

# ***Public Defenders, Advocates Sue New York, Claim Vaccine Denial Violates Constitutional Rights of Incarcerated People***

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**(NEW YORK, NY) – Neighborhood Defender Service of Harlem, The Bronx Defenders, The Legal Aid Society, the New York Civil Liberties Union, and Brooklyn Defender Services** filed an Article 78 petition today on behalf of all individuals held in New York City jails. The petition alleges that Governor Andrew Cuomo’s refusal to include all incarcerated people in the pool of individuals eligible for COVID-19 vaccinations—while providing vaccinations to others living in congregate settings and to Department of Correction (DOC) employees—ignores science and public health mandates and arbitrarily excludes incarcerated New Yorkers in violation of the Equal Protection clause of the 14<sup>th</sup> Amendment to the United States Constitution.

The coalition of public defenders and civil liberties advocates demanded that the state immediately offer vaccinations to all incarcerated people.

On January 11, Governor Cuomo initiated vaccination Phase 1b, which made groups living in congregate settings, such as homeless shelters, as well as DOC staff, eligible for vaccination. But incarcerated people, who are forced to live in the quintessentially congregate settings of jails and prisons, are generally ineligible for vaccination despite the extraordinary COVID risks posed by those crowded environments.

Incarcerated New Yorkers face high risk of COVID-19 infection. The petition cites public health guidance from the Center for Disease Control, the National Academies of Science, Engineering and Medicine, and affidavits from medical professionals, all urging the swift vaccination of incarcerated people in the interest of public health. The experts explicitly advise states to vaccinate jail and prison staff and incarcerated people at the same time.

The numbers bear out the risk to incarcerated people and the wisdom of the experts’ guidance. The New York City jail population is at its highest level since late March 2020, making social distance impossible to maintain. The state Department of Correction and Community Supervision (DOCCS) just registered its 5,000th positive COVID-19 test result of people in its custody. 30 New Yorkers have died in prisons since the pandemic began. Put plainly, the lives of incarcerated New Yorkers – and public health at large – depends on offering vaccinations to everyone in DOC custody.

The coalition named two petitioners, **Charles Holden and Alberto Frias**, both of whom are held on Rikers Island. In the petition, Frias explained that he feared for his health because of the unsafe conditions in DOC custody.

“The past year has been the scariest of my life. I have asthma, and every day that passes without being vaccinated leaves me anxious that I might be the next person to get sick, or that I may pass COVID onto other people,” said Frias. “[Rikers Island] is very unsanitary and risky. It is impossible to stay six feet apart. You eat together, you use the same showers. DOC does not supply masks within the housing area, so people are walking around without masks. I am simply asking to be treated fairly and with dignity.”

Mr. Holden said that he is disgusted by the government’s discrimination against incarcerated people.

“The virus is getting worse and numbers are going up. People around me are getting sick, there’s a high rate of infection, and it feels unsafe. My dorm is nearly full, we sleep in beds that are inches apart and people are unable to wear masks,” Holden said. “People are getting sick around me. We need the vaccine now or it will get worse. The irresponsibility of the state to overlook incarcerated people is despicable.”

The exclusion of incarcerated New Yorkers from vaccination eligibility also conflicts with New York’s stated goal of ensuring equitable vaccine access for Black and brown communities, and across class lines. Poor people and Black and brown New Yorkers comprise the overwhelming majority of New York’s incarcerated population. The failure to vaccinate them compounds existing inequality.

“New York’s current vaccination policy discriminates against our clients on a basic level. It says that their lives, their families, and their neighborhoods matter less than those of other New Yorkers,” said **Libby Fischer, Managing Attorney of the Criminal Defense Practice at Neighborhood Defender Service of Harlem**. “We’re bringing this petition because we refuse to allow their humanity to be trampled. Governor Cuomo has a legal obligation to meet the rights – including the Constitutional rights - of incarcerated New Yorkers. But more than that, he has a moral obligation to protect the health and dignity of every New Yorker, including those in jails and prisons. We intend to make sure he fulfills it.”

“Since the very beginning of the pandemic, the state has routinely disregarded the health and safety of incarcerated people,” said **Justine Olderman, Executive Director of The Bronx Defenders**. “Withholding the vaccine from people being detained in congregate settings goes against CDC guidelines. It also goes against the moral responsibility the state has towards the people it incarcerates. Governor Cuomo must make the vaccine immediately available to any incarcerated person who wants it.”

“We are holding Governor Cuomo accountable to the demands of science, public health and racial justice, ” said **Mary Lynne Werlwas, Director of The Legal Aid Society Prisoners’ Rights Project**. “New York’s choice to withhold the vaccine from the people confined to dense,

dangerous congregate settings of jails and prisons ignores the unambiguous public health guidance that calls for priority vaccinations in this vulnerable setting, and exacerbates the vastly disproportionate toll of this virus on Black and Latinx communities.”

“The exclusion of people held in New York City jails from current State vaccination plans disrespects the lives of people who are incarcerated and who are overwhelmingly Black and Brown,” said **Donna Lieberman, executive director at the New York Civil Liberties Union.** “To treat high-risk individuals who are locked up in high-risk congregate settings known as jails differently flies in the face of public health guidance, common decency, and essential efforts to curb the spread statewide. From Sullivan County to New York City, the NYCLU will continue the fight for the safety and wellbeing of New Yorkers who are incarcerated, which helps keep all New Yorkers safe.”

“As COVID-19 continues to run rampant in prisons and jails, New York State has refused to include incarcerated people in its vaccine authorization plans,” said **Lisa Schreibersdorf, Executive Director of Brooklyn Defender Services.** “The State’s plan already acknowledges the grave risk from COVID faced by people working and living in congregate settings by prioritizing correctional staff and people living in shelters and nursing homes. However, this plan fails to provide the same protection to those living in prisons and jails, where people already face crowded, unsanitary, and inhumane conditions, including substandard medical care. Before another life is lost, New York must act immediately and authorize vaccines for incarcerated people.”

The filing can be found [here](#).

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