



Insights

William McGovern and Chang Liu on Obtaining Post-COVID-19 Vaccination Compassionate Release in New York Law Journal

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The high risk of COVID-19 infection and death in U.S. federal prisons has led to a wave of court decisions granting prisoners compassionate release under the 2018 First Step Act (FSA). However, with the proliferation of highly effective vaccines, is this door now closed? Pointing to a recent case, Kobre & Kim's William McGovern and Chang Liu say not yet in an article for *New York Law Journal*.

The FSA allows compassionate release of federal prisoners for "extraordinary and compelling circumstances." While federal district courts have agreed that poor conditions in federal prisons during the pandemic meet this condition, judges have also ruled that a prisoner's vaccination undercuts this position. However, the release of Macau-based billionaire Ng Lap Seng in March 2021, even though he was soon to be fully vaccinated for COVID-19, points to a possible way for securing compassionate release in this and other scenarios.

The judge argued that Mr. Ng's conditions of incarceration were harsher than anticipated due to COVID-19, which when combined with his medical conditions was sufficient to constitute "extraordinary and compelling circumstances." The judge used referred to a similar argument in another case as well. This indicates that, paired with a "plus factor," arguing a sentence has become harsher than anticipated is a potential approach to obtain compassionate release.

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