

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
ALBANY DIVISION**

PRISONERS' LEGAL SERVICES OF NEW  
YORK,

Plaintiff,

v.

DANIEL F. MARTUSCELLO, in his official  
capacity as Commissioner of the New York  
State Department of Corrections and  
Community Supervision,

Defendant.

Case No. 25 Civ 290 (AJB/PJE)

**DECLARATION OF PERRY M. GROSSMAN IN SUPPORT OF PLAINTIFF  
PRISONERS' LEGAL SERVICES OF NEW YORK'S MOTION BY ORDER TO SHOW  
CAUSE FOR AN EXPEDITED PRELIMINARY INJUNCTION**

Perry M. Grossman hereby declares under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a supervising attorney at the New York Civil Liberties Union ("NYCLU"). I am admitted to practice law in the State of New York and before this Court. I serve as counsel for Plaintiff Prisoners' Legal Services of New York in the above-captioned case. I submit this declaration in support of Prisoners' Legal Services of New York's Motion by Order to Show Cause for an Expedited Preliminary Injunction. I am over 18 years of age. I have personal knowledge of the facts stated herein.

2. I respectfully move this Court to order Defendant Daniel Martuscello, III, in his official capacity as Commissioner of the New York State Department of Corrections & Community Supervision to show cause why this Court should issue an expedited preliminary

injunction restoring access to legal visits, timely legal mail, and timely legal telephone calls at DOCCS facilities where Prisoners' Legal Services of New York ("PLS") has clients.

3. No prior request has been made for the relief requested herein.

4. Beginning February 18, 2025, attorneys at PLS had all extant legal calls or visits with clients in DOCCS facilities cancelled. Since that time, PLS attorneys have been generally unable to schedule legal visits and have received virtually no legal mail or confirmation that legal mail they have sent has been delivered. Although some of the legal calls requested by PLS attorneys have been scheduled, there is a large and growing backlog of legal calls. In addition, PLS attorneys seeking to schedule legal calls at some facilities today have been told that legal calls were not being scheduled.

5. PLS has acted expeditiously under the circumstances. Given the urgent health and safety needs of PLS' clients, upcoming court deadlines, and the need to collect and preserve evidence for disciplinary proceedings or civil rights litigation or other proceedings, a fully noticed motion would not provide PLS and its clients with timely relief. These matters are urgent and require immediate court intervention.

6. For example, one PLS client at Five Points Correctional Facility was brutally attacked by his cell mate during the strike. His family members reported that he had suffered permanent vision loss from the attack. Under normal circumstances, if PLS learned of an assault against a current or prospective client, PLS would immediately work to preserve any evidence associated with the event. Much of that evidence can only be collected through a prompt legal visit, so that the PLS attorney can photograph the individual's injuries, collect physical evidence from the scene, and visually assess the individual's physical and mental health in case that individual needs immediate outside medical care. PLS attempted to contact the facility on March 4, and was

told by facility staff that legal visits are not occurring and would not be scheduled. Ex. 3, Declaration of Krin Flaherty (“Flaherty Decl.”), ¶ 19.

7. For example, PLS has been unable to contact a client to prepare him for release. PLS administers a Pre-Release and Re-Entry Program (“PREP”). On March 4, a PLS staff member submitted a request for a legal call with a client at Mohawk Correctional Facility to discuss his release date, which was, at that time, scheduled for a year from that date. Through PREP, PLS begins working with clients to prepare them from release well in advance so that they may ensure that the client has housing, medical and mental health providers, and other community support. After submitting the request for a legal call, the PLS staff member was informed for the first time that the client would be released on March 18, but the facility would not schedule a legal call. Because PLS cannot speak with this client, he would be homeless and unsupported in his medical and mental health needs upon release. Despite notifying DOCCS that this was an urgent request, the call has not been scheduled. Ex. 6, Declaration of Yuriy Pereyaslavskiy (“Pereyaslavskiy Decl.”), ¶ 14.

8. For example, PLS attorneys practicing in the Upstate Immigration Court project have been unable to schedule legal visits with their clients currently held for immigration removal proceedings. Ex. 5, Declaration of Jillian Nowak (“Nowak Decl.”), ¶ 2. Immigration courts operate with strict deadlines for scheduled removal proceedings. *Id.* ¶ 9. For PLS attorneys to represent their clients in removal proceedings, timely communication with clients—in person and via phone—is imperative. *Id.* ¶ 10. Since the strikes commenced, PLS attorneys have been unable to schedule legal visits at Mid-State, Riverview, Attica, Clinton, Wyoming, Collins, Franklin, Shawangunk, Taconic, Ulster, Walkill, Sing Sing, Wende, Washington, and Upstate Correctional Facilities. *Id.* ¶ 16. One PLS client at Shawangunk Correctional Facility had his removal hearing

scheduled for March 3. *Id.* ¶ 18. On February 21, PLS attempted to schedule a legal visit, which DOCCS denied that same day, stating that “all visitation has been suspended at this time in all facilities[.]” *Id.* PLS renewed these visit requests on February 25 and 26, and DOCCS denied these requests. *Id.* Because PLS counsel could not meet with this client, PLS counsel requested that their removal proceedings be continued. *Id.* The case was reset for April 10. *Id.* It is rare that immigration judges grant these requests. *Id.* Additionally, PLS has 125 incarcerated individuals on their waitlist for immigration services who they cannot presently contact while their removal proceedings are still ongoing, meaning that these individuals will face their removal proceedings without counsel absent this Court’s intervention. *Id.* ¶ 17.

9. For example, I am informed by PLS attorney Mae Moskin that she has been unable to schedule a legal call or legal visit with her client at Attica Correctional Facility. Her client has a chronic kidney condition and reports that he has been experiencing rectal bleeding, peeling and ashen skin, and shortness of breath. These symptoms indicate the possibility of a life-threatening bowel blockage that requires treatment at a hospital, as he has been given only laxatives by facility staff with no improvement in his symptoms during the ongoing strike. Ms. Moskin attempted to contact staff and administrators at Attica, without success. Without legal calls or legal visits, PLS cannot advocate on his behalf and ensure that he receives proper care, diagnosis, and treatment for a potentially fatal obstruction.

10. Non-confidential methods of communication are an inadequate substitute for legal calls and visits because they are monitored by DOCCS and therefore may subject PLS and its clients to privilege waivers or retaliation. Ex. 3, Flaherty Decl., ¶ 8.

11. The time frame for a fully noticed motion under Local Rule 7.1(a)—which provides twenty-one days after service for the filing of opposition papers and potentially time for reply

papers—is too prolonged for PLS to ensure that their attorneys are able to secure the timely communications necessary to protect the health and safety of their clients and to ensure that their immigration attorneys are able to adequately prepare clients for in-person hearings occurring in 21 days. *See* Ex. 5, Nowak Decl., ¶¶ 17-23.

12. On March 3, 2024 at 5:08 p.m., I e-mailed Jason Golub, Deputy Commissioner and General for DOCCS to advise him that PLS anticipated filing a motion for a temporary restraining order by order to show cause in this Court. Mr. Golub received the e-mail and we have been in contact over these issues since then and I have kept him apprised of the status of our submission.

13. Exhibit 1, attached hereto, is a true and correct copy of the Declaration of Karen Murtagh.

14. Exhibit 2, attached hereto, is a true and correct copy of the Declaration of Sophia Heller.

15. Exhibit 3, attached hereto, is a true and correct copy of the Declaration of Krin Flaherty.

16. Exhibit 4, attached hereto, is a true and correct copy of the Declaration of David Bentivegna.

17. Exhibit 5, attached hereto, is a true and correct copy of the Declaration of Jillian Nowak.

18. Exhibit 6, attached hereto, is a true and correct copy of the Declaration of Yuriy Pereyaslavskiy.

19. Exhibit 7, attached hereto, is a true and correct copy of the Declaration of Veronica Vela.

20. I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 6, 2025  
New York, New York

/s/ Perry M. Grossman  
Perry M. Grossman