



**REMARKS SUBMITTED TO THE NEW YORK CITY BOARD OF CORRECTION
COMMITTEE ON THE DEPARTMENT OF CORRECTION’S VARIANCE REQUEST
REGARDING RECEIPT OF MAIL AND PACKAGES IN NYC JAIL SYSTEM**

Dear Chair Sampson and Members of the Board of Correction:

As members of the Corrections and Community Reentry Committee of the New York City Bar Association, we are here to express our significant concerns about the two proposed variances before the Board of Correction, one for a variance from Minimum Standard § 1-11(e)(1)(i) (the “mail variance”) and one from Minimum Standard § 1-12(a) (the “package variance”). The mail variance would require all incoming paper mail to be scanned and then allowing incarcerated people access only to the scanned version (*i.e.*, on a tablet). The package variance would allow incoming packages only from approved vendors sending items directly from a vendor’s facility – thus banning homemade or handmade goods, books or clothing from family members, friends, or loved ones that are not ordered and sent from such vendors.

We recognize that contraband in Rikers is a serious issue, and that mail is one method through which contraband is brought onto the island. But based on the information publicly available, the Department of Correction has not demonstrated the need for either variance. We are also troubled by the use of the variance process for this change, and concerned that the impact of mail scanning on incarcerated individuals has not been thoroughly taken into account.

First, there is conflicting information on how contraband is entering Rikers and additional information is needed before resorting to a full ban on paper mail and non-commercial packages. While Commissioner Molina testified at the New York City Council that “most” of the contraband enters Rikers “in letters and packages laced with fentanyl,”¹ Department of Correction investigators have previously testified in federal court that staff are the “usual” source of contraband.² And while in the mail variance proposal, Commissioner Molina wrote that three of the then-eighteen deaths at Rikers had been caused by fentanyl overdoses, he did not identify how that fentanyl had entered Rikers. Before embarking on changes of this magnitude, the Board of Correction should have rigorous, reliable data on how much contraband is entering the facility

¹ Reuven Blau, “City Jails Move to Digitize Mail, Which Led Other Lockups Into Legal Fights,” The City, Nov. 4, 2022, <https://www.thecity.nyc/2022/11/4/23439318/city-jails-could-digitize-mail-other-lockups-legal-fights>.

² John Annese, “Rikers Island Guards and Staff are ‘Usually’ Source of Drugs at the Jail, Investigator testifies,” New York Daily News, Nov. 29, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-officers-smuggle-contraband-trial-20221129-ldqmm6ftlna3dagrfpmgdvxpom-story.html>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

through mail and packages. Incomplete or imprecise data about the cause of a serious problem may well lead to implementing ineffective or incomplete solutions.

Second, we have concerns about the use of the variance process for this policy change. As discussed at the public meeting on these variances, the Rules of the City of New York do not appear to contemplate using a variance for a permanent policy change of this nature. A full rulemaking process would not only conform more closely to the Rules, but it would also allow the Board to come up with a more tailored solution rather than a complete, permanent ban on all paper mail and non-commercial packages. The Department of Justice recommends numerous alternatives to detect drugs short of mail scanning, which should at least be considered by the Board and Department of Correction.

Third, we are concerned that the Department has not fully considered the impact of mail scanning on incarcerated people. In the mail variance proposal, Commissioner Molina asserted without explanation that scanning mail “will not impose any danger or hardship on the individuals in our custody.” But it is undeniable that incarcerated people rely on effects such as love letters, photographs, children’s drawings, and greeting cards to buoy their spirits as placeholders for the deprivation of the physical presence of their loved ones. A scanned version of your daughter’s crayon portrait is just not the same as the real thing. Further, consistent access to functioning tablet readers is not currently assured which means that incarcerated people may be deprived of receiving their mail either in a timely way or at all.

Scanning mail and delivering only the scans to tablets represents a significant, likely permanent, policy shift for a correctional facility. While contraband in Rikers is a serious issue, the Board should rely on rigorous, reliable data before agreeing that removing paper mail and non-commercial packages is the least intrusive solution to the issue. By following a rulemaking process rather than the variance process, the Board would be able to fully consider all relevant state and federal best practices and craft a more nuanced and informed solution to the issue. Finally, the impact of mail scanning on incarcerated individuals must be given significant weight in this decision. Mail scanning is usually a one-way street: Commissioner Molina stated that there is no intention to ever return to paper mail at the Department of Correction. Finally, we ask that the Board meet with incarcerated people and their families to personally understand the long-term impact of this decision on those whom it will most affect.

Corrections and Community Reentry Committee
Alexis Flyer and Stephanie Holmes, Co-Chairs
Remarks delivered by Andrew Case, Committee Member

January 27, 2023