

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

MARK NUNEZ, et al., :

Plaintiffs, :

- against - :

CITY OF NEW YORK, et al., :

Defendants. :

: 11 Civ. 5845 (LTS)(JCF)

----- X

UNITED STATES OF AMERICA, :

Plaintiff-Intervenor, :

- against - :

CITY OF NEW YORK and NEW YORK CITY  
DEPARTMENT OF CORRECTION, :

Defendants. :

----- X

**ORDER**

**Section I: Remedial Steps for the Department to Address by December 31, 2023**

This Order is intended to redress practices causing imminent harm and to remediate the Department's non-compliance with certain provisions of the prior *Nunez* Court Orders. This order does not displace the requirements of prior *Nunez* Court Orders, which remain in effect. The Court now enters this remedial Order to impose specific requirements and deadlines on the Department to immediately address some of the ongoing deficiencies that the Monitor has identified in the July 10, 2023 Report (dkt. 557).

1. **UOF, Security and Violence Indicators:** By, September 30, 2023, the Department, in consultation with the Monitor, shall develop a set of data and metrics for use of force, security and violence indicators that will be routinely evaluated by Department leadership to identify trends and patterns regarding unnecessary and excessive force and violence in order to identify the root cause of these issues and develop strategies to address them. Upon request by the Monitor, the Department shall provide data regarding use of force, security, and violence indicators and permit observation of meetings in which such information is evaluated by Department leadership.
2. **Revise Search Procedures:** By, October 30, 2023, the Department, in consultation with the Monitor, shall reconstitute its search procedures and practices to ensure searches are conducted in an efficient, timely, safe manner and to reduce the possibility of a use of force. The new search procedures shall be subject to the approval of the Monitor.
3. **Revise Escort Procedures:** By, October 30, 2023, the Department, in consultation with the Monitor, shall revise its escort procedures and practices to eliminate the use of painful escort holds. The new escort procedures shall be subject to the approval of the Monitor.
4. **Lock-in and Lock-out Procedures:** By October 30, 2023, the Department shall revise and implement a new protocol that requires each lock-in and lock-out to occur at certain times each day. Housing unit staff must ensure the lock-in and lock-out occur and report the times for the housing unit to the Tour Commander. The Department shall track and record the lock-in and lock-out times at each unit in every Facility to ensure the lock-in and lock-out occur as required. These protocols and procedures shall be subject to the approval of the Monitor.
5. **Control Station Security:** By September 25, 2023, the Department shall revise and implement a protocol to ensure the Control Station Door is secured at all times and to ensure that a Control Station Door is never opened when a housing unit door is opened or an incarcerated individual is in the vestibule. This protocol shall be subject to the approval of the Monitor.
6. **Staff Off Post:** Staff shall not leave their post or place of assignment without the permission of a superior. Employees who are authorized to leave their post for any reason must return to the post as quickly as possible. Staff assigned to work to a housing unit post (either the A or B post) shall not be permitted to leave their post until they have been properly relieved or exigent circumstances exist.

7. **Special Teams Training:** By, August 31, 2023, the Department, in consultation with the Monitor, shall develop a training program and provide such training to Special Teams<sup>1</sup>. The training program shall include fully developed lesson plans and teaching outlines, examinations, and written materials, including written scenarios and exercises, to be distributed to students. The content of the training program shall include, among other things, procedures and protocols for use of force, conducting searches, and responding to alarms and emergency situations in a manner that ensures the safety of incarcerated individuals and staff. The content of the training programs shall be subject to the approval of the Monitor.
8. **Revise Special Teams Command Level Orders:** By, November 30, 2023, the Department, in consultation with the Monitor, shall review and revise as necessary all of Special Teams command level orders related to the use of force. The new Special Teams command level orders related to the use of force shall be subject to the approval of the Monitor.
9. **Screening and Assignment of Staff to Special Teams:** By, October 30, 2023, the Department, in consultation with the Monitor, shall revise and implement its screening and assignment process for the initial assignment to Special Teams and routine reassessment of Special Teams staff to ensure the staff assigned to Special Teams are appropriately fit for duty. The Department's screening policy and reassessment procedures shall be subject to the approval of the Monitor.
10. **Revise Pre-Promotional Screening Policies and Procedures:** By, October 30, 2023, the Department, in consultation with the Monitor, shall revise its pre-promotional screening policies and procedures to address the issues identified by the Monitor in each of its Court filings in 2023.
11. **ID Staffing:** By, December 31, 2023, the City shall ensure that the Department's ID Division maintains at least 21 supervisors and 85 investigators to conduct use of force investigations unless and until the Department presents an internal staffing analysis and can demonstrate to the Monitor that fewer staff are necessary to conduct thorough, timely, and objective investigations of all Use of Force Incidents as required by the *Nunez* Court Orders.
12. **Additional Reporting by the City and Department Regarding Intake:** On September 15, 2023 and November 15, 2023, the City and Department shall file two additional reports on the Court docket regarding the status of their continued efforts to implement reliable Intake tracking systems for new admissions and inter/intra facility transfers.
13. **Revise Command Discipline Policy and Procedures:** By November 30, 2023, the Department, in consultation with the Monitor, shall develop and implement appropriate controls and procedures regarding the adjudication of Command Discipline, including but not limited to the following:

---

<sup>1</sup> Special Teams is defined as the Emergency Services Unit and any functional equivalent unit, including, but not limited to the Strategic Response Team and the Special Search Team.

- a. timely processing of cases so that a minimal number of cases are dismissed due to procedural errors;
- b. quality assurance measures to ensure that all Command Disciplines impose an appropriate outcome and do not merely default to the lowest level sanction, unless proportional to the severity of the misconduct;
- c. appropriate mechanisms to ensure cases that require referral for formal discipline via MOCs are completed as required by policy, including but not limited to, when the conduct merits formal discipline or when a staff member has exceeded the number of allowable CDs in a given time period; and
- d. appropriate tracking of any appeal to the Legal Division and the outcome of the appeal.

The Department's Command Discipline policy and procedures shall be subject to the approval of the Monitor.

**14. External Assessment of Procedures for Preventing and Responding to Self-Harm:**

The City and Department shall authorize, and the Department and CHS shall engage, a consultant (and any necessary staff) who is a qualified expert in the prevention and response to self-harm in correctional settings to conduct the assessment outlined below. The Monitor has approved of the selection of Dr. Timothy Belavich. If Dr. Belavich proves to be unavailable or becomes unavailable or his continued service becomes otherwise unfeasible in the future, the Department will retain an appropriate replacement subject to approval of the Monitor. The consultant shall conduct the following assessment in consultation with the Monitor:

- a. DOC and H+H policies related to Suicide Prevention to ascertain whether they reflect generally accepted practice.
- b. H+H protocols for screening, assessing, and treating the risk of suicide and DOC protocols for responding to suicidal ideation/referrals and for monitoring those who are on suicide precautions to determine whether they are adequate.
- c. DOC staff's practices and responses to self-harm incidents.
- d. Current H+H and DOC protocols and practices to identify where performance is subpar.
- e. DOC and H+H's Morbidity-Mortality Review process to ensure that it reflects the generally accepted practice and relevant professional standards.

The consultant shall provide the Monitor with a report of his findings by December 31, 2023.

**Section II: Monitor Reporting**

1. The Monitor shall file status reports on October 10, 2023 and November 16, 2023 on the City and Department's efforts to address the specifically enumerated remedial relief outlined in this Order.

2. On December 21, 2023, the Monitor shall file his next report with the compliance assessments of the *Nunez* Court Orders pursuant to the Court's June 13, 2023 Order, § 3.

SO ORDERED this 10th day of August, 2023

A handwritten signature in black ink, appearing to read 'L. Swain', with a long horizontal flourish extending to the right.

LAURA TAYLOR SWAIN  
Chief United States District Judge