

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)

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF PRISONERS' LEGAL SERVICES OF NEW YORK'S
ORDER TO SHOW CAUSE FOR AN EXPEDITED PRELIMINARY INJUNCTION**

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Dated: March 6, 2025

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PRELIMINARY STATEMENT

As a wildcat correctional officer strike enters its third week at correctional facilities across New York state, many incarcerated individuals remain cut off from their attorneys and advocates, with legal visits suspended and legal calls and mail highly curtailed. This ongoing harm has reached a crisis point. Plaintiff Prisoners' Legal Services ("PLS") has received complaints of horrific conditions inside the correctional facilities administered by the New York State Department of Corrections and Community Supervision ("DOCCS"), with reports of incarcerated people being beaten by guards, missing meals or not receiving adequate nutrition, and not receiving necessary medication or medical attention. To date, seven incarcerated people have died during the strike. And many incarcerated people have been locked in their cells and dorms all day, every day.

Beginning February 18, the legal visits and calls that PLS had scheduled with their clients and prospective clients were suspended. Legal visits are essential for clients to discuss time sensitive or difficult matters and for PLS attorneys to document evidence of beatings or urgent medical needs. As an example, on March 4, PLS received a report of an individual at Gouverneur Correctional Facility with a dangerous leg infection who is not receiving medical treatment. PLS attorneys have tried to schedule an emergency legal visit to interview the client, take photographs to preserve evidence and assist with medical advocacy, and get his signature for a medical release, but have been refused. PLS attorneys also regularly use legal calls to discuss urgent legal matters with clients. Access to legal calls has been limited and delayed and, at some facilities, requests continue to be rejected.

Confidential legal visits and calls are necessary to collect information to take action for PLS's clients. All indications are that legal mail during the strike has been extremely delayed or

altogether disrupted at reaching either attorneys or incarcerated persons. Together, these three channels are the sole means by which PLS, an independent, non-profit legal services organization created and funded by New York State to protect the civil and constitutional rights of incarcerated individuals, can have confidential conversations with incarcerated clients. Without continued and timely access to those channels of communication, PLS cannot effectively assist its clients in seeking relief from the severe deprivations they are currently suffering without the risk of retaliation from correctional officers or privilege waivers. Nor can PLS effectively continue ongoing time-sensitive work on their incarcerated clients' other critical legal matters. As a result, PLS turns to this Court for urgent relief on behalf of itself and its clients to restore their access to legal communications at these facilities and vindicate their First Amendment rights.

FACTS

I. New York State Correctional Officers Initiate a Wildcat Strike

Since February 17, 2025, DOCCS correctional officers in 41 out of 42 New York state prisons have taken part in an unsanctioned “wildcat” strike, in which Thousands of correctional officers walked off the job, bringing facility operations to a standstill.¹ Incarcerated people have gone with intermittent access to food, water, medications, and other life-sustaining necessities.² In some facilities, incarcerated people have been confined to their cells for days at a time.³ At least

¹Spencer Platt, *NY'S Prison Guard Strike Has Roots in Decades of Racialized Deindustrialization*, Truthout (Feb. 28, 2025), available at <https://truthout.org/articles/nys-prison-guard-strike-has-roots-in-decades-of-racialized-deindustrialization/>.

² Amy Feiereisel, *Here's What Conditions Inside NY Prisons Have Been Like During the Strikes*, North County Pub. Radio (Feb. 28, 2025), available at <https://www.northcountrypublicradio.org/news/story/51346/20250228/here-s-what-conditions-inside-ny-prisons-have-been-like-during-the-strikes>.

³ Jon Campbell, *Two People Die While Incarcerated at Sing Sing Amid Officers' Unauthorized Strike*, Gothamist (Feb. 27, 2025), available at <https://gothamist.com/news/ny-prison-strikes-conditions-woodbourn>.

seven incarcerated persons in DOCCS custody have died since the strike commenced.⁴ Governor Hochul mobilized thousands of members of the National Guard to staff prisons around the state.⁵

This strike did not begin in a vacuum. In December 2024, officers at Marcy Correctional Facility beat Robert Brooks Sr., an incarcerated man, to death while he was handcuffed to a medical bed—an event record on body worn cameras.⁶ In the aftermath of Mr. Brooks’ murder, Commissioner Martuscello announced that all correctional officers would be required to activate their body-worn cameras while interacting with incarcerated persons.⁷ Days before the strike began, the indictments were set to be unsealed.⁸ Ten correctional officers were ultimately indicted for murder and related charges.⁹

II. Legal Communication Grinds to a Stop

Mr. Brooks’s death is another example of the horrific, longstanding conditions affecting the over 33,000 people incarcerated in New York correctional facilities. PLS works to address these conditions year-round. PLS was created by New York State after the Attica uprising in 1971 to protect the civil and constitutional rights of incarcerated individuals and “ensure respect for

⁴ Jan Ransom, *N.Y. State Police Investigate Death of Another Inmate at Upstate Prison*, N.Y. Times (Mar. 4, 2025), available at <https://www.nytimes.com/2025/03/04/nyregion/ny-prison-strike-guards.html?partner=slack&smid=sl-share>.

⁵ Reuven Blau, *State Prison Strike Drags On as Gov. Hochul Threatens Firings and Arrests*, The City (Mar. 3, 2025), available at <https://www.thecity.nyc/2025/03/03/new-york-state-prison-strike-halt-act/>.

⁶ Renee Anderson & Mark Prussin, *New York Officers in Beating of Robert Brooks Sr. Indicted for Murder by Grand Jury*, CBS News (Feb. 20, 2025), available at <https://www.cbsnews.com/newyork/news/robert-brooks-beating-marcy-correctional-facility-update/>.

⁷ N.Y. State Dep’t of Corr’s and Comm. Supervision, Fiscal Year 2026 Public Protection Budget Hearing February 13, 2025, Testimony of Daniel F. Martuscello III, Commissioner, available at <https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2025-02/nys-dept-of-corrections-community-supervision-daniel-f.-martuscello-.pdf>.

⁸ Anderson & Prussin, *supra* note 6.

⁹ *Id.*

human dignity and human rights . . . while helping incarcerated individuals prepare for successful reintegration into their communities upon release.” Ex. 1,¹⁰ Declaration of Karen Murtagh (“Murtagh Decl.”), ¶ 8. The state recognized the importance of civil representation to protect human dignity and vindicate the rights of New Yorkers incarcerated throughout the state. *Id.*

But PLS cannot do so at this time. Since the strike began, legal communication with incarcerated persons has been severely curtailed. DOCCS facilities have blocked PLS’s avenues for real-time privileged and confidential legal communications. Ex. 1, Murtagh Decl., ¶¶ 28-33; Ex. 6, Declaration of Yuriy Pereyaslavskiy (“Pereyaslavskiy Decl.”), ¶¶ 11-13; Ex. 3, Declaration of Krin Flaherty (“Flaherty Decl.”), ¶¶ 16-185; Ex. 4, Declaration of David Bentivegna (“Bentivegna Decl.”), ¶¶ 11-1221. Legal visits have been cancelled and indefinitely suspended at many facilities and legal calls have been severely reduced or delayed. *Id.* Ex. 1 Murtagh Decl., ¶¶ 29, 31-33; Ex. 6, Pereyaslavskiy Decl., ¶¶ 12, 14-18; Ex. 3, Flaherty Decl., ¶¶ 17-26; Ex. 4, Bentivegna Decl., ¶¶ 12-21. PLS has also received only a small fraction of the mail it usually receives from DOCCS facilities and little, if any, postmarked since the start of the strike. Ex. 6, Pereyaslavskiy Decl., ¶ 13; Ex. 3, Flaherty Decl., ¶ 18; Ex. 4, Bentivegna Decl., ¶ 12. In addition, PLS has not received any acknowledgement that the legal mail it has sent to DOCCS facilities over the past two weeks has been received by its current or prospective clients. Ex. 3, Flaherty Decl., ¶ 18. There is no substitute for privileged and confidential legal communications with incarcerated individuals because non-confidential means of communication may irretrievably waive privilege. Ex. 3, Flaherty Decl., ¶ 8; Ex. 6, Pereyaslavskiy Decl., ¶ 8. Non-legal

¹⁰ All exhibits referenced here (“Ex.”) are exhibits to the 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 (“Grossman Decl.”), filed concurrently herewith.

communications are monitored by DOCCS personnel and may subject current or prospective clients to retaliation where those claims implicate the performance of DOCCS personnel. *Id.*

PLS's clients are currently experiencing harm that requires urgent legal attention and intervention, but, without timely access to confidential channels of communication, PLS cannot adequately represent those clients. According to reports relayed by loved ones of incarcerated individuals through the limited non-confidential communication channels available, PLS clients have gone without access to medical care or consistent access to nutrition. Ex. 1, Murtagh Decl., ¶¶ 30, 33; Ex. 2, Declaration of Sophia Heller ("Heller Decl."), ¶ 15; Ex. 3, Flaherty Decl., ¶ 259; Ex. 4, Bentivegna Decl., ¶ 1622; Pereyaslavskiy Decl. Ex. 6, ¶ 21. PLS relies on legal communication to identify and investigate the very same issues being reported during the strike. PLS attorneys regularly schedule visits, calls, and send mail to evaluate cases for representation and communicate with existing clients. Ex. 3, Flaherty Decl., ¶ 6. In cases where incarcerated individuals report urgent health and safety needs are not being met, such as access to medicine, medical care, nutrition, or protection from brutality, PLS relies upon legal visits and calls to promptly and confidentially collect the facts and evidence required for expeditious legal intervention. Ex. 3, Flaherty Decl., ¶¶ 11-13, 15, 20-21.

Legal visits are vital to PLS's work. Legal visits allow PLS attorneys to conduct in-person investigations into emergent issues, such as reports of excessive force or urgent medical needs. Ex. 3, Flaherty Decl., ¶¶ 11-12. Legal visits are a necessity for collecting and preserving evidence for incidents involving medical conditions or physical injuries, where attorneys can "capture pictures of serious injuries" or to "observe the severity of a client's medical condition." *Id.* ¶ 11. Moreover, legal calls are limited to 30 minutes to an hour by DOCCS directive, so legal visits are crucial for

more time-intensive case needs, such as client preparation for a deposition, settlement conference, or trial. Ex. 2, Heller Decl., ¶ 7.

Legal calls are also essential to PLS's work, although not necessarily a substitute for legal visits. PLS attorneys rely on legal calls to update clients on case matters, especially those clients incarcerated in remote facilities, clients with low literacy, and clients with different language access needs. Ex. 3, Flaherty Decl., ¶¶ 6, 9; Ex. 2, Heller Decl., ¶¶ 7-8, 10, 12. Since February 18, PLS attorneys have had severely limited access to legal calls and access to legal calls appears to remain suspended at some facilities, for example, Attica and Mid-State Correctional Facilities. Ex. 3, Flaherty Decl., ¶ 17; Ex. 5, Declaration of Jillian Nowak, ("Nowak Decl."), ¶ 15; Ex. 4, Bentivegna Decl., ¶¶ 13-15. Just today a legal call that was scheduled to take place at Auburn Correctional Facility was cancelled due to the ongoing strike. Pereyaslavskiy Decl. Ex. 6, ¶ 15.

Because almost all of PLS's scheduled legal visits and calls have been cancelled or rescheduled since February 18, there is now a growing backlog of time-sensitive requests for legal visits and calls. Ex. 1, Murtaugh Decl. ¶ 31. Most DOCCS facilities where PLS has clients have not allowed PLS attorneys to schedule legal visits with their clients since February 18. The general suspension of legal calls at several DOCCS facilities, such as Attica and Mid-State, appears indefinite. For example, PLS attorneys have attempted to reschedule calls and visits at Attica with no success. Ex. 4, Bentivegna Decl., ¶¶ 13-15. As a result, PLS attorneys have been unable to adequately assess or respond to emergency requests for assistance, both from prospective incarcerated clients and their concerned families. *Id.* ¶ 15.

Legal mail has significantly declined since the strike began. *Id.* ¶ 12. Likewise, PLS cannot use legal mail to quickly secure client signatures on urgent legal filings, complete

retainers with prospective clients, or execute medical releases. Ex. 3, Flaherty Decl., at ¶¶ 8-9; Ex. 2, Heller Decl., ¶ 10.

III. DOCCS's Actions Imperil Plaintiff and its Clients

New York's prisons house people at all stages of the legal process, including individuals incarcerated with challenges to their criminal convictions, disciplinary appeals, conditions of confinement claims, immigration cases, and more. Their obligations and clocks do not stop simply because of a wildcat strike. Since DOCCS's shuttering of legal communication, PLS's clients and prospective clients have experienced the following:

- A PLS client at Five Points Correctional Facility ("CF") was assaulted by his cell mate during the strike and suffered permanent vision loss as a result of the assault. Under normal circumstances, PLS would immediately schedule a legal visit to preserve any evidence associated with the assault. Much of that evidence would only be acquired through an in-person legal visit, such as photographing his injuries, collecting evidence at the scene, and visually assessing the client's physical and mental health needs. A PLS attorney contacted the facility on March 4, but facility staff stated that legal visits are not occurring or being scheduled. Ex. 3, Flaherty Decl., ¶¶ 19.
- PLS staff have been unable to reach a client to prepare him for his pending release date. Ex. 6, Pereyaslavskiy Decl., ¶ 2. On March 4, a PLS staff member submitted a legal call request to speak with a client at Mohawk CF who was scheduled for release in one year. After submitting the call request, the facility informed PLS for the first time that the client would be released on March 18, but the facility denied the legal call request. As a result, PLS cannot prep their client for release, and he is at-risk of homelessness and losing his continuity of healthcare upon release. Ex. 6, Pereyaslavskiy Decl., ¶ 14.

- PLS attorneys in the immigration practice have been unable to schedule legal visits with clients at Midstate, Riverview, Attica, Clinton, Wyoming, Collins, Franklin, Shawangunk, Taconic, Ulster, Walkill, Sing Sing, Wende, Washington, and Upstate CFs to prepare clients for imminent removal proceedings. Ex. 5, Nowak Decl., ¶¶ 2, 9-10, 16. PLS could not contact one PLS client at Shawangunk CF to prepare him for his March 3 removal proceeding. *Id.* ¶ 18. PLS was repeatedly denied visit requests, which resulted in the PLS attorney submitting a request to continue his case. *Id.*
- A PLS attorney has been unable to schedule a legal call or visit with her client at Attica CF who has a chronic kidney condition. The client is now presenting symptoms such as rectal bleeding and shortness of breath. These symptoms indicate the possibility of a life-threatening bowel blockage, but the attorney cannot presently contact her client to inform of her advocacy for his transfer to an off-site medical facility or other appropriate emergency relief. Grossman Decl., ¶ 9.
- PLS attorneys have been unable to schedule legal calls at Attica CF, which has resulted in an inability to communicate with current and prospective clients about time-sensitive disciplinary hearings and reports that these individuals are presently going without their medical treatments. Ex. 4, Bentivegna Decl., ¶¶ 14-16.
- Another PLS client with serious medical needs is due for a periodic infusion at an outside medical facility, yet PLS has no means of knowing whether she has been taken to her appointment. Ex. 3, Flaherty Decl., ¶ 21.
- A family member of an incarcerated individual with stage four cancer contacted PLS to let them know that the incarcerated individual was not taken to an oncology appointment;

however, PLS has been unable to conduct follow-up with that prospective client. Ex. 1, Murtagh Decl., ¶ 30.

- PLS cannot schedule an emergency legal visit at Gouverneur CF to investigate a prospective client's denial of medical care. He has a leg infection with gangrene or cellulitis, yet he is being forced to walk throughout the facility, despite needing a wheelchair. He is at-risk of losing his foot or life if the infection spreads. PLS was denied an emergency legal visit and told that no visits would be scheduled. As a result, PLS cannot preserve vital evidence for a civil damages case by documenting his condition or obtaining his signature on a medical release. Ex. 2, Heller Decl., ¶ 13.
- PLS could not contact three clients at Groveland CF and Attica CF to facilitate their previously scheduled therapeutic sessions, as both facilities cancelled the legal calls and have not rescheduled them. Ex. 6, Pereyaslavskiy Decl., ¶¶ 8, 16-17.
- A prospective PLS client's sister has been extorted by a gang member for her brother's safety, a matter which PLS would typically investigate with a confidential legal visit or call given the sensitive nature of the complaint. Ex. 3, Flaherty Decl., ¶ 22.

PLS cannot advocate on behalf of these persons and the countless others who reach out each week for intakes without legal visits, calls, or mail.

PLS is concerned about the safety of its clients and prospective clients. Family members of incarcerated people have reported to PLS serious deprivations inside facilities: their incarcerated loved ones have gone days without food or receiving food that is severely limited, inedible or expired; housing blocks have no lighting, cold temperatures and/or no hot water; fires in cells; interruptions in medications and sick call; no access to showers or outside recreation; no access to the law library or to mail, including legal mail; a complete lack of response from DOCCS staff

regarding reports of assaults within the facilities; and delays in parole hearings. Ex. 6, Pereyaslavskiy Decl., ¶ 21; Ex. 3, Flaherty Decl., ¶ 23; Ex. 2, Heller Decl., ¶ 15; Bentivegna Decl. Ex. 4, ¶¶ 15-16; Ex. 1, Murtagh Decl., ¶¶ 30, 33. Yet, PLS cannot investigate these claims as it normally would by preserving video, photographic and other documentary evidence. As a result of to the cancellation, suspension, or curtailment of legal communications at DOCCS facilities, PLS's current and prospective clients are being prejudiced in their ability to develop and bring non-frivolous claims and defenses.

ARGUMENT

Plaintiff, on behalf of its clients and itself, seeks an expedited preliminary injunction against the Defendant's unlawful cancellation, suspension, and limitation of legal communication in violation of the First Amendment. To be entitled to this relief, Plaintiff must demonstrate a "clear or substantial" likelihood of success on the merits, a "strong showing" of irreparable harm in the absence of preliminary relief, and that such relief is in the public interest. *See New York ex. Rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 650 (2d Cir. 2015) (citations and internal quotation marks omitted). Here, Plaintiff satisfies each of these requirements and is therefore entitled to a preliminary injunction.

IV. Plaintiff's Claims Are Likely to Succeed on the Merits.

PLS seeks preliminary relief on its access to courts claim under the First Amendment to the United States Constitution. Because PLS can show a substantial likelihood of success on the merits of this claim, it is entitled to relief.

A. Plaintiff's First Amendment Claim is Substantially Likely to Succeed.

PLS is substantially likely to succeed on its access to courts claim under the First Amendment to the United States Constitution because Defendant's interference with legal

communications denies PLS's clients meaningful access to courts and violates PLS's rights to engage in expressive and associational conduct.

It is well-established that “[p]risoners . . . ‘have a constitutional right of access to the courts.’” *Bourdon v. Loughren*, 386 F.3d 88, 92 (2d Cir. 2004) (citing *Bounds v. Smith*, 430 U.S. 817, 821 (1977)) (collecting cases); *see also Heyliger v. West*, No. 918CV336TJMTWD, 2022 WL 3020967, at *3 (N.D.N.Y. May 31, 2022) (cleaned up) (“The First Amendment provides, in relevant part, that ‘Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.’ The right to petition, which applies to the states through the Fourteenth Amendment, extends to all departments of the Government, including the courts.”). “As a corollary of [the] right of access [to courts], a prisoner has a right to correspond with his legal counsel.” *Washington v. James*, 782 F.2d 1134, 1138 (2d Cir. 1986).

The constitutional right of access to courts encompasses the right of incarcerated individuals to communicate with attorneys. *See Lewis v. Casey*, 518 U.S. 343, 384 (1996) (citations omitted) (“Access to the courts means the opportunity . . . to send and receive communications to and from judges, courts and lawyers.”). Accordingly, practices that “unreasonably burden[]” communications between incarcerated individuals and their attorneys are unlawful. *Wolfish v. Levi*, 573 F.2d 118, 133 (2d Cir. 1978), *rev'd in part on other grounds*, *Bell v. Wolfish*, 441 U.S. 520 (1979) (affirming injunction of prison restrictions on attorney visits that hindered incarcerated people’s opportunity to consult with their attorneys); *see also Cancel v. Goord*, No. 00 CIV 2042 LMM, 2001 WL 303713, at *5 (S.D.N.Y. Mar. 29, 2001) (citing *Brewer v. Wilkinson*, 3 F.3d 816, 820 (5th Cir. 1993) (incarcerated individuals have a constitutional right to “to be free from unjustified governmental interference with [legal] communication.”)).

The right of access to the courts is violated “where government officials obstruct legitimate efforts to seek judicial redress.” *Heyliger*, 2022 WL 3020967, at *3; *see Benjamin v. Kerik*, 102 F. Supp. 2d 157, 175-76 (S.D.N.Y. 2000), *aff’d sub nom. Benjamin v. Fraser*, 264 F.3d 175 (2d Cir. 2001) (citing *Procunier v. Martinez*, 416 U.S. 396, 419 (1974) (“[I]nmates must have a reasonable opportunity to seek and receive the assistance of attorneys,” and thus, “[r]egulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid.”). “To state a claim for denial of access to the courts . . . a plaintiff must allege that the defendant ‘took or was responsible for actions that hindered [the] plaintiff’s efforts to pursue a legal claim.’” *Davis v. Goord*, 320 F.3d 346, 351 (2d Cir. 2003) (citing *Monsky v. Moraghan*, 127 F.3d 243, 247 (2d Cir.1997)) (cleaned up). “Claimants need demonstrate that “‘official action frustrates a plaintiff . . . in preparing and filing suits at the present time,’ and ‘claims not in aid of a class of suits yet to be litigated, but of specific cases that cannot now be tried (or tried with all material evidence), no matter what official action may be in the future.’” *Tutora v. Gessner*, No. 17-CV-9517 (KMK), 2019 WL 1382812, at *5 (S.D.N.Y. Mar. 27, 2019) (citing *Christopher v. Harbury*, 536 U.S. 403, 413-14 (2002)).

Here, DOCCS facilities are denying PLS and its clients the ability to communicate promptly about urgent legal matters concerning their deteriorating conditions of confinement and ongoing legal matters. As a matter of course, PLS attorneys rely upon in-person legal visits, legal calls, and legal mail to communicate with their clients. Each mode of communication has specific, unique purposes and PLS cannot pursue effective legal advocacy for their incarcerated clients without each of these modes of communication. *See* Ex. 2, Heller Decl., ¶¶ 7-10; Ex. 4, Bentivegna Decl., ¶¶ 6-10. Since the correctional officers’ strike began on February 17, 2025, PLS attorneys have faced significant communication and access barriers when trying to reach their clients.

PLS attorneys have been denied the opportunity to schedule legal visits with current or prospective clients at many DOCCS facilities and faced limited access to legal calls at some facilities. Ex. 3, Flaherty Decl., ¶ 17 (describing inability of Managing Attorney and staff “to reliably make legal calls or schedule legal visits with incarcerated individuals at DOCCS facilities” since February 18, 2025). At many facilities, PLS attorneys have not been informed when they might be able to schedule visits to communicate with their clients. Similarly, compared to usual circumstances, the volume of legal mail incoming from these facilities since the strikes began is very low. Nor has there been any acknowledgment that incarcerated individuals have received any legal mail sent by PLS to various prisons across the state since the strikes began. Ex. 3, Flaherty Decl., ¶ 18. And although facilities have recently resumed scheduling calls, the lack of legal visits and legal mail, along with a growing backlog of legal calls, “unreasonably burdens” communications between PLS and its clients and therefore violates the constitutional rights of PLS’s clients. *Wolfish*, 573 F.2d at 133.

In addition to the rights of PLS’s clients, PLS’s own First Amendment rights are implicated by the Defendant’s denial of legal correspondence between PLS and its incarcerated clients. Public interest legal organizations have a First Amendment right to solicit prospective clients to engage in expressive and associational conduct through litigation. *In re Primus*, 436 U.S. 412 (1978). In *In Re Primus*, the Supreme Court recognized the First Amendment rights for organizations to contact prospective injured clients for which “the rendition of legal services” is one of its primary purposes as “a form of political expression and political association.” *Id.* at 427. “The First and Fourteenth Amendments require a measure of protection for advocating lawful means of vindicating legal rights, including advising another that his legal rights have been infringed and refer[ring] him to a particular attorney or group of attorneys . . . for assistance.” *Id.* at 431-32

(citations and quotation marks omitted). Analogously, here, PLS is a public interest legal organization that provides *pro bono* legal services for the vindication of the rights to which its indigent, incarcerated clients are entitled under state and federal law. PLS was created by New York State to expressly “protect[] the civil and constitutional rights of incarcerated individuals” and to “help[] ensure respect for human dignity and human rights.” Ex. 1, Murtagh Decl., ¶ 8. As such, PLS has a First Amendment right to correspond with these clients for the provision of legal services in accordance with its mission.

Here, both the First Amendment rights of PLS itself and its clients are violated by the Defendant’s curtailment of legal communication, which is frustrating PLS and its clients pursuit of nonfrivolous legal claims. Indeed, some of PLS’s current and prospective clients are experiencing ongoing harm that requires urgent legal intervention. But this harm will persist until PLS is able to resume the timely legal communications with its clients necessary for effective advocacy on their behalf. Ex. 2, Heller Decl., ¶ 16 (describing that “harm to both [PLS’s] clients and legal practice accumulates every day that DOCCS [] hinder[s] [PLS] from communicating with people incarcerated in DOCCS facilities”); Ex. 4, Bentivegna Decl., ¶ 17 (same).

The commencement of the strike and resulting disruption in all forms of legal communication between PLS and its clients has severely impeded PLS’s ability to investigate the complaints of its incarcerated clients and to engage in legal advocacy on their behalf. *See, e.g.*, Ex. 6, Pereyaslavskiy Decl., ¶ 12, 21. As a result, PLS is unable to work with clients to prepare for fast-approaching court appearances and deadlines, to work with clients to prepare new actions under tight statutes of limitation timing concerns, to assist clients with other emergent needs, and to assist prospective clients. Ex. 4, Bentivegna Decl., ¶¶ 7-10 (describing necessity of legal communications to complete a range of tasks related to legal advocacy on behalf of clients). PLS

has multiple pending and anticipated legal actions that are directly frustrated by the Defendant's interruption of legal correspondence between the organization and its clients. For example, many of PLS's clients are immigrants, and several of these individuals have hearings scheduled imminently. Ex. 5, Nowak Decl. ¶¶ 18-20. Without the ability to have privileged visits and conversations with these clients, PLS and these clients are unable to prepare for trial. If the Defendant's curtailment of legal communications continues, these clients are at high risk of receiving a deportation order.

In addition, as part of PLS's regular course of business, the organization receives and investigates a high number of complaints regarding DOCCS facilities, and frequently litigates issues related to constitutional and other legal deprivations, such as a lack of medical care, a lack of food, and a lack of religious accommodations. Because PLS cannot communicate with its clients, nonfrivolous claims that PLS would have normally investigated and raised are now unexamined. Ex. 2, Heller Decl., ¶ 13 (describing PLS attorney's inability to investigate and preserve evidence related to client's medical claim for deliberate indifference); Ex. 4, Bentivegna Decl., ¶¶ 13-17 (describing attorney's inability to investigate and pursue legal advocacy in response to clients' urgent needs for medical care due to inability to speak with clients). This inability to develop and pursue viable legal claims severely burdens the First Amendment rights of PLS and their current and prospective clients. *See Collins v. Goord*, 438 F. Supp. 2d 399, 416 (S.D.N.Y. 2006) (citing *Lewis v. Casey*, 518 U.S. 343, 351 (1996) (plaintiff successfully stated access to counsel claim where they had made repeated, denied requests for information to be used to pursue legal action, and defendants thus "hindered [their] efforts to pursue a legal claim")); *Lewis v. Casey*, 518 U.S. 343, 351 (1996) (an individual unable to file a complaint related to arguably actionable harm due

to a prison blocking access to legal information and assistance presents a cognizable access to courts claim).

And, while the interruption of just one form of legal communication would severely burden PLS's ability to assist its clients, DOCCS's suspension or curtailment of multiple forms of legal communication creates a substantial barrier to effective representation. DOCCS regulations recognize that different forms of legal communication between attorneys and their incarcerated clients serve different functions, and each have unique import.¹¹ The interruption of even one form of legal communication, such as the suspension of legal visits at many facilities would hinder attorneys' abilities to advocate for their clients.

Legal visits are a primary means of real-time attorney-client communications and serve unique purposes as compared to legal mail or calls. Ex. 3, Flaherty Decl., ¶ 10 (“[Legal] [v]isits are . . . essential for clients who have low literacy as [attorneys] can explain important documents word by word” as well as for clients with certain “mental health issue[s] as it is sometimes easier to speak with someone who is scared and paranoid in person”); *see also* Directive #4423 at 10. For example, for legal action involving medical conditions or physical injuries, legal visits are necessary for attorneys to “capture pictures of serious injuries” or to “observe the severity of a client’s medical condition,” particularly since attorneys typically have much more consistent, in-person access to their clients than do medical personnel. *Id.* ¶¶ 11-12.

Legal calls, too, serve unique purposes. Ex. 2, Heller Decl., ¶¶ 8-9 (describing the necessity of legal calls for investigating urgent client concerns); Ex. 3, Flaherty Decl., ¶ 7 (legal calls are

¹¹ *See, e.g.*, Directive #4423: Incarcerated Individual Telephone Calls, Department of Corrections and Community Supervision (January 15, 2014) (hereinafter “Directive #4423”), at 10, available at <https://doccs.ny.gov/system/files/documents/2024/11/4423.pdf>) (providing for legal calls where “the legal matter cannot be adequately addressed through privileged correspondence [and] a legal visit would be unduly burdensome under the circumstances”).

“sometimes the only way to discuss important case matters” for clients with certain educational needs or to address urgent matters for individuals incarcerated at facilities located remotely). DOCCS regulations reflect that legal calls are for those matters that cannot be adequately addressed through correspondence or visits. *See* Directive #4423 at 10. Here, all forms of legal communications have been interrupted. Legal visits remain widely unavailable. Legal mail appears widely interrupted. Whether and to what extent legal calls can be scheduled varies by facility, and overall, there have been reductions and delays in call scheduling. Taken together, these interruptions constitute an impermissible burden on PLS’ and their clients’ First Amendment rights.

B. There Is Inadequate Penological Interest to Justify this Prolonged Denial of Legal Communications Between PLS and Its Clients.

Though a “prison regulation [that] impinges on inmates’ constitutional rights” may be upheld “if it is reasonably related to legitimate penological interests,” because the Defendant’s prolonged interruption of multiple forms of legal communication bears no such reasonable relation, injunctive relief is warranted. *Turner v. Safley*, 482 U.S. 78, 89 (1987).

Courts examine four factors to determine whether a prison’s infringement on constitutional rights is reasonably related to legitimate penological interests: (1) whether there is a “valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it,” (2) “whether there are alternative means of exercising the right that remain open to prison inmates,” (3) “the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally,” and (4) whether there exists “an alternative that fully accommodates the prisoner’s rights at *de minimis* cost to valid penological interests.” *Id.* at 89-91. On balance, these factors weigh in favor of PLS.

- i. Staffing Shortages Cannot Continue to Justify this Prolonged Denial of Multiple Forms of Legal Communication Between PLS and Its Clients.*

Although staffing concerns may support a brief interruption of legal communications under some circumstances, the prolonged curtailment of multiple forms of legal communication between PLS and its clients is no longer justifiable, particularly given the reports of incarcerated persons ongoing health and safety issues. *See Benjamin v. Kerik*, 102 F. Supp. 2d 157, 176-78 (S.D.N.Y. 2000), *aff'd sub nom. Benjamin v. Fraser*, 264 F.3d 175 (2d Cir. 2001) (holding that “unpredictable and significant delays” faced by attorneys seeking to visit their incarcerated clients due to defendant’s “security concerns” were “not justified by legitimate penal interests”). Notwithstanding reports of inadequate medical care, nutrition, exercise, and severe brutality by guards, Ex. 4, Bentivegna Decl., ¶¶ 13-17; Ex. 2, Heller Decl., ¶¶ 13-15; Ex. 3, Flaherty Decl., ¶¶ 19, 21, 22-23; Ex. 6, Pereyaslavskiy Decl., ¶ 21, PLS and its clients have been denied legal visits at numerous facilities and have had curtailed or uneven access to legal calls. For example, Attica and Mid-State correctional facilities have all but categorically denied legal communications for over two weeks now. There is no penological interest in continuing to deny PLS the opportunity to assist those suffering incarcerated persons. Indeed, it is in DOCCS’s penological interest to allow PLS to do the job for which New York State created this legal services provider: to protect the rights of incarcerated individuals and help ensure respect for human dignity and human rights, thereby reducing the likelihood of another prison uprising. Ex. 1, Murtagh Decl., ¶ 8.

ii. Incarcerated Individuals Have No Alternative Means of Exercising Their Implicated First Amendment Rights.

“The second *Turner* factor asks whether there are alternative means for the inmate to exercise the right asserted,” and, here, the answer is no. *United States v. Loera*, No. 09CR466S4BMC, 2017 WL 9481022, at *5 (E.D.N.Y. Sept. 27, 2017), *report and recommendation adopted in part*, No. 09-CR-00466 (BMC), 2017 WL 4675773 (E.D.N.Y. Oct. 17, 2017). PLS and its clients have no alternative means of exercising their First Amendment rights

that are being violated by the Defendant's blocking of legal correspondence. There is no substitute for legal communications. Using non-confidential means of communication would subject PLS and its clients to a privilege waiver. Non-legal communications are also monitored by DOCCS personnel and may subject PLS's current or prospective clients to retaliation where those claims implicate the performance of DOCCS personnel. Ex. 3, Flaherty Decl., ¶ 8. Furthermore, when client needs are immediate and/or real-time conversation between lawyer and client is necessary for effective representation, there is no substitute for legal calls and visits, specifically.

Every form of legal communication between PLS and its clients has been interrupted at numerous facilities for over two weeks now. Legal visits remain generally unavailable and DOCCS personnel have not provided a date certain for when access to legal visits will be restored. Legal mail processing is extremely limited at best. Ex. 3, Flaherty Decl., ¶ 18; Ex. 4, Bentivegna Decl., ¶ 12; Ex. 6, Pereyaslavskiy Decl., ¶ 13. While some legal calls are now being scheduled, at some facilities, such as Attica, which incarcerates thousands of individuals, requests remain unanswered. Ex. 4, Bentivegna Decl., ¶¶ 13-15. Meanwhile, the volume of necessary legal calls grows as conditions deteriorate. Furthermore, to the extent available, legal calls are no substitute for legal visits where, for example, an attorney must collect and preserve evidence of injuries, Ex. 3, Flaherty Decl., ¶ 19, or prepare a client for imminent hearings, Ex. 5, Nowak Decl., ¶¶ 7-24.

Because there exists no alternative means for PLS to communicate with its incarcerated clients, this *Turner* factor favors PLS.

iii. Accommodation of the First Amendment Rights of PLS and its Clients Will Not Unduly Burden DOCCS.

The third *Turner* factor concerns “the impact that accommodation of the asserted constitutional right would have on prison personnel, other inmates, and the allocation of prison resources.” *Nicholas v. Miller*, 109 F. Supp. 2d 152, 160 (S.D.N.Y. 2000) (citing *Turner*, 482 U.S.

at 90). This factor weighs in favor of correctional facilities where the right in question “can be exercised only at the cost of significantly less liberty and safety for everyone else, guards and other prisoners alike.” *Thornburgh v. Abbott*, 490 U.S. 401, 418 (1989) (citations and internal quotations omitted). Here, the opposite is true: accommodating the constitutional rights of PLS and its clients will have a positive impact on DOCCS facilities and resources and result in significantly *more* liberty for other incarcerated individuals unable to make any contact with legal counsel.

DOCCS will not be unduly burdened by accommodating the First Amendment rights of PLS and its clients. Instead of imposing undue burden, permitting legal counsel to communicate with its clients improves prison operations and reduces the risk of prison uprisings. PLS was created by New York state following the 1971 Attica prison uprising with the express goal of “protect[ing] the civil and constitutional rights of incarcerated individuals” and “help[ing] ensure respect for human dignity and human rights.” Ex. 1, Murtagh Decl., ¶ 8. PLS was incorporated with grant funding from the New York State Office of Crime Control and the Federal Law Enforcement Assistance administration, “an official recognition that incarcerated individuals’ ready access to high quality legal services contributes positively to the ability of prisons to function in a way that complies with the law and facilitates the fulfillment of DOCCS’ duties to the welfare of incarcerated individuals.” *Id.* Thus, contrary to any undue burden, allowing incarcerated individuals access to their legal counsel is *beneficial* for facility operations.

Even more significantly, accommodation of the asserted constitutional rights will have immediate, beneficial impacts for individuals incarcerated in DOCCS facilities across the state. Since the strikes commenced, PLS has received complaints about incarcerated individuals lacking access to food and medicine, as well as complaints of brutality—which unfortunately has already turned lethal over the duration of these strikes. Ex. 3, Flaherty Decl., ¶¶ 19, 25. Allowing PLS to

complete the charge it was given upon its creation by New York State and investigate and advocate on behalf of its clients is critical to ensure the protection of the civil and constitutional rights of incarcerated New Yorkers.

iv. Defendant Can Implement Alternatives that Accommodate the Rights of PLS and Its Clients.

“The existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an exaggerated response to prison concerns.” *Turner*, 482 U.S. at 90 (internal quotations omitted). This factor weighs against the regulation if the incarcerated individual “can point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests.” *Id.* at 91.

Here, the weeks-long broad curtailment of legal communications at many DOCCS facilities is neither necessary nor justifiable. It represents an “exaggerated response” to the correctional officers’ strike. Soon after the strikes commenced, Governor Hochul deployed thousands of National Guard troops to fill staff vacancies.¹² Several correctional facilities have resumed legal calls and there may be technological solutions to allow for regular legal calls with reduced staffing needs at *de minimis* cost.¹³ Ex. 7, Declaration of Veronica Vela, ¶¶ 3-4.

V. Plaintiff’s Clients Face Irreparable Harm Without an Injunction

Irreparable harm “is the single most important prerequisite for the issuance of a preliminary injunction.” *Pearson Educ., Inc. v. Labos*, No. 19-cv-487, 2019 WL 1949820, at *5 (S.D.N.Y. Apr.

¹² Blau, *State Prison Strike Drags On*, *supra* note 5.

¹³ For example, many people in DOCCS’s custody have access to tablets. On information and belief, these tablets have functionality for phone calls. Attorneys for people in custody of the New York City Department of Correction (“DOC”) at Rikers Island have provided DOC with a list of confirmed attorney phone numbers for calls from these types of tablets that are not recorded by DOC. Ex. 7, Vela Decl. ¶¶ 3-4. Using this type of functionality allows for confidential legal calls without requiring facility staff to escort an individual to a specific location. *Id.* ¶ 4.

23, 2019) (quotation marks and citation omitted). Plaintiff must show that the alleged harm is “imminent, not remote or speculative” and “incapable of being fully remedied by monetary damages.” *Reuters Ltd. v. United Press Int’l, Inc.*, 903 F.2d 904, 907 (2d Cir. 1990). Evidence of the “the risk of injury to . . . health and constitutional rights” can establish irreparable harm. *Ferreyra v. Decker*, No. 20 CIV. 3170 (AT), 2020 WL 2612199, at *4 (S.D.N.Y. May 22, 2020).

Current and prospective PLS clients are facing health and safety issues that require immediate legal attention and intervention. *See, e.g.*, Section I *supra*. For example, a PLS attorney in the Buffalo office has been attempting unsuccessfully to have a legal call with a client incarcerated in Attica who is suffering from a severe intestinal blockage. Grossman Decl., ¶ 9. The attorney has received calls from the incarcerated client’s mother this evening conveying serious concerns about the medical care that the client has been receiving and that the client now has been experiencing peeling and ashen skin, shortness of breath and rectal bleeding. *Id.* Because these facts may give rise to an emergency Eighth Amendment claim concerning the client’s medical care, a legal call and visit are urgently required to ensure that the client’s life and health are protected, and his rights are vindicated. *Id.*

For another example, on March 4, PLS received a call from the mother of a person incarcerated at Gouverneur Correctional Facility who reported that her son who has been surgically treated for a severe leg infection is currently “in agony—that his foot is black and bleeding.” Ex. 2, Heller Decl., ¶ 13. At previous facilities, this incarcerated person had access to a wheelchair, but does not have one at Gouverneur, which has aggravated his injuries. *Id.* According to the report, this person’s medical care was inadequate before, but has come to a complete stop since the strike. *Id.* A legal visit is required for PLS to collect promptly the necessary consent to represent the incarcerated person, evidence of the injuries, and releases for his medical records to pursue

immediate relief to ensure he receives the medical attention necessary to save his limb or otherwise address the harm he is suffering. *Id.* However, Gouverneur has indefinitely suspended legal visits.

Moreover, “a presumption of irreparable injury flows from a violation of constitutional rights.” *See Tripathy v. Lockwood*, No. 22-PR-949, 2022 WL 17751273, at *2 (2d Cir. Dec. 19, 2022) (cleaned up); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”) *Jolly v. Coughlin*, 76 F.2d 468, 482 (2d Cir. 1996). DOCCS’s interruption of legal communications during this strike violates PLS’s clients’ right to counsel and access to courts. *See generally* Section I *supra*. PLS attorneys have been unable to correspond with clients without any indication of when such communication will be restored. Ex. 2, Heller Decl., ¶ 12. Similarly, PLS attorneys cannot reach those clients with upcoming immigration trials and habeas proceedings, which robs them of their ability to appropriately prepare for upcoming court appearances. Ex. 5, Nowak Decl., ¶¶ 18-20. Further, PLS cannot connect with potential clients to conduct important investigative work. Ex. 6, Pereyaslavskiy Decl., ¶ 21; Ex. 2, Heller Decl., ¶ 159 Ex. 4, Bentivegna Decl., ¶¶ 15-16. There is no indication that the timing requirements imposed on disciplinary proceedings will be tolled as a result of the strike, which means that PLS and its potential clients are losing vital time to investigate claims. PLS cannot perform any of these functions unless DOCCS resumes legal communications in compliance with its regulations and directives.

VI. The Public Interest Favors Issuance of a Preliminary Injunction.

In evaluating a motion for preliminary relief, “balancing of the equities merges into [the court’s] consideration of the public interest.” *SAM Party of N.Y. v. Kosinski*, 987 F.3d 267, 278 (2d Cir. 2021) (citation omitted). Fundamentally, “the public interest lies with enforcing the Constitution and federal law.” *P.G. v. Jefferson Cty.*, No. 21-cv-388, 2021 WL 4059409, at *5

(N.D.N.Y. Sept. 7, 2021) (citing *Paykina on behalf of E.L. v. Lewin*, 387 F. Supp. 3d 225, 245 (N.D.N.Y. 2019)). By contrast, the government has no interest in maintaining an unconstitutional practice. See *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013). That is true even when “granting a preliminary injunction would cause financial or administrative burdens on the Government.” *Averhart v. Annucchi*, No. 21-cv-383, 2021 WL 2383556, at *16 (S.D.N.Y. June 10, 2021) (citing *Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266, at *13 (S.D.N.Y. May 23, 2019); *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir. 1984) (stating that, where there is “a conflict between the [government’s] financial and administrative concerns on the one hand, and the risk of substantial constitutional harm” on the other “the balance of hardships tips decidedly in [a plaintiff’s] favor.”).

The public interest weighs in favor of resuming timely legal visits and calls. The fact of PLS’s creation by New York State is evidence that its access to legal communications with incarcerated individuals is in the public interest and, specifically, in the interest of DOCCS officials. PLS was founded and has been funded by New York State to provide legal services to incarcerated individuals for, *inter alia*, the purpose of reducing the likelihood of prison uprisings. Ex. 1, Murtagh Decl., ¶ 8. Impeding PLS’ access to its clients, particularly those suffering risks to their health and safety or with imminent deadlines in their legal actions, foregoes those important benefits, particularly in the tensest prison environments. Instead, the public interest sharply favors the humane treatment of incarcerated individuals and transparency and accountability in government, which ensuring PLS access to its current and prospective clients provides. DOCCS’s staffing shortages are financial and administrative constraints, but those constraints cannot and should not justify an indefinite suspension of timely legal visits and communication in DOCCS’s

facilities. Without timely access to its clients, PLS cannot fulfill its obligations to address the concerns of individuals on the inside or to fulfill the objectives of its contract with New York State.

What information incarcerated persons have been able to communicate during the strike indicate that they have been without food, medications, and other necessities for extended periods of time, with little indication that these services will be provided at any regular interval. Legal communication is crucial to investigate and address these conditions. *See Darnell v. Pineiro*, 849 F.3d 17, 30 (2d Cir. 2017) (“[C]onditions of confinement may be aggregated to rise to the level of a constitutional violation . . . when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise.”). PLS’s routine practice would be to investigate these reports through legal calls or visits, given the natural delays involved with sending and receiving legal mail. An order directing DOCCS to provide timely legal visits, calls, and mail is the sole avenue to remedy this.

CONCLUSION

For the foregoing reasons, Plaintiff Prisoners’ Legal Services of New York, on behalf of itself and its clients detained in DOCCS facilities, respectfully moves this Court for an order granting Plaintiff’s motion for an expedited preliminary injunction.

Dated: March 6, 2025
New York, New York

New York Civil Liberties Union Foundation

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* *Application for admission to NDNY forthcoming*

** *Pro hac vice application forthcoming*