To sign on to this letter, please submit your name and affiliation via this form. Contact dewolf@law.ucla.edu with questions.

December 17, 2020

Dear members of the CDC's Advisory Committee on Immunization Practices, state governors, and state and local COVID-19 vaccination program planning and coordination committees:

We, the undersigned experts and practitioners in bioethics, the treatment of infectious diseases, public health, epidemiology, and criminal legal policy, urge you to prioritize incarcerated populations (also including those in immigration detention) and correctional staff (including on-site health care providers) for receipt of any COVID-19 vaccine approved for public use. We also urge that people in carceral systems receive the same priority for receipt of a vaccine as both their peers in other congregate settings, such as long-term care facilities, and staff working in the facilities in which they are housed.

We also emphasize that distribution and administration of a vaccine to people in custody must occur via a process that educates incarcerated individuals about the vaccine's safety and efficacy and only when informed consent has been provided by recipients.

In making this appeal, we echo the recommendations made by the American Medical Association to prioritize people in congregate settings, including prisons and jails, within the initial phases of vaccine distribution.¹

Increased Risk of COVID-19 in the U.S. Carceral System

As the Centers for Disease Control and Prevention (CDC) has recognized, incarcerated people are among the most vulnerable to contracting and dying of COVID-19.² Like people living in other congregate settings such as long-term care facilities, the more than two million incarcerated people in this country live in close quarters, where they are often unable to socially distance and frequently lack access to basic personal protective equipment. Elderly incarcerated people and those with underlying medical conditions are at especially heightened risk of severe illness and death.

¹ "AMA policy calls for more COVID-19 prevention for congregate settings." Press Releases. *American Medical Association*. November 17, 2020.

https://www.ama-assn.org/press-center/press-releases/ama-policy-calls-more-covid-19-prevention-congregate-settings

² FAQs for Administrators, Staff, Incarcerated People & Family Members. *Centers for Disease Control and Prevention*. Last accessed December 15, 2020.

https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/faq.html; Guidance for Shared or Congregate Housing. *Centers for Disease Control and Prevention*. Last accessed December 15, 2020. <a href="https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-guidance-shared-guidance-shared-guidance-shared-guidance-shared-guidance-shared-guidance-s

A study published this summer in the Journal of the American Medical Association found that during the early months of the pandemic, incarcerated populations were 5.5 times more likely to be infected with COVID-19 than members of the U.S. population as a whole, and 3 times more likely to die of the virus as compared to their non-incarcerated, same-age peers.³ Despite dramatic increases in community transmission in the American population more broadly, more recent calculations indicate that the incarcerated are, strikingly, still 4.8 times more likely to be infected than the non-incarcerated and, adjusting for age, 2.7 times more likely to die due to complications of COVID-19.⁴

Outbreaks in prisons and jails have had severe consequences. Since March 2020, around 250,000 incarcerated people have been infected by COVID-19 and close to 1600 have died.⁵ Over the same period, more than 53,000 correctional staff have been infected and over 90 have died.⁶ There is, moreover, strong reason to think that these reported numbers understate the true impact of COVID-19 on the people who live and work in carceral settings.⁷

Ethical Imperative to Prioritize Incarcerated Populations

Most state and federal agencies are in consensus about the need to prioritize for vaccination individuals living in long-term care facilities and other congregate settings due to their increased risk of infection. We are of the firm belief that those living and working in carceral facilities must similarly be prioritized, both for their own protection and for the safety of the incarcerated populations and outside communities with whom they interact daily.

Recognizing their vulnerability, the American Medical Association called for people who are incarcerated and work in correctional and detention centers to receive priority access to COVID-19 vaccines.⁸ The National Academies of Sciences, Engineering, and Medicine and Centers for Disease Control have also recommended prioritizing people in congregate settings, including prisons and jails, within the first two phases of vaccine distribution.⁹

³ Brendan Saloner, Kalind Parish, Julie A. Ward, Grace DiLaura, and Sharon Dolovich. COVID-19 Cases and Deaths in Federal and State Prisons. *JAMA*, 2020; 324(6):602–603, https://jamanetwork.com/journals/jama/fullarticle/2768249.

⁴ Sharon Dolovich. Mass Incarceration, Meet COVID-19. *University of Chicago Law Review Online*. November 16, 2020. https://lawreviewblog.uchicago.edu/2020/11/16/covid-dolovich/.

⁵ Sharon Dolovich, Aaron Littman, Kalind Parish, Grace DiLaura, Chase Hommeyer, Michael Everett, Hope Johnson, and Neal Everett. UCLA Law COVID-19 Behind Bars Data Project: Jail/Prison Confirmed Cases Dataset. *UCLA Law*. Last accessed on December 15, 2020. shorturl.at/jCQV1.

⁷ For a discussion on causes of underreporting see Sharon Dolovich, Mass Incarceration, Meet COVID-19, *University of Chicago Law Review Online*. November 16, 2020. https://lawreviewblog.uchicago.edu/2020/11/16/covid-dolovich/.

⁸ "AMA policy calls for more COVID-19 prevention for congregate settings." Press Releases. *American Medical Association*. November 17, 2020.

 $[\]underline{\text{https://www.ama-assn.org/press-center/press-releases/ama-policy-calls-more-covid-19-prevention-congregate-settin} \ \underline{\text{gs}}$

⁹ COVID-19 Vaccination Program Interim Playbook for Jurisdiction Operations. *Centers for Disease Control and Prevention*. October 29, 2020.

However, an analysis of draft vaccine distribution proposals submitted by 48 states to the CDC on December 4, 2020, reveals that, at present, only 27 states even mention incarcerated people as a priority group for receipt of a vaccine within the first two phases of distribution. ¹⁰ In several of those states, correctional staff are being prioritized over incarcerated people – even those who are elderly or have underlying medical vulnerability. ¹¹ Similarly, the federal Bureau of Prisons (BOP) plans to reserve its initial allotments of a vaccine for corrections staff, rather than for people held in federal custody. ¹²

We have seen arguments favoring prioritization of correction staff over incarcerated people, offered on the ground that staff are vectors of transmission from the facilities to the surrounding community and vice-versa. But incarcerated populations are not static; every day, in prisons and jails around the country, people cycle into and out of facilities, often transmitting the virus with them. The population churn is especially great in jails, which admit and release an estimated 10-12 million people every year. To meaningfully reduce the rate of transmission, it is critical to ensure vaccination of the entirety of both the residential and working populations of corrections facilities. And given, as we have noted, the disproportionate risk of death the incarcerated face from COVID-19, as well as the possibility that corrections staff may opt not to be vaccinated, we continue to strongly believe the incarcerated should be given equal priority for vaccination. And the contraction of the equal priority for vaccination.

Even in states where incarcerated people are explicitly identified in priority groups in the initial plans, which are subject to change, we fear that their access to a vaccine may be delayed as states finalize the vaccination plans. For example, contrary to the initial draft plan submitted to the

https://www.nationalacademies.org/news/2020/10/national-academies-release-framework-for-equitable-allocation-or-for-acovid-19-vaccine-for-adoption-bv-hhs-state-tribal-local-and-territorial-authorities

https://www.cdc.gov/vaccines/imz-managers/downloads/COVID-19-Vaccination-Program-Interim_Playbook.pdf; "National Academies Release Framework for Equitable Allocation of a COVID-19 Vaccine for Adoption by HHS, State, Tribal, Local, and Territorial Authorities." News Release. *The National Academies of Sciences, Engineering and Medicine*. October 2, 2020.

¹⁰ Katie Rose Quandt. "Incarcerated people and corrections staff should be prioritized in COVID-19 vaccination plans." *Prison Policy Initiative*. December 8, 2020.

https://www.prisonpolicy.org/blog/2020/12/08/covid-vaccination-plans/.

¹¹ Ibid.

¹² Michael Balsamo and Michael R. Sisak. "Federal prisons to prioritize staff to receive virus vaccine." *AP News*. November 23, 2020.

https://apnews.com/article/coronavirus-pandemic-prisons-85361fcf7cda33c7b6afb5ad8d2df8a2.

¹³ Wendy Sawyer and Peter Wagner. Mass Incarceration: The Whole Pie 2020. *Prison Policy Initiative*. March 24, 2020. https://www.prisonpolicy.org/reports/pie2020.html

¹⁴ Ensuring Vaccines Work. *Centers for Disease Control and Prevention*. Last accessed December 15, 2020. https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness.html; Vaccines FAQ. *Coronavirus Resource Center, Johns Hopkins University & Medicine*. Last accessed December 15, 2020.

https://coronavirus.jhu.edu/vaccines/vaccines-faq; Bill Dentzer, "Some corrections officers say they'll quit before getting COVID shot." Las Vegas Review-Journal. December 9, 2020.

https://www.reviewjournal.com/news/politics-and-government/nevada/some-corrections-officers-say-theyll-quit-before-getting-covid-shot-2211129/

CDC, Colorado has now deprioritized incarcerated people following objections by the Governor earlier this month.¹⁵

From an ethical perspective, we are of the firm view that, (a) incarcerated people must be given equal priority for early access to the vaccine along with correctional staff, and (b) among the incarcerated population, the elderly and/or those with underlying medical conditions, must be given the same priority as their non-incarcerated peers.

Importance of Education and Informed Consent in Vaccine Administration

Finally, all jurisdictions must ensure that distribution and administration of the vaccine to incarcerated people occurs in an ethically sound manner. Every effort should be made to: (a) educate incarcerated people about the safety and efficacy of any vaccine that is made available to them, and (b) provide incarcerated individuals with a meaningful opportunity to give – or withhold – informed consent. In light of the historical legacy of medical experimentation, the inherent reality of coercive control in carceral environments, and the deep distrust many incarcerated people and their families feel towards correctional authorities, careful steps must be taken when implementing the vaccine protocol in carceral facilities to maximize uptake while respecting the autonomy of incarcerated recipients.

As vaccine distribution plans are finalized and recommendations are implemented, we urge you to prioritize vaccination of both incarcerated people and corrections staff and ensure that those in custody are provided with the meaningful opportunity to be educated about the vaccine and give informed consent.

Respectfully,

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¹⁵ Steve Staeger. "Prisoners moved down on Colorado's vaccine priority list." 9News. December 9, 2020. https://www.9news.com/article/news/local/next/colorado-vaccine-plan-2020-coronavirus-covid-prisoners/73-aa22c6 fa-cd82-4991-94d0-fa3905e5d9a5; Alex Burness, "Gov. Polis says Colorado prisoners shouldn't get COVID-19 vaccine before free people." *The Denver Post*. December 1, 2020. https://www.denverpost.com/2020/12/01/polis-covid-vaccine-prison-jail-colorado/.

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