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CIVIL DISTRICT COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

DOCKET NO: 15-6070

DIVISION L-6

CITY OF NEW ORLEANS

VERSUS

MARLIN N. GUSMAN, IN HIS CAPACITY AS SHERIFF OF THE PARISH OF
ORLEANS, AND THE ORLEANS PARISH SHERIFF'S OFFICE

FILED: _____ DEPUTY CLERK: _____

**AMICUS BRIEF ON BEHALF OF ORLEANS PARISH PRISON REFORM
COALITION AND OTHERS**

For years, New Orleans has put more of its people in jail than any city in the United States.¹ This Amicus Brief is filed on behalf of a broad coalition of organizations and individuals in New Orleans who have actively worked for years to stop our City from putting so many of our people in jail. They advocated for and continue to fully support the hard cap of a maximum of 1438 people imprisoned at the various facilities of the Orleans Parish Prison. This firm limit of 1438 is now the law. That law, and the will of the people of New Orleans which it embodies, must be respected. If Defendant chooses to disregard the law, it is the duty of this Court to enforce it.

The organizations and individuals who submit this Amicus include:

1. **The Orleans Parish Prison Reform Coalition (OPPRC)** is a group of concerned organizations and individuals from diverse political, economic, and cultural backgrounds. The organization represents a broad sector of the New Orleans community who have come together to advocate for a smaller jail and the reallocation of funds from incarceration and detention to building the infrastructure of a caring community.
2. **The Justice and Accountability Center of Louisiana** tackles deficiencies in the post-conviction phase of the criminal justice system while creating a supportive collaborative space for attorneys and advocates.

¹ Campbell Robertson, Sheriff Wants a Big Jail in New Orleans, but City Balks, N.Y. Times, Feb. 15, 2011, available at http://www.nytimes.com/2011/02/16/us/16orleans.html?_r=0.

3. **The Gulf Coast Center for Law & Policy** is a non-profit, public interest law firm and justice center with a mission to build, serve and advocate for structural shifts that promote equity in law, society and community.
4. **Women with a Vision** works to improve the lives of marginalized women, their families, and communities by addressing the social conditions that hinder their health and well-being. We accomplish this through relentless advocacy, health education, supportive services, and community-based participatory research.
5. **The Promise of Justice Initiative** is a private, non-profit organization that advocates for humane, fair, and equal treatment of individuals in the criminal justice system. It seeks to reform the Louisiana criminal justice system and abolish the death penalty.
6. **The MICAH Project** is a non-denominational, non-partisan organization that works with people of all faiths to recognize and build on their faith values to create a more equitable and just world.
7. **V.O.T.E., Voice of the Ex-Offender**, is a grassroots, membership based organization founded and run by Formerly Incarcerated Persons (FIPs) in partnership with allies dedicated to ending the disenfranchisement of and discrimination against FIPs.

I. SUMMARY OF ARGUMENT

Counsel for the Defendant describes City Council's ordinance capping the number of people imprisoned in New Orleans at 1438 as "imprudent." However, it took years of work by scores of people in a considered and thoughtful process to pass an ordinance lawfully promulgated by the New Orleans City Council, capping the number of beds at 1438. If Defendant thinks the law is "imprudent" he may, like all other citizens, seek to change the law. Defendant does not have the authority to disregard a law he disagrees with unless he is ready to accept the consequences of breaking the law.

Defendant now seeks assistance from this Court to disregard the explicit, considered will of the community and the duly promulgated law of local government.

This Court should respect the rule of law and the will of the community and order Defendant to incarcerate no more than 1,438 people within the city's jail.

II. STATEMENT OF INTEREST

The undersigned have spent years advocating for major reductions in the number of prisoners confined in the various parts of the criminal justice system in the City of New Orleans.

They have a strong interest in addressing the illegal and unconstitutional conditions of incarceration in New Orleans.

They have worked to combat the negative effects of incarceration in their communities, and they have been avid leaders in a democratic and community-driven movement urging government officials to develop a plan for addressing these problems.

A core element of the plan that our elected officials developed in 2011 is to ensure that the jail facilities being built meet but do not exceed New Orleans' long-term needs for a jail. This requires housing all detainees within the one building - whose construction was authorized - and ensuring that the building is equipped to meet all of their needs.

The Sheriff's direct refusal to comply with this ordinance threatens to undo the years of efforts people have undertaken to shape public policy through coordination with the legislative and executive branches of local government.

As this Court is fully aware, the United States leads the entire world in the rate of incarceration of its people and Louisiana leads all fifty states. For years New Orleans incarcerated as many as 7000 people at a time and led both Louisiana and the nation in the rate of incarceration of its citizens.² This previous high rate of incarceration represents a failure, which the signers of this brief and the lawmakers of the City of New Orleans have decided shall not be repeated.

The undersigned are not taking positions on jurisdictional issues. This cap should be honored in both state and federal court. Defendant's argument that this matter should be taken up in federal court is one that Defendant should take up in federal court.

III. ARGUMENT AGAINST OVER-INCARCERATION IN NEW ORLEANS

As part of the commitment to a constitutional jail, community members and public officials recognized years ago that keeping the population of the jail to a manageable size was crucial.

This ordinance at issue in this case was not just the result of an impromptu City Council vote. Instead, it was the culmination of the democratic process through a Criminal Justice Working Group convened by the Executive Branch, formed in 2010, that included government officials, criminal justice experts, and civic leaders (including some of the undersigned organizations). Through this framework, community members presented their concerns and perspectives. The Working Group considered crime, demographic, and jail population data; taxpayer interests; community feedback; the social and financial costs of excessive incarceration,

²² Campbell Robertson, [Sheriff Wants a Big Jail in New Orleans, but City Balks](http://www.nytimes.com/2011/02/16/us/16orleans.html?_r=0), N.Y. Times, Feb. 15, 2011, available at http://www.nytimes.com/2011/02/16/us/16orleans.html?_r=0.

including the tragic racial disparities over-incarceration imposes on affected communities; and best practices for managing jail size.³

Ultimately, the Working Group recommended a jail with a maximum capacity of 1,438 beds, capable of housing all relevant populations.

The maximum of 1438 was approved by the City Council in 2011.⁴

The ordinance is perfectly clear: the Sheriff may not construct or occupy the Phase II building unless it is constructed so as to allow the housing of all inmates, with the exception of those requiring acute mental health services, who should be housed in a hospital. It is equally clear that the Sheriff is not in compliance with the ordinance.

Thus, since the Sheriff decided to go forward without abiding by the terms of the conditional use permit, he may not continue with construction or occupy the building.

The City is simply seeking to enforce the law of the City of New Orleans. It is inappropriate for the Sheriff's Office to disregard the decision these stakeholders and the City have reached and force the city of New Orleans into a different course of action by its blatant violation of the law. Doing so shifts important policy decisions away from the people and government who are most informed by and responsive to the community's needs and will.

It is also important to note that any public safety concerns inherent to the size of the new jail can be easily remedied without violating the law. For instance, the Sheriff continues to house a large number of Department of Corrections (DOC) prisoners, despite repeated formal directives from the Mayor and City Council⁵ to return them to physical custody of DOC. Removing these state prisoners would immediately remedy concerns about insufficient bed space within the new jail.⁶

Additionally, the City is at the beginning of a comprehensive undertaking to reduce the jail population even further. On July 1, 2015, representatives from the Mayor's office presented the first phase of their plan to criminal justice leaders who participate in the Jail Population Management Subcommittee of the Criminal Justice Council. The Sheriff has also expressed his commitment to these initiatives; he was a co-applicant with the Mayor in New Orleans' successful bid for a grant from the MacArthur Safety and Justice Challenge, which provides jurisdictions with funding to reform their incarceration and criminal justice practices. This makes compliance with this ordinance even more critical.

³ At that time, the jail was more than four times greater than the national average for urban areas. At 1,438 beds, it will still be one and a half times the national average for urban areas.

⁴ New Orleans, La., Ordinance No. 24,282 M.C.S. (Feb. 3, 2011).

⁵ New Orleans, La., Resolution R -14-347 (Aug. 21, 2014).

⁶ While DOC has legal responsibility for determining where these inmates are housed, Louisiana Secretary of Public Safety James LeBlanc testified in federal court that there are no legal barriers to transferring prisoners serving state sentences away from New Orleans. See Naomi Martin, "Mayhem" at Orleans Parish Jail Persists as Mayor, Sheriff Fight Over Reforms and Funding, Times Picayune (Mar. 21, 2014), http://www.nola.com/crime/index.ssf/2014/03/mayhem_at_orleans_jail_persist.html.

For years, community representatives in New Orleans have witnessed and spoken out against the harms caused by over-incarceration and its disproportionate impact on communities of color. The decision to limit the capacity of the jail is a crucial part of reform efforts by both the government and the community.

The Sheriff's refusal to comply with the law flies in the face of the decisions being made by government officials and community representatives about what is best for the city they represent, and it would allow Defendant to violate the very law he is sworn to uphold.

IV. TIMELINE

The organizations and people who signed this brief have been involved in advocating for a hard cap on the number of people incarcerated in New Orleans for years. The cap of 1438 is the result of years of work going back to 2010.

For example in September 2010, the OPPRC took out a full page ad in the Times-Picayune signed by over 300 people from New Orleans advocating for a much smaller jail.⁷ This ad was signed by many in our community including former Criminal Court Judge Calvin Johnson, journalists Lolis Eric Elie and Jed Horn, community leaders Gina Warner and Matt Suarez, former City Council member Shelley Midura, artists Kermit Ruffins and Wendell Pierce, as well as dozens of teachers, lawyers, social workers, religious leaders and community advocates.

Community forums were held at the Mahalia Jackson Community Center and School on Jackson Avenue, the Treme Community Center, the Martin Luther King Jr. School on Caffin Avenue, and the Dryades YMCA on Oretha Castle Haley Boulevard.

As a result of much discussion and advocacy, on November 22, 2010, the Mayor's Criminal Justice Working Group recommended the construction of a new jail, with a recommended maximum capacity of 1,438 beds and the ability to accommodate any type of prisoner. The Working Group recommended that the new jail provide programming to reduce recidivism, and that all other buildings be decommissioned when it is opened.⁸

On February 3, 2011, the City Council adopted City Ordinance No. 24,282, establishing a conditional use permit for OPP, permitting the construction of a new 1,438-bed jail, and

⁷ A copy of this ad is available at <https://opprc.files.wordpress.com/2013/04/final-opp-ad2.pdf>.

⁸ Katy Reckdahl, Smaller Orleans Parish Jail Is Recommended in Final Report, Times Picayune (Nov. 22, 2010), http://www.nola.com/politics/index.ssf?2010/11/smaller_orleans_parish_jail_is.html.

The process was initiated on September 22, 2010 when the Criminal Justice Working Group was created by Executive Order MJL 10-06. See Mayor Appoints Panel to Study Appropriate Jail Size, City Business (Sept. 24, 2010), <http://neworleanscitybusiness.com/blog/2010/09/24-mayor-appoints-panel-to-study-appropriate-jail-size/>.

On December 6, 2010, Mayor Landrieu released a letter to City Council in support of the Working Group's recommendations. Letter from Mitchell J. Landrieu, Mayor, New Orleans, to Arnie Fielkow et al., City Councilmembers, New Orleans (Dec. 6, 2010), available at <http://lensnola.wpengine.netdna-cdn.com/wp-content/uploads/2010/12/Landrieu-letter-to-council.pdf>.

requiring that all other facilities be decommissioned upon occupancy (with the exception of TDC, which it said must close within eighteen months).⁹

The community kept the pressure on. One example of this is OPPRC's 2013 challenge to the City for the lack of progress being made towards keeping the cap on prisoners at 1,438.¹⁰

Efforts to keep the jail small continued. On August 21, 2014, the City Council adopted Resolution R-14-347, calling for the safe and expeditious removal of Plaquemines Parish prisoners and DOC prisoners (with the exception of work-release, community service, and re-entry) from OPP, and demanding the retrofit of the fourth floor of Phase II (stating opposition to the construction of Phase III).¹¹ On November 20, 2014, the City Council adopted Resolution R-14-527, calling for the safe and expeditious removal of all transfer youth under the age of 18 from OPP to the Youth Studies Center (YSC).¹²

The decision to cap the number of people jailed in New Orleans has been roundly debated, studied and decided. The law says 1438. The Defendant knows this is the law but chooses not to follow it. The duty of this Court is to enforce the law.

V. CONCLUSION

Signers of this Amicus ask this Court to enforce the law and honor the cap of 1,438 people incarcerated in New Orleans. None of this is new. This is the result of years of work by the public and local government in public. Defendant does not have the right or the authority to disregard the will of the people. It is the law. It is also right and just. This court should enforce the law.

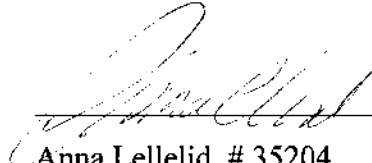
⁹ New Orleans, La., Ordinance No. 24,282 M.C.S. (Feb. 3, 2011)..

¹⁰ Open Letter from Orleans Parish Prison Reform Coalition to Mayor Mitch Landrieu (Sept. 13, 2013), [available at](http://media.nola.com/crime_impact/other/Letter%20to%20Mayor%20Landrieu%209-13-13.pdf) http://media.nola.com/crime_impact/other/Letter%20to%20Mayor%20Landrieu%209-13-13.pdf.

¹¹ [City Council Regular Meeting News Summary August 21, 2014](http://www.nolacitycouncil.com/news/meetingsummary.asp?id=%7BC2F6A21D-8B56-4BC2-B385-73FC6AB65237%7D), NOLA City Council (Aug. 21, 2014), <http://www.nolacitycouncil.com/news/meetingsummary.asp?id=%7BC2F6A21D-8B56-4BC2-B385-73FC6AB65237%7D>.

¹² [City Council Regular Meeting News Summary November 20, 2014](http://www.nolacitycouncil.com/news/meetingsummary.asp?id=%7B734A50F7-4FD1-4C85-A255-C73EF0D81727%7D), NOLA City Council (Nov. 20, 2014), <http://www.nolacitycouncil.com/news/meetingsummary.asp?id=%7B734A50F7-4FD1-4C85-A255-C73EF0D81727%7D>.

Respectfully submitted,



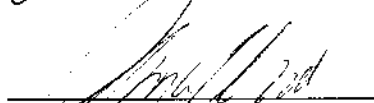
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CERTIFICATION

A copy of this brief has been served on Sharonda Williams, counsel for City of New Orleans and James Williams, counsel for Marlin Gusman by email and U.S. Postal Mail this 6th day of July 2015.



Anna Lellelid