

21-16696

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

<p><b>MARCIANO PLATA, et al.,</b> Plaintiffs-Appellees,</p> <p>v.</p> <p><b>GAVIN NEWSOM, et al.,</b> Defendants-Appellants.</p>
--

On Appeal from the United States District Court  
for the Northern District of California

No. 4:01-cv-01351-JST  
The Honorable Jon S. Tigar, District Judge

**REPLY IN SUPPORT OF EMERGENCY  
MOTION TO STAY UNDER CIRCUIT RULE  
27-3 AND MOTION TO EXPEDITE**

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## INTRODUCTION

Less than six months ago, in June 2021, the federal Receiver commended CDCR’s “robust vaccination program,” which had resulted in “a dramatic reduction in the number of COVID-19 cases.” (Suppl.APP-8.) The Receiver also recognized that “[r]esponding to the COVID-19 pandemic remains a high priority for both CDCR and California Correctional Health Care Services (CCHCS).” (*Id.*)

In a complete reversal, the Receiver now argues that State Defendants’ “robust vaccination program” (*id.*) is deliberately indifferent to the threat of COVID-19, in violation of the Eighth Amendment. What changed?

Both the Receiver and Plaintiffs cite the tragically high numbers of COVID-19 infections and deaths among the incarcerated population. But the vast majority of these infections (over 95%) and deaths (over 92%) occurred *before* June 1, 2021—in other words, well before the Receiver lauded CDCR’s efforts.<sup>1</sup>

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<sup>1</sup> Compare Suppl.APP-8 (noting, as of May 28, 2021, 49,254 confirmed COVID-19 patient cases and 224 deaths) *with* Population COVID-19 Tracking, <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (last accessed Nov. 26, 2021) (showing 51,632 total confirmed cases and 242 deaths.).

The Receiver and Plaintiffs also cite “the rise of the Delta variant” over the last few months. But the Receiver’s own data demonstrates that California has taken extraordinarily effective steps to protect inmates from the Delta variant. Since June 1, 2021, the total number of COVID-19 infections in California has increased by 31%, while the total number of infections of CDCR inmates increased by just 3.9%.<sup>2</sup> In other words, infections increased eight times faster *outside* CDCR’s walls than within, directly refuting the Receiver’s claim that COVID-19 always “spread[s] far more rapidly among the incarcerated population than the general public.” (R.Opp’n, ECF No. 21-1 at 1.) Three hospitalizations out of nearly 100,000 incarcerated persons is a lower hospitalization rate than the Bay Area’s.<sup>3</sup>

While the Receiver and Plaintiffs disagree that Defendants’ policies go far enough, those policy disputes are not “the stuff of deliberate indifference.” *Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 638 (9th Cir. 2021). Ultimately, there is no support in the record or the law for

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<sup>2</sup> See <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (total cases in California increased from 3,858,992 to 5,057,759, while confirmed CDCR cases increased from 49,717 to 51,632).

<sup>3</sup> See Los Angeles Times, *With Hospitals Full, Central California Pleading to Send COVID-19 Patients to L.A.*, <https://www.latimes.com/california/story/2021-11-23/central-california-pleading-to-send-covid-19-patients-to-l-a-as-hospital-fill-up> (last accessed Nov. 26, 2021).

the district court's extraordinary finding of deliberate indifference and its unprecedented interference with core state operations and responsibilities while California confronts this historic pandemic. Under the court's flawed reasoning, every prison system in the country without a staff-vaccination mandate would be violating the Eighth Amendment. But no federal court has issued a similar order, before or since. Defendants are likely to succeed on the merits.

Defendants have also demonstrated that operational harms will occur absent a stay. Defendants provided real-world examples, specific to the correctional context, of circumstances where significant numbers of workers declined to comply with mandatory-vaccination requirements. Plaintiffs have not disputed expert testimony establishing that similar rates of refusal in California's prisons would create staff shortages, severely impact prison operations, endanger prison staff, the public, and the incarcerated population, and decrease educational and rehabilitative opportunities. (APP-25–30, 49–55.) As the recent partial deactivation of High Desert State Prison shows (Emergency Mot., ECF No. 9-1 at 23 n.8), the harms Defendants identified are not speculative. A stay would serve the public interest by helping ensure sufficient prison staff to keep inmates safe and provide essential and constitutionally-mandated services.

For these reasons, this Court should stay the vaccine-mandate orders to preserve the status quo pending the outcome of this appeal.

## **ARGUMENT**

### **I. DEFENDANTS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.**

#### **A. Defendants’ Actions to Reduce the Risk of Harm from COVID-19 Satisfy the Eighth Amendment.**

As Defendants explained, the district court incorrectly applied the objective and subjective elements of the Eighth Amendment test. (*See* Emergency Mot. at 13–17.) Regarding the objective component, Plaintiffs have not established that the “risk that the[y] ... complain of”—that a vaccinated person will contract COVID-19 and develop serious symptoms from an unvaccinated staff member who has been tested, remains masked, and follows social distancing protocols—is “so grave that it violates contemporary standards of decency to expose *anyone* unwillingly” to that risk. *Helling v. McKinney*, 509 U.S. 25, 36 (1993). And, as to the subjective element, Defendants did not “disregard” the health risks posed by COVID-19 because they “responded reasonably to the risk.” *Farmer v. Brennan*, 511 U.S. 825, 837, 844 (1994); *see also Estelle v. Gamble*, 429 U.S. 97, 104–06 (1976) (deliberate indifference is the “unnecessary and wanton infliction of pain”).

In response, the Receiver contends primarily that incarcerated persons have not chosen to tolerate a “heightened risk of [the virus].” (R.Opp’n at 17.) But that argument ignores the relevant inquiry, which is whether a particular risk is one “today’s society” at large—not a subset of incarcerated persons—chooses to tolerate. *Helling*, 509 U.S. at 36. Nor does the inquiry change because some individuals can “work remotely, have their groceries delivered, or wear their masks around others.” (Pl.Opp’n, ECF No. 22 at 10.) Many individuals in society are unable to take advantage of those options in order to make a living. Average Californians willingly risk encountering unvaccinated persons in their day-to-day lives—even in places that do not require twice-weekly testing and N95 masks. *See Hines v. Youseff*, 914 F.3d 1218, 1231–32 (9th Cir. 2019) (when “millions” of people “freely chose to live” in an area despite the risk of valley fever, it did not violate “contemporary standards of decency” to house prisoners in that area). The Receiver’s argument ignores the wide acceptance of Defendants’ testing, masking, and vaccination policies as reasonable measures to mitigate the risk of COVID-19.<sup>4</sup> (*See* Emergency Mot. at 16 (citing to a workplace

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<sup>4</sup> Plaintiffs maintain that a federal mandate governing nursing-home workers, which requires vaccination, is a more apt measure of societal standards. (Pl.Opp’n at 13–14.) Defendants’ policies align with that

vaccinate-or-test mandate recommended by the U.S. Occupational Safety and Health Administration).)

The Receiver and Plaintiffs also misconstrue Defendants’ position regarding the testimony from their expert in the state-court action *Davis v. Cal. Dep’t Pub. Health, et al.* (R.Opp’n at 15–16, *citing* R.App.-58; Pl.Opp’n at 12–13), which was specifically made in defense of the CDPH order that applies only to health-care settings. (R.App.-45, 59.) Dr. Reingold simply never addressed the wisdom of the district court’s more expansive vaccine mandate or whether the Eighth Amendment requires it. (*Id.*) Any discussion of deliberate indifference must acknowledge Defendants’ success in vaccinating the majority of the incarcerated population and significantly mitigating the risk of harm. (APP-93.)

Finally, Plaintiffs’ and the Receiver’s attempt to distinguish *Fraihat* is unpersuasive. *Fraihat* is instructive not because it analyzes identical facts, but because it illustrates the high bar for deliberate indifference and the discretion courts must afford to executive branch officials who employ “reasonable measures” to address a “complex problem” like the pandemic. *Fraihat*, 16 F.4th at 636, 639. Applying *Fraihat*, the question here is not

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mandate in that they require vaccination for certain workers assigned to specific prison health care settings. (APP-100–103.)

whether Defendants’ policies could have gone further, but whether those policies show “reckless disregard” for the health risks they “directly sought to mitigate.” *Fraihat*, 16 F.4th at 638. The district court committed error when it failed to take into account Defendants’ extremely effective and “robust vaccination program” to protect incarcerated persons and staff from COVID-19. (Suppl.APP-8.) These policies have ensured that, over the last few months, COVID-19 has spread more slowly within CDCR’s incarcerated population than the community at large. *See* <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (showing that from June 1, 2021 to present, total cases in California increased 31%, while cases among incarcerated persons increased just 3.9%).

Because Defendants have not recklessly disregarded known health risks, they are likely to succeed on the merits.

**B. The Vaccine Mandate Does Not Satisfy the PLRA’s Command to Narrowly Tailor Relief to the Least Intrusive Means Necessary to Address the Constitutional Right.**

Even if a constitutional violation could be shown, the vaccine-mandate orders are not narrowly drawn, they extend further than necessary to correct the violation, and are not the least intrusive means to address the violation. *See* 18 U.S.C. § 3626(a)(1)(A).

Vaccinating all class members, rather than all prison workers, would be a more narrowly tailored remedy to correct any supposed Eighth Amendment violation. The Receiver himself indicated an intention to develop a plan to vaccinate all class members subject to religious and medical exemptions, telling the district court last month, “we will submit a plan to the court.” (Suppl.APP-4–5.)

Plaintiffs claim that a policy of vaccinating incarcerated persons would be unduly intrusive because they “do not have the option to quit their jobs to avoid the vaccine” (Pl.Opp’n at 16), but that focus is misplaced. “Intrusiveness” under the PLRA is not defined by its impact on individual incarcerated persons, but on the operation of the prison system. 18 U.S.C. § 3626(a)(1)(A); *see Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1071 (9th Cir. 2010) (the PLRA asks whether “the same vindication of federal rights could have been achieved with less involvement by the court in directing the details of defendants’ operations”). A vaccinate-all-workers mandate—regardless of employer, job responsibility, or work location— indisputably intrudes more heavily on prison operations than a policy of vaccinating the less than twenty percent of the prison population who, despite having been offered vaccinations, choose to remain unvaccinated.

The mandates are also overbroad because they apply to all workers, even those who are not CDCR employees and those who do not directly interact with inmates. (APP-87.) For example, the office assistant who works in the mailroom processing outgoing mail or the contractor who enters prison grounds to update phone systems but has no contact with inmates must be vaccinated under the district court's orders. (*Id.*) Unlike the district court's one-size-fits-all approach, Defendants' current policies are targeted to protect medically vulnerable populations and take into account heightened levels of risk, by requiring vaccines for workers who provide health care services and are assigned to health care settings. (APP-94–96, 100–03.)

Finally, while claiming that nothing short of the district court's orders will “move[] the needle on vaccination rates” (R.Opp'n at 8), the Receiver himself acknowledges that Defendants' own more targeted efforts are in fact substantially moving the needle (*id.* at 24). Thanks to Defendants' efforts, CDCR's staff vaccination rates have jumped from 53% to 68% over the last four months. *See* <https://www.cdcr.ca.gov/covid19/population-status-tracking/>. Such progress directly refutes the Receiver's and Plaintiffs' claims that Defendants' vaccination efforts have been “ineffective”

(R.Opp'n at 2), and proves Defendants' point that current policies are effectively protecting vulnerable persons.

The district court's broad vaccine mandate is not narrowly tailored, nor the least intrusive method to reduce the risk of harm from COVID-19 among the incarcerated population.

**II. BECAUSE THE STATE FACES IRREPARABLE HARM ABSENT A STAY, THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WEIGH IN ITS FAVOR.**

The public interest is best served by a stay of these extraordinary judicial vaccine-mandate orders to avoid the risk of serious staffing shortages at CDCR institutions that could adversely impact safety and security. Defendants' concerns are based on projections from current data and grounded in reasonable judgments from an individual with expertise in prison administration. (APP-49–55.)

This Court should reject Plaintiffs' and the Receiver's arguments that estimated rates of noncompliance are "speculative." (R.Opp'n at 26; Pl.Opp'n at 19.) The question of whether to issue a stay is, by its nature, a "probabilistic' endeavor." *Al Otro Lado v. Wolf*, 952 F.3d 999, 1015 (9th Cir. 2020). Thus, it is necessary to make predictive judgments regarding the likelihood of a particular risk. Defendants' predictions regarding staffing shortages are based on observed data from two CDCR institutions subject to

the CDPH vaccination mandate. At one institution, approximately five percent of correctional officers had not been vaccinated or sought an exemption by the relevant deadline. (APP-25–30.) The Director of CDCR’s Division of Adult Institutions stated that similar levels of noncompliance would have a “substantial adverse impact” on prison operations and would “preclude a number of prisons from offering regular programming.” (APP-28.) There is no basis in law for the district court to substitute its own judgment regarding the risk of harm for that of this official, who has decades of expertise in the field of prison administration.

Plaintiffs and the Receiver are also mistaken in concluding that no harm will befall the State because the progressive discipline process takes time. (R.Opp’n at 27–28; Pl.Opp’n at 19–20.) While the process is incremental by design, the assumption that unvaccinated staff will continue to work indefinitely during the progressive discipline process is incorrect. (APP-28.) Progressive discipline includes pay reductions, unpaid suspension, and ultimately termination. (*Id.*) When staff are suspended without pay, staffing levels are impacted. (*Id.*) Further, it is likely that, as in Washington, some percentage of staff will simply choose to separate from CDCR, rather than wait to be terminated. (APP-53.) While the Receiver points to high compliance rates among other jurisdictions to suggest that

vacancies are unlikely (R.Opp’n at 28), he has not submitted any evidence showing that an accurate comparison may be drawn between CDCR and those workforces. Nor has the Receiver addressed that around 700 unvaccinated correctional officers are eligible for full retirement benefits and may choose to retire rather than be vaccinated. (APP-54.)

In addition, the Receiver’s argument that “contingency plans” exist for each prison (R.Opp’n at 29) minimizes the harms that go hand-in-hand with reduced staffing levels. While prisons can maintain essential functions in the face of severe staffing shortages, such shortages impact safety and security, may cause officer fatigue and burnout (leading to injuries and requests for extended leave), and may require suspending programs in order to focus on essential operations. (APP-27–30, 51–55.) No party has suggested that operating the entire prison system with severe staffing shortages is a viable long-term solution. And the undisputed evidence establishes that the likely harm to prison operations due to the vaccine-mandate orders would be compounded by low numbers of academy graduates and pre-existing staffing shortages. (APP-54.)

Plaintiffs’ analogy to cases addressing irreparable harm to employees, and the economic consequences of job loss, misses the point. The primary harm Defendants identified is to the operation of the prison system, not

injury to individual workers. Staffing shortages will harm not just prison workers but incarcerated persons as well. Also, none of Plaintiffs' cited cases involve challenges to vaccination requirements imposed by a federal court; they all involve challenges to executive branch policy decisions, which are not constrained by the PLRA. Neither the Receiver nor Plaintiffs have pointed to any case where a district court found that a similar vaccinate-or-test policy violated the Eighth Amendment.

The Receiver claims that Defendants' policies "threaten[] the health and wellbeing of patients in CDCR custody." (R.Opp'n at 29.) This argument fails to acknowledge that the measures Defendants have already taken—such as reducing the prison population, masking and social-distancing mandates, enhanced cleaning measures, quarantine/isolation protocols, patient screening, movement restrictions, and testing mandates—have largely done what they were designed to do: reduce the risk of serious illness and hospitalization due to COVID-19. Three patient hospitalizations (APP-59) and about 137 active cases among the inmate population are a small fraction of the 10,000 cases recorded in December 2020. *See* <https://www.cdcr.ca.gov/covid19/population-status-tracking/>.

Finally, the Receiver and Plaintiffs' arguments regarding lack of urgency lack merit. Defendants promptly filed their stay motion in the

district court just a few days after the Receiver requested that the district court impose an implementation deadline. (Court Docket 3707, 3715.)

Defendants thus sought a stay even before the district court set the January 12, 2022 implementation deadline. Defendants did not “[sleep] on [their] rights,” and any minimal delay is not a basis to deny relief. *California v. Health & Hum. Servs.*, 390 F. Supp. 3d 1061, 1066–67 (N.D. Cal. 2019).

### **III. THIS COURT SHOULD EXPEDITE BRIEFING.**

Defendants have met the standard for an emergency stay to issue. In the alternative, the irreparable harm discussed above establishes good cause to expedite consideration of this appeal.

## CONCLUSION

This Court should issue a stay of the vaccine-mandate orders to maintain the status quo. In the alternative, the Court should expedite briefing and consideration of this appeal.

Dated: November 26, 2021      Respectfully submitted,

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### CERTIFICATE OF COMPLIANCE

I hereby certify that this reply complies with the type-volume limitation of Ninth Circuit Rules 27-1 and 32-3 because it contains 2,720 words. This reply complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 27 because it has been prepared in a proportionally spaced typeface using 14-point font.

Dated: November 26, 2021

/s/ Martha Ehlenbach  
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Deputy Attorney General

21-16696

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

<p><b>MARCIANO PLATA, et al.,</b> Plaintiffs-Appellees,</p> <p>v.</p> <p><b>GAVIN NEWSOM, et al.,</b> Defendants-Appellants.</p>
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On Appeal from the United States District Court  
for the Northern District of California

No. 4:01-cv-01351-JST  
The Honorable Jon S. Tigar, District Judge

**SUPPLEMENTAL APPENDIX OF RECORDS  
SUBMITTED IN SUPPORT OF DEFENDANTS'  
EMERGENCY MOTION TO STAY**

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**SUPPLEMENTAL APPENDIX OF RECORDS**

Defendants-Appellants respectfully submit copies of district-court filings cited in their reply regarding the emergency motion to stay, in compliance with Federal Rules of Appellate Procedure 8(a)(2)(b)(iii) and 27(a)(2)(B). The documents are bates-stamped “Suppl.APP.”

<b>Date</b>	<b>Docket No.</b>	<b>Description</b>	<b>Suppl. APP Pages</b>
10/29/21	3727	Transcript of October 14, 2021 Hearing on CCPOA’s Motion to Intervene (excerpts)	3–6
06/01/21	3597	Forty-seventh Tri-Annual Report of the Federal Receiver For January 1–April 30, 2021 (excerpts)	7–9

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UNITED STATES DISTRICT COURT

**CERTIFIED COPY**

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable JON S. TIGAR, Judge

MARCIANO PLATA, et al.,	)	<b>Motion to Intervene</b>
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. C 01-01351 JST
	)	
GAVIN NEWSOM, et al.,	)	Pages 1 - 18
	)	
Defendants.	)	Oakland, California
_____	)	Thursday, October 14, 2021

**REPORTER'S TRANSCRIPT OF ZOOM WEBINAR PROCEEDINGS****APPEARANCES (VIA ZOOM) :**

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(Appearances continued next page)

Reported Remotely By: Raynee H. Mercado, CSR No. 8258

Proceedings reported by electronic/mechanical stenography;  
transcript produced by computer-aided transcription.

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 565-7228**

1 Ms. Bixby is correct that there are -- there are going to be  
2 some issues that are just not going to be before me.

3 But I think religious exemptions by itself is enough to  
4 carry us over the goal line, if I can use another football  
5 metaphor. Having decided that question, I don't need to reach  
6 the question of permissive intervention, and so I won't.

7 I will not be issuing a written order in connection with  
8 today's hearing, so my remarks constitute the court's order.  
9 And any party seeking a written order should obtain a copy of  
10 the transcript.

11 Thank you all.

12 **MR. BRIAN:** Your Honor, Brad Brian. If I may have  
13 just a couple seconds, Your Honor.

14 First of all, I would -- I would comment that I'm  
15 surprised by the football analogy in the light of the baseball  
16 game tonight, but I appreciate the sports reference.

17 **THE COURT:** Well, I should just tell you, I'm no  
18 one's sports fan, so any sports analogy coming out of this  
19 court should be surprising.

20 But anyway -- okay.

21 **MR. BRIAN:** In the -- at the end of your order, Your  
22 Honor, you asked the receiver to consider efforts to increase  
23 the vaccination rate among the incarcerated population.

24 We are considering that, and we are developing a plan that  
25 we think effectively will read that all incarcerated persons

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 565-7228**

1 becoming vaccinated, subject to religious and -- and medical  
2 exemptions. That plan is still in development, but we will  
3 submit a plan to the court --

4 **THE COURT:** Do we have -- since I do have everybody  
5 here, do we have a case management conference coming up any  
6 time soon?

7 When is that -- Someone remind me of the date.

8 **MS. DUPREE:** -- 28th, Your Honor.

9 **THE COURT:** December -- February 28?

10 **MS. DUPREE:** October 28.

11 **THE COURT:** Oh, October 28. Oh, that's very soon.  
12 Couple weeks away.

13 Okay. So, Mr. Brian, go ahead.

14 **MR. BRIAN:** And the second point, Your Honor, I  
15 appreciate. And I'll take Your Honor's cues as well.

16 I was going to apprise your court [sic] of the development  
17 in -- in Kern County. And in light of that, we on behalf of  
18 the Receiver will be filing next week a request for  
19 instructions from the court.

20 We don't think that the Kern County order has any effect  
21 on Your Honor's order --

22 **THE COURT:** Instructions from -- instructions from  
23 this court or the Kern County court?

24 **MR. BRIAN:** From your -- from this -- from your  
25 court.

1           **MR. BRIAN:** Thank you, Your Honor.

2                   (Proceedings were concluded at 2:20 P.M.)

3                               --o0o--

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5  
6                               **CERTIFICATE OF REPORTER**

7  
8                   I certify that the foregoing is a correct transcript  
9                   from the record of proceedings in the above-entitled matter.

10                  I further certify that I am neither counsel for, related to,  
11                  nor employed by any of the parties to the action in which this  
12                  hearing was taken, and further that I am not financially nor  
13                  otherwise interested in the outcome of the action.

14  
15                               *Raynee H. Mercado*

16                  Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

17                               Friday, October 15, 2021

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**CALIFORNIA CORRECTIONAL  
HEALTH CARE SERVICES**

# **Achieving a Constitutional Level of Medical Care in California's Prisons**

**Forty-seventh Tri-Annual Report of the Federal Receiver  
For January 1 – April 30, 2021**

**June 1, 2021**

**California Correctional Health Care Receivership**

can be found in the Receiver's Eleventh Tri-Annual Report on pages 15 and 16. ([https://cchcs.ca.gov/wp-content/uploads/sites/60/2017/08/T11\\_20090601\\_11thTriAnnualReport.pdf](https://cchcs.ca.gov/wp-content/uploads/sites/60/2017/08/T11_20090601_11thTriAnnualReport.pdf))

Court coordination activities include: health care contracting; facilities, construction, and activation; telemedicine, information technology, and the Electronic Health Records System (EHRS); nursing; pharmacy; recruitment and hiring; statewide health care grievances; institutional Chief Executive Officers; credentialing and privileging; and space coordination.

## **B. Progress during this Reporting Period**

### **(i) COVID-19 Status**

Responding to the COVID-19 pandemic remains a high priority for both CDCR and California Correctional Health Care Services (CCHCS). As a result of a continued commitment to patient and staff screening and testing, COVID-19 education, and a robust vaccination program, CDCR and CCHCS have seen a dramatic reduction in the number of COVID-19 cases during this reporting period. Response activities, tracking information, and COVID-19 related communications can be found on the CDCR and CCHCS websites at <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/> and <https://cchcs.ca.gov/covid-19-interim-guidance/>.

As of May 28, 2021, there have been 49,254 confirmed COVID-19 patient cases throughout CDCR institutions, of which 48,395 have resolved and 607 were released while active, with 28 active cases within CDCR institutions. This is a decrease of more than 2,200 active cases since the previous reporting period. There have been 224 patient deaths. Active staff cases have also significantly decreased during this reporting period. There have been 16,770 confirmed staff COVID-19 cases, with 16,694 resolved, and 166 active cases. There have been 28 staff deaths.

### **Vaccines**

Beginning in December 2020, information regarding rollout schedule, benefits of the vaccine, and answers to frequently asked questions was distributed to all staff and patients. CDCR and CCHCS received their initial allocation of approximately 18,000 doses, which consisted of both the Pfizer and Moderna vaccines, during the week of December 21, 2020. Vaccination of staff and patients was scheduled in phases consistent with the California Department of Public Health's (CDPH) prioritization tiers. First priority included front line health care and custody staff at all institutions and residents of Skilled Nursing Facilities at Central California Women's Facility (CCWF), CHCF, and California Medical Facility (CMF). Subsequently, the vaccine was offered to patients statewide aged 65 and older, followed by patients with an increased risk of hospitalization or death if infected with COVID-19 (patients with an elevated "COVID Risk Score"). Eventually, the vaccine was offered to all patients and staff regardless of job classification or location.

During the month of April 2021, the Department hosted town hall forums with external stakeholders for patients at California State Prison, Los Angeles (LAC). The guests included program providers, formerly incarcerated individuals, and incarcerated legal representatives to discuss the important role vaccines play on the road to safely reopening prisons. Plans are in

progress for a second of these events to be held at Salinas Valley State Prison (SVSP).

As of the end of this reporting period, 98 percent of 95,641 patients have been offered the vaccine with an overall acceptance rate of 73 percent. Acceptance rates have been even greater among higher-risk patients:

- Patients 65 years old or greater: 90 percent
- Patients with a COVID Risk Score  $\geq 6$ : 92 percent
- Patients with a COVID Risk Score of  $\geq 3$ : 84 percent

The high vaccination rate among patients has contributed to a dramatic and sustained decline in COVID-19 cases among the incarcerated population.

As of the end of this reporting period, 43 percent of the more than 65,000 CDCR and CCHCS staff have been fully vaccinated. During the month of May 2021, the Department will be contacting every unvaccinated employee and encouraging them to accept the vaccine. Open vaccine clinics will also be held throughout the state during the month of May for eligible staff to receive their choice of either the Moderna or single-dose Johnson & Johnson Janssen vaccine. During this time, education, videos, and information regarding the importance of vaccines will be shared with staff. Additionally, the California Prison Receivership is sponsoring a vaccine rewards program with prizes totaling \$100,000 to award individuals and group efforts related to the vaccine program.

CDCR and CCHCS continue to move forward with an ambitious vaccine administration schedule, inoculating as many individuals as possible. Vaccination remains the best tool to prevent serious illness and death due to COVID-19 and to significantly decrease the spread of the virus.

#### Employee Health Program

At the onset of the COVID-19 pandemic, CDCR and CCHCS worked collaboratively to quickly establish a system for identifying and managing COVID-19 outbreaks. Although significant effort was initially placed on proper identification and management of COVID-19 spread among the patient population, a comparably robust system did not exist for staff. As the result of a joint decision between CCHCS and CDCR, CCHCS assumed oversight of employee and occupational health functions by establishing an Employee Health Program (EHP), effective October 23, 2020. The primary purpose of the EHP is to develop and implement consistent processes for the control and prevention of the spread of any communicable disease in correctional institutions, youth facilities, headquarters, regional offices, and surrounding communities.

In fall 2020, a three-phase EHP implementation began. Phase 1 included establishment of institutional EHP Core Teams (Registered Nurses, Medical Assistants, Associate Governmental Program Analysts, and Staff Services Analysts); implementation of local case investigation and contact tracing; procurement of dedicated space and office equipment; and continued onsite serial staff COVID-19 testing. Phase 2, which rolled out in February 2021, included the recruitment of Licensed Vocational Nurses to establish institutional onsite testing teams;