

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

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In the Matter of the Application of
CHARLES HOLDEN and ALBERTO FRIAS on behalf of
themselves and all others similarly situated,

Index No.

Petitioners,

**ORDER TO
SHOW CAUSE**

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

- against -

HOWARD A. ZUCKER, as Commissioner of Health for New
York State, and ANDREW M. CUOMO, as Governor of the
State of New York,

Respondents.

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Upon the annexed Verified Petition, the affirmation, the annexed exhibits, and upon all the proceedings heretofore had herein, let the Respondents or Respondents' attorneys show cause before me or one of the Judges of this Court, at a Motion Term of the Supreme Court of the State of New York, located at 851 Grand Concourse, in the County of Bronx, City and State of New York, on the 10th day of February 2021, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made:

1. Vacating and annulling Respondents' determination excluding incarcerated individuals as a group from those currently eligible in COVID-19 vaccine priority category 1b, and directing Respondents to modify current eligibility of category 1b and immediately authorize incarcerated individuals as a group for vaccination, upon finding the exclusion arbitrary and capricious and an abuse of discretion pursuant to CPLR § 7803(3);
2. Vacating and annulling Respondents' determination excluding incarcerated individuals as a group from those currently eligible in COVID-19 vaccine priority category 1b, and directing Respondents to modify current eligibility of category 1b and immediately

authorize incarcerated individuals as a group for vaccination, upon finding the exclusion in violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution and Article 1 § 11 of the New York State Constitution, pursuant to CPLR § 7803(3); and

3. Granting such other and further relief as the Court deems just and proper.

SUFFICIENT CAUSE THEREFORE APPEARING, let service by hand delivery of a copy of this Order together with a copy of the annexed supporting papers on Respondents and by mail on the Attorney General of the State of New York, pursuant to CPLR § 7804(c), on or before the ___ day of February 2021, be good and sufficient service.

Dated: February _____, 2021
Bronx, New York

JUSTICE OF THE SUPREME COURT

TO:
Howard A. Zucker
Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza,
Albany, NY 12237

and

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