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Biden - Harris Transition
COVID-19 Advisory Board

Dr. Marcella Nunez-Smith, Co-Chair
Biden - Harris Transition
COVID-19 Advisory Board

Dr. Vivek Murthy, Co-Chair
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COVID-19 Advisory Board

December 3, 2020

Dear Dr. Kessler, Dr. Murthy, and Dr. Nunez-Smith:

As your colleagues, and experts in the medical and public health community, we write to urge President-elect Biden and the Transition COVID-19 Advisory Board to **advance pandemic relief strategies that substantially reduce federal, state, and local incarceration levels.**

Prisons and jails have become leading [coronavirus hotspots](#), but federal, state, and local leaders have not sufficiently sought to reduce the public health threat that their conditions present. The estimated [11% reduction](#) in the overall incarcerated and detained population during the pandemic has been inadequate given the scale of U.S. incarceration. Depopulating carceral settings, including for detained youth and immigrants, during the COVID-19 pandemic would save lives and help limit the spread of the virus to communities nationwide. Physical distancing is unattainable in overcrowded and unsanitary carceral facilities, making viral outbreaks especially likely among a population with disproportionately high numbers of people who are medically vulnerable.

Insufficient staff and resources limit access to timely and adequate medical care for those incarcerated or detained. Additionally, there are large numbers of older people in the incarcerated population who are more vulnerable to the virus. A *Marshall Project* [analysis](#) found that the percentage of people in state prisons who are 55 years or older more than tripled between 2000 and 2016, and today older individuals make up a greater portion of the state prison population than people aged 18-24. The overrepresentation of Black, Latinx, and Indigenous people in these facilities also [exacerbates](#) the disproportionate harm that COVID-19 has already inflicted on these populations in the community.

The rate of COVID-19 cases reported in federal and state prisons is over [four times](#) the national rate of confirmed cases. The COVID-19 mortality rate in prisons is [twice](#) that of the general population, after adjusting for age, sex, and race/ethnicity.¹ [Jails](#) and [immigration detention](#)

¹ In federal prisons, 140 people had died of COVID-19 by November 17, 2020. Balsamo, M. (2020, November 17). Federal prison left inmates with virus in housing for a week. *Washington Post*.

[centers](#) have also reported higher rates of COVID-19 positivity than the U.S. population.² The movement of staff between correctional facilities and their communities and the close contact between staff and incarcerated people enables the virus to spread into and out of these facilities. By mid- November, at least 42,000 corrections workers nationwide had tested positive for COVID-19 and 86 had died, according to UCLA Law's [COVID-19 Behind Bars Project](#).

Medical, public health, and criminal justice [experts](#) and [practitioners](#) have already recommended substantial depopulation in these facilities because the infrastructure of carceral facilities and the policies practiced within them are incompatible with basic Centers for Disease Control and Prevention guidelines and given the heightened health vulnerability of incarcerated populations. Pandemic-era depopulation of detention and corrections facilities is supported by [criminological evidence](#) that many incarcerated people do not pose an unreasonable public safety risk. Even before the pandemic, the level of decarceration in the United States was incommensurate with the nationwide crime drop. Although nationwide crime rates have fallen to [half their 1990s level](#) in recent years, the incarcerated population grew by 300% between 1980 and 2008 and only declined by 8% between 2008 and 2018.³

Since the pandemic, decarceration has been too modest. Local jails, in which two-thirds of the confined population has not yet been convicted, reduced their populations [22%](#) by July 2020 (from 738,400 to 575,952 people).⁴ [Preliminary evidence](#) suggests that this reduction has helped to reduce the spread of the virus without harming public safety. But several jurisdictions have since reversed this trend and increased their jail populations. State prisons, which confine over half of incarcerated individuals, decreased their confined population by only [4%](#) by May 2020 (from 1,260,393 to 1,207,710).⁵ Shortening excessive [prison terms](#) and expediting releases, especially of elderly people who [pose a limited public safety risk](#), would go far in mitigating the harm of this virus. The Bureau of Prisons (BOP), whose confined population grew by over 600% between yearends 1980 and 2019, downsized by just [14%](#) between March and November 2020 (from 175,315 to 154,396), remaining dangerously overcrowded.

² On the spread of the virus in youth detention and treatment facilities see: Rovner, J. (2020). COVID-19 in Juvenile Facilities. Washington, DC: The Sentencing Project. Available at: <https://www.sentencingproject.org/publications/covid-19-in-juvenile-facilities/>

³ Brown, J. M. et al. (1996). Correctional Populations in the United States, 1994. Bureau of Justice Statistics. Available at: <https://www.bjs.gov/content/pub/pdf/cpius94a.pdf>; Maruschak, L. M. and Minton, T. D. (2020). Correctional Populations in the United States, 2017-2018. Bureau of Justice Statistics. Available at: <https://www.bjs.gov/content/pub/pdf/cpus1718.pdf>

⁴ Compared to the nationwide jail population on Dec 31, 2018, the most recent data reported by the Bureau of Justice Statistics.

⁵ The *Marshall Project* and *Associated Press* estimate an [8% reduction](#) in the population confined in both state and federal prisons between March and June 2020.

Meaningful and effective decarceration amidst the pandemic can limit the number of people exposed to the virus in leading coronavirus clusters while also protecting the broader communities to which these individuals return. A [consensus report](#) by the National Academies of Sciences, Engineering, and Medicine recommends “implementing COVID-19 testing and facilitating quarantines in the community for 14 days (if needed) before released individuals return to their families or group housing.” The report also recommends that plans to ensure a safe reentry of incarcerated persons to communities also include: “identifying resources to provide housing; addressing access to public benefits, such as the Supplemental Nutrition Assistance Program (popularly known as food stamps); and working with community health systems for access to health care.”

We urge the Transition COVID-19 Advisory Board to make the following recommendations to the Biden - Harris Administration:

- Centers for Disease Control and Prevention shall explicitly recognize and include decarceration and expanded access to healthcare for incarcerated and recently released individuals as necessary guidance for federal, state, and local officials.
- Department of Justice leaders shall utilize existing authorities, such as compassionate release and home confinement, to expedite the immediate release or transfer of elderly and medically vulnerable people out of the Bureau of Prisons.
- Support COVID-19 relief funding for state, local, and tribal carceral systems to incentivize a [significant reduction](#) of incarcerated populations and to assist reentry and community-based organizations to respond to COVID-19.
- Direct the Attorney General to 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 the person poses a specific threat of violence to a specific person.
- Support the COVID-19 in Corrections Data Transparency Act, which would require the BOP, U.S. Marshals Service, and state and local correctional agencies to report disaggregated data to the CDC on the effects of COVID-19 in their facilities, including any racially or ethnically disparate impacts.
- Ensure that pandemic-related decarceration is not racially imbalanced.
- Implement universal and regularly repeated testing for all correctional staff and people incarcerated.

As with the COVID-19 situation in the rest of the country, the situation in detention and correctional facilities is likely to get much worse. According to a [recent weekly report](#) from The White House Coronavirus Task Force, there is “now aggressive, unrelenting, expanding broad community spread across the country, reaching most counties, without evidence of improvement

but rather, further deterioration.” The report goes on to state that current efforts to stop the spread “are inadequate and must be increased to flatten the curve.”

Current efforts to minimize the impact of the spread of COVID-19 behind bars have also been insufficient. We urge you to recommend policies that are commensurate with the challenge before us. For more information contact Carlos Franco-Paredes:
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Sincerely,*

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