MARSHALL PROJECT (Oct. 11, 2017).

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

^v Gabrielle Banks, *Judge approves deal to air condition Texas geriatric prison*, HOUS. CHRONICLE (May 8, 2018).

^{vi} Office of the Mayor, *One New York: The Plan for a Strong and Just City*, p. 228-29, <https://onenyc.cityofnewyork.us/wpcontent/uploads/2018/04/OneNYC-1.pdf>.