



July 19, 2021

Honorable Anthony Annucci  
Acting Commissioner  
NYS Department of Corrections and Community Supervision  
The Harriman State Campus, Building 2  
1220 Washington Avenue  
Albany, New York 12226-2050

Honorable Howard A. Zucker, M.D., J.D.  
Commissioner  
NYS Department of Health  
Corning Tower  
Empire State Plaza,  
Albany, NY 12237

Dear Dr. Zucker and Acting Commissioner Annucci:

I write on behalf of New Yorkers United for Justice (NYUJ), a bipartisan coalition of 14 criminal justice reform, civil rights, and legal advocacy organizations that advances commonsense criminal legal reforms to make our state safer, fairer, and more just.

NYUJ laments having not received responses to its prior letters to DOCCS that set out important concerns and requests for transparency with respect to DOCCS's public reporting on infections, health conditions of prison facilities, and vaccination strategies and rates. Those prior letters are attached for Dr. Zucker's benefit.

As you are both aware, the Covid-19 pandemic is not over, particularly for populations with low vaccination rates and high population densities.<sup>1</sup> The explosion of aggressive variants worldwide

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<sup>1</sup>See, e.g., CBS, <https://www.cbsnews.com/news/new-covid-19-cases-united-states-almost-all-among-people-unvaccinated/> ("Almost all of the new cases—99.7%—are among people who have not been vaccinated."); Virginia Mercury, <https://www.virginiamercury.com/2021/07/08/unvaccinated-and-partially-vaccinated-virginians-account-for-virtually-all-new-covid-cases-since-december-data-shows/> ("From December 29 to June 25, 99.7 percent of new COVID-19 cases have occurred among unvaccinated or partially vaccinated Virginians, according to VDH. Those residents made up 99.3 percent of hospitalizations and 99.6 percent of deaths over the same time period."); WebMD, <https://www.webmd.com/vaccines/covid-19-vaccine/news/20210513/over-99-percent-hospitalized-2021-covid-patients-unvaccinated> ("A new study found that more than 99% of patients hospitalized with COVID-19 during the first four months of 2021 weren't fully vaccinated").

puts prisons and other correctional facilities at extreme risk for breakthrough infections, the propagation of variants and the potential emergence of new strains of the virus<sup>2</sup> Yet we are unaware of any public statements or reporting from DOCCS documenting the vaccination program it has undertaken, its metrics, or its level of success since the March 29 order issued by Justice Alison Y. Tuitt of State Supreme Court in the Bronx (Order), which required the state to provide all incarcerated persons in the state's prisons and jails with vaccinations as soon as possible. These concerns are compounded by the recent lawsuit filed by Dr. Michael Salvana alleging that certain DOCCS policies with respect to providing medical care to incarcerated people hamstring physicians and endanger the health and wellbeing of individuals in DOCCS's care.<sup>3</sup>

Indeed, the total lack of public reporting on vaccination progress by DOCCS is an embarrassing outlier for New York State, both compared to other sectors and agencies within New York and correctional agencies across the country, many of which have made public information and timely data reporting a keystone of their Covid-19 management and vaccination strategy. The information that DOCCS has failed to make available is an urgent matter of public concern, public interest, and public health. The withholding of such information is a violation of the public's trust and incompatible with DOCCS's responsibilities to the State of New York.

Accordingly, our Coalition requests that DOCCS immediately takes the following steps:

- Furnish data on vaccinations for individuals in New York's prisons and jails, as well as corrections and parole officers, in similar form to what the state provides for all New Yorkers, by county: <https://covid19vaccine.health.ny.gov/covid-19-vaccine-tracker>
- Break out this data by race, ethnicity, age; and gender, as is done by the New York State Department of Health (NYSDOH) site for all New Yorkers: <https://covid19vaccine.health.ny.gov/vaccine-demographic-data>.
- Provide a plan and regular status reports on the rollout of an education initiative to teach individuals in New York's facilities about vaccine safety and efficacy, using messengers who are credible to incarcerated populations;
- Furnish examples of public signage and other forms of communication used to communicate with incarcerated people about the vaccine;

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<sup>2</sup> According to the *Washington*

*Post*, [https://www.washingtonpost.com/health/delta-variant-vaccines/2021/07/08/05b1bc5e-df75-11eb-ae31-6b7c5c34f0d6\\_story.html](https://www.washingtonpost.com/health/delta-variant-vaccines/2021/07/08/05b1bc5e-df75-11eb-ae31-6b7c5c34f0d6_story.html), a peer-reviewed report from scientists in France, published in the journal *Nature*, found that the delta variant has mutations that allow it to evade some of the neutralizing antibodies produced by vaccines or by a natural infection. A single shot of a two-dose vaccine "barely" offers any protection, researchers reported. Moreover, after Britain adopted a strategy of delaying second doses so as to prioritize giving people a first dose of a vaccine, breakthrough infections were experienced there, said Monica Gandhi, an infectious-diseases doctor at the University of California at San Francisco who was not involved in either research study.

<sup>3</sup> See

<https://www.ny1.com/nyc/all-boroughs/politics/2021/07/16/doctor-files-a-whistleblower-lawsuit-against-nys-department-of-corrections>



- Provide a full accounting of how DOCCS facilities have managed Covid-19 from a medical standpoint, including any spaces that have been converted or repurposed during the pandemic or used for any pandemic-related functions; a full breakdown of uses of solitary confinement during the pandemic; and a full accounting of any individuals treated for Covid-19 outside a DOCCS facility,<sup>4</sup> or transferred within DOCCS or from DOCCS for any reason during the pandemic and the protocols for such transfers; and
- Present a clear and detailed articulation of current and future vaccination plans, as well as plans for recordkeeping, tracking, and timely public reporting.

Since the beginning of the pandemic, NYUJ has publicly called for DOCCS to release appropriate plans for and clear data on testing, tracing, treatment, and isolation protocols; and later for a robust, thoughtful vaccination process that included credible messengers to overcome hesitancy over the course of this pandemic crisis. We renew these requests.

The NYUJ Coalition hopes that the Department of Health can assist DOCCS in bringing its reporting in line with that of its fellow agencies and jurisdictions. Public knowledge of these data will help New York State be better prepared for the next inevitable public health emergency.

New Yorkers, especially those incarcerated in New York's prisons and jails, must have the full commitment of our state leaders to the wellbeing of incarcerated New Yorkers and the prevention and management of outbreaks in prisons and the surrounding communities. We hope you will take swift actions to effectuate our requests and ensure that New Yorkers in state custody, corrections officers, and the communities that surround correctional facilities are fully and appropriately protected from Covid-19.

NYUJ stands ready to support and serve as a resource to the State in this regard and welcomes the opportunity to so serve.

Sincerely,

Alexander Horwitz  
Executive Director  
New Yorkers United for Justice

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<sup>4</sup> For example, it is essential to accurately capture how many individuals may have died in hospitals but contracted the virus in our state's prison and jail facilities to understand the virus's progress through our state and to prevent another such outbreak in the future.