



United States District Court

DISTRICT OF OREGON

1507 United States Courthouse
1000 S.W. Third Avenue
Portland, Oregon 97204

Chambers of

Marco A. Hernández

Chief Judge

December 1, 2020

Mr. James C. Duff, Director
Administrative Office of the U.S. Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

Sent via Electronic Mail

Dear Director Duff:

On behalf of the U.S. District Court for the District of Oregon, I write to call attention to certain issues related to access to justice for defendants detained before or during criminal proceedings that, in our view, should be considered in deliberations about how to make COVID-19 vaccines available. In doing so, I emphasize that the Court makes no assessment about particular detention facilities' policies, decisions, or resources, and the Court makes no assessment of the adequacy of defendants' access to counsel and court proceedings from particular detention facilities. Nor does the Court advocate for any outcome related to prioritizing vaccine availability, or for any other policy outcome. Rather, I ask that the Administrative Office advise decision makers to consider these matters during their deliberations about distributing COVID-19 vaccines.

The prevalence of COVID-19 has substantially affected operations within detention facilities. Managing infection risk has required measures that affect a detained defendant's ability to meet in person with an attorney to review evidence and receive legal advice, to talk in person with a defense investigator, to participate fully in court-ordered examinations, and to be transported to a court hearing. Pandemic-related practices may also result in limitations on a detained defendant's ability to meet in person with U.S. Probation or Pretrial Officers for assistance with release or reentry needs designed to encourage compliance with the law or reduce the likelihood of recidivism.

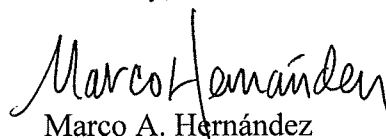
Defendants detained at federal prisons, or at state or local detention facilities contracted to house them, generally communicate with their attorneys and investigators by phone or videoconference due to the risk of infection from in-person meetings. Because the meetings are conducted remotely, it may be more difficult for the defendant to confer, and to review documents and other evidence related to his or her case. Telephone and video resources for remote meetings are limited, and so the detained defendant's opportunities to communicate with his or her attorney may likewise be limited. This circumstance may result in less frequent or

shorter attorney meetings and, in turn, longer timespans between hearings. Infection risk may also affect a detained defendant's ability to appear in person for a court hearing.

Vaccination, when available to detained defendants, will improve access to justice. Face-to-face communication between a defendant and attorney or investigator, and the opportunity to review case-related documents together, provide more effective, efficient, and meaningful avenues for case preparation and decision-making. Vaccination will facilitate a defendant's participation in the justice system at a very basic level by allowing a defendant to meet with an attorney or appear for a proceeding without risking infection to the defendant, to others confined in the same facility, or to individuals present at an in-person hearing.

Because the availability of vaccination will improve access to justice for detained defendants, I ask that the Administrative Office advise decision makers to consider these matters during deliberations about distributing COVID-19 vaccines. In making these comments, however, I express no opinion on the relative priorities that should be given between detained defendants and prison staff (or other law enforcement personnel or anyone else involved in the criminal justice system). I also express no comment on what steps might need to be taken to ensure that any decision by a detained defendant to accept vaccination is made voluntarily and knowingly, with all relevant information disclosed.

Sincerely,



Marco A. Hernández
Chief U.S. District Court Judge
District of Oregon

CC, Sent via Electronic Mail:

Governor Kate Brown
Dr. José R. Romero, Chair, CDC Advisory Committee on Immunization Practices
Lisa Hay, Federal Public Defender, District of Oregon
Billy Williams, United States Attorney, District of Oregon

CC, Sent via U.S. Mail:

Senator Ron Wyden
Senator Jeff Merkley
Representative Suzanne Bonamici
Representative Greg Walden
Representative Earl Blumenauer
Representative Peter DeFazio
Representative Kurt Schrader