



New York Civil Liberties Union

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February 17, 2021

Via email

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

Howard A. Zucker, M.D., J.D.
Commissioner of Health for New York State
Corning Tower, Empire State Plaza
Albany, New York, 12237

Re: COVID-19 Vaccine Distribution at the Buffalo Federal Detention Facility

Dear Governor Cuomo and Commissioner Zucker:

The New York Civil Liberties Union, together with a coalition of the undersigned organizations representing people in civil immigration detention, writes to express serious concern over your failure to clarify how — or even whether — the New York State Department of Health is prioritizing individuals at the Buffalo Federal Detention Facility (“BFDF”) for access to the COVID-19 vaccine. Your silence compounds the risk to our clients and betrays the “guiding principles” that purportedly underlie DOH’s approach to vaccine distribution in this state. We ask that you respond to this letter by next Wednesday, February 24, explaining your plan, if any, for distributing the COVID-19 vaccine to people detained or employed at BFDF.

BFDF is the most populous immigration detention facility in New York, with an average daily census exceeding 600 people. Individuals confined there — like people in any congregate setting — face a sharply heightened risk of contracting COVID-19. Recent data on the skyrocketing incidence of COVID-19 in ICE facilities, including BFDF, bear out that reality: The number of confirmed COVID-19 cases at ICE facilities nationwide is surging towards 10,000¹; and ICE has reported repeated, ongoing outbreaks of COVID-19 at BFDF specifically.²

Recognizing the increased threat that COVID-19 poses in congregate settings like BFDF, the Centers for Disease Control and Prevention have advised that people in detention facilities be prioritized for the COVID-19 vaccine alongside facility staff “because of their shared increased

¹ See Noelle Smart and Adam Garcia, *Tracking COVID-19 in Immigration Detention*, VERA INST. JUST., <https://www.vera.org/tracking-covid-19-in-immigration-detention> (last visited Jan. 11, 2021).

² See *Jones v. Wolf*, No. 20-CV-00361(W.D.N.Y. filed Oct. 21, 2020 to Dec. 23, 2020), ECF Nos. 137–44 (status letters reporting new cases of COVID-19 within BFDF).

risk of disease.”³ Similarly, as recently as last week, New York State’s phased distribution plan, included “[r]esidents and staff at . . . congregate care facilities” in Phase 1a of vaccine distribution.⁴

Despite the demonstrated risk of COVID-19 transmission at BFDF, and the recognition by State and federal officials that people in congregate care settings should be prioritized for the vaccine, it appears the COVID-19 vaccine has not been distributed to individuals detained or employed at the facility, and DOH’s phased vaccine distribution priority list omits any reference to immigration detention facilities.⁵ Because you have provided *no* public information regarding DOH’s plan for vaccine distribution at BFDF, we, our clients, and the public are left to guess how or whether DOH is prioritizing people detained and employed at BFDF for access to the COVID-19 vaccine.

DOH purports to base its approach to COVID-19 vaccine distribution on a series of “guiding principles” — among them, “equitable and clinically driven distribution”; “transparency”; “use of data”; “partnership, coordination, and public outreach.” The safety of individuals detained and employed at BFDF depends on your living up to those commitments by clarifying your plan to distribute the COVID-19 vaccine at immigration detention facilities.

We ask that you respond to this letter by next Wednesday, February 24, explaining your plan for distributing the COVID-19 vaccine at BFDF, including by clarifying:

- (1) The respective roles of New York State and ICE in ensuring vaccine distribution at BFDF,
- (2) Which DOH officials are tasked with COVID-19 vaccine distribution at BFDF,
- (3) How people detained and employed at BFDF are prioritized in DOH’s phased distribution plan,
- (4) When people detained and employed at BFDF will have access to the COVID-19 vaccine, and
- (5) What information and education will be provided to people detained and employed at BFDF regarding the COVID-19 vaccine.

We look forward to hearing from you on this important issue.

³ *COVID-19 Vaccine FAQs in Correctional and Detention Centers*, Ctrs. Disease Control & Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/vaccine-faqs.html> (last updated Jan 11., 2021).

⁴ *Phased Distribution of the Vaccine*, N.Y. STATE DEP’T HEALTH, <https://web.archive.org/web/20210210165251/https://covid19vaccine.health.ny.gov/phased-distribution-vaccine> (Feb. 10, 2021, 4:52 PM). DOH has since modified the language of the relevant vaccine priority category to include “[s]taff and residents of nursing homes, skilled nursing facilities, and adult care facilities.” See *Phased Distribution of the Vaccine*, N.Y. STATE DEP’T HEALTH, <https://covid19vaccine.health.ny.gov/phased-distribution-vaccine> (last visited Feb. 11, 2021).

⁵ *Guiding Principles*, N.Y. STATE DEP’T HEALTH, <https://covid19vaccine.health.ny.gov/phased-distribution-vaccine#guiding-principles> (last visited Feb. 11, 2021).

Sincerely,

NEW YORK CIVIL LIBERTIES UNION

By: 
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and

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