

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

Except for large college campuses and factories, the 25 biggest COVID-19 clusters in the U.S. all have occurred in correctional facilities.<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 is an early and chilling example. Despite banning visitors in March, the first COVID-19 case was detected on April 4.<sup>3</sup> Within a month, over 75% 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 have tested positive and 1,450 have died, undoubtedly an undercount given the lack of testing in correctional facilities and insufficient data reporting.<sup>5</sup> 7,152 immigrants held in immigration detention have tested positive at 104 of the 200 facilities in which 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 Immigration and Customs Enforcement (ICE) detention system, and the Office of Refugee Resettlement (ORR), that oversees immigrant youth detention, to stop the spread of COVID-19 among people who are incarcerated and work in federal custody.

#### *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 at a minimum by 25% within the first 100 days, as local jails did between March and June, when they released enough people that the national jail population declined 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 sentence.
2. Use compassionate release to release people 55+ or 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 fostercare settings.
5. Issue more clemencies and commutations.

6. Direct federal prosecutors and DHS 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, testing, and contact tracing. Consistent with the HEROES Act, which passed the 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 minimum, upon admission to the facility and before release, and 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 Task Force to consider these recommendations and for the administration to take action immediately. The costs—both social and fiscal—of inaction are too great to ignore.

*For more information, contact Hayne Yoon, Federal Policy: [hyoon@vera.org](mailto:hyoon@vera.org) or 202.465.8906.*

- 
- <sup>1</sup> *New York Times*. Covid in the U.S.: Latest Map and Case Count, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>. Accessed 11 Nov. 2020.
- <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, May 2020, <https://www.vera.org/downloads/publications/coronavirus-guidance-crisis-behind-bars.pdf>. Accessed 11 Nov. 2020.
- <sup>3</sup> Standifer, Cid and Frances Stead Sellers, "Prisons and Jails Have Become a 'Public Health Threat' During the Pandemic, Advocates Say." *The Washington Post*. Nov. 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> *New York Times*. Covid in the U.S.: Latest Map and Case Count, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>. Accessed 11 Nov. 2020.
- <sup>6</sup> U.S. Immigration and Customs Enforcement (ICE), "ICE Guidance on COVID-19," [www.ice.gov/coronavirus](http://www.ice.gov/coronavirus). Accessed 13 Nov. 2020.
- <sup>7</sup> Borysova, Meghan E. et al. "Racial and Ethnic Health Disparities in Incarcerated Populations." *Journal of Health Disparities Research and Practice*, vol. 5, no. 2, 2012, pp. 92-100. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3546523/>. Accessed 12 Nov. 2020.
- <sup>8</sup> *Vera Institute of Justice*. The Scale of the COVID-19-Related Jail Population Decline, August 2020, <https://www.vera.org/publications/covid19-jail-population-decline>. Accessed 11 Nov. 2020.
- <sup>9</sup> The Vera Institute 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 their recommendations is that jails, prisons, and detention centers maintain at least 150 square feet per incarcerated person to maintain social distance and safety. See MASS Design Group, "The Role of Architecture in Fighting COVID-19: Rethinking Carceral Environments During and After COVID-19," May 2020, <https://massdesigngroup.org/covidresponse>.
- <sup>10</sup> *Council on Criminal Justice*. COVID-19, Jails, and Public Safety, 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). Accessed 12 Nov. 2020.