

February 25, 2021

CONTACT

Sam McCann, Neighborhood Defender Service of Harlem (smccann@ndsny.org)

Arianna Fishman, New York Civil Liberties Union (afishman@nyclu.org)

Redmond Haskins, The Legal Aid Society (rhaskins@legal-aid.org)

Ryan Karerat, The Bronx Defenders (rkarerat@bronxdefenders.org)

Daniel Ball, Brooklyn Defender Services (Dball@bds.org)

Public Defenders, Advocates Ask Court to Force State to Offer Vaccine to Incarcerated People Immediately

(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 asked the state Supreme Court to grant a preliminary injunction in their ongoing suit against the State of New York today. If granted, the preliminary injunction would force the state to begin offering vaccinations to incarcerated people immediately, while awaiting a final decision on the petition.

The next scheduled hearing for the petition is March 8.

The petition, filed on February 4 in state Supreme Court in the Bronx, 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 corrections employees—ignores science and public health mandates and arbitrarily excludes incarcerated New Yorkers in violation of the Equal Protection clause of the 14th 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. Since the petition was filed, the State has expanded vaccine eligibility to hundreds of thousands of additional people while still refusing to offer vaccines to all incarcerated people alongside other similarly high-risk groups.

On January 11, Governor Cuomo initiated vaccination Phase 1b, which made groups living in congregate settings, such as homeless shelters, as well as corrections 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 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 offer them vaccinations compounds existing inequality.

“Holding people in conditions we know to be unsafe while people around them get sick and die is both unconscionable and illegal. The conditions in our jails and prisons clearly constitute an emergency” said **Libby Fischer, Managing Attorney of Neighborhood Defender Service's Criminal Defense practice.** “An emergency situation demands an emergency response. We look forward to the Court granting this preliminary injunction to fulfill the rights of incarcerated people statewide.”

“It is an affront to common decency and a violation of public health guidance that New York State has neglected to offer vaccines to all incarcerated New Yorkers. We are taking action today to bring this cruel and discriminatory practice to an end immediately,” said **Donna Lieberman, executive director at the New York Civil Liberties Union.** “The NYCLU will not stop fighting for the safety and wellbeing of New Yorkers who are incarcerated—it's a matter of basic human rights and essential to the health of all New Yorkers.”

"Governor Cuomo's gamble with the lives of people incarcerated in prisons and jails grows more perilous each passing day, as the NYC jails are more crowded than at any time since the pandemic began, physical distancing is an impossibility and the new variants emerge. It is inhumane and illegal to wait another day to provide the vaccine to people in prisons and jails,” said **Mary Lynne Werlwas, Director of the Prisoners' Rights Project at The Legal Aid Society.**

“Governor Cuomo's exclusion of incarcerated people from vaccine eligibility, especially given the health conditions in New York's jails and prisons, is unconscionable,” said **Justine Olderman, Executive Director of The Bronx Defenders.** “It puts politics over humanity and illustrates the ways in which Black and brown lives are devalued by those in positions of power. If the Governor is not going to act, then the courts must step in to right this terrible wrong.”

"With each day that passes, more and more New Yorkers suffer because the State has failed to provide critical medical protection to people living in one of the most dangerous, high-risk environments,” said **Lisa Schreibersdorf, Executive Director of Brooklyn Defender Services.** “Denying incarcerated people access to the life-saving vaccine goes against science, public health, and basic humanity, and causes irreversible harm. As COVID-19 continues to ravage New York's prisons and jails, the State cannot wait any longer and must act immediately to authorize vaccines for all incarcerated people.”

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

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