



**BROOKLYN
DEFENDER
SERVICES**

Milbank

December 6, 2021

Contact:

Redmond Haskins, The Legal Aid Society, rhaskins@legal-aid.org
Daniel Ball, Brooklyn Defender Services, dball@bds.org
Jocelyn De Carvalho, Milbank, JDeCarvalho@milbank.com

*****FOR IMMEDIATE RELEASE*****

Legal Aid, Brooklyn Defender Services and Milbank Secure Ruling to Ensure Incarcerated Clients' Access to Medical Care

(NEW YORK, NY) - The Legal Aid Society, Brooklyn Defender Services and Milbank LLP lauded a recent [decision](#) in [Agnew v. NYC Department of Correction](#) which found that the New York City Department of Correction (DOC) has [failed](#) to provide access to medical care for incarcerated New Yorkers in the City Jails. The order mandates that DOC immediately remedy these unlawful failures and provide people in its care with access to medical services.

Recognizing that DOC's failures are far reaching, the Court certified a class that includes all current and future persons incarcerated in NYC Department of Correction (DOC) jails and designated Legal Aid, Brooklyn Defender Services and Milbank as class counsel. According to the ruling, DOC must comply with its legal duties to provide medical services to all persons in NYC jails, by:

- Providing all class members with access to sick call on weekdays and make sick call available a minimum of five days per week within 24 hours of a request;
- Providing sufficient security to allow class members movement to and from health services in the jails; and
- Not prohibiting or delaying class members' access to care, appropriate treatment, or medical or dental services.

The Court ordered the Department to demonstrate compliance with its order - and these duties - within a week. If DOC cannot meet its duty to provide these basic services - a task that is fundamental but has been largely out of reach for the Department in the current crisis - the parties will return to Court so that Petitioners may ask for alternative relief, including the release of incarcerated people facing particularly grave medical consequences from the breakdown in access to basic medical care and the dangerous conditions in the jails.

“After this tragic year, when at least fourteen New Yorkers have died at Rikers Island and other local jails, we are grateful the Court took swift action to order the DOC to fulfill its obligation to provide the thousands of New Yorkers who remain in the jails with access to medical care. If DOC is still unable to comply with this ruling, it has no authority to detain, and the City and State must act immediately to release people in its custody to prevent further suffering,” said **Veronica Vela, Supervising Attorney with the Prisoners' Rights Project at The Legal Aid Society.**

“Thousands of people are suffering because the Department of Correction consistently fails to meet basic human needs and ensure health and safety for people in its custody,” said **Brooke Menschel, Director of Civil Rights and Law Reform at Brooklyn Defender Services**. “This is not only inhumane and morally wrong, it is illegal and the Court agreed. Every day we hear from people in distress, in need of both emergency and routine medical care, and yet these calls for help regularly go unanswered. The results are devastation, suffering, and death. We will continue to turn to courts, elected officials, and policymakers and demand that DOC be held accountable for failing to protect people in its custody - if the Department cannot fulfill this basic function, people in need of medical care must be released immediately.”

“People incarcerated on Rikers Island and in other DOC facilities have a right to access medical care and have been denied that access for many months, which has caused significant suffering,” said **Milbank Litigation associate Katherine Fell**. “We are pleased that the Court has ordered DOC to comply with its obligations to provide access to medical care to all in its custody.”

Petitioner Background

One of the many people who have been deeply impacted by the crisis is Petitioner J.A., a 23-year-old who has been in DOC custody since September 13, 2021. He has long suffered from asthma and has had a number of serious asthma attacks throughout his life requiring hospitalization. J.A. also has a history of seizures.

Several months ago, J.A. was stabbed in his side. His lung was punctured and collapsed as a result. While being treated at the hospital, his doctor advised him not to engage in strenuous activity. His doctor warned him that if he stressed his body too much, his lung could collapse again.

During his arrest in September, police officers hit J.A. with a police vehicle. After a few NYPD officers threw him to the ground and one officer stepped on the back of his left leg while he was on the ground. The injuries that he suffered included deep bone bruising, a swollen left knee, and numerous scratches. Due to the pain from his injuries, which made it difficult for him to walk, J.A. attended his arraignment in a wheelchair.

When J.A. arrived at Rikers Island, he was left on a bus in handcuffs for fourteen hours, during which time he was denied access to food, water, a toilet, and medical care.

He then remained in intake for six days, where he had to sleep on the floor the entire time. Each day in intake, J.A.’s cell was sprayed with a strong pepper spray. One day, his cell was sprayed five times. This exposure to pepper spray aggravated his asthma and he had difficulty breathing. J.A. also vomited several times after being sprayed. He did not have his inhaler, and was denied medical attention despite requesting it. During his incarceration, J.A. has suffered from a pounding headache and continues to have difficulty walking due to his injuries. He also continues to have difficulty breathing due to his exposure to pepper spray and his asthma. He has had to use a cane to walk. He is concerned about these health issues as well as their potential impact on his seizure disorder and his lung, which had collapsed only a few months earlier.

Despite frequent requests for medical attention J.A. had requested medical attention daily—by calling the Correctional Health Services (CHS) hotline and by asking individual DOC officers, J.A. is regularly denied access to care. Several times after calling the CHS hotline, J.A. was told that a DOC escort would bring him to the clinic, but no escort arrived. When he asks DOC officers to bring him to the clinic, the DOC officers refuse. One officer told him that in order to get taken to the clinic he would need to get down on the floor, grab his chest and pretend to be having a medical emergency.

Since being in DOC custody, J.A. has not had regular or necessary access to medical care, including not being brought to the clinic when needed, not receiving medical treatment or a health assessment, and repeatedly being denied an inhaler for weeks at a time.

Background on City jails Crisis

The conditions in the jails have been described as “deplorable and nothing short of a humanitarian crisis.” By failing to provide access to medical care to individuals in its custody, DOC has violated well-established local laws and failed to fulfill its duties. And this failure has directly contributed to immeasurable suffering in a system that has seen 14 deaths of persons in custody this year.

The jail system’s chief of health care services himself has stated that many of the deaths are “jail attributable” because of the jail’s conditions. People under suicide watch who should have been under constant supervision were left alone by DOC staff who abandoned their posts. At least five people being held at Rikers are believed to have died by suicide since November 2020, and the overall levels of self-harm among those imprisoned have increased at a rate described by the New York City Board of Correction as “alarming.”

Other people have suffered from serious health conditions and were in need of treatment, but they were left to fend for themselves. Last week, for example, a person reported being stabbed in the eye in a housing unit without staff to escort him to a medical clinic. He had to rely on other incarcerated people to find the keys to open his cell door and help him to the clinic.

DOC Commissioner Schiraldi himself has admitted that the jails are in a state of crisis, stating “the level of disorder here is deeply, deeply troubling.” Ross MacDonald, the chief medical officer for Correctional Health Services, issued a public statement earlier this Fall stating “today I do not believe the city is capable of safely managing the custody of those it is charged with incarcerating in its jails...”

###

The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For 145 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. www.legalaidnyc.org

Brooklyn Defender Services (BDS) is a public defender organization serving tens of thousands of Brooklyn residents each year since 1996. Our mission is to provide high-quality and client-centered criminal, family, and immigration legal representation, as well as civil legal services, social work support and advocacy for people who cannot afford an attorney. www.bds.org

Milbank LLP is a leading international law firm that provides innovative legal services to clients around the world. Founded in New York over 150 years ago, Milbank has offices in Beijing, Frankfurt, Hong Kong, London, Los Angeles, Munich, New York, São Paulo, Seoul, Singapore, Tokyo and Washington, DC. Milbank’s lawyers collaborate across practices and offices to help the world’s leading commercial, financial and industrial enterprises, as well as institutions, individuals and governments, achieve their strategic objectives. To learn more about Milbank, please visit www.milbank.com and