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By email only

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Re: Prioritizing Vaccinations in Prisons and Jails

Dear Governor Whitmer and Director Gordon:

Like most people across the state and country, we are worried about the frightening rise of COVID-19 infections and deaths and the slow rate of vaccinations across both Michigan and throughout the country. We are dismayed that the federal government has come up so short of the promises it made to provide vaccinations for millions of people before the new year began. The delayed distribution of vaccines from the federal government makes it even more important that those most vulnerable to this deadly disease be prioritized as vaccinations are administered across the state. This is why we are seriously concerned that Michigan's current COVID-19 vaccination plan excludes people who live in correctional facilities from any level of prioritization.

As you know, COVID-19 attacks and kills incarcerated people at alarming rates that far exceed its contagion and lethality among the general population. Yet the state's updated January 6

prioritization guidance document remains silent on the need to prioritize people who live in prisons, jails, and other detention facilities for vaccinations.¹ We raised this with your team prior to your release of updated guidance, remain troubled by this oversight, and urge you to correct it.

The current guidance appears to recognize the extreme danger of these facilities, yet omits the people who live there from prioritization for vaccines. For example, the guidance prioritizes people who live in congregate settings like adult foster care homes and psychiatric facilities, but not people who live in correctional facilities where COVID-19 spreads just as quickly. The guidance also prioritizes people who work in correctional facilities, but not people who live there. It is also our understanding that *some* incarcerated people will be eligible for vaccinations based on their age or medical conditions, which means that healthcare providers will come into prisons with vaccines and yet literally pass by thousands of at-risk people who could be vaccinated to protect the safety of all.

The humane treatment of incarcerated people is not only a public health mandate, it is constitutionally required. Under the Eighth Amendment, states are obligated to provide adequate medical care for those whom it is punishing by incarceration, as an incarcerated person “must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met.”² The Supreme Court has recognized that “a condition of confinement that is sure or very likely to cause serious illness and needless suffering,” including “exposure of inmates to a serious, communicable disease,” is *precisely* the type of harm the Eighth Amendment was designed to prevent.³ Thus, while incarcerated people may be deprived of liberty as a consequence of their convictions, they “retain the essence of human dignity inherent in all persons,” and a “prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.”⁴

COVID-19 Is Devastating the Incarcerated Population

Prioritizing the incarcerated population is critical because, as you know, the spread of COVID-19 in prisons and jails has been devastating and deadly, and poses a vastly greater threat in these forced congregate living environments than it does for the population at large. The rate of COVID-19 cases in federal and state prisons is more than four times the national rate, and the mortality rate in federal prisons is twice that of the general population.⁵ The situation is even worse in Michigan prisons, where there have been at least 22,629 cases of COVID-19, the third-highest rate

¹ Michigan Department of Health & Human Services, *Michigan COVID-19 Vaccination Interim Prioritization Guidance* (Jan. 6, 2021) (“Prioritization Guidance”), https://www.michigan.gov/documents/coronavirus/MI_COVID-19_Vaccination_Prioritization_Guidance_710349_7.pdf.

² *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

³ *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

⁴ *Brown v. Plata*, 563 U.S. 493, 510-11 (2011).

⁵ Cid Standifer and Frances Stead Sellers, *Prisons and Jails Have Become a ‘Public Health Threat’ During the Pandemic, Advocates Say*, *The Washington Post* (Nov. 11, 2020), https://www.washingtonpost.com/national/coronavirus-outbreaks-prisons/2020/11/11/b8c3a90c-d8d6-11ea-930e-d88518c57dcc_story.html.

in the country, and at least 121 deaths, the second-highest rate in the country.⁶ The average rate of cases among incarcerated people is a shocking 983% higher than Michigan's overall rate; the mortality rate is 133% higher than Michigan's overall. And every day that vaccinations are delayed is deadly: Over 2,000 incarcerated people have been infected, and twenty have died of COVID-19 in Michigan prisons, in the last month alone.

Residents of Correctional Facilities Should Be Prioritized With Residents of Other Congregate Living Settings and Correctional Staff

Michigan's current vaccination plan fails to appropriately prioritize incarcerated people in two different ways. First, while Phase 1A, Priority Two, Group B of the current vaccination plan appropriately prioritizes people in congregate living environments, residents of jails and prisons are not included in this group; the guidance specifically lists comparable congregate settings such as adult foster care centers and psychiatric hospitals, but omits corrections facilities.⁷ The CDC, by contrast, warns that all people who live in congregate settings are critical populations because they are at increased risk of acquiring or transmitting COVID-19, and specifically groups together incarcerated people with residents of other congregate living facilities.⁸ In short, incarcerated people are at similar risk as people in any other congregate setting and should be prioritized as such. Other states, including Kansas, North Carolina, and Washington, have drafted plans in which incarcerated people are given priority along with others in congregate living settings, such as long-term care, farmworker housing, and homeless shelters.⁹ Michigan should modify its vaccination plan accordingly.

Second, while Phase 1B, Group B of Michigan's plan appropriately recognizes that *staff* in prisons, jails, and juvenile justice facilities have "frequent or intense exposure," and therefore prioritizes those staff for vaccination, the plan does not provide for vaccinating the *residents* of such facilities at the same time despite the dangers that they face.¹⁰ Michigan's vaccination plan implicitly recognizes that such facilities are congregate housing facilities that present a great risk of COVID-19 but excludes the people who live there from vaccination. This exclusion of residents devalues the lives and health of the people living in such facilities, who are disproportionately vulnerable populations. According to a recent review of state plans, Connecticut, Delaware, Illinois,

⁶ See The Marshall Project, *A State-by-State Look at Coronavirus in Prisons*, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (updated Jan. 7, 2021).

⁷ *Prioritization Guidance*, *supra*, at 4.

⁸ Centers for Disease Control and Prevention, *COVID-19 Vaccination Program Interim Playbook for Jurisdiction Operations* at 15 (Oct. 29, 2020), https://www.cdc.gov/vaccines/imz-managers/downloads/COVID-19-Vaccination-Program-Interim_Playbook.pdf.

⁹ See Kansas Department of Health and Environment, *COVID-19 Vaccine Prioritization* at 2, 5 (Jan. 7, 2021), <https://www.kansasvaccine.gov/DocumentCenter/View/121/Vaccine-Prioritization-Slides-PDF>; North Carolina Department of Health and Human Services, *NCDHHS Shares Updated Rollout Plan for COVID-19 Vaccinations* (Dec. 30, 2020), <https://www.ncdhhs.gov/news/press-releases/ncdhhs-shares-updated-rollout-plan-covid-19-vaccinations>; Washington State Department of Health, *COVID-19 Vaccine Prioritization Guidance and Interim Allocation Framework* at 4 (Jan. 7, 2021), <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/820-112-InterimVaccineAllocationPrioritization.pdf>.

¹⁰ *Prioritization Guidance*, *supra*, at 4.

Massachusetts, New Mexico, and Pennsylvania include incarcerated people as well as correctional staff in Phase 1 or a Phase 1 subdivision of their vaccination priorities.¹¹ Given that staff at correctional facilities in Michigan are being prioritized for vaccines, residents of such facilities should be as well.

Public Health and Corrections Experts Agree That Science Supports Prioritizing Incarcerated People for Vaccinations

Since the beginning of the COVID-19 pandemic, your offices have consistently and appropriately assured the public that you intend to follow the science and advice of experts when addressing this crisis. However, plans that delay the vaccination of incarcerated people until well after the vaccination of correctional staff have been described as “dubious, epidemiologically and ethically, without evidence that staff vaccinations would be enough to stop the spread of infection.”¹² Instead, experts in public health and corrections policy recommend vaccinations for residents of prisons and jails be given top priority with other congregate living environments and the staff who work there. For example, the American Medical Association has declared that correctional workers *and* incarcerated people should be prioritized in receiving access to COVID-19 vaccines in the initial phases of distribution because the virus “spreads quickly in high-density populations, particularly in correctional facilities.”¹³ Similarly, the framework for equitable distribution of a COVID-19 vaccine developed by the National Academies of Sciences, Engineering, and Medicine recommends equal and high prioritization for “people in prisons, jails, and detention centers *and* staff working in those settings.”¹⁴ And the Prison Policy Initiative recommends that incarcerated people *and* corrections staff be prioritized for vaccination, warning that the vaccination of staff should not be considered sufficient to stop the spread of COVID-19 in correctional facilities.¹⁵ As summarized by David Sears, an infectious disease specialist at the University of California, San Francisco: “From a public health standpoint, we are not going to stop COVID-19 in the

¹¹ See Katie Rose Quandt, *Incarcerated People and Corrections Staff Should Be Prioritized in COVID-19 Vaccination Plans*, Prison Policy Initiative (updated Jan. 5, 2021), <https://www.prisonpolicy.org/blog/2020/12/08/covid-vaccination-plans/>; see also Delaware Health and Social Services, *Delaware COVID-19 Vaccine Allocation Framework* at 4 – 5 (Dec. 29, 2020), https://coronavirus.delaware.gov/wp-content/uploads/sites/177/2020/12/DPH_COVID-Vaccine-Allocation-Phases_Public_122920_With-cover.pdf; Illinois Department of Public Health, *Vaccine Distribution: Phases 1A and 1B* (last visited Jan. 10, 2021), <https://www.dph.illinois.gov/covid19/vaccine-distribution>; New Mexico Department of Health, *COVID-19 Vaccine* (last visited Jan. 10, 2021), <https://cv.nmhealth.org/covid-vaccine/>.

¹² Emily Bazelon, *Why Inmates Should Be at the Front of the Vaccination Lines*, The New York Times (Dec. 3, 2020), <https://www.nytimes.com/2020/12/03/opinion/coronavirus-vaccine-jail.html>.

¹³ American Medical Association, *AMA Policy Calls for More COVID-19 Prevention for Congregate Settings* (Nov. 17, 2020), <https://www.ama-assn.org/press-center/press-releases/ama-policy-calls-more-covid-19-prevention-congregate-settings>.

¹⁴ National Academies of Sciences, Engineering, and Medicine, *National Academies Release Framework for Equitable Allocation of a COVID-19 Vaccine for Adoption by HHS, State, Tribal, Local, and Territorial Authorities* (Oct. 2, 2020), <https://www.nationalacademies.org/news/2020/10/national-academies-release-framework-for-equitable-allocation-of-a-covid-19-vaccine-for-adoption-by-hhs-state-tribal-local-and-territorial-authorities> (*emphasis added*).

¹⁵ Quandt, *supra*.

communities until we are able to stop it in prisons and jails.”¹⁶ Michigan should therefore follow the advice of scientists and experts in this area, and prioritize incarcerated populations for vaccination.

Prioritizing Vaccinations for Incarcerated People Is Critical to Combating Systemic Racism

Finally, we urge you to devote special attention to this issue in light of Governor Whitmer’s recognition, by executive directive, that racism is a public health crisis, and that the pandemic has “revealed, confirmed, and highlighted the deadly nature of pre-existing inequities caused by systemic racism.”¹⁷ This announcement acknowledged that the COVID-19 infection rate for Black Michigan residents was more than three times higher than white residents, and the death rate was more than four times higher. Similarly, the CDC reports that Black people infected with COVID-19 are 3.7 times more likely to be hospitalized and 2.8 times more likely to die than white people.¹⁸ This impact on Black Michigan residents is exacerbated by their overrepresentation in Michigan’s prisons and jails, undoubtedly one of the “harms caused by a system steeped in persistent inequalities.”¹⁹ Although Black people are only 14% of Michigan’s population, they comprise 49% of the population in prisons and jails.²⁰ Recognizing that “[t]o this day, racism perpetuates inequitable outcomes in the criminal justice system,” Governor Whitmer has created a council tasked with promoting “equitable treatment of all Michiganders,” and “seek[ing] to remedy structural inequities in this state.”²¹ Thus, public pronouncements at the highest levels have appropriately acknowledged that Black people are doubly disadvantaged during this pandemic, because racism permeates both the criminal justice system and the healthcare system. But now, to literally save lives, heartfelt expressions of recognition and concern must be followed by meaningful action. Prioritizing incarcerated people appropriately for vaccination is the only logical step forward.

Conclusion

In sum, we urge you to prioritize prisoners for vaccination, just as you prioritize those living in other congregate living settings and correctional staff. Doing so has been proven to be a matter of life and death.

¹⁶ Madison Pauly, *The Freakout About Giving COVID Vaccines to Prisoners Has Already Begun*, Mother Jones (Dec. 4, 2020), <https://www.motherjones.com/crime-justice/2020/12/prison-vaccine-covid-priority-colorado/>.

¹⁷ Office of Governor Gretchen Whitmer, *Governor Whitmer Signs Executive Directive Recognizing and Addressing Racism as a Public Health Crisis, Creates the Black Leadership Advisory Council* (Aug. 5, 2020), https://www.michigan.gov/whitmer/0,9309,7-387-90499_90640-535762--,00.html.

¹⁸ Centers for Disease Control and Prevention, *Hospitalization and Death by Race/Ethnicity* (updated Nov. 30, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

¹⁹ *Governor Whitmer Signs Executive Directive*, *supra*.

²⁰ See Prison Policy Initiative, *Michigan Profile*, <https://www.prisonpolicy.org/profiles/MI.html>; Prison Policy Initiative, *Blacks Are Overrepresented in Michigan Prisons and Jails*, https://www.prisonpolicy.org/graphs/2010percent/MI_Blacks_2010.html.

²¹ *Governor Whitmer Signs Executive Directive*, *supra*.

Thank you for your attention to this very important matter.

Sincerely,

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