



# Milbank

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

## ***City Admits Failure to Comply With Court Order to Ensure Access to Medical Services for People in NYC Jails***

### ***The Legal Aid Society, Brooklyn Defender Services and Milbank LLP File Motion to Hold City in Contempt***

#### ***Attorneys Reaffirm Call to Decarcerate Local Jails***

(NEW YORK, NY) - The Legal Aid Society, Brooklyn Defender Services and Milbank LLP filed a motion for contempt in [\*Agnew v. New York City Department of Correction\*](#) in Bronx Supreme Court on Tuesday, following an admission by the New York City Department of Correction (DOC) [that the agency is not complying](#) with a December court [order](#) to provide basic access to medical care for incarcerated New Yorkers.

The [admission](#) came in an affidavit signed by DOC Bureau Chief of Facility Operations, which reads in part: “In my opinion, I believe this rate of production does not constitute substantial compliance with the pertinent directives to provide timely access to the clinics.”

In data accompanying the affidavit, DOC reported that there were 7,070 total instances in December alone of people not being produced for medical appointments, which is higher than the rate of October and November 2021, before the Court issued its emergency order. Further, DOC admits that at least 1061 of those non-productions were because no DOC escort was available.

DOC claims that another 5,268 appointments were missed last month because people refused, but a review of medical records, statements from incarcerated people, and even a review of DOC's own data shows the dubiousness of that claim. In many instances it is likely that a person was never even told of their appointment. This may be the case in the 3,900 reported refusals where DOC admits it cannot provide any explanation for the person refusing.

The affidavit, combined with data demonstrating the barriers to accessing care and countless reports from people in DOC custody who are unable to access critical medical services, provides the basis of the Petitioners' request that the court hold the Department in contempt.

Memorandum of Law: [https://legalaidnyc.org/wp-content/uploads/2022/02/20220201\\_105.-MOL-in-Support-of-Their-Order-to-Show-Cause-for-Contempt.pdf](https://legalaidnyc.org/wp-content/uploads/2022/02/20220201_105.-MOL-in-Support-of-Their-Order-to-Show-Cause-for-Contempt.pdf)

Order to Show Cause: [https://legalaidnyc.org/wp-content/uploads/2022/02/20220201\\_86.-Proposed-Order-to-Show-Cause.pdf](https://legalaidnyc.org/wp-content/uploads/2022/02/20220201_86.-Proposed-Order-to-Show-Cause.pdf)

Petrick Affidavit: [https://legalaidnyc.org/wp-content/uploads/2022/02/20220201\\_104.-Sarah-Petrick-Affidavit.pdf](https://legalaidnyc.org/wp-content/uploads/2022/02/20220201_104.-Sarah-Petrick-Affidavit.pdf)

De Avila Affidavit: [https://legalaidnyc.org/wp-content/uploads/2022/02/20220201\\_103.-De-Avila-Supplemental-Affidavit.pdf](https://legalaidnyc.org/wp-content/uploads/2022/02/20220201_103.-De-Avila-Supplemental-Affidavit.pdf)

### **Mr. F Client Example**

When Mr. F, now in his mid-20s, arrived in DOC custody last winter, he immediately reported cavities and that he would like to see the dentist for ongoing tooth pain. When he was not brought to Correctional Health Services (CHS), he began calling the CHS hotline to request dental help and was scheduled for an appointment with the dentist in the early spring.

Although the pain intensified, Mr. F was never brought to the clinic for that appointment. Since that time, Mr. F has continued to consistently request dental care, often on a weekly basis, both by calling the CHS hotline and by asking officers on his housing unit to take him to the clinic for his tooth pain.

When Mr. F has been able to reach someone through the CHS hotline, he has been told that he is scheduled for a dental appointment and a DOC escort will bring him to the clinic. For nearly a year, he was not brought to the clinic for any scheduled dental appointment, despite the fact that CHS scheduled him for approximately one appointment per month.

Beginning in the late spring of 2021, Mr. F has not been able to chew on one side of his mouth at all, making it difficult to eat. He has difficulty sleeping and is regularly awoken by the pain from his tooth. Mr. F's mouth is now infected and leaks blood and pus and he believes he has nerve damage.

After nearly a year of DOC failing to bring him to his dental appointments, he was finally brought to the clinic at a time he had a pre-scheduled court appearance, causing him to miss the court appearance where he may have been released. By the time he saw the dentist, his infection had advanced to such a point where he will now need extensive dental surgery and other dental procedures.

**The Legal Aid Society, Brooklyn Defender Services and Milbank LLP released the following statement:**

“The City’s jails remain in crisis. Thousands of people incarcerated in our jails are suffering and even dying because the New York City Department of Correction consistently fails to provide them with timely access to medical care. Every day, we hear from people that their calls for help go unanswered. The City has now admitted that DOC is flagrantly violating a court order requiring the agency to address this problem. This is outrageous and illegal. The City’s inability and unwillingness to meet basic human needs for the people in its custody reaffirms the urgency to immediately remove people from the inhumane and dangerous conditions of the City jails.”

**Background on Agnew v. NYC Department of Correction**

On December 3rd, 2021, The Supreme Court of the State of New York County of The Bronx found that 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 people in NYC Department of Correction (DOC) jails who have been or will be denied access to medical care because of DOC’s failures 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 DOC to demonstrate compliance with its order - and these duties - within one week of the date of the order.

**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 laws. And this failure has directly contributed to immeasurable suffering and the 16 deaths of persons in custody last year.

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.

Former DOC Commissioner Vincent Schiraldi himself admitted that the jails are in a state of crisis, stating “[the level of disorder here is deeply, deeply troubling](#)” and “[the risks to the human beings in our custody are at a crisis level.](#)”

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*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](http://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](http://www.bds.org)*

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