February 26, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue NW
Washington D.C. 20050

Dear President Biden,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national advocacy organizations to promote and protect civil and human rights in the United States, and the 109 undersigned organizations, we urge you to take swift action to protect the health and safety of incarcerated individuals during the COVID-19 pandemic and request a meeting to discuss the issues outlined below in more detail.

While the pandemic jeopardizes everyone’s safety, incarcerated individuals are much more likely to be people with disabilities or to have pre-existing health conditions, making them exceptionally vulnerable due to overcrowding, unsanitary prison conditions, and a lack of access to quality healthcare services. Though the COVID-19 vaccine is a critical advancement, distribution to incarcerated populations will take precious time, and correctional medical experts expect participation rates will be low because the Bureau of Prisons (BOP) has failed to pair vaccine rollout with needed outreach and education. Indeed, BOP has already reported a low adherence rate by staff to the vaccine: a January 15, 2021 BOP press release reported that roughly half of staff had agreed to accept the vaccine. Moreover, the emergence of new strains of the virus that are potentially more contagious and deadly means that the need to protect high-risk individuals remains as urgent as ever.

To uphold your campaign commitments to advance racial justice and criminal justice reform and effectively confront COVID-19 during your first 100 days, it is imperative that you use existing authorities to aggressively reduce jail and prison populations.

Although the overall BOP population has dropped, many individuals remain crowded together in institutions that are incapable of delivering adequate medical care in the best of

times. The mortality rate among incarcerated individuals is more than twice that of the general population when adjusted for age, sex, and race/ethnicity. Additionally, infection and death rates have been exacerbated due to misguided attempts to mitigate the spread through increased use of solitary confinement in lieu of medical isolation. Individuals in prison are nearly five times more likely to become infected than the general population, and have other risk factors that put them at increased risk of complications. For example, approximately 20 percent of the federal prison population is over age 50 and, according to BOP, approximately 45 percent have multiple chronic health conditions. Moreover, historic patterns of over-policing and the overcriminalization of Black and Brown individuals has created a prison population that overrepresents communities of color and exacerbates the disproportionate impact the coronavirus is already having on these communities more broadly. Depopulating prisons to address the coronavirus pandemic is not only a public health issue and a criminal justice issue, but a racial justice issue as well.

As of February 24, 2021, there have been a staggering 47,694 total coronavirus cases among the approximately 125,000 individuals in BOP custody – more than one third of the population – along with more than 6,000 cases among federal correctional facility staff. Moreover, 222 people in federal custody and four staff have died. Courts across the country have noted that BOP has frequently undertreated or

9 Dep’t of Justice, Federal Prison System FY 2021 Performance Budget Congressional Submission https://bit.ly/2Y7xDE6 (“Approximately 45 percent of offenders have multiple chronic conditions that, despite management with medications and other therapeutic interventions, will progress and may result in serious complications.”). https://www.bjs.gov/content/pub/pdf/mpsfpiji1112.pdf
11 U.S. Department of Justice, Federal Bureau of Prisons. COVID-19 Cases. (February 2021). https://www.bop.gov/coronavirus/index.jsp. There are 1,650 federal inmates and 1,683 BOP staff who have confirmed positive test results for COVID-19 nationwide. Currently, 45,356 inmates and 4,652 staff have recovered. There have been 222 federal inmate deaths and 4 BOP staff member deaths attributed to COVID-19 disease. Of the inmate deaths, 4 occurred while on home confinement.
12 Id. This number includes deaths in privately-managed prisons, which are reported separately on BOP’s website.
ignored COVID-related symptoms, and a lawsuit filed on behalf of individuals incarcerated at North Carolina’s Butner Correctional Complex, which includes a medical center, has alleged that when people have gotten sick with COVID “treatment is almost nonexistent” and hospital transfers do not occur until the time when individuals “are already experiencing respiratory failure.” In failing to provide even the bare minimum of appropriate medical care to one of its most vulnerable populations, the United States is wholeheartedly failing in its duty to maintain safe, secure, and humane detention facilities.

As infections among BOP staff have risen – including by more than 100 percent from November 3 to December 1, 2020 – BOP has increased its use of “augmentation” to fill staffing gaps. This practice reassigns staff from other roles, such as educational or administrative, to correctional officer roles, a process that employees have long contended “sacrifices safety” of incarcerated individuals and staff while also decreasing the provision of maintenance, rehabilitation, or medical care. Now, as the union representing BOP employees has alleged, CDC guidelines are being violated and workplace safety complaints filed with the Occupational Safety and Health Administration have gone largely unaddressed due to cuts in that agency’s workforce.

Public health experts have unequivocally asserted that the only way to stop the spread of the coronavirus in prison settings is to rapidly and sufficiently reduce the number of people in those facilities. While BOP has reduced the federal prison population somewhat this year, that decrease has not provided the level of reduction necessary to make safe those facilities that have been overcrowded for years. Similarly, vaccine distribution is slow and incarcerated people have been deprioritized for vaccinations. Significant resources must be devoted to building trust in both the vaccine and the quality of medical care offered in prison settings, and this, along with distribution itself, will take valuable time that individuals at heightened risk of coronavirus contraction simply do not have.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act expanded BOP’s authority to release individuals to home confinement; however, both BOP and DOJ have failed to effectively exercise that authority. The agencies issued restrictive guidance and memos that severely limited the number of individuals eligible for release and created a “complex set of procedural and logistical hurdles” for incarcerated individuals to overcome. Moreover, during the first three months of the pandemic, BOP approved just 11 of the nearly 11,000 compassionate release petitions filed, and, based on a survey...

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17 Id.
19 Id.
conducted by the Federal Public and Community Defenders, it appears that BOP did not initiate a single motion for compassionate release based on heightened risk of severe illness from a COVID-19 infection.\(^{{20}}\) Such a failure by BOP to act is not without measure, as roughly 50 individuals have died in BOP custody after filing – and in some cases even after being granted – requests for release.\(^{{21}}\) But it is not just those in BOP custody who remain at significant risk with no relief in sight. There are currently 63,919 individuals held in custody by the U.S. Marshals Service (USMS) who are awaiting either trial, sentencing, or transfer to BOP facilities.\(^{{22}}\) The Department of Justice recently concluded that USMS “had a practice of transporting prisoners without first testing that…may lead to further infections,”\(^{{23}}\) and reports abound that those in USMS custody are frequently denied treatment “unless severe symptoms appear, necessit[ating] transfer to an outside facility.”\(^{{24}}\) There have been at least 28 deaths of individuals in USMS custody to date.\(^{{25}}\)

As such, we believe there are a number of actions you can take immediately to protect incarcerated people:

- Eliminate the ineffective and inhumane use of solitary confinement that has exacerbated the spread of the coronavirus;
- Prioritize the release or transfer of elderly and other vulnerable people from federal custody;
- Implement system-wide access to COVID-19 testing and vaccinations for all correctional staff and people in federal custody, including those in USMS custody;
- Minimize arrests, decline to seek detention of individuals at their initial appearance in court, and consent to the release of those already detained absent clear and convincing evidence that they pose a specific threat of violence to a specific person;
- Eliminate the use of the PATTERN tool as a criterion for consideration of home confinement or compassionate release; and


\(^{{24}}\) Complaint: ACLU Files Class Action Lawsuit Against Butner FCC. American Civil Liberties Union.

• Require DOJ’s Bureau of Justice Statistics to meet and exceed its obligations for data collection and reporting in a timely manner, including demographic information on virus infections, deaths, and releases for people in BOP and USMS custody.

Millions of people across the United States have demonstrated that they want a federal government that takes seriously its responsibility to control the pandemic and believes it is far past time to begin addressing the full impact of systemic racism in this country. In your first weeks in office, you have the power to do both by taking strong action to protect the health and safety of incarcerated individuals. By reducing prison and jail populations, and taking the other steps outlined above, your administration can ensure that the most vulnerable among us are not forgotten but rather protected, released, and provided safe reentry during our nation’s public health emergency.

We look forward to discussing these issues with you and Department of Justice officials. Please contact Sakira Cook, Senior Director, Justice Reform Program, The Leadership Conference on Civil and Human Rights, at cook@civilrights.org; Patricia Richman, National Sentencing Resource Counsel, Federal Public and Community Defenders, at Patricia_Richman@fd.org; Aamra Ahmad, Senior Policy Counsel, ACLU, at aahmad@aclu.org; or Kara Gotsch, Deputy Director, The Sentencing Project, at kgotsch@sentencingproject.org to schedule a convenient time for a meeting.

We look forward to working with your administration to protect those currently incarcerated and those at risk of incarceration in the United States.

Sincerely,

The Leadership Conference on Civil and Human Rights
ACCESS (Arab Community Center for Economic and Social Services)
Advocacy Without Borders
AIDS Alabama
AIDS Foundation Chicago
Alabama State Association of Cooperatives
Alliance for Safety and Justice
Alternate ROOTS
American Association of People with Disabilities
American Civil Liberties Union
American Family Voices
American Friends Service Committee
Americans for Democratic Action (ADA)
Amistad Law Project
Amnesty International of the USA, Inc.
Amnesty International USA
Ananda shanti Yoga Society
Arab American Institute (AAI)
Arkansas United
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Black and Pink Massachusetts
Blue Future
Bread for the World
Brennan Center for Justice at NYU School of Law
Center for Disability Rights
Center for Law and Social Policy (CLASP)
Center on Race, Inequality, and the Law at NYU Law
Charles Hamilton Houston Institute for Race and Justice at Harvard Law School
Church of Scientology National Affairs Office
Church World Service
Civil Rights Corps
Color Of Change
Colorado Freedom Fund
Common Cause
Community Alliance on Prisons
Council on American-Islamic Relations (CAIR)
CURE (Citizens United for Rehabilitation of Errants)
DC Democratic Caucus for Returning Citizens
Defending Rights & Dissent
Director of National Policy
Disability Rights Advocates
Drug Policy Alliance
Ending Criminalization of HIV and Overincarceration In Virginia ECHO VA
Essie Justice Group
FAMM
Federal Public and Community Defenders
Florida Rights Restoration Coalition
Futures Without Violence
Health in Justice Action Lab at Northeastern University
Impact Justice
Incarcerated Relief Resource Center
Innocence Project
Interfaith Action for Human Rights
Jewish Council for Public Affairs
Just Detention International
Just Future Project
Just Futures Law
Justice Roundtable
Katal Center for Equity, Health, and Justice
Kentucky Council of Churches
LatinoJustice PRLDEF
Law Enforcement Action Partnership
Life Unbolted, Inc
Long Island Social Justice Action Network
Muslim Advocates
National Religious Campaign Against Torture
National Action Network
National Association of Criminal Defense Lawyers
National Center for Lesbian Rights
National Council for Incarcerated and Formerly Incarcerated Women and Girls
National Council of Churches of Christ in the USA (NCC)
National Council on Alcoholism and Drug Dependence-Maryland Chapter
National Disability Rights Network (NDRN)
National Employment Law Project
National Equality Action Team (NEAT)
National Hepatitis Corrections Network
National Immigration Project (NIPNLG)
National Juvenile Justice Network
National Organization for Women
National Working Positive Coalition
NETWORK Lobby for Catholic Social Justice
Newhour_Li.org
Open The Government
Operation Restoration
Pennsylvania Immigration and Citizenship Coalition
People For the American Way
Philadelphia Reentry Think Tank
Prison Policy Initiative
Project On Government Oversight
Public Defender Association
Rebuilding Indepedence My Style
Rural Coalition
SaveOurselves Movement for Justice and Democracy
Southern Poverty Law Center
StoptheDrugWar.org
Students for Sensible Drug Policy
T’ruah: The Rabbinic Call for Human Rights
TN State Conference NAACP
The Center for HIV Law and Policy
The Decarceration Collective
The Sentencing Project
The Taifa Group
The United Methodist Church - General Board of Church and Society
Transgender Legal Defense and Education Fund
Tzedek Association
Union for Reform Judaism
Unitarian Universalists for a Just Economic Community
Washington Lawyers’ Committee for Civil Rights and Urban Affairs
WCJA