



**Officers**

**Chair**

Judith L. Lichtman  
National Partnership for  
Women & Families

**Vice Chairs**

Derrick Johnson  
NAACP  
Farhana Khera  
Muslim Advocates  
Thomas A. Saenz  
Mexican American Legal  
Defense and Educational Fund

**Secretary**

Fatima Goss Graves  
National Women's Law Center

**Treasurer**

Lee A. Saunders  
American Federation of State,  
County & Municipal Employees

**Board of Directors**

Kimberly Churches  
AAUW  
Alphonso B. David  
Human Rights Campaign  
Rory Gamble  
International Union, UAW  
Jonathan Greenblatt  
Anti-Defamation League  
Mary Kay Henry  
Service Employees International Union  
Damon Hewitt  
Lawyers' Committee for  
Civil Rights Under Law  
Sherrilyn Ifill  
NAACP Legal Defense and  
Educational Fund, Inc.  
David H. Inoue  
Japanese American Citizens League  
Benjamin Jealous  
People for the American Way  
Derrick Johnson  
NAACP  
Virginia Kase  
League of Women Voters of the  
United States  
Samer E. Khalaf  
American-Arab  
Anti-Discrimination Committee  
Marc Morial  
National Urban League  
Janet Murguía  
UnidosUS  
Debra L. Ness  
National Partnership for  
Women & Families  
Christian F. Nunes  
National Organization for Women  
Rabbi Jonah Pesner  
Religious Action Center  
Of Reform Judaism  
Rebecca Pringle  
National Education Association  
Lisa Rice  
National Fair Housing Alliance  
Anthony Romero  
American Civil Liberties Union  
Fawn Sharp  
National Congress of American Indians  
Maria Town  
American Association of  
People with Disabilities  
Richard L. Trumka  
AFL-CIO  
Randi Weingarten  
American Federation of Teachers  
John C. Yang  
Asian Americans Advancing Justice |  
AAJC

Interim President & CEO  
Wade Henderson

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 110 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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

<sup>1</sup> Vallas, Rebecca. *Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America's Jails and Prisons*. (July 2016). [https://cdn.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf?\\_ga=2.163727420.2027820979.1614090622-1709328763.1614090622](https://cdn.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf?_ga=2.163727420.2027820979.1614090622-1709328763.1614090622).

<sup>2</sup> U.S. Department of Justice, Federal Bureau of Prisons. Update on COVID-19 Vaccinations. (January 2021). [https://www.bop.gov/resources/news/pdfs/20210115\\_press\\_release\\_vaccination.pdf](https://www.bop.gov/resources/news/pdfs/20210115_press_release_vaccination.pdf)

<sup>3</sup> Centers for Disease Control and Prevention. About COVID-19 Variants. (February 2021). <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html>

times.<sup>4</sup> The mortality rate among incarcerated individuals is more than twice that of the general population when adjusted for age, sex, and race/ethnicity.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> For example, approximately 20 percent of the federal prison population is over age 50<sup>8</sup> and, according to BOP, approximately 45 percent have multiple chronic health conditions.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> Moreover, 222 people in federal custody and four staff have died.<sup>12</sup> Courts across the country have noted that BOP has frequently undertreated or

---

<sup>4</sup> See, e.g., Honderich, H. and Popat, S. (July 27, 2020). *Coronavirus: Can this California prison save itself from Covid-19?* BBC NEWS. <https://www.bbc.com/news/world-us-canada-53476208>; Novak, K. (July 9, 2020). *Inmates Say Poor Conditions, Medical Care Continue at San Quentin.* KCBS RADIO.

<sup>5</sup> Schnepel, K. *COVID-19 in U.S. State and Federal Prisons.* National Commission on COVID-19 and Criminal Justice. (Sept. 2020).

[https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid\\_commission/FINAL\\_Schnepel\\_Design.pdf](https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid_commission/FINAL_Schnepel_Design.pdf)

<sup>6</sup> *Solitary Confinement is Never the Answer: A Special Report on the COVID-19 Pandemic in Prisons and Jails, the Use of Solitary Confinement, and Best Practices for Saving the Lives of Incarcerated People and Correctional Staff.* Unlock the Box. (June 2020).

<https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860e0d57d0ce8195/1592247570889/June2020Report.pdf>

<sup>7</sup> Saloner, B., Parish, K., Ward, J. A., DiLaura, G., & Dolovich, S. (2020). COVID-19 cases and deaths in federal and state prisons. *Jama*, 324(6), 602-603.

<sup>8</sup> U.S. Department of Justice, Federal Bureau of Prisons. *Inmate Age.*

[https://www.bop.gov/about/statistics/statistics\\_inmate\\_age.jsp](https://www.bop.gov/about/statistics/statistics_inmate_age.jsp)

<sup>9</sup> 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/mpsfppi1112.pdf>

<sup>10</sup> Reinhart, R. and Chen, D. *Incarceration and Its Disseminations: COVID-19 Pandemic Lessons From Chicago's Cook County Jail.* HEALTH AFFAIRS. (June 4, 2020).

[https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00652?utm\\_campaign=covid19fasttrack&utm\\_medium=press&utm\\_content=reinhart&utm\\_source=mediaadvisory](https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00652?utm_campaign=covid19fasttrack&utm_medium=press&utm_content=reinhart&utm_source=mediaadvisory).

<sup>11</sup> 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.

<sup>12</sup> *Id.* This number includes deaths in privately-managed prisons, which are reported separately on BOP's website.

ignored COVID-related symptoms,<sup>13</sup> 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.”<sup>14</sup> In failing to provide even the bare minimum of appropriate medical care to one of its most vulnerable populations,<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> Now, as the union representing BOP employees has alleged, CDC guidelines are being violated<sup>18</sup> and workplace safety complaints filed with the Occupational Safety and Health Administration have gone largely unaddressed due to cuts in that agency’s workforce.<sup>19</sup>

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

---

<sup>13</sup> See, e.g., *United States v. Cassidy*, 17-CR-1165 (W.D.N.Y. May 13, 2020); *United States v. Cassidy*, CRIMINAL ACTION NO. 2:18cr95-MHT (WO) (M.D. Ala. Jun. 4, 2020).

<sup>14</sup> Complaint, *Hallinan et al v. Scarantino et al*, 5:2020ct03333 (2020).

<sup>15</sup> See, e.g., Department of Justice Office of Inspector General. *DOJ IG Releases Report of Remote Inspection of Federal Bureau of Prisons Metropolitan Detention Center Brooklyn Examining the Institution’s Response to the Coronavirus Pandemic* (Nov. 10, 2020). <https://oig.justice.gov/news/doj-oig-releases-report-remote-inspection-federal-bureau-prisons-metropolitan-detention-center>

<sup>16</sup> Katz, E. *Federal Prison Employees Fear Staff Shortages and Mass Reassignments as COVID-19 Cases Spike*. GOVERNMENT EXECUTIVE (Dec. 1, 2020). <https://www.govexec.com/workforce/2020/12/federal-prison-employees-fear-staff-shortages-and-mass-reassignments-covid-19-cases-spike/170399/>

<sup>17</sup> *Id.*

<sup>18</sup> Blakinger, K. *These Federal Prison Guards Are Desperate for Trump to Lose*. THE MARSHALL PROJECT. (Nov. 5, 2020) <https://www.themarshallproject.org/2020/11/05/these-federal-prison-guards-are-desperate-for-trump-to-lose>

<sup>19</sup> *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.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> The Department of Justice recently concluded that USMS “had a practice of transporting prisoners without first testing that...may lead to further infections,”<sup>23</sup> and reports abound that those in USMS custody are frequently denied treatment “unless severe symptoms appear, necessit[ating] transfer to an outside facility.”<sup>24</sup> There have been at least 28 deaths of individuals in USMS custody to date.<sup>25</sup>

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

---

<sup>20</sup> *The COVID-19 Crisis in Federal Detention: December 2020*. Sentencing Resource Counsel for the Federal Public and Community Defenders (Dec. 1, 2020).

[https://www.fd.org/sites/default/files/news/sentencing\\_resource\\_counsel\\_fact\\_sheet-december.pdf](https://www.fd.org/sites/default/files/news/sentencing_resource_counsel_fact_sheet-december.pdf)

<sup>21</sup> See Alison K. Guernsey, List of Compassionate Release Attempts, Iowa College of Law Federal Defense Clinic (Feb. 17, 2021).

<sup>22</sup> See U.S. Marshals Service-Coronavirus (COVID-19) Data and Information, <https://www.usmarshals.gov/coronavirus/stats.html>.

<sup>23</sup> See Department of Justice, Office of Inspector General, *Review of the United States Marshals Service’s Response to the COVID-19 Pandemic* (Feb. 2021), <https://oig.justice.gov/sites/default/files/reports/21-034.pdf>. See also *States v. Cassidy*, 17-CR-1165 (W.D.N.Y. May 13, 2020); Hamilton, K. and Blakinger, K. ‘Con Air’ Is Spreading COVID-19 All Over the Federal Prison System. THE MARSHALL PROJECT.

<https://www.themarshallproject.org/2020/08/13/con-air-is-spreading-covid-19-all-over-the-federal-prison-system>

<sup>24</sup> Complaint: ACLU Files Class Action Lawsuit Against Butner FCC. American Civil Liberties Union.

<https://www.aclu.org/legal-document/complaint-aclu-files-class-action-lawsuit-against-butner-fcc>

<sup>25</sup> Cantú, A. *Federal Prosecutors Hold Protestors for Months Pretrial*. TYPEINVESTIGATIONS (Nov. 17, 2020). <https://www.typeinvestigations.org/investigation/2020/11/17/federal-prosecutors-hold-protesters-for-months-pretrial/>



- 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](mailto:cook@civilrights.org); Patricia Richman, National Sentencing Resource Counsel, Federal Public and Community Defenders, at [Patricia\\_Richman@fd.org](mailto:Patricia_Richman@fd.org); Aamra Ahmad, Senior Policy Counsel, ACLU, at [aaahmad@aclu.org](mailto:aaahmad@aclu.org); or Kara Gotsch, Deputy Director, The Sentencing Project, at [kgotsch@sentencingproject.org](mailto: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  
The Bail Project  
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 Independence 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