



August 16, 2021

The Honorable Kathleen C. Hochul
Lieutenant Governor of the State of New York
New York State Capitol Building
Albany, NY 12224

The Honorable Janet DiFiore
Chief Judge of the State of New York
New York State Court of Appeals
20 Eagle Street
Albany, NY 12207

Lisette Camilo, Commissioner
Department of Citywide Administrative Services
1 Centre Street
New York, NY 10007

Dermot Shea, Commissioner
New York City Police Department
1 Police Plaza
New York, NY 10038

Vincent Schiraldi, Commissioner
New York City Department of Correction
75-20 Astoria Boulevard
East Elmhurst, NY 11370

Marcos Gonzalez Soler, Director
Mayor's Office of Criminal Justice
1 Centre Street
New York, NY 10007

Dear Lieutenant Governor Hochul, Judge DiFiore, Commissioner Camilo, Commissioner Shea, Commissioner Schiraldi, and Mr. Soler:

We write to raise urgent concerns about public health and safety in the city’s courthouses amidst a new wave of COVID-19 cases. As of August 12, the seven-day average number of cases in New York State had risen 108% and hospitalizations had risen 72% from 14 days earlier.¹ In New York City, infections increased by 83% and hospitalizations by 45% over the same period. In city courthouses, reports of infected people—people facing charges, defense attorneys, court staff, and judges—have escalated significantly in the past two weeks. After a period from the beginning of May through July 13 when no Legal Aid attorneys reported exposure or tested positive while working, 12 reported exposure or infection in the second half of July, and seven of those were from July 28 alone.

These rapidly rising rates of infection appear to be linked to the highly transmissible Delta variant, which has become the dominant coronavirus strain in the United States. In its current guidance, the U.S. Centers for Disease Control and Prevention (“CDC”) warns that the Delta variant is nearly twice as contagious as earlier variants, that it may cause more severe illness than earlier variants, and that fully vaccinated people with Delta-variant breakthrough infections can spread the virus to others.² Studies have found that the Pfizer-BioNTech, Moderna, and Janssen/Johnson & Johnson vaccines are all less effective against the Delta variant than against the original strain.³

While we welcome the recent announcement by the Office of Court Administration (OCA) of a return to a requirement that people in courthouses wear masks, more and swifter action is needed to protect our clients, our staff, and everyone who uses the courthouses from unacceptable, avoidable risk. OCA’s relaxation of pandemic rules was based on the belief that fully vaccinated people were unlikely to become sick or spread the virus, but this belief does not stand up to current data on the Delta variant. A broader reconsideration of the relaxation of those rules is warranted. We therefore urge you to take the following additional actions immediately.

1) Provide an N95 or KN95 mask to anyone who arrives in a courthouse without a mask or who requests one and enforce the mask mandate.

Because of the Delta variant’s high transmissibility and its ability to be spread by fully vaccinated people, the CDC recommends that everyone in areas of high transmission wear a mask indoors in public spaces.⁴ The CDC currently identifies all of New York City as an area of high transmission.⁵ While the recent return to a general mask

¹ The New York Times, *Tracking Coronavirus in New York: Latest Map and Case Count*, August 11, 2021, available at [New York Coronavirus Map and Case Count - The New York Times \(nytimes.com\)](https://www.nytimes.com/interactive/2021/08/11/nyregion/coronavirus-map-cases.html)

² U.S. Centers for Disease Control and Prevention, *Delta Variant: What We Know About the Science*, available at [Delta Variant: What We Know About the Science | CDC](https://www.cdc.gov/media/releases/2021/s0806-delta-variant-science.html) (last updated August 6, 2021).

³ See, e.g., Jaime Lopez Bernal, et al., *Effectiveness of Covid-19 Vaccines against the B.1.617.2 (Delta) Variant*, *New England Journal of Medicine*, July 21, 2021, available at [Effectiveness of Covid-19 Vaccines against the B.1.617.2 \(Delta\) Variant | NEJM](https://www.nejm.org/doi/full/10.1056/NEJMoa2111036).

⁴ *Ibid.*

⁵ U.S. Centers for Disease Control and Prevention, *COVID-19 Integrated County View*, available at [CDC COVID Data Tracker](https://www.cdc.gov/covid19/integrated-county-view/) (last updated August 11, 2021).

requirement is a positive step, not all masks are equal when it comes to blocking coronavirus particles in the air. As a former FDA commissioner commented recently, wearing a high-quality mask such as a KN95 is important because even a high-quality cloth mask only affords 20% protection against transmission.⁶ Given the risks involved and the rapidly evolving understanding of how the Delta variant impacts that risk, a precautionary approach should govern decision making, and you should go beyond a general mask mandate to proactively provide higher-quality masks to people in courthouses.

Compliance and enforcement are also essential: every agency that operates in the courthouses must proactively ensure that its employees and visitors comply with the mask mandate. Throughout the pandemic, when mask mandates were previously in effect, our attorneys and clients reported to us frequent instances of police officers, court officers, correction officers, and visitors to courthouses who failed to wear masks. With the highly transmissible Delta variant on the rise, your agencies must take proactive steps to monitor and enforce mask requirements.

2) Conduct all non-dispositive appearances virtually, unless a client requests an in-person appearance.

Because the coronavirus that causes COVID-19 spreads primarily through respiratory vapor inhaled while indoors in close proximity to others, social distancing has been one of the pillars of the public health response to the pandemic. In recent weeks, however, distancing has broken down in several New York City courthouses. Our staff report that many hallways and courtrooms are now crowded enough to make maintaining six feet of separation from others impossible. This fact, combined with the CDC's findings regarding the escalating risks posed by the Delta variant, makes social distancing an essential measure, as it has been for most of the pandemic. To facilitate that distancing, OCA should conduct all non-dispositive appearances virtually, unless a client requests an in-person appearance.

As disturbing data about the Delta variant and the rate of courtroom-linked infections continues to emerge, OCA must take swift and meaningful steps to protect all who enter its courthouses in order to avoid a scenario in which greater limitations must be placed again on in-person appearances.

3) Schedule and locate arraignments on appearance tickets in such a way that crowds do not gather in the hallways outside courtrooms.

Our staff report that people responding to appearance tickets have been crowding hallways outside the courtrooms they were directed to report to. This crowding appears to result, in part, from enforced distancing in the seating areas of these courtrooms. As noted above, social distancing is an important part of preventing the spread of COVID-19, and it must be possible not just in courtrooms but in hallways as well. This problem could be avoided by scheduling and locating arraignments on appearance tickets in a more staggered manner, rather than the current practice of holding such arraignments on limited days and noticing all of them for 9:00 a.m. Should the rate of positive

⁶ Pia Singh, *Dr. Scott Gottlieb says the Covid delta surge may be the 'final wave' in U.S.*, NBC News, August 9, 2021, available at [Covid: Dr. Gottlieb says delta variant surge may be the 'final wave' in U.S. \(cnbc.com\)](https://www.cnbc.com/2021/08/09/covid-dr-gottlieb-says-delta-variant-surge-may-be-the-final-wave-in-u.s.-cnbc.com).

infections continue to increase, a plan must be established to allow for remote appearances and pleas by affirmation to reduce the total number of people entering courthouses.

4) Ensure that screening and separation of symptomatic people in custody continues

In the past week, we have received several disturbing examples of a failure to provide medical care and screening for people in custody reporting or demonstrating symptoms of COVID-19. In one such case, a Brooklyn client was eventually diagnosed with COVID-19, after spending more than ten hours in NYPD custody actively displaying symptoms and another two hours in crowded pre-arraignment pens where many people were not wearing masks, risking exposure to other people in custody, court staff, and the lawyer assigned to represent him. He was not screened or tested until this lawyer brought his symptoms to the attention of court staff. NYPD must ensure that the health screening protocols at precincts continue to be followed, so that those arrestees needing medical attention receive it immediately and to reduce the potential spread at courthouses and in holding cells. The diversion of people reporting symptoms to the Red Hook Community Court and the Midtown Community Court for such screening and isolation must continue. Anyone in police custody who shows any possible symptoms of COVID-19 should be separated from others and given a rapid test immediately.

5) Provide documentation to confirm that all detention areas of all courthouses now have air filtration systems rated MERV 13 or higher or place air purifiers with HEPA filters in areas with poor air circulation and allow access to independent medical and industry experts to evaluate public and non-public courthouse areas

The Legal Aid Society wrote to the Department of Citywide Administrative Services (“DCAS”) several times in 2020 seeking information on upgrades to courthouse air filtration systems. Although DCAS provided some information in response, it never confirmed that all detention areas of 100 Centre Street in Manhattan, the Criminal and Family Court buildings in Queens, and the Brooklyn Criminal and Supreme Court buildings had filtration systems rated MERV 13 or higher or, if they did not, that other remedial steps, such as installing portable air purifiers with HEPA filters, had been taken to ensure health and safety of those areas. Seventeen months into the pandemic, there is no excuse for not having these upgrades in place throughout all courthouses and being transparent about the steps taken to ensure basic health and safety.

Additionally, we are requesting that you grant access to our independent medical and industry experts to inspect and evaluate conditions and to provide us the name and contact information of all experts you are working with to guide your decision making.

Finally, while we adamantly hope that it will not occur and implore OCA to take all necessary safety measures to ensure it does not occur, we must be prepared to take swift action should the breakthrough cases continue to climb.

We stand ready to assist and cooperate in any measures necessary to address this emergent threat. We look forward to your substantive response as soon as possible.

Sincerely,

Bronx Defenders

Brooklyn Defender Services

The Legal Aid Society

Neighborhood Defender Service

New York County Defender Services

cc: Sanford M. Cohen, General Counsel, Department of Citywide Administrative Services

Deanna Logan, General Counsel, Mayor's Office of Criminal Justice

Corey Johnson, Speaker, New York City Council

Adrienne E. Adams, Member, New York City Council

Keith Powers, Member, New York City Council