

**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.

COMPLAINT

1. Over the past two weeks, the ongoing correctional officer labor dispute across all but one of New York State's Department of Corrections and Communities Supervision (DOCCS) prisons has created hazardous conditions for people who are incarcerated at those facilities.

2. As a result of the strike, plaintiff Prisoners' Legal Services of New York (PLS) has been unable to speak securely to many of its current and prospective clients, despite reports that people on the inside cannot access medicine, healthcare, and food, that incarcerated individuals are being held in solitary confinement, that assaults within the prison are going unaddressed by staff, and that at least seven people have died, among other deprivations.

3. Now, as many correctional facilities enter the third week of the strike, legal calls and visits continue to be suspended at many facilities, which has effectively prevented legal advocacy organizations, such as PLS, from addressing the dire conditions its clients and

prospective clients are facing, and from providing meaningful legal assistance in ongoing cases or matters.

4. By suspending legal calls and visits altogether at many facilities, DOCCS is depriving PLS of its constitutional right to communicate with current and potential clients about their treatment and conditions while incarcerated at DOCCS facilities.

5. Legal calls and visits are essential for Prisoners' Legal Services' attorneys to effectively and confidentially communicate with current and prospective clients who are incarcerated at remote facilities, have certain mental health diagnoses, low literacy, or language access needs, or in the case of urgent matters like time sensitive medical deprivations and reports of assaults by prison staff or other prisoners.

6. Incarcerated individuals also have ongoing legal cases that require them to communicate urgently with their lawyers. However, during the ongoing labor dispute, many of those prisons are holding incarcerated people incommunicado from lawyers and courts.

7. For one example, PLS attorneys have been attempting to have a legal call with a client incarcerated at Mid-State Correctional Facility who has a March 20, 2025 deadline for a notice of appeal in a work release challenge in state court. On March 3, his PLS attorney received a report that this client was assaulted by members of the prison's correctional staff on or around Friday, February 28 and/or Saturday, March 1.

8. PLS, an independent not-for-profit law firm created by New York State to protect the civil and constitutional rights of incarcerated individuals, asks this Court to enjoin the suspension of legal calls and visits in DOCCS facilities and restore the First Amendment rights of PLS and its clients to access the courts.

PARTIES

9. Plaintiff Prisoners' Legal Services (PLS) is a non-profit legal services organization providing civil legal services to indigent individuals in New York State correctional facilities in cases where no other counsel is available.

10. Founded in 1976 in response to the Attica uprising, PLS has regional offices in Albany, Buffalo, Ithaca, Newburgh, and New York City. Across its five offices, PLS employs approximately 44 attorneys and approximately 22 non-attorney legal staff. As part of the New York State Upstate Immigration Program, PLS provides free legal representation to non-citizens incarcerated in New York State prison facing immigration removal proceedings under the Institutional Hearing Program (IHP) and other non-citizens who are detained or non-detained facing immigration removal proceedings. These proceedings take place at the Bedford Hills and Ulster Immigration Courts, located inside the Ulster Correctional Facility and at the Batavia Immigration Court in Batavia, New York.

11. PLS has current clients with ongoing cases in DOCCS facilities throughout New York State. Since February 17, 2025, PLS has had diminished capacity to communicate with current clients incarcerated in DOCCS facilities through legal calls or visits about urgent legal matters in ongoing cases. The urgency of these matters makes correspondence by legal mail an insufficient substitute for legal calls.

12. PLS regularly receives communications from people incarcerated in virtually all 42 New York State prisons. Since January 1, 2025, PLS has received 1,400 intakes from 40 DOCCS prisons. Since February 17, 2025, PLS has had diminished ability to communicate with prospective clients incarcerated in DOCCS facilities through legal calls about urgent deprivations of rights that would give rise to claims, including concerning inadequate access to

medication, medical attention, and nutrition. The urgency of the deprivations communicated to PLS makes correspondence by legal mail an insufficient substitute for legal calls and legal visits.

13. Defendant Daniel F. Martuscello III is the Commissioner of the New York State Department of Corrections and Community Supervision. He is sued in his official capacity.

FACTS

Correctional Officer Wildcat Strike

14. On the morning of February 17, 2025, New York State correctional officers at Collins Correctional Facility and Elmira Correctional Facility first initiated a strike, and within days, 41 of the 42 state prisons in New York were participating in the wildcat strike.

15. The strike comes conspicuously close in time to events holding several correctional officers accountable for the brutal murder of Robert Brooks, who was incarcerated at Marcy Correctional facility. Mr. Brooks died on December 10, 2024. On February 5, 2025, Governor Kathy Hochul announced that the correctional officers' attack on Mr. Brooks had been determined to be a homicide. Following Mr. Brooks' murder, Defendant DOCCS Commissioner announced that all correctional officers would be required to wear and activate their body-worn cameras while interacting with prisoners. Indictments against the correctional officers involved in Mr. Brooks' death were anticipated to be unsealed on February 18, 2025. That unsealing was postponed to February 20, 2025, when murder charges and other criminal charges were brought against the correctional officers involved in Mr. Brooks' death.

16. Mr. Brooks' death is a horrific example of the treatment and conditions that the more than 33,000 people incarcerated can and do face in New York State prison facilities. Their access to counsel is essential to ensuring that they can receive relief when those conditions

subject them to brutality or deprive them of constitutional rights and basic necessities, such as nutrition, medication, and recreation.

17. Some people incarcerated in New York's prisons may have ongoing federal civil proceedings, immigration proceedings, appeals of their criminal convictions, or are in the midst of parole proceedings or other administrative proceedings related to challenging disciplinary determinations and accessing education and adequate health care services while incarcerated.

18. The ongoing or prospective legal matters of people incarcerated in New York State prisons often require the urgent attention of lawyers. PLS was created by New York State in response to the 1971 Attica prison uprising to protect the civil and constitutional rights of incarcerated individuals and to act as a safety valve to help prevent prison riots.

19. However, currently PLS is unable to communicate with its current and prospective clients about their urgent legal matters because during the strike (a) all legal visits have been suspended; (b) many DOCCS facilities have cancelled and indefinitely suspended all legal calls; and (c) other facilities have severely curtailed access to those legal calls.

Conditions for Incarcerated Individuals at DOCCS Facilities Have Deteriorated During the Unauthorized Strike

20. The need for PLS and people incarcerated in DOCCS facilities to have the kind of timely communications that legal calls and visits provide is at its highest right now because the strike has created hazardous conditions in DOCCS facilities across New York State.

21. It has been reported that since the strikes began, people who are incarcerated in state prisons have been on lockdown, with many in solitary confinement.

22. Some individuals are being held in punitive disciplinary confinement units even after completing disciplinary sanctions.

23. At least seven men have died since the strikes began. On February 22, one man, Jonathan Grant, was found unresponsive in his cell at Auburn Correctional Facility. Mr. Grant had recently had several strokes, at least one in the week prior his death. His requests for medical help in the days prior to his death were brushed off.

24. On February 24, Jeffery Bair, a man who was incarcerated at Auburn Correctional Facility, was found unconscious in his cell.

25. Two other men, Anthony Douglas and Franklyn Dominguez, died in their own cells during the lockdown, hours apart from one another, at Sing Sing Correctional Facility on February 27.

26. And another man, Messiah Nantwi, who was incarcerated at Midstate Correctional Facility, died on March 1, 2025. At least eleven DOCCS staff members had been placed on administrative leave pending the results of the investigation into Mr. Nantwi's death.

27. It has also been reported that during the strikes, complaints of assaults on people who are incarcerated are going unaddressed by correctional officer staff.

28. It has also been reported that some individuals incarcerated at DOCCS facilities do not currently have timely access to medications, medical services, or medical appointments. For example, it was reported that one of PLS's prospective clients with stage IV cancer who is currently housed at the Wende Correctional Facility medical unit had their cancer treatment appointments cancelled due to the staff shortages.

29. There have been reports that individuals incarcerated at DOCCS facilities do not have consistent access to food or water or have been denied warm meals or appropriate food, including food consistent with religious observance.

30. Family members are also being prohibited from visiting their loved ones who are incarcerated in DOCCS facilities.

DOCCS Facilities Have Suspended Legal Calls, Legal Visits, and Access to Courts.

31. Most DOCCS facilities where PLS has clients have not allowed PLS attorneys to schedule legal visits with their clients for nearly two weeks since February 18. The suspension of legal calls at several DOCCS facilities, including but not limited to Attica, Auburn, Franklin, Marcy, and Midstate, is indefinite. Legal visits are indefinitely suspended at those facilities and many more.

32. Beginning February 18, DOCCS cancelled all of PLS's then-scheduled legal calls and visits.

33. PLS attorneys regularly schedule legal visits, legal calls, and send legal mail to clients and incarcerated people who contact PLS to evaluate their cases for potential representation.

34. Legal calls are critical for PLS staff anytime there are urgent matters affecting a client or prospective client. PLS cannot respond to such urgent matters without legal calls, especially if the individual is incarcerated at a facility that is remotely located and not near one of PLS's offices. Additionally, if a client has low literacy or certain educational or language access needs, a phone call is essential for effective communication.

35. PLS attorneys cannot use the same system for calls, or tablets, that families use because these communication methods are monitored by DOCCS and are not confidential. In a confidential legal call, PLS attorneys can protect attorney client communications and safely discuss sensitive matters involving staff complaints or other incarcerated persons.

36. PLS attorneys are responsible under the New York Rules of Professional Conduct to secure their clients' confidential information (Rule 1.6(c)), to engage in active communications with their clients (Rule 1.4), and to provide competent representation (Rule 1.1).

37. Legal visits are also critical for PLS. For example, if PLS receives a report of excessive force used against a person is incarcerated, it is imperative that PLS staff are permitted to visit the individual promptly to photograph their injuries while the injuries are visible. The same is true if a client has certain medical needs that PLS must urgently document to ensure clients receive prompt medical attention. For clients with diminished intellectual capacity, low literacy, who do not speak English, or clients who have severe mental health diagnoses, PLS must communicate in-person during legal visits to ensure understanding of often complex legal concepts.

38. Additionally, DOCCS's policies significantly restrict the duration and frequency of legal calls, so if PLS staff are unable to schedule a legal call or the call is limited to 30 minutes or one hour, a legal visit will be necessary. Visits are also critical during active litigation when PLS must prepare clients for a deposition, settlement conference, or trial.

39. Legal calls and legal visits that were scheduled by PLS attorneys with their clients incarcerated in DOCCS facilities between February 18 and today were cancelled and most have yet to be rescheduled.

40. PLS attorneys have attempted to re-schedule these cancelled calls and visits or to schedule new calls and visits at some of these facilities, including Marcy and Midstate, but have been told by DOCCS personnel that they cannot schedule any legal calls or visits at this time.

41. As of today, PLS attorneys have not been able to re-schedule legal calls at the Marcy, Mid-State, Attica, Auburn, Bare Hill, Cayuga, Coxsackie, Eastern, Five Points, Gouverneur, Groveland, Hale Creek, Lakeview, Orleans, Taconic, and Wallkill Correctional Facilities. In some facilities, such as Clinton and Elmira, calls have been rescheduled for after March 17—nearly a month after DOCCS first suspended all legal communications—with no guarantee that those calls will actually take place.

42. Additionally, for clients with ongoing immigration cases or criminal appeals that require in-person appearances or a legal visit to facilitate time-sensitive court filings, attorneys are unable to communicate with clients about those time-sensitive court appearances, ensure they make it to their appearances, and are unable to meet with clients in DOCCS facilities to facilitate time-sensitive court filings. For example, PLS has at least one client incarcerated at Attica Correctional Facility with an ongoing immigration case that has a trial coming up within the next week. Without the ability to schedule a legal visit, PLS attorneys will be unable to adequately prepare the client for trial and the trial cannot go forward, which will have severe and significant consequences for this individual's immigration case.

43. PLS also has significant concerns that the legal mail its staff has sent to DOCCS facilities since February 18 has not been delivered to clients or prospective clients. PLS has not received any acknowledgement of legal mail being received that PLS staff have mailed to incarcerated individuals at various facilities across DOCCS since the strikes commenced on February 17.

44. Because PLS attorneys have been unable to schedule legal visits since February 18 at most DOCCS facilities and have been unable to reschedule calls at the Marcy, Mid-State, Attica, Auburn, Bare Hill, Cayuga, Coxsackie, Eastern, Five Points, Gouverneur, Groveland,

Hale Creek, Lakeview, Orleans, Taconic, and Wallkill facilities, and because mail has been significantly slowed, PLS and its clients and potential clients have been impacted in a variety of harmful ways.

PLS's Current and Prospective Incarcerated Clients Are Suffering Harm or Are Likely to Suffer Harm Imminently that Requires Urgent Legal Attention

45. Because PLS staff have been unable to conduct legal calls or legal visits and send and receive legal mail due to the ongoing strike, PLS clients' legal rights as well as their physical and mental safety and well-being have suffered.

46. PLS staff have received dozens of reports from family members who have relayed information about serious deprivation issues inside of DOCCS correctional facilities.

47. Family members have reported that 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.

48. PLS's inability to communicate with incarcerated people has significantly interfered with its ability to represent its clients and investigate the cases of prospective clients. PLS cannot advocate for its clients and prospective clients, including by raising legal claims for serious violations.

49. For example, PLS has a long-time client with serious medical needs who requires periodic infusions at an outside hospital and she is due for such an infusion. However, without the ability to schedule a legal call, PLS has no reliable way of assessing what her medical needs are at this time or if they are being adequately addressed.

50. In another case, PLS attorneys have attempted to schedule a legal call with a client at Midstate Correctional Facility to discuss a March 20 legal filing deadline but have not been able to do so. Further, it has been reported that this client was assaulted by correctional officers and beaten but has not been taken to the hospital because the prison was too short-staffed to arrange transport. PLS cannot fully and effectively advocate on his behalf, investigate potential damages, discuss his legal goals, or represent him in his disciplinary proceeding without a legal call and/or visit.

51. Similarly, PLS was contacted by a family member of a client at Gouverneur Correctional Facility who recently had surgery, is in significant pain, and needs ongoing medical treatment that he has not received regularly since the strike. PLS needs to immediately schedule a visit to interview him, take pictures of his injury to preserve evidence and/or show to an outside expert to assist in advocating for the proper course of treatment, and obtain his signature on medical releases, but has not been able to do so because of DOCCS' failure to schedule calls or visits.

52. In another case, PLS was contacted by two clients who are transgender and have requested to be transferred to a female facility for safety purposes, but PLS's inability to schedule legal calls is preventing PLS attorney from advocating on behalf of these clients at a time where there are increased safety concerns within the facility in general due to staffing shortages.

53. In the case of a client who needs additional mental health treatment, PLS's inability to schedule calls and visits has prevented PLS from obtaining the client's informed consent to execute a release of mental health records, which are needed to advocate for additional treatment for this individual.

54. PLS has also received reports that clients have not been provided appropriate food or are being held in disciplinary confinement past the date they had completed disciplinary sanctions, but are unable to investigate without the ability to make legal calls or conduct legal visits.

55. PLS also received a report that a prospective client is being denied reasonable accommodations pursuant to the Americans with Disabilities Act, accommodations which are necessary for this individual to make progress towards earning his GED. Without the ability to schedule a legal call, PLS cannot effectively investigate and advocate in this case.

56. With respect to prospective clients, PLS attorneys typically do not rely on family reports alone because sometimes the family's wishes differ from the incarcerated individual's wishes. With gang violence especially, PLS attorneys must speak with the incarcerated person to make sure that they would like PLS to advocate on their behalf due to the serious implications of being labelled a "snitch" in prison. This conversation can be easily and safely discussed in a legal call. Since the strike, a PLS attorney has been in contact with an incarcerated individual's sister who was extorted for hundreds of dollars to keep her brother safe. Due to the seriousness of the situation and without an efficient and confidential means to speak with the incarcerated person, the attorney was forced to advocate on the sister's behalf without understanding the incarcerated person's preference for addressing his safety.

57. The interruption in PLS's ability to correspond with clients has directly impeded the ability of PLS attorneys to raise nonfrivolous legal claims on behalf of clients. In providing prison disciplinary representation, it is imperative that PLS attorneys talk to their clients. Pursuant to state law, prison disciplinary hearings happen on an accelerated timeline, and PLS attorneys need to act quickly to preserve video footage and other documentary evidence. These

urgent discussions cannot wait for mail correspondence, which is significantly slowed right now.

58. PLS attorneys are being prevented from raising claims on behalf of their clients concerning hazardous conditions in prisons that are occurring during and because of this strike.

59. To effectively represent clients, PLS is very careful about exposing its clients and prospective clients to potential retaliation from DOCCS staff under normal conditions, let alone the current dangerous conditions in DOCCS facilities right now. Without access to legal visits and calls with current and prospective clients, PLS attorneys and staff cannot have confidential conversations around safety and preferences for how to advocate about the dire conditions they are facing.

60. Without visits or reliable mail, PLS attorneys and staff are unable to secure client authorizations to obtain information from prison officials. Raising claims without the client's input and access to their records is ineffective and can discredit PLS's advocacy efforts to its clients' detriment.

61. It is imperative for PLS clients' legal rights and physical and mental safety and well-being that PLS attorneys and staff immediately be allowed to conduct legal calls, legal visits, and send and receive legal mail without delay. The harm to both PLS's clients and PLS's legal practice increases every day that DOCCS facilities prohibit legal communications with people in incarcerated at DOCCS facilities.

JURISDICTION AND VENUE

62. Jurisdiction is proper under 28 U.S.C. § 1331 because this is a civil action arising under the Constitution of the United States.

63. Venue is proper under 28 U.S.C. § 1391 because the Northern District of New York is a judicial district in which a substantial part of the events or omissions giving rise to Plaintiff's claims occurred.

FIRST CAUSE OF ACTION

64. Defendant's conduct as described herein violates the First and Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 by blocking PLS' ability to have confidential legal phone calls, legal visits, and/or other legal communications with their clients and people who are incarcerated in DOCCS facilities who are seeking legal assistance.

RELIEF REQUESTED

Based on the foregoing, Plaintiff requests that this Court:

- a. assert jurisdiction over this matter;
- b. enter judgment in favor of Plaintiff and against Defendant;
- c. enter temporary, preliminary, and/or permanent injunctive relief

as follows:

- i. Enjoining the suspension of legal visits, legal calls, and timely processing legal mail at DOCCS facilities where legal communications are currently suspended and require those facilities to schedule legal visits and calls as soon as practicable and no longer than five days;
- ii. award Plaintiff costs and reasonable attorneys' fees; and
- iii. provide any other relief deemed just and equitable.

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

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Dated: March 4, 2025

* Application for admission to NDNY forthcoming

**Pro hac vice application forthcoming