

December 21, 2020

Dr. Jeanne M. Lambrew, Commissioner
Dr. Nirav Shah, Director
Maine Centers for Disease Control
Department of Health and Human Services
109 Capitol Street
11 State House Station
Augusta, Maine 04333

Re: Vaccine Distribution in Maine's Prisons and Jails

Dear Commissioner Lambrew and Director Shah:

As you know, the COVID-19 pandemic has disproportionately affected certain vulnerable communities.¹ People living in congregate care settings and communities of color have seen the worst. This is especially true in prisons, jails and detention facilities—congregate settings where physical distancing is nearly impossible, medical vulnerabilities are much higher than average, and populations are disproportionately made up of people of color.

During a meeting of the Permanent Commission on the Status of Racial, Indigenous and Maine Tribal Populations on Dec. 16, Dr. Shah said that the state has not decided whether to include incarcerated people in Phase 1 of its vaccine plan.² We ask you to join the growing consensus among many states and health care experts to prioritize jails and prisons in Phase 1, or at the very least, treat incarcerated people “with comorbid and underlying conditions that put them at *significantly* higher risk”³ the same as all other people with these conditions. In this way, we can help keep people who live and work inside those facilities safe, and also protect our larger community, where correctional workers return every day.

There is a growing move among states, and an increasing consensus among medical professionals, recognizing the greater danger people who live and work in prisons and jails face from COVID-19. As of last week, at least eleven states and one territory have prioritized

¹ Your acknowledgement that Maine faces stark racial and ethnic disparity in its COVID-19 infection rates and recognition that communities of color must be prioritized is commendable. Vaccination Plan, COVID-19, Interim Draft, Maine Center for Disease Control and Prevention, 4, 55 (Oct. 16, 2020), available at <https://www.maine.gov/dhhs/mecdc/infectious-disease/immunization/documents/covid-19-vaccination-plan-maine-interim-draft.pdf>.

² In Maine's vaccine distribution plan, as described by Dr. Shah at the Dec. 16 CDC briefing, essential and frontline workers are now categorized in Phase 1b.

³ *Id.* at 72.

incarcerated people in Phase 1 of their vaccine plans.⁴ Also last week, experts from Yale, Harvard, Columbia, Brown, UNC-Chapel Hill, UCSF and UCLA released a paper recommending that states prioritize incarcerated people and correctional staff.⁵ This prioritization recognizes that individuals living in carceral settings have higher rates of disability and chronic health issues due, in part, to the physical stress and strain imposed by imprisonment. They also often lack adequate nutrition, health care, access to fresh air, and proper hygiene measures. These factors put incarcerated people at increased risk of serious injury or even death from the coronavirus, and make a vaccine all the more urgent.

In Maine alone, individuals incarcerated in state prison have an infection rate that is nearly 500 percent higher than the state's infection rate as a whole.⁶ One of the largest single-site outbreaks in the state occurred in a prison—the Maine Correctional Center.⁷ A man died after being infected with COVID-19 as part of an outbreak in the York County Jail, with 87 cases ultimately associated with the outbreak.⁸ At a national level, the COVID-19 case rate in immigration detention earlier this year—including state and local prisons and jails that rent space to ICE—was calculated to be about thirteen times higher than the rate of the U.S. population.⁹

⁴ These states are: California, Utah, Montana, New Mexico, Nebraska, Michigan, North Carolina, Maryland, Delaware, Connecticut, Rhode Island and Massachusetts. See Emily Wang, et al., *Recommendations for Prioritizations and Distribution of COVID-19 in Prisons and Jails*, (Dec. 16, 2020), available at https://justicelab.columbia.edu/sites/default/files/content/COVID_Vaccine_White_Paper.pdf (citing Josh Michaud, et al., Kaiser Family Foundation, *States Are Getting Ready to Distribute COVID-19 vaccines. What Do Their Plans Tell Us So Far?*, available at <https://www.kff.org/report-section/states-are-getting-ready-to-distribute-covid-19-vaccines-what-do-their-plans-tell-us-so-far-state-plans/>).

⁵ Emily Wang, et al., *Recommendations for Prioritizations and Distribution of COVID-19 in Prisons and Jails*, *supra* note 3. This paper relied upon work done by the National Academies of Science, Engineering and Medicine (NASEM) to identify what an equitable allocation of coronavirus vaccine would look like.

⁶ A State-by-State Look at Coronavirus in Prisons, The Marshall Project, (Dec. 7, 2020) <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> compare Maine Department of Health and Human Services, Cumulative Covid-19 Cases by County, available at <https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus/data.shtml> (last accessed December 21, 2020).

⁷ Megan Gray, *Maine confirms three prison inmates were hospitalized with COVID-19*, Portland Press Herald (Nov. 24, 2020), <https://www.centralmaine.com/2020/11/24/maine-confirms-three-prison-inmates-were-hospitalized-with-covid-19/?rel=related> (stating “More than 150 people, mostly inmates, have tested positive [at the Maine Correctional Center] since late October”).

⁸ Megan Gray, *COVID-19 cited as factor in death of York County inmate as jail outbreak is declared over*, Portland Press Herald (Oct. 24, 2020), <https://www.pressherald.com/2020/10/23/covid-19-cited-as-factor-in-death-of-york-county-jail-inmate-as-outbreak-is-declared-over/>.

⁹ Parsa Erfani et al., *COVID-19 Testing and Cases in Immigration Detention Centers, April-August 2020*, JAMA Network (Oct. 29, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2772627#:~:text=From%20April%20to%20A>

Though state officials might be tempted to disregard or discount incarcerated peoples' rights to receive early vaccine treatment because they are in a jail or prison, Maine has a legal obligation to take care of people when it takes away their ability to take care of themselves. That is especially true here because our state's prison and jail population, more than 10 percent of which are people of color,¹⁰ reflects the systemic and historic racism that infuses all levels of our criminal legal system.

Maine also has an obligation to provide robust care for incarcerated and detained people. Doctors work under a professional ethical obligation to treat every human being as possessing equal dignity, worth, and value, and the American Medical Association has emphasized medical professionals' ethical obligation to treat patients without discriminating based on any "personal or social characteristics that are not clinically relevant,"¹¹ including whether they are rich or poor, friend or foe, incarcerated or free, disabled or non-disabled, or citizen or non-citizen. We urge that you consider yourself, as Maine's top decision maker regarding vaccine allocation and distribution, to be similarly ethically bound: this obligation carries with it the duty to ensure that Maine does not discriminate against incarcerated people and that officials base vaccine priorities on the clear public health evidence that—like people in congregate and long-term care settings—people held in prisons, jails, and immigration detention are in grave danger and have a heightened need for vaccine access.

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We recognize that vaccine allocation and distribution will present a tremendous challenge to state officials, who must balance a number of different public health, practical, and political

[ugust%202020%2C%20the%20mean%20monthly%20case%20rate,2.0%20to%206.9%20per%20month](https://www.usatoday.com/story/news/health/2020/11/11/covid-ice-detainee-case-rate-higher-than-general-us-study/6220333002/); Adrianna Rodriguez, 'A stain on our country': ICE efforts to stop COVID-19 spread fail to protect immigrant detainees from virus, USA Today (Nov. 11, 2020), <https://www.usatoday.com/story/news/health/2020/11/11/covid-ice-detainee-case-rate-higher-than-general-us-study/6220333002/>.

¹⁰ State of Maine Department of Corrections Prisoner Search, available at <https://www1.maine.gov/online/mdoc/search-and-deposit/index.htm> (last accessed December 21, 2020).

¹¹ *AMA Code of Medical Ethics*, American Medical Association, https://www.ama-assn.org/system/files/2019-01/code-of-medical-ethics-chapter-1_0.pdf at 1.1.2 ("Physicians must also uphold ethical responsibilities not to discriminate against a prospective patient on the basis of race, gender, sexual orientation or gender identity, or other personal or social characteristics that are not clinically relevant to the individual's care."). See also Edmund F. Howe, *When, If Ever, Should Military Physicians Violate a Military Order to Give Medical Obligations Higher Priority?*, The Society of Federal Health Professionals (Nov. 1, 2015), <https://academic.oup.com/milmed/article/180/11/1118/4160612> (reporting a consensus among doctors that an American battlefield surgeon had a professional ethical obligation to disobey orders and treat a wounded Iraqi soldier even though it could have delayed the care given to a similarly injured American soldier); see also *The Physician's Pledge*, World Medical Association Declaration of Geneva (July 9, 2018), <https://www.wma.net/policies-post/wma-declaration-of-geneva/>.

considerations with the fact that the immediate supply of available vaccines will be severely limited. Maine must, however, heed its moral and legal obligations to make these decisions based on the public health evidence, prioritizing access for those communities that have been disproportionately affected by the disease. This necessarily includes people who live and work in jails and prisons.

Sincerely,

A handwritten signature in black ink, appearing to read "Meagan Sway". The signature is fluid and cursive, with the first name "Meagan" written in a larger, more prominent script than the last name "Sway".

Meagan Sway
Policy Director
ACLU of Maine