

1 EXPEDITE

2 x Hearing set for:

3 Date: Friday, April 23, 2021

4 Time: 9:00 a.m.

5
6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY**

7 CANDIS RUSH, JUSTIN AUTREY,
8 GREGORY STEEN, THEODORE RHONE,
and MICHAEL LANIER, on behalf of
9 themselves and all others similarly situated,

10 Plaintiffs/Petitioners,

11 vs.

12 WASHINGTON STATE DEPARTMENT OF
CORRECTIONS, a state agency; STEPHEN
13 SINCLAIR, Secretary of the Washington State
Department of Corrections; WASHINGTON
14 STATE DEPARTMENT OF HEALTH, a state
agency; and DR. UMAIR SHAH, Secretary for
the Washington State Department of Health;

15 Defendants/Respondents.

CLASS ACTION

No. 21-2-00491-34

16 **PLAINTIFFS'/PETITIONERS' MOTION
FOR A PRELIMINARY INJUNCTION**

17 **I. INTRODUCTION AND RELIEF REQUESTED**

18 Defendants/Respondents have refused to provide people living in Department of
19 Corrections' (DOC) facilities access to COVID-19 ("COVID") vaccines and they have done so
20 for no legitimate penological reasons.¹ Furthermore, they continue to allow correctional staff
21 who refuse to be vaccinated to have contact with the members of the proposed Class. These
22 deliberate decisions violate Article I, § 12 and § 14 of Washington's Constitution and the

23 ¹ Defendants/Respondents are hereinafter "Defendants" and Plaintiffs/Petitioners are hereinafter "Plaintiffs".
Defendants Sinclair and Department of Corrections are hereinafter collectively "DOC" and Defendants Shah and
Department of Health are hereinafter collectively "DOH".

1 Defendants’ duty to protect all people living in DOC’s facilities from harm.² Accordingly, the
2 proposed Class asks this Court to issue a preliminary injunction ordering the Defendants to give
3 all people in DOC facilities immediate access to the vaccine; to provide accurate,
4 comprehensive, and culturally responsive information about COVID and the vaccines to all
5 people in prison; and to prohibit DOC staff members who have not been vaccinated from
6 having contact with the prison population.

7 COVID-19 poses a substantial risk to all people living in DOC facilities. While
8 Washington state, like the rest of the world, has been devastated by the pandemic, few groups of
9 people have been more impacted by COVID than those who live in our prisons. Major
10 outbreaks have occurred in prisons throughout the state in the last six months. As a result,
11 COVID has infected nearly 6,200 of the roughly 14,300 people who live in DOC prisons –
12 approximately 40% of the entire prison population. Legions of DOC staff have also been
13 infected. At least 16 people who work or live in our prisons have died and many others have
14 suffered serious, debilitating, long term health impacts. As these numbers demonstrate, the
15 Defendants’ management of the pandemic in our prisons has been exceptionally ineffective.

16 Vaccines have given the Defendants the opportunity to mitigate these mistakes and meet
17 their legal duties. Unfortunately, they have refused to vaccinate everyone under their care.
18 While they claim that all people living in DOC facilities are now “eligible” to receive the
19 vaccine, they have refused to actually make vaccine available to the Plaintiffs and thousands of
20

21 ² This Court has jurisdiction to review Defendant DOH’s actions pursuant to Washington’s Administrative
22 Procedures Act. *See* RCW 34.05.510. The Department of Corrections is exempt from the APA. *See* RCW
23 34.05.(1)(c). The Plaintiffs have therefore brought a Complaint against Defendants DOC and Secretary Sinclair and
a Petition for Review under the APA against Defendants DOH and Secretary Shah. However, these procedural
differences have no impact on the analysis or outcome of this case. In fact, the Court should analyze the claims and
allegations against all of the Defendants in the same way irrespective of the procedural device that applies to them
individually.

1 others. Nonetheless, they continue to allow staff who refuse vaccination to have direct face-to-
2 face contact with the Plaintiffs and the members of the proposed Class.

3 We are entering another COVID wave and yet the Defendants refuse to vaccinate people
4 who are most vulnerable or provide them with accurate information about the vaccine; instead,
5 they subject them to great risk at the hands of unvaccinated staff members. Accordingly, this
6 Court should issue the preliminary injunction the Plaintiffs seek.

7 II. FACTS

8 A. COVID poses serious danger to people living in Washington’s prisons.

9 COVID-19 is a deadly and highly transmissible disease that is easily spread through
10 respiratory droplets between people who come into close contact with one another. These
11 droplets may travel as far as 6 feet and land on surfaces where the virus can live for several
12 days. *Declaration of Dr. Fredrick L. Altice* at ¶ 14. Consequently, the virus is more likely to
13 spread rapidly in congregate settings like prisons. *Id.*

14 Once infected, a person with COVID can quickly progress from experiencing basic
15 symptoms like cough, congestion, and fever to more life-threatening complications as the virus
16 spreads into the lungs and other organs. COVID is a deadly disease, but even when it is not
17 fatal, it can cause long-lasting or permanent damage to different body systems. *Id.* at ¶ 13; *see*
18 *also Declaration of Dr. Robert Greifinger* at ¶¶ 11-12 (detailing myriad long-term and chronic
19 health conditions that COVID can cause).

20 Residents and staff of correctional institutions are at a particular risk of harm from
21 exposure and spread of COVID. Prisons are crowded congregate environments where, given
22 current population levels, social distancing is impossible. People live, eat, and sleep in close
23 quarters, and residents have very little ability to control the environment around them. While the

1 general public can take proactive steps to protect themselves through social distancing and
2 appropriate masking, people inside prisons do not have those same opportunities. *Id.* at ¶¶ 23,
3 26; *cf. Declaration of Justin Autrey* at ¶ 18 (people quarantined in their cells snore, cough, and
4 talk, spreading germs to everyone else nearby); *Declaration of Candis Rush* at ¶ 30.

5 During the early phases of the pandemic, Defendant DOC introduced a range of policies
6 and practices aimed at stopping COVID from entering the prisons and containing its spread.
7 Through the spring and summer of 2020, DOC experienced a small outbreak at the Monroe
8 Correctional Complex and a larger more dangerous outbreak at the Coyote Ridge Corrections
9 Center. Then, after a lull through the autumn, COVID struck with a vengeance in late
10 November and ran rampant through many DOC facilities during the winter. Over that short
11 time, thousands of people became sick and some died.

12 These last months have proven that Defendants could not keep COVID contained.
13 Because the Defendants have been unable to protect them, roughly 40% of people incarcerated
14 in Washington’s prisons have been infected; an infection rate approximately 8.5 times higher
15 than that in Washington generally. *Declaration of Dan Pacholke* at ¶ 6.

16 Defendant DOC’s heavy reliance on strict limitations of movement and lockdown
17 measures (in the name of “quarantine and isolation”) has led to a serious deterioration in
18 conditions for many people (e.g. prolonged periods of solitary confinement; lack of access to
19 toilets, running water, and showers; lack of access to family and loved ones; severely limited
20 programming; increased time locked down in cells). *Altice Decl.* at ¶ 19; *see also, Declaration*
21 *of Wendell Clark* at ¶¶ 19-25; *Declaration of Michael Linear* at ¶¶ 13-20; *Declaration of*
22 *Theodore Rhone* at ¶ 11. Many people have been abruptly crammed together in gyms or other
23 spaces, while DOC staff scramble to figure out how to manage an exploding outbreak in

1 overcrowded prisons. *Declaration of Jimmie Chea* at ¶¶ 19-30; *Linear Decl.* at ¶ 17-19;
2 *Declaration of Atif Rafay* at ¶¶ 11-21. When all other locations are overwhelmed, sick people
3 remain stuck in their cells left to care for themselves or their cellmates. *Autrey Decl.* at ¶¶ 14-
4 21. Even when the virus is not immediately rampaging through our prisons, there are few if any
5 educational or religious services to occupy people’s time. *Rush Decl.* at ¶¶ 18, 20; *Declaration*
6 *of Gregory Steen* at ¶ 9.

7
8 **B. The Defendants have refused to provide vaccines to people living in Washington’s
prisons.**

9 Vaccines are the best opportunity to protect people living in the prisons and a means to
10 end the terrible COVID-related prison conditions that people are experiencing. *Altice Decl.* at ¶
11 30. Unfortunately, the Defendants have refused to utilize this tool. *See* Defendants’ letter dated
12 March 19, 2021 (attached as Ex. 6 to *Supplemental Declaration of Counsel Nicholas B. Straley*
13 (refusing to immediately vaccinate all people in DOC custody) (DOC/DOH Letter)). Defendant
14 DOH has done so despite authorizing the vaccination of thousands of people who are less at risk
15 than people in our prisons.

16 As discussed in detail in the Plaintiffs’ Amended Complaint/Petition, Defendant DOH
17 has prioritized a number of groups of people for access to the vaccine over people in prison even
18 though people in prison have a greater rate of infection and equal or greater chances of serious
19 outcomes from COVID. *See* Attachment 1 to this motion (tables that lay out DOH’s original
20 vaccine instructions prioritization and new prioritization as of March 31, 2021); *see also*
21 *Plaintiffs’ Complaint/Petition* at 18-23, ¶¶ 76-108 (includes citations to DOH’s vaccine
22 instructions and prioritization documents). They have done so even though DOC continues to
23

1 force people living in prisons to be in close contact with correctional staff who refuse the
2 vaccine.

3 Since the emergence of the vaccines in December 2020, DOH has treated people in
4 prison less favorably than other groups, such as correctional officers and workers in certain
5 industries. *Id.* As time has gone by, DOH has added more and more people into its prioritization
6 categories while continuing to push people in prison down the line. *Id.*³ DOH's decisions to
7 prioritize other groups and move them up the prioritization tiers has meant that people in our
8 prisons have in large measure been denied access to the vaccines. DOH's recent decisions to
9 open up the vaccines to millions more people before ensuring that people in prisons receive
10 them has once again made it more difficult for people in prison who want the vaccine to
11 actually receive it.

12 The State has received more than enough doses to have vaccinated every person in DOC
13 custody without significantly limiting access to the vaccine for other high-risk populations. To
14 date, the State has delivered over 3.4 million doses to Washington residents since December
15 2020, currently averaging more than 57,000 per day.⁴ This daily average is roughly four times
16 the DOC prison population. Accordingly, had they used just one-fourth of one day's allotment,
17 the Defendants could have vaccinated every person in DOC custody in a single day and there
18 would still be more than 42,500 doses remaining for distribution to other community sites.
19 Nonetheless, the Defendants continue to refuse to immediately vaccinate all people under their
20 care.

22 ³ *Also, compare DOH December 2020 vaccination instructions and prioritization (attached as Ex. 1 to the Supp.*
23 *Decl. of Nicholas B. Straley) with DOH March 31, 2021 vaccination instructions and prioritization (attached as Ex.*
3 to the Supplemental Declaration of Nicholas B. Straley).

⁴ DOH COVID-19 Data Dashboard, <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard>.

1 **C. The Defendants have failed to provide people in prison with accurate information about**
2 **the vaccine.**

3 Many people in prison may be reluctant to accept the vaccine when it is offered because
4 of several compounding issues: (1) a of lack of information being made available to them about
5 the vaccine, its effectiveness, and its risks/potential side effects; (2) a lack of information about
6 who should or should not take the vaccine; (3) a pervasive history of medical racism and/or lack
7 of informed consent to medical treatment or research, both in and outside of correctional
8 facilities in this country; and (4) a lack of trust in DOC as the source of this information, and
9 even the vaccine itself. *See Brinkley-Rubenstein Decl.* at ¶¶ 13, 57-58; *Pacholke Decl.* at ¶ 15;
10 *Autrey Decl.* at ¶¶ 33, 41-43; *Chea Decl.* at ¶¶ 34-37, 42; *Clark Decl.* at ¶¶ 29, 31; *Rhone Decl.*
11 at ¶¶ 22-23; *Rafay Decl.* at ¶¶ 33-41; *Steen Decl.* at ¶ 21.

12 Plaintiffs and other declarants have shared their experiences regarding the information
13 (or lack thereof) that DOC has given to them about the COVID-19 vaccines. In many cases, the
14 most information that people have received, if any, is a consent form asking whether they wish
15 to take the vaccine, but without any written information about the vaccine, its benefits, and
16 potential risks and side effects or opportunity to consult with medical staff. *Rush Decl.* at ¶ 22;
17 *Linear Decl.* at ¶ 22; *Rafay Decl.* at ¶ 35; *Rhone Decl.* at ¶¶ 22-23; *Steen Decl.* at ¶ 15.

18 In addition, DOC staff members have provided people with conflicting or plainly
19 incorrect information. Some have encouraged people to not accept the vaccine and have spread
20 unsubstantiated conspiracy theories and incorrect information regarding COVID-19 and the
21 vaccines. *Rush Decl.* at ¶ 25. Others have boasted that they refused to take the vaccine. *Id.* at ¶
22 21; *Rhone Decl.* at ¶ 26. In light of these realities, Defendants must implement a robust,
23 culturally responsive outreach and education strategy in partnership with respected voices in the

1 prison community and the public to address issues of misinformation and to build trust around
2 the COVID vaccine.

3 **D. The Defendants continue to allow staff who refuse to take the vaccine access to people
4 in the prisons.**

5 The outbreaks in Washington’s prisons have arisen from infectious corrections staff
6 transmitting the virus to other people as they conduct their daily rounds. *Altice Decl.* at ¶¶ 15;
7 *Brinkley-Rubinstein Decl.* at ¶ 48; *Pacholke Decl.* at ¶ 8. Now, as many as 50% of correctional
8 staff may refuse to take the vaccine. *Brinkley-Rubinstein Decl.* at ¶ 51; *Clark Decl.* at ¶ 32 (many
9 correctional officers brag about refusing the vaccine) *Rhone Decl.* at ¶ 26 (staff have said they
10 refused the vaccine). Not only are the people inside of prisons unable to effectively mask and
11 social distance or be vaccinated, but they are also surrounded by correctional staff who refuse to
12 take the vaccine. Nonetheless, Defendants continue to allow these unvaccinated staff to have
13 direct personal contact with everyone who lives in DOC facilities, putting everyone at serious
14 risk.

15 Individuals in DOC custody who may be unable to take the COVID vaccine due to
16 individual circumstances or vulnerabilities are at particular risk of harm from unvaccinated staff.
17 An unknown percentage of people in our prisons will be unable or unwilling to accept the
18 vaccine even when it becomes widely available. *See Autrey Decl.* at ¶ 34 (may be unable to get
19 the vaccine due to recent heart attack); *Chea Decl.* at ¶ 36 (does not want to take the vaccine
20 because he does not know enough about it); *Clark Decl.* at ¶¶ 30-31 (younger people are worried
21 to take the vaccine because of multiple historical issues inside DOC). The many staff who refuse
22 to be vaccinated combined with people living inside who are not vaccinated creates a breeding
23 ground for new waves of prison outbreaks.

1 Staff refusal is especially dangerous with the emergence of COVID variants that are more
2 infectious and potentially more deadly – strains against which the current vaccine may have
3 reduced efficacy. *Altice Decl. at ¶ 28; Brinkley-Rubenstein Decl. at ¶¶ 28-31.* Unvaccinated staff
4 members may harbor these more virulent strains and become likely to transmit them to people in
5 our prisons. *Pacholke Decl. at ¶ 8; Autrey Decl. at ¶ 39* (must interact with staff on a daily basis);
6 *Clark Decl. at ¶¶ 33-35* (residents must interact with correctional staff every day, but
7 correctional staff are not taking the virus seriously); *Linear Decl. at ¶¶ 28-29* (DOC staff travel
8 throughout the facility); *Rush Decl. at ¶ 16* (correctional staff enter rooms regularly, making
9 social distancing irrelevant). The emergence of new variants also increases the likelihood that the
10 current vaccines will need to be supplemented by booster vaccinations. *Altice Decl. at ¶ 20.* On-
11 going staff refusal to accept the current vaccines, or future boosters, will continue to endanger an
12 unknowable number of members of the proposed Plaintiff Class into the foreseeable future. *Id. at*
13 *¶ 29.*

14 III. STATEMENT OF THE ISSUES

- 15 A. Should the Court issue a preliminary injunction because the Defendants have a
16 clear duty to protect the Plaintiffs from COVID-19 and yet have refused to do so?
- 17 B. Will the Defendants’ on-going refusal to vaccinate all people living in DOC facilities
18 and refusal to ban staff who have refused the vaccine access to people living in DOC
19 facilities continue to cause the Plaintiff Class actual and substantial injuries?

19 IV. ARGUMENT

20 To obtain a preliminary injunction, a party must show: 1) a clear legal or equitable right;
21 2) a well-grounded fear of immediate invasion of that right; and 3) that the facts complained of
22 either are or will result in actual and substantial injury. *Kucera v. State Dep’t of Transp.*, 140
23 Wn.2d 200, 209, 995 P.2d 63 (2000). These criteria must be examined in light of equity,

1 including balancing the relative interests of the parties, and if appropriate, the interests of the
2 public. *Id.*⁵ Plaintiffs’ meet each of these elements.

3 **A. The Defendants have violated clear constitutional and common law duties to protect**
4 **the Plaintiffs from harm.**

5 *i. The Defendants have violated constitutional and common law duties to protect*
6 *people living in Washington’s prisons from COVID-19.*

7 Article I, § 14 prohibits the infliction of “cruel punishment.” This provision reads:
8 “Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.”
9 Wash. Const. art. I, § 14. In the past, the Washington courts have generally utilized the federal
10 Eighth Amendment “deliberate indifference” standard in evaluating how Washington’s
11 constitutional protections apply in prison conditions cases. *See e.g., Colvin v. Inslee*, 195 Wn.2d
12 879, 900, 467 P.3d 953 (2020). However, just last month and for the first time, the Washington
13 State Supreme Court affirmed that “Article I, Section 14, of the Washington State Constitution
14 provides more protection than the 8th Amendment to the United States Constitution[.]” in prison
15 conditions cases. Order, *In re Pers. Restraint Petition of Williams*, No. 99344-1 (Wash. Sup. Ct.
16 Mar. 12, 2021) (attached as Ex. 8 to *Supplemental Declaration of Nicholas Straley*) (emphasis
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21 ⁵ The standard for a preliminary injunction articulated in *Kucera* applicable to DOC’s actions is different than the
22 APA’s test for issuing a preliminary injunction. *See* RCW 34.05.550(3) (requiring a showing that the petitioner is
23 “likely to prevail” on the merits and will suffer “irreparable harm” absent a preliminary injunction). Nonetheless,
Washington courts have made clear that the APA’s “likely to prevail” standard and *Kucera*’s “clear legal or
equitable right” standard require the same analysis. *Bellevue Square, LLC v. Whole Foods Mkt. Pac. Nw., Inc.*, 6
Wn. App. 2d 709, 715, 432 P.3d 426 (2018) (citing *Kucera*, 140 Wn.2d at 216). Therefore the standard in
determining whether to issue a preliminary injunction against all of the Defendants is substantially similar.

1 added).⁶ The Supreme Court has yet to issue its opinion in the *Williams* case articulating the
2 proper standard to use when addressing these type of cruel punishment claims. However, the
3 Court of Appeals that reviewed the *Williams* matter has announced a test to examine conditions
4 of confinement cases under Article I, § 14. *See Matter of Williams*, 15 Wn. App. 2d 647, 671,
5 476 P.3d 1064 (2020).

6 The *Williams* Court ruled that Washington’s Constitution requires courts to “consider
7 whether the conditions of [] confinement create an unreasonable and unacceptable risk of death
8 or serious injury in light of all relevant circumstances.” *Id.* This test is significantly more
9 protective than the federal Eighth Amendment test which merely prohibits a state actor’s
10 “deliberate indifference to a substantial risk of serious harm.” *Cf. Farmer v. Brennan*, 511 U.S.
11 825, 828, 114 S. Ct. 1970, L. Ed. 2d 811 (1994).

12 The *Williams* Court articulated three factors to determine whether a particular condition
13 of confinement poses “an unreasonable and unacceptable risk of death or serious injury.” First,
14 whether “there is a clear national consensus” against the challenged condition; second, “the
15 severity of the risk for this petitioner, including how the conditions of confinement impact his
16 degree of risk”; and third, whether the challenged condition or practice serves a “legitimate
17 penological purpose.” *Williams*, 15 Wn. App. 2d at 672. This standard announced in *Williams* is
18 the analysis this Court should use because the Plaintiffs have brought their constitutional claims
19 solely under Washington’s Constitution. *See Plaintiffs’ Complaint/Petition* at 43-44, § VI, ¶¶ 1-
20 2.

21
22
23 ⁶ The Washington Supreme Court has ruled that Art. I, § 14 provides broader protections than the Eighth Amendment when analyzing whether an individual criminal sentence is unconstitutionally disproportionate. *See e.g. State v. Bassett*, 192 Wn.2d 67, 78, 428 P.3d 343 (2018); *State v. Fain*, 94 Wn.2d 387, 397, 617 P.2d 720 (1980).

1 In addition to this constitutional duty, the Defendants also owe the Plaintiffs a common
2 law duty to protect their health, welfare and safety. *Gregoire v. City of Oak Harbor* 170 Wn.2d
3 628, 635, 244 P.3d 924 (2010) (jailers owe special duty of care to inmates). The duty owed “is a
4 positive duty arising out of the special relationship that results when a custodian has complete
5 control over a prisoner deprived of liberty.” *Id.* This unique “special relationship” is
6 qualitatively different than any more limited responsibility the State has to look after the health
7 and welfare of the general public. As such, these constitutional and common law duties require
8 that the Defendants prioritize protecting people living in prisons from COVID-19, yet, they
9 have chosen not to do so.

10 The Defendants have violated their constitutional and common law duties to protect the
11 proposed Class from an unreasonable and unacceptable risk of death or serious injury. There is
12 a clear consensus that the Defendants must protect people in prisons from COVID and that
13 vaccines are a tool that they must employ to protect them; the Defendants’ refuse to vaccinate
14 people in prisons or protect them from staff who refuse the vaccine; and the Defendants’
15 refusals serve no legitimate penological purposes. *Cf. Williams*, 15 Wn. App. 2d at 672.

16 ***ii. There is a clear consensus that people in prison must be protected from COVID-19***
17 ***and that vaccines are necessary to do it.***

18 The Washington Supreme Court recognized in *Colvin v. Inslee* that COVID-19
19 constitutes a substantial risk of serious harm to people living in Washington’s prisons. *See*
20 *Colvin*, 195 Wn.2d at 900.

21 [T]he petitioners face a substantial risk of serious harm....In prison...facilities,
22 inmates live in close confinement with one another with no real choice as to social
23 distancing or other measures to control spread of the virus. The risk of a COVID-
19 outbreak is undeniably high in these facilities and under these conditions.

1 *Id.* Furthermore, the State agrees with the *Colvin* Court that that the conditions in Washington’s
2 prisons are very likely to lead to widespread COVID infections. *Cf. Proclamation by Governor*
3 *Inslee regarding COVID-19* (December 10, 2020) (Governor Inslee acknowledging that COVID
4 poses a particularly serious risk to people who live in congregate settings like prisons).⁷

5 There is no legitimate dispute that people in prison are at particular risk of contracting
6 COVID and having bad outcomes once they do. *Altice Decl.* at ¶ 30 (“The inability to
7 effectively implement physical distancing, provide adequate sanitation supplies and PPE, and
8 ongoing exposure to correctional and medical staff who come and go from the facilities each
9 day have led to thousands of COVID-19 infections among people in prison.”); *see also*
10 *Brinkley-Rubinstein Decl.* at ¶¶ 17-23; *Greifinger Decl.* at ¶¶ 7-9 (detailing health impacts of
11 COVID-19).

12 Since the introduction of the vaccines, the State has possessed the means to rectify
13 these mistakes and actually protect people in prison. As DOH acknowledges on its website
14 “COVID-19 vaccination is one of the most important tools to end the COVID-19 pandemic.”
15 *See* DOH website, COVID-19 Vaccine Data.⁸ Experts agree that vaccines are an essential tool
16 that the Defendants must use to combat COVID. *See Altice Decl.* at ¶¶ 20, 30; *Brinkley-*
17 *Rubinstein Decl.* at ¶ 64 (“vaccines are the primary means that WDOC and the State have to
18 address COVID-19 in our prisons.”) Unlike in Washington, many states have initiated
19 comprehensive and effective COVID vaccination programs in their prisons. *Id.* at ¶ 10
20 (describing Rhode Island, Massachusetts, Virginia, and California prison systems where “each
21 system has successfully vaccinated large swaths of the [prison] population”).

22 _____
23 ⁷ Found at https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-25.9.pdf.

⁸ Found at <https://www.doh.wa.gov/Emergencies/COVID19/vaccine>.

1 At least two courts have found that states must provide people in prison immediate
2 access to COVID vaccines. *See* Opinion and Order, *Maney v. Brown*, No. 6:20-cv-00570-SB
3 (D. Or. Feb. 21, 2021) (attached as Ex. 7 to *Supp. Straley Decl.*); *see also*, Order, *Holden v.*
4 *Zucker*, No. 801592/2021E (NY Sup. Ct. Bronx Cty. March 29, 2021) (attached as Ex. 9 to
5 *Supp. Straley Decl.*). In *Maney*, the U.S. District Court of Oregon granted a class of people in
6 Oregon’s prisons a preliminary injunction requiring the State to make COVID vaccines
7 immediately available to all of them. *See Maney* Order at 30. In so doing, the Court highlighted
8 “the critical role that vaccines play in controlling the spread of the virus.” *Id.* Furthermore, it
9 held that by “[d]enying the vaccine to [people in prisons] suffering from high infection rates
10 and death” Oregon violated its duty to the people under its care. *Id.* at 28. Similarly, a New
11 York court recently ordered New York City Department of Corrections to immediately
12 vaccinate all people in New York City detention facilities. *See Holden* Order at 17-19 (citing
13 *Maney* Order at 3) (denial of vaccine to people incarcerated in NY City detention facilities is
14 arbitrary and capricious). As recognized in these cases, the availability of vaccines has
15 fundamentally altered the legal landscape related to COVID in prisons.

16 The Defendants have the means to immediately protect people in prisons from getting
17 COVID and end the terrible conditions they have imposed to try and limit COVID’s spread
18 throughout the prisons. Unfortunately, the State has made the deliberate decision not to take
19 this simple step that is supported by a strong national consensus.⁹

20 ***iii. People in prison are at substantial risk of injury or death until they are vaccinated***
21 ***and contact with staff who refuse the vaccine has ended.***

22 ⁹ Undoubtedly, the Defendants will assert that all people in prison are now “eligible” to receive the vaccine.
23 However, Defendants have also admitted that “eligibility” does not equate to access. In fact, Defendants admit that
people in prison may not actually receive immediate access to the vaccine. *See* Ex. 6 to *Supp. Straley Decl.*
(DOC/DOH Letter) at 1 (“Unfortunately, because of limited vaccine supply to date, there has not been enough to
offer it to everyone...”).

1 The huge, recent outbreaks in Washington’s prisons prove that DOC’s efforts to limit
2 the intrusion and spread of COVID have been utterly ineffective. As a result, to date, nearly
3 6,200 people who live in our prisons have been infected with COVID and 14 people have
4 died.¹⁰ DOC has not released information about how many people continue to suffer from long
5 term symptoms or COVID-caused damage to vital organs and body systems. DOC continues to
6 experience new cases every week and unfortunately, the pandemic appears to be surging again.
7 *See* Lenny Bernstein, “Biden, health officials sound alarm as signs of COVID surge
8 proliferate,” Washington Post (March 29, 2021) (reporting rapid growth in new COVID cases
9 and increasing hospitalizations of young people with serious COVID-related complications).¹¹
10 It is simply a matter of time until DOC experiences another major outbreak if the Defendants do
11 not immediately vaccinate people living in prison.

12 But even the widespread availability of vaccines will not end this crisis. Evolving
13 COVID variants and the unknown long-term efficacy of the vaccines require that DOC take
14 other significant precautions, irrespective of whether people living in prisons have already
15 received a vaccine. *Altice Decl.* at ¶¶ 20, 25, 29; *Brinkley-Rubinstein Decl.* at ¶¶ 25, 32-33, 52.
16 Prohibiting contact between staff who refuse the vaccines and people living in our prisons is one
17 of those vital steps.

18 Prison staff are the likely vector for all of Washington’s prison outbreaks. *Altice Decl.* at
19 ¶ 15; *Brinkley-Rubinstein Decl.* at ¶¶ 46, 48; *Pacholke Decl.* at ¶ 8. The Defendants have made
20 the vaccine widely available to DOC staff, while denying it to most people living in their prisons.

22 ¹⁰ DOC website, *COVID-19 Data*, found at: <https://doc.wa.gov/corrections/covid-19/data.htm#confirmed>.

23 ¹¹ Found at: https://www.washingtonpost.com/health/covid-biden-mask-mandates/2021/03/29/b7864ccc-90a8-11eb-9668-89be11273c09_story.html

1 Unfortunately, many correctional staff have refused to take the vaccine. Estimates are that 50%
2 or more of correctional staff have refused or will refuse to be vaccinated. *Brinkley-Rubinstein*
3 *Decl.* at ¶ 51.

4 History has shown that no alternative measure, like screening and testing or mask
5 requirements for staff, will prevent a COVID outbreak caused by an infectious staff member. *Id.*
6 at ¶¶ 49, 52-54, 65. The Defendants cannot force the vaccine upon staff or people living in
7 prison. Therefore, staff who refuse vaccines will pose an on-going threat even after the current
8 vaccines are widely available. *Id.* at ¶ 54; *see also Altice Decl.* at ¶ 20 (discussing danger of
9 variants and corresponding need to ensure that every person receives and accepts a booster as
10 soon as they are developed).

11 The large percentage of staff members who refuse the vaccine is particularly concerning
12 because some number of people who live in Washington's prisons will also refuse vaccinations
13 for medical or other reasons. Therefore, even when the vaccine becomes widely available, a
14 many DOC staff and an unknown number of people in DOC facilities will remain unvaccinated.
15 These personal decisions to refuse the vaccine do not alter the Defendants' duty to protect all
16 people under their care from COVID. *Gregoire*, 170 Wn.2d at 643 (State owes duty to protect
17 people in prison even when they engage in self-harm). DOC must therefore prohibit potentially
18 infectious correctional staff from being in contact with people who live in prison. And while
19 those people in prison who have not yet been vaccinated are clearly the most at-risk, staff who
20 refuse the vaccines threaten many others under their care, including those who have had COVID
21 and/or have been vaccinated. *See e.g., Brinkley-Rubinstein Decl.* at ¶¶ 52-54.

22 As detailed in the declarations filed in support, the Defendants bear some responsibility
23 for the refusal by the people under their care to accept the vaccine. The Defendants have not

1 provided people with enough accurate information from trustworthy sources on which to make
2 informed decisions about whether to accept the vaccine. DOC's history of shoddy medical care,
3 the Defendants' promises regarding protection from COVID that did not come to pass, and other
4 considerations leave many people living in Washington's prisons with justified skepticism
5 regarding information they receive from DOC sources. *Id.* at ¶¶ 57-58; *Pacholke Decl.* at ¶ 14.
6 Unless the Defendants understand these dynamics and utilize trustworthy educational methods,
7 many people will likely not accept the vaccine. The Court should order the Defendants to
8 properly and thoroughly inform people in their care about the vaccine in ways that actually
9 promote their acceptance. *Brinkley-Rubinstein Decl.* at ¶¶ 57-58; *Pacholke Decl.* at ¶ 15.

10 Providing vaccines to people living in prisons, properly educating them, and preventing
11 contact with staff who refuse the vaccines will also allow the Defendants to end the terrible
12 conditions under which so many people have lived for the last year. As detailed above and in the
13 Plaintiffs Complaint, DOC has allowed conditions in the prisons to gravely deteriorate for the
14 last year in their attempts to stop the virus. Appropriate physical distancing is not possible at
15 DOC's current overcrowded population levels. Therefore, DOC has resorted to restrictive
16 measures, such as severe and ongoing limitations on movement and routine use of harsh solitary
17 confinement and extended quarantines to in an effort to control the outbreaks. Families have
18 been unable to visit one another for almost a year. People have been denied exercise and fresh
19 air. The Defendants could end these conditions if they simply adopted the measures the Plaintiffs
20 seek.

21 Early on in the pandemic, Washington courts were reticent to direct DOC in how to
22 manage COVID-19. *See Colvin*, 195 Wn.2d at 901; *also Matter of Pauley*, 13 Wn. App. 2d 292,
23 316, 466 P.3d 245 (2020). Courts refrained from taking action in large part based upon DOC's

1 new COVID-related policies and procedures, which everyone hoped would protect people from
2 COVID and prevent its spread through Washington’s prisons. When the Washington Supreme
3 Court issued its *Colvin* opinion in July 2020 before the massive winter outbreaks, it was then
4 satisfied that DOC had “implemented a multifaceted strategy designed to protect offenders
5 housed at various facilities.” *Colvin*, 195 Wn.2d at 901; cf. *Pauley*, 13 Wn. App. 2d at 316
6 (finding that DOC’s newly announced COVID policies and procedures were sufficient because
7 very few people had become sick and no one had yet died). However, the *Colvin* Court also
8 recognized that rapidly changing, COVID-related events might require future court intervention.
9 “The result might be different on different facts, and we do not suggest the inadequacy of safety
10 measures can never amount to deliberate indifference.” *Id.*

11 The representations made to the *Colvin* and *Pauley* courts regarding the efficacy of DOC
12 preventative measures have proven to be sadly and terribly incorrect. DOC’s mitigation plans
13 have completely unraveled since those decisions were issued. Thousands of people have
14 become sick and some have died. The facts have changed and the inadequacies of promised
15 safety measures are now apparent. The time has arrived for a court to revisit how the
16 Defendants are handling the pandemic.

17 ***iv. The Defendants’ refusals to vaccinate all people in Washington’s prisons and to***
18 ***bar staff who refuse the vaccine from having contact with them serve no legitimate***
penological purposes.

19 The Defendants should have already vaccinated all people in DOC facilities. They have
20 had months to do so. Their on-going refusal to take this step and the expansion of “eligibility”
21 to more and more people outside of prison serve no legitimate penological goals. As the Oregon
22 federal District Court noted in its *Maney* Order and Opinion, “[e]ven when faced with limited
23 resources, the state must fulfill its duty of protecting those in custody” from COVID. *Maney*,

1 Order at 3.

2 People in prison must receive the vaccine now for a number of reasons. First, COVID-
3 19 poses a greater risk to people living in prisons than to almost any other population in the
4 state because they live crammed together in decrepit facilities that do not allow people to protect
5 themselves, they suffer disproportionately from COVID by virtue of age or disability, and they
6 are completely reliant upon the State and its employees to keep them safe and healthy. Second,
7 unlike many other at-risk populations, the State owes an affirmative constitutional and common
8 duty of care to people living in our prisons. Third, as a result of the Defendants’ failed efforts to
9 fight COVID, people in prisons have been subjected to horrendous conditions that no other
10 cohort of people have faced. Fourth, they have been denied the vaccine for many months, a time
11 during which the Defendants could have acted. Finally, given the relatively small number of
12 people who the Defendants would need to vaccinate – at most 14,300 people – and the ease of
13 access to the population, vaccine administration could be completed quickly and efficiently,
14 without significantly limiting vaccine availability to other high-risk groups.

15 Millions more people in Washington will become “eligible” for the vaccine over the next
16 two weeks, likely guaranteeing that people in prison will suffer additional delays in actually
17 being vaccinated absent action by this Court. On March 31, people in prisons and more than 1.5
18 million other Washington residents became “eligible” for the vaccine. *See* Ryan Blethen,
19 “*Washingtonians 16 and up will be eligible for COVID vaccines by May 1, state says; here’s*
20 *how we get there,*” The Seattle Times (Mar. 24, 2021). By April 15, Plaintiffs will be in
21 competition for vaccine access with over 3 million more Washington residents who are at much
22 less risk from COVID-19. *See id* (on April 15, anyone over 16 years of age becomes eligible or
23 roughly 3,000,000 more people). Moreover, unlike other groups of people, Plaintiffs cannot

1 “hunt” for vaccination appointments from multiple providers in many different locations or stand
2 in line in the hopes of receiving a “leftover” dose. Instead, people in prison are totally dependent
3 on the Defendants providing them access to the vaccine, something the Defendants have refused
4 to do to date, except for a small number of people. They also continue to refuse to state when
5 people in prison will actually receive the vaccine. *See* DOC/DOH March 19, 2021 Letter
6 (attached as Ex. 6 to Supp. Straley Decl.).

7 DOH has been broadly expanding “eligibility” without first ensuring that it meets the
8 Defendants legal obligations to those under the State’s care. These decisions appear to have been
9 influenced by politically powerful constituencies that are more publicly favored than people
10 incarcerated in Washington’s prisons. *See e.g.*, Dahlia Bazzaz, Jenn Smith & Hannah Furfaro,
11 “Washington state teachers, school employees move to the head of the vaccine line – what’s
12 next?” The Seattle Times (Mar. 4, 2021). Denying vaccines to people in prison in order to
13 provide them to people who are not incarcerated and do not face the same threats from COVID
14 does not advance any legitimate penological goal, even if it furthers some other State interest.

15 Similarly, there is no legitimate penological objective served by allowing correctional
16 officers who refuse to be vaccinated to have contact with people living in our prisons. As
17 detailed above, the Defendants have a legal obligation to protect people in our prisons from
18 COVID; ensuring that only vaccinated staff have access to people inside furthers that obligation.
19 Administrative convenience or concerns about staffing levels cannot outweigh this paramount
20 duty. *See Hudson v. McMillian*, 503 U.S. 1, 6, 112 S. Ct. 995, 998, 117 L. Ed. 2d 156 (1992)
21 (“State’s responsibility to provide inmates with medical care ordinarily does not conflict with
22 competing administrative concerns”); *see also McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir.
23 1992). The Defendants have many ways of increasing vaccine acceptance by its staff through

1 incentives and education. They also can utilize other administrative and staffing tools so that
2 they can both protect people and adequately operate DOC facilities.

3 **B. Defendants’ actions violate Article I, § 12, the Privileges or Immunities clause.**

4 Article I, § 12 of the Washington Constitution provides, “[n]o law shall be passed
5 granting to any citizen, class of citizens, or corporation other than municipal, privileges or
6 immunities which upon the same terms shall not equally belong to all citizens, or corporations.”
7 Defendants’ COVID-19 vaccine distribution plan violates Article I, § 12 by granting priority
8 vaccine eligibility and access to groups that are less or equally at-risk of harm from exposure to
9 COVID-19 than people in prison, without extending that priority equally to Plaintiffs and other
10 people in DOC custody. Defendants have also violated this constitutional limitation by refusing
11 to grant people in prison the ability to avoid contact with people who have refused the vaccine,
12 a right all other people in the general public enjoy.

13 Article I, § 12 is more protective than the federal equal protection clause and requires an
14 independent analysis in certain situations. *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 196
15 Wn.2d 506, 518, 475 P.3d 164 (2020). This independent privileges and immunities analysis
16 applies when a governmental action implicates a fundamental right which belong to the citizens
17 of the state by reason of such citizenship. *Id.* (citing *Schroeder v. Weighall*, 179 Wn.2d 566,
18 572, 316 P.3d 482 (2014)). If such a fundamental right is implicated then courts apply a two-
19 part test. First, the court asks whether a challenged governmental action “grants a ‘privilege or
20 immunity’”. *Id.* at 519. If a privilege or immunity exists, the court asks whether there is a
21 “reasonable ground” for granting that privilege or immunity. *Id.*

22 ***i. Defendants’ actions implicate the Plaintiffs’ constitutionally guaranteed right to***
23 ***be protected from harm while incarcerated.***

1 Plaintiffs and Class members have a constitutionally protected, fundamental right to be
2 protected from harm when they are incarcerated in Washington’s prisons. As detailed above,
3 Article I, § 14 of the Washington Constitution requires the Defendants to protect people in our
4 prisons from unsafe or unhealthy conditions. *See Pauley*, 13 Wn. App. 2d at 310. This
5 fundamental right also derives from the State’s common law duty to protect people in prison.
6 *See Gregoire v. Oak Harbor*, 170 Wn.2d at 628 (jailers owe a special common law duty to
7 protect the health and safety of incarcerated people). In addition, the legislature has recognized
8 the importance of this fundamental right. For example, in Chapter 72.09 RCW, DOC’s enabling
9 statute, the legislature has required that DOC “provide the maximum feasible safety for the
10 persons and property of the general public, the staff, and the inmates.” RCW 72.09.010(1); *see*
11 *also Livingston v. Cedeno*, 164 Wn.2d 46, 51, 186 P.3d 1055 (2008) (primary objective of the
12 Washington correctional system is to provide maximum feasible safety for the public, staff, and
13 inmates); *cf.*, RCW 72.09.010(2) (denial of liberty is only punishment DOC can exact upon
14 people under its care, other types of deprivations are prohibited).

15 The Defendants, by prioritizing certain groups who are either equally or less at risk than
16 Plaintiffs, while refusing to prioritize access to the vaccination for the Plaintiffs or Class
17 members, have created a privilege for these prioritized groups that implicates this fundamental
18 right. Similarly, by allowing correctional staff who refuse the vaccine access to people in
19 prison, the Defendants have refused to provide people in prison the same right to protect oneself
20 from other people that is enjoyed by the non-incarcerated public generally.

21 Defendants have granted privileges or immunities to certain groups and have chosen to
22 exclude people in prisons. These actions are unconstitutional because the Defendants have no
23 reasonable grounds to discriminate against the Plaintiffs and their fellow class members.

1 **ii. No reasonable grounds exist for Defendants’ refusal to keep people in prison in**
2 **health and safety.**

3 The Defendants have excluded people in prison from accessing the vaccine, while
4 giving hundreds of thousands of other people access. They have also denied people in prison the
5 ability to keep themselves safe from others; a right enjoyed by most every other person.

6 Defendants have no reasonable grounds on which to defend either of these sets of decisions. As
7 demonstrated by their high infection rates, people in prison face as much or more risk from
8 COVID than almost any other cohort of people. In addition, unlike others they are forced into
9 contact with people who may be infectious and have knowingly refused the vaccine. No other
10 cohort of people faces such immediate and on-going dangers of infection. *See Greifinger Decl.*
11 at ¶¶ 23-25, 28-29 (Residents and staff of correctional facilities are at a particular risk of harm
12 from exposure and spread of COVID-19); *Altice Decl.* at ¶¶ 16-19, 25; *Brinkley-Rubenstein*
13 *Decl.* at ¶¶ 20-23, 41, 54, 65. The Defendants decisions are grants of privileges or immunities
14 that violate Washington’s Constitution.¹²

15 **C. The Court should issue a preliminary injunction because the Defendants actions**
16 **will likely result in actual and substantial injury to the Plaintiff Class and the**
17 **equities fall utterly in their favor.**

18 The pandemic is not over. COVID-19 remains a highly contagious airborne disease that
19 spreads rapidly through congregate environments like prisons. *See Altice Decl.* at ¶ 14. It also
20 continues to mutate and evolve in dangerous and unforeseen directions. COVID is likely to be
21 with us for a long time to come. *Brinkley-Rubenstein Decl.* at ¶¶ 25-26, 31, 33. Officials at the

22 ¹² Even if the Court does not apply the heightened “reasonable basis” standard of review, these decisions do not
23 meet the less restrictive “rational basis” standard, used to analyze equal protection claims that do not implicate
 protected classes of people. There is simply no rational basis to the Defendants’ decisions to put the lives of people
 in prison at risk, when there exist simple means to avoid that risk, vaccines and prohibitions on contacts by vaccine-
 resistant correctional staff. *See Holden Order* at 17-18 (finding that NY City DOC “irrationally distinguished”
 between people in jails and other similarly situated people and had “no acceptable excuse” to justify its actions).

1 national, state, and local levels are all warning of an onrushing “Fourth Wave” of COVID related
2 infections. *See* Evan Bush, “‘Vax Day’ and a possible fourth wave of COVID: Washington’s
3 State’s pandemic outlook,” *The Seattle Times* (Apr. 1, 2021) (possibility of fourth wave looms
4 large for health officials, as COVID-19 variants now make up a majority of recent cases); Reid
5 Wilson, “COVID-19’s fourth wave is hitting the U.S. hard,” *The Hill* (Mar. 30, 2021) (new
6 spikes driven by the emergence of variants). Accordingly, every member of the Plaintiff Class
7 continues to face the very real risk of contracting the virus and suffering an array of potentially
8 disabling or fatal symptoms. *Altice Decl.* at ¶ 13.

9 Defendants’ actions over the past year demonstrate that this injury is anything but
10 speculative. Even with the best of intentions and with extensive policies and procedures in place,
11 they have been unable to keep COVID out of the prisons or control it once inside. Facing a
12 raging epidemic within its facilities, DOC turned to degrading and dangerous practices. People
13 have been isolated in solitary confinement or locked down with others in small cells for weeks at
14 a time; many have been shuffled from place to place only increasing their chances of catching
15 COVID; all have been denied access to programming, recreation, the out-of-doors, showers,
16 running water, clean laundry, and basic hygiene supplies at one time or another; and none have
17 been able to have any in-person contact with children, spouses or other loved ones in over a year.
18 *See generally, Autrey Decl.; Chea Decl.; Clark Decl.; Lanier Decl.; Rafay Decl.; Rush Decl.;*
19 *Steen Decl.* The Defendants’ efforts to keep people safe have failed to do so, and yet these
20 terrible conditions continue.

21 Several new COVID variants have recently emerged, strains that are likely more
22 infectious and deadly. *See Altice Decl.* at ¶ 11, 25-29; *Brinkley-Rubinstein Decl.* at ¶¶ 28-31. As
23 a result, cases are again climbing in Washington and across the country. *See* Ryan Blethen,

1 “Washington state’s COVID-19 case count flattening, increasing in some counties,” The Seattle
2 Times (Mar. 26, 2021). The Defendants on-going failure to protect people under their care must
3 end now. The Defendants refuse to act; thus, the Court must step in and order them to do so.

4 **IV. CONCLUSION**

5 For these reasons, the Court should grant Plaintiffs’ request for preliminary injunction
6 requiring the Defendants to provide immediate access to the COVID-19 vaccine to people in
7 prison, to provide thorough, accurate, culturally responsive information about the COVID-19
8 vaccine to people in prison, and to restrict DOC staff who have not been vaccinated from
9 interacting with people living in DOC facilities.

10 DATED this 5th day of April, 2021.

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ATTACHMENT 1

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

DOH VACCINE INSTRUCTIONS - PHASES AND TIERS OVER TIME

ORIGINAL PHASES AND TIERS (December 2020 – to February 2021)

Phase 1a Tiers	Groups
Tier 1	<ul style="list-style-type: none"> • High risk workers in health care settings, • High risk first responders, • Residents and staff of nursing homes, assisted living facilities, and other community-based, congregate living settings where most individuals over 65 years of age are receiving care, supervision or assistance.
Tier 2	<ul style="list-style-type: none"> • All other workers at risk to COVID working in health care settings
Phase 1b Tiers	Groups
Tier 1	<ul style="list-style-type: none"> • All people 70 years or older • People 50 years and older in multigenerational households
Tier 2	<ul style="list-style-type: none"> • High-risk critical workers 50 years and older who work in certain congregate settings.
Tier 3	<ul style="list-style-type: none"> • People 16 years and older with 2 or more co-morbidities or underlying conditions
Tier 4	<ul style="list-style-type: none"> • High risk critical workers under age 50 in certain congregate settings (as noted above in Tier 2) • People (residents, staff, volunteers) in congregate living settings (e.g., correction facilities, prisons, jails, detention centers; group homes for people with disabilities) and people experiencing homelessness that access services or live in congregate settings (e.g., shelters, temporary housing)

NEW PHASES AND TIERS (as of March 31, 2021)

Phase 1a Tiers	Groups
	<i>(Tiers and groups are substantially similar to original 1a set out above)</i>
Phase 1b Tiers	Groups (bold and italics indicate new groups of people that DOH added after its initial instructions to Tiers or expansions of existing groups to include people under 50)
Tier 1	<ul style="list-style-type: none"> • All people 65 years and older • People 50 years and older living in multigenerational households • <i>All workers in childcare settings – eligible 3/4/21</i> • <i>All pre-K-12 educators and school staff – eligible 3/4/21</i>
Tier 2	<ul style="list-style-type: none"> • <i>All high-risk critical workers who work in certain congregate settings – eligible 3/17/21</i> <ul style="list-style-type: none"> • Agriculture; food processing; grocery stores; corrections, prisons, jails, or detention facilities; public transit; fire, law, social workers and other first responders • <i>People who are pregnant</i> • <i>People with a disability that puts them at high risk</i>
Tier 3	<ul style="list-style-type: none"> • People 16 years and older with 2 or more comorbidities or underlying conditions • <i>All people 60 years and older</i>
Tier 4	<ul style="list-style-type: none"> • People, staff, and volunteers in congregate living settings; <ul style="list-style-type: none"> • Correctional facilities; group homes for people with disabilities; congregate settings for people experiencing homelessness that live in or access service in such settings • <i>All other critical workers in certain congregate settings; restaurants/food services; manufacturing; construction</i>