

# **Recommendations to the Biden-Harris Coronavirus Task Force on Immediate Steps to Combat COVID-19 Behind Bars**

December 2, 2020

Consistently among the biggest COVID-19 clusters in the United States, correctional facilities are seeing record high surges in coronavirus infections.<sup>1</sup> The crowded and congregate nature of jails, prisons, and detention centers—where 2.3 million people are incarcerated and tens of thousands of staff work each day—pose a unique threat for the infection and spread of COVID-19.<sup>2</sup>

Ohio's Pickaway Correctional Institution (PCI) is an early and chilling example. Even though PCI banned visitors in March, the facility detected its first COVID-19 case on April 4.<sup>3</sup> Within a month, more than 75 percent of the 2,000 people incarcerated there tested positive and, by late May, 35 were dead.<sup>4</sup> Six months later, COVID-19 behind bars continues to rage unchecked across the country. As of November 11, 2020, at least 252,000 incarcerated people and correctional employees had tested positive and 1,450 had died, undoubtedly an undercount given the lack of testing in correctional facilities and insufficient data reporting.<sup>5</sup> Seven thousand five hundred and twelve immigrants held in immigration detention have tested positive at 104 of the 200 facilities in which U.S. Immigration and Customs Enforcement (ICE) maintains beds.<sup>6</sup> Black and Latinx people, who have borne the brunt of the pandemic, disproportionately make up America's correctional and immigration detention population.<sup>7</sup>

It is imperative to act immediately and decisively to combat COVID-19 behind bars. President-Elect Biden and Vice President-Elect Harris can manage this crisis consistent with public health and safety by (1) reducing the number of people incarcerated to ease overcrowding; (2) protecting people who remain incarcerated by implementing best practices for prevention, testing, and containment; and (3) reorganizing correctional operations for social distance, not isolation or punishment.

## **Recommendations for actions to take through direct oversight and authority**

The Biden-Harris Administration can take several measures with the U.S. Bureau of Prisons (BOP); the ICE detention system; and the Office of Refugee Resettlement (ORR), which oversees immigrant youth detention, to stop the spread of COVID-19 among people who are incarcerated or detained in federal custody and the staff who work in these facilities.

### **Recommendation 1: Release people from BOP, ICE, and ORR custody**

Safely releasing people to ease overcrowding and allow for social distancing is a top priority. The administration should set a goal to reduce the number of people in custody by a minimum of 25 percent within its first 100 days, as local jails did between March and June

when they released enough people to lower the national jail population by a quarter in that time.<sup>8</sup>

1. Release people from BOP custody who are within one year of the end of their sentences.
2. Use compassionate release for people aged 55 and older and those who are especially vulnerable to COVID-19.
3. Release people held in immigration detention, prioritizing those with vulnerabilities.
4. Prioritize swift reunification of children in ORR custody with family members and, at a minimum, ensure they are placed in smaller and transitional foster care settings.
5. Issue more clemencies and commutations.
6. Direct federal prosecutors and U.S. Department of Homeland Security attorneys to not seek pretrial or immigration detention unless there is a credible public safety risk that justifies it.

### **Recommendation 2: Best practices for prevention, testing, and containment**

Public health officials agree that the most effective strategy to combat COVID-19's spread is the use of personal protective equipment (PPE), testing, and contact tracing. Consistent with the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, which passed the U.S. House of Representatives, at least \$200 million should be allocated immediately to implement these best practices within the BOP, ICE, and ORR systems.

1. Provide all people who work and are incarcerated in federal correctional settings with PPE in accordance with Centers for Disease Control and Prevention guidance.
2. End transfers of incarcerated people between BOP facilities and within the ICE system.
3. Mandate mass testing at key intervals including, at a minimum, on admission to the facility and before release, as well as immediately when any case of COVID-19 is suspected.
4. Institute a contact tracing policy behind bars.
5. Align facility design to meet public health recommendations by using single cells when possible and maintaining at least 150 square feet of personal space per person.<sup>9</sup>

### **Recommendation 3: Reorganize correctional operations to promote social distancing**

Responses to COVID-19 have largely centered on lockdown measures, such as prohibiting in-person visits with family members and loved ones; limiting movement or access to programs and time in the yard; and, for facilities with single units, requiring people to stay in their cells. The rate of infection and death toll to date demonstrate that these tactics are ineffective.

1. Change routine practices and train staff to limit direct contact between people.
2. Change schedules and methods of running programs, activities, and religious services to promote social distancing and safety—but do not eliminate them.
3. Provide free tablets and phone calls to replace lost in-person visits.

## Recommendations for actions through guidance and incentives to localities

The Biden-Harris Administration can guide and incentivize the authorities that oversee state and local jails, prisons, and detention centers to adopt the recommendations above.

1. Urge Congress to pass the HEROES Act, including an allocation of \$300 million in Byrne Justice Assistance and another \$600 million in Pandemic Justice Response Act grants.
2. Urge Congress to pass the COVID-19 in Corrections Data Transparency Act to hold state and local systems accountable for testing and infection numbers, spread, and outcomes.
3. Issue guidance and provide assistance and oversight through the Office of Justice Programs to states and localities looking to effectively combat COVID-19 behind bars.

Resistance to these reforms is often couched in public safety and budgetary concerns. However, a September 2020 study of jail and prison early release policies during COVID-19 demonstrates that we can maintain public safety while prioritizing public health.<sup>10</sup> We urge the COVID-19 Task Force to consider these recommendations and the administration to take action immediately. The costs—human, social, and fiscal—of inaction are too great to ignore.

*For more information, contact Hayne Yoon, director, federal policy, Vera Institute of Justice, at [hyoon@vera.org](mailto:hyoon@vera.org) or 202-465-8906.*

## Endnotes

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<sup>1</sup>The Editorial Board, "Opinion: America Is Letting the Coronavirus Rage Through Prisons," *New York Times*, November 21, 2020, <https://www.nytimes.com/2020/11/21/opinion/sunday/coronavirus-prisons-jails.html>.

<sup>2</sup> Vera Institute of Justice, *Policy Guidance: We Must Urgently Do More to Address COVID-19 Behind Bars and Avoid Mass Infection and Death* (New York: Vera Institute of Justice, May 2020), <https://www.vera.org/downloads/publications/coronavirus-guidance-crisis-behind-bars.pdf>.

<sup>3</sup> Cid Standifer and Frances Stead Sellers, "Prisons and Jails Have Become a 'Public Health Threat' During the Pandemic, Advocates Say," *Washington Post*, November 11, 2020, [https://www.washingtonpost.com/national/coronavirus-outbreaks-prisons/2020/11/11/b8c3a90c-d8d6-11ea-930e-d88518c57dcc\\_story.html](https://www.washingtonpost.com/national/coronavirus-outbreaks-prisons/2020/11/11/b8c3a90c-d8d6-11ea-930e-d88518c57dcc_story.html).

<sup>4</sup> Ibid.

<sup>5</sup> "Covid in the U.S.: Latest Map and Case Count," *New York Times*, accessed December 2, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

<sup>6</sup> U.S. Immigration and Customs Enforcement, "ICE Guidance on COVID-19," [www.ice.dhs.gov/coronavirus](http://www.ice.dhs.gov/coronavirus).

<sup>7</sup> Meghan E. Borysova, Ojmarrh Mitchell, Dawood H. Sultan, and Arthur R. Williams, "Racial and Ethnic Health Disparities in Incarcerated Populations," *Journal of Health Disparities Research and Practice* 5, no. 2 (2012), 92-100, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3546523/>.

<sup>8</sup> Vera Institute of Justice, *The Scale of the COVID-19-Related Jail Population Decline* (New York: Vera Institute of Justice, August 2020), <https://www.vera.org/downloads/publications/the-scale-of-covid-19-jail-population-decline.pdf>.

<sup>9</sup> The Vera Institute of Justice works closely with MASS Design Group, an award-winning social design firm that has helped correctional facilities across the country invest in architecture and redesign to manage COVID-19 in a manner consistent with social distancing and safety, not isolation. One of its recommendations is for jails, prisons, and detention centers to maintain at least 150 square feet per incarcerated person for social distance and safety. See MASS Design Group, MILPA, and Vera Institute of Justice, *The Role of Architecture in Fighting COVID-19: Carceral Environments and COVID-19* (Boston/New York: MASS Design Group, MILPA, and Vera Institute of Justice, May 2020), <https://massdesigngroup.org/sites/default/files/multiple-file/2020-07/Carceral%20Environments%20and%20COVID-19.pdf>.

<sup>10</sup> Council on Criminal Justice, National Commission on COVID-19 and Criminal Justice, *COVID-19, Jails, and Public Safety* (New York: Council on Criminal Justice, September 2020), [https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid\\_commission/covid-19\\_jails\\_and\\_public\\_.pdf](https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid_commission/covid-19_jails_and_public_.pdf).