

NY Supreme Court Rules Incarcerated People Must be Offered COVID Vaccine Immediately

Judge sides with public defenders and advocates in suit, says state's exclusion of incarcerated people from vaccine eligibility is unconstitutional

March 29, 2021

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(New York, NY) – A judge in New York Supreme Court ruled today that Governor Cuomo violated the constitutional rights of incarcerated people in refusing to offer them a COVID-19 vaccine alongside other groups in congregate settings, and ordered that every incarcerated person in the state be made eligible for the vaccine immediately.

The court sided with a coalition of advocates - Neighborhood Defender Service of Harlem, The Bronx Defenders, The Legal Aid Society, the New York Civil Liberties Union, and Brooklyn Defender Services - who brought the suit on behalf of incarcerated people in New York City jails. The group argued that the Governor's decision to exclude people held in jails and prisons was dangerous and discriminatory, and ignored public health guidance. The court agreed, ruling the state arbitrarily excluded incarcerated people, in violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution. Read the full decision [here](#).

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, were generally ineligible for vaccination prior to today's decision, despite the extraordinary COVID-19 risks posed by those crowded environments.

Jail and prison populations are surging to pre-pandemic levels, and the infection rate is unsurprisingly spiking. As of March 18, there are 577 people currently in DOC custody with confirmed cases of COVID-19, up from 306 at the start of the year. Every day that passed without the vaccine endangered the lives of incarcerated people, as underlined by a recently-uncovered Board of Correction report on three Covid-related deaths on Rikers Island.

The exclusion of incarcerated New Yorkers from vaccination eligibility also conflicted 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.

In court on March 22nd, the coalition presented testimony from public health experts to back up its claims that the state's decision to not vaccinate incarcerated people presented an imminent danger. The experts -

as well as public health guidance - explicitly advise that states vaccinate jail and prison staff and incarcerated people at the same time, and say the state's action to date have been wholly inadequate. "[O]ffering vaccines only to staff and subsets of people in custody, such as those of a certain age or with underlying conditions that put them at higher risk of serious illness, is not an intervention sufficient to mitigate the inherent risk of congregate residential setting," wrote Dr. Victoria Adewunmi in an affidavit.

The coalition also provided the court with statements from named petitioners who spoke about the persistent danger Covid-19 poses in jails and prisons. Their statements echoed the BOC report investigating deaths on Rikers last Spring. "[Rikers Island] is very unsanitary and risky. It is impossible to stay six feet apart," said Charles Holden in a statement. 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."

The court's decision means that Governor Cuomo must make incarcerated people eligible for vaccination, and that jail and prison officials must offer the vaccine to those in custody immediately.

"Today's decision provides a measure of overdue relief to our clients who fear for their lives and to our neighbors who lie awake at night worried about their loved ones' safety while held in city and state custody. The state's abdication of its responsibility to protect incarcerated people during the pandemic - culminating in its unconstitutional denial of the vaccine - ranks as one of the cruelest and most horrifying actions I have seen in my years as a public defender," said **Alice Fontier, Managing Director of Neighborhood Defender Service of Harlem**. "We are grateful that the court stepped in today to intervene in the Governor's callous disregard of our clients' humanity. The decision will make our jails and prisons much safer, but make no mistake: the situation remains incredibly dangerous and we urge officials to continue to reduce the jail and prison population immediately."

"It is an affront to public health guidance and common decency that New York State had neglected to offer vaccines to all incarcerated New Yorkers in NYC DOC custody, and our legal action has now brought this cruel and discriminatory practice to its immediate end," 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, which helps keep all New Yorkers safe."

"Governor Cuomo's decision to withhold the vaccine from the people confined to dense, congregate settings of jails and prisons always ignored the unambiguous public health guidance that called for priority vaccinations in this uniquely dangerous setting, and exacerbated the vastly disproportionate toll of this virus on Black and Latinx communities," said **Mary Lynne Werlwas, Director of The Legal Aid Society's Prisoners' Rights Project**. "These New Yorkers should have had priority access to the vaccine, and this never should have required litigation."

"The Court's decision to expand vaccine access to all incarcerated people will bring much-needed relief to thousands of New Yorkers who badly need protection from this deadly virus. It is shameful that it took repeated legal action for the New York State government to ensure that incarcerated people have access to this critical immunization—a protection that has been accessible to people living and working in other congregate settings, including those working in prisons and jails, for over two months," said **Lisa Schreibersdorf Executive Director of Brooklyn Defender Services**. "Moreover, while vaccine access is an important step towards dramatically reducing the risk of COVID-19, jails and prisons are intrinsically dehumanizing and dangerous. The best and most humane way to protect people's health during a pandemic is to decarcerate."

"Governor Cuomo's ongoing, irrational, and punitive exclusion of incarcerated people from vaccine eligibility has needlessly put thousands of New Yorkers' lives at risk," said **Justine Olderman, Executive**

Director of The Bronx Defenders. "We are relieved that the court has acted today to right this terrible wrong so that each and every one of the people we represent who wants a vaccine can finally receive one."

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