



February 23, 2021

**Via Facsimile**

The Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

**Re: Priority COVID-19 Vaccination for Judges, Lawyers, and Support Staff Who Must Appear in Person in Court, Meet With Clients in Jails and Prisons and Other Detention Facilities**

Dear Governor Cuomo:

We write on behalf of the New York City Bar Association (City Bar) to express our concern about the functioning of the criminal justice, immigration and family court systems during the ongoing COVID-19 health crisis—particularly with respect to the members of the bench and bar and others who participate in those systems. Specifically, we urge that judges, lawyers, and support or non-lawyer staff for any of the above services, agencies, or facilities who must appear in person in court or related proceedings and/or meet with clients in jails and prisons and other detention facilities be given priority in COVID-19 vaccination allocation and distribution. This approach will protect their health and safety, as well as that of their families, other in-person participants in the courts, incarcerated and/or detained people held in congregate settings, and the wider community, and will help facilitate a quicker return to normal court operations.<sup>1</sup>

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<sup>1</sup> The New York City Bar Association continues to advocate for COVID-19 vaccine priority for incarcerated people and vulnerable communities. See “Prioritizing COVID-19 Vaccine Distribution to Incarcerated People,” Jan. 29, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/prioritizing-covid-19-vaccine-distribution-to-incarcerated-people>; “Support for a Just and Equitable Framework for Allocation and Distribution of the COVID-19 Vaccine in New York State,” Jan. 22, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/equitable-covid19-vaccine-allocation> (all websites last visited Feb. 23, 2021.)

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

The City Bar is a private, non-profit organization of more than 25,000 members who are professionally involved in a broad range of law-related activities. Founded in 1870, the City Bar is one of the oldest bar associations in the United States. Its mission is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

As COVID-19 continues to spread throughout New York State and at a particularly alarming rate in the state's jails and prisons, New York State and Federal judges, prosecutors, criminal defense lawyers, family court lawyers who represent juvenile defendants, immigration lawyers who represent detained immigrants, presentment agency personnel charged with handling juvenile delinquency cases, law school faculty and students working in criminal, juvenile justice and immigration law school clinics, and support or non-lawyer staff for any of the above services, agencies, or facilities, all place their health and well-being, as well as the health and well-being of their families, at risk each time they appear in-person in court or visit a client in a prison or detention facility. While we applaud the inclusion of law enforcement officers, court officers, corrections officers, probation officers, and other civilian court personnel in Phase 1b of New York State's vaccine distribution plan,<sup>2</sup> we believe all essential participants in the criminal justice, immigration and family court systems must be given priority for COVID-19 vaccinations in the current or next phase (Phase 1c) in order to ensure the safe and efficient functioning of those systems.<sup>3</sup> Many of these lawyers work for legal service providers or are on County Law 18B or Criminal Justice Act (CJA) panels and will be able to show proof of identification in order to receive the vaccine as a priority participant.

Although the Courts are currently conducting proceedings virtually in many instances, certain proceedings continue to be conducted in person.<sup>4</sup> Judges, prosecutors, criminal defense lawyers, and clinical personnel, including those that appear in family court, still must appear regularly in-person, in government buildings, to fulfill important constitutional and governmental functions. Moreover, immigration lawyers who represent detained clients, including some of the most vulnerable populations, are forced to choose between appearing telephonically or risking their health to personally appear beside their clients in order to be more effective in proceedings that sometimes carry life and death consequences for their clients. Criminal defense lawyers, immigration lawyers, and law school clinic participants represent clients who are incarcerated in jails currently besieged by COVID-19<sup>5</sup> and often must meet with their clients in person, which

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<sup>2</sup> See <https://covid19vaccine.health.ny.gov/phased-distribution-vaccine>.

<sup>3</sup> Chief Judge Janet DiFiore has also called for judges to be given COVID-19 vaccine priority, noting that their exclusion threatens court operations: "Failure to include judges in the priority category runs counter to our ability and our efforts to maximize the provision of justice services, and to our central role in protecting public safety and upholding the rule of law." See <https://www.law360.com/articles/1346051/top-ny-judge-urges-gov-to-put-jurists-in-vaccination-rollout>.

<sup>4</sup> If the courts decide to resume jury trials before the COVID-19 vaccine is universally available, we would urge that jurors and witnesses also be given vaccine priority.

<sup>5</sup> In a recent update to Administrative Order No. 2020-14, by the Honorable Roslynn Mauskopf, Chief Judge of the United States District Court of the Eastern District of New York, issued on January 19, 2021, stated that of 5,319 inmates tested at the Metropolitan Detention Center in Brooklyn, 229 had tested positive for COVID-19, with 49 inmates in isolation on that date.

means entering and exiting congregate detention facilities, prosecutors’ and probation offices and the courts, and risking their (and their families) lives and safety.

By including correctional officers, court officers, and other civilian court personnel in its list of COVID-19 vaccine eligible individuals, the State has recognized the importance of these participants to the efficient functioning of our courthouses and correctional institutions, as well as these individuals’ heightened workplace exposure to COVID-19. Nonetheless, the State has not included other key institutional participants—namely, judges, prosecutors (including those charged with handling juvenile delinquency cases), criminal defense, immigration and family court lawyers, law school clinic participants, and support or non-lawyer staff for any of the above services, agencies, or facilities who must appear in courthouses, have in-person interactions with victims, witnesses and others, and/or meet with clients in correctional institutions.<sup>6</sup> This decision runs contrary to the recommendation of the Cybersecurity and Infrastructure Security Agency of the United States Government, which lists “workers supporting the operations of the judicial system, including judges, lawyers, and others providing legal assistance,” as essential workers deserving of COVID-19 vaccine priority.<sup>7</sup> Notably, other states, including Kentucky, Louisiana, Nevada, and Pennsylvania, have prioritized judges and lawyers for COVID-19 vaccine eligibility.<sup>8</sup>

We agree that it is in the State of New York’s best interest to return the courts—especially those necessary for the full functioning of our criminal, juvenile, and immigration justice systems—back to their full operations as soon as possible. However, we believe this can only be achieved by speedily vaccinating all whose presence in those courts is required for the prompt and equitable administration of justice.<sup>9</sup> In conjunction with the City Bar’s prior calls for

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<sup>6</sup> To the extent that the State may be concerned that prioritizing certain categories of lawyers may open the floodgates to demands for vaccines from all lawyers, we note that judges, prosecutors, and attorneys who work for nonprofit entities or who are members of the 18B or CJA panels can present proof of employment and/or membership on such panels. To further ensure that only those attorneys and support staff required to appear in-person in court or other related proceedings and/or at jail and prison facilities receive the vaccine, vaccines could be distributed on site at courthouses and other designated locations.

<sup>7</sup> *Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response*, U.S. Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, December 16, 2020; [https://www.cisa.gov/sites/default/files/publications/ECIW\\_4.0\\_Guidance\\_on\\_Essential\\_Critical\\_Infrastructure\\_Workers\\_Final3\\_508\\_0.pdf](https://www.cisa.gov/sites/default/files/publications/ECIW_4.0_Guidance_on_Essential_Critical_Infrastructure_Workers_Final3_508_0.pdf).

<sup>8</sup> See <https://chfs.ky.gov/agencies/dph/covid19/DraftKentuckyVaccinationPlan.pdf> (Kentucky lists “legal” among essential workers slated for vaccine allocation in Phase 1c); <https://ldh.la.gov/index.cfm/faq/category/138> (Louisiana lists “Judiciary Personnel” among those with priority in Phase 1c, Tier 2); <https://nvhealthresponse.nv.gov/wp-content/uploads/2021/01/NEVADA-COVID-19-VACCINE-PLAYBOOK-V3-1.pdf> (Nevada includes “judges and others providing critical in-person legal assistance” among “Frontline Community Support” personnel with vaccine priority); (<https://www.health.pa.gov/topics/disease/coronavirus/Vaccine/Pages/Vaccine.aspx> (Pennsylvania lists Legal Services providers for vaccine priority in Phase 1c).

<sup>9</sup> The New York State Bar Association’s Executive Committee has also announced its support for vaccine priority for prosecutors, public defenders, criminal court judges, and others who are obligated, by court order or otherwise, to appear in court in person. See Christian Nolan, “NYSBA Advocates for Immediate Vaccination of Certain Members of the Legal Profession,” New York State Bar Association, Feb. 18, 2021, <https://nysba.org/nysba-advocates-for-immediate-vaccination-of-certain-members-of-the-legal-profession/>. See also Ryan Tarinelli, “Prosecutors, Public Defenders Should be Vaccine Eligible, NYSBA Executive Committee Says,” *New York Law*

just and equitable vaccine distribution,<sup>10</sup> we urge state officials to prioritize immediately all lawyers, judges, and court participants who must appear in court in-person and/or in congregate prison or detention facilities in the current or immediate next phase of allocation and distribution of the COVID-19 vaccine.

Respectfully,

Criminal Courts Committee  
Terri S. Rosenblatt, Chair

Immigration & Nationality Law Committee  
Danny Alicea, Chair

Juvenile Justice Committee  
Jennifer Gilroy Ruiz, Co-Chair  
Maura Keating, Co-Chair

Small Law Firm Committee  
Anne Wolfson, Chair

Council on the Profession\*  
Melissa Colon-Bosolet, Co-Chair  
Dean Matthew Diller, Co-Chair

\* Abbe R. Gluck was recused from the vote.

#### Contact

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*Journal*, (Feb. 16, 2021), <https://www.law.com/newyorklawjournal/2021/02/16/prosecutors-public-defenders-should-be-vaccine-eligible-nysba-executive-committee-says/>.

<sup>10</sup> The City Bar has called for a just and equitable framework for allocation and distribution of the COVID-19 vaccine in New York that prioritizes those populations for which the evidence shows heightened vulnerability, including certain Black/African American and Latinx communities with a high percentage of people living in poverty and/or with inequitable access to conditions that support health and healthy outcomes, and individuals with developmental, physical, and/or cognitive impairments. *See* “Support for a Just and Equitable Framework for Allocation and Distribution of the COVID-19 Vaccine in New York State” (Jan. 2021), <https://s3.amazonaws.com/documents.nycbar.org/files/2020829-EquitableCOVID19VaccineAllocation.pdf>. We were heartened by the recent announcement that, as of February 15, 2021, adult New Yorkers with certain physical, developmental and/or medical conditions or disabilities qualify for vaccine priority. *See* <https://covid19vaccine.health.ny.gov/phased-distribution-vaccine>.