



September 24, 2020

Centers for Disease Control and Prevention
1600 Clifton Rd.
Atlanta, GA 30329

ATTN: CDC Director Robert R. Redfield
Kyle McGowan, Chief of Staff
Mitch Wolfe, MD, MPH (RADM,
USPHS), Chief Medical Officer
Robin M. Ikeda, MD, MPH
(RADM,USPHS), Assoc. Director for
Policy and Strategy

Dear Director Redfield,

We commend the CDC's recommended measures to prevent the spread of COVID-19 in correctional facilities. Nonetheless, infection and death rates continue to increase more rapidly inside adult and juvenile jails, prisons, and immigration centers than in the general population. As of August 27, the fifteen largest COVID-19 clusters in the United States were in jails or prisons.¹ There are also a concerning number of positive cases reported in juvenile facilities across the country. Public health experts have calculated the death rate in federal and state prisons to be at least three times higher than in the general population.²

Additionally, a June report from Unlock the Box finds that there has been a 500% increase in the use of solitary confinement in response to the outbreak of the COVID-19 pandemic – a trend that puts the lives of countless incarcerated people, corrections officers and community members at risk.³ The report notes in extensive detail the analysis of medical experts on the risks associated with federal and state jails and prisons utilizing punitive solitary confinement instead of targeted depopulation efforts and medical isolation to contain the spread of the virus. Incarcerated people will continue to hide their symptoms out of fear of being placed in

¹ *Coronavirus in the U.S.: Latest Map and Case County*, N.Y. Times, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#clusters> (last visited Aug. 27, 2020).

² Brendan Saloner et al., *COVID-19 Cases and Deaths in Federal and State Prisons*, JAMA (July 8, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2768249>.

³ Unlock the Box, *Solitary Confinement is Never the Answer* (2020), <https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860e0d57d0ce8195/1592247570889/June2020Report.pdf>.

prolonged solitary confinement, a practice which the United Nations has said can amount to torture, furthering the spread inside state and federal jails and prison facilities.

The report also quotes Dr. Homer Venters, former chief medical officer for New York City Jails, who noted that lockdown units typically require more staff and greater levels of contact between corrections officers and incarcerated people “because of the need to handcuff and physically escort people to and from the shower, in and out of the cell for health care, and numerous other basic operations.” For this reason, Dr. Venters has joined numerous other medical professionals in denouncing the use of solitary confinement as a response to the spread of COVID-19.

Even with unprecedented national spikes in COVID-19 infections, correctional facilities remain a reservoir for infection by comparison, threatening traditionally medically compromised residents, staff, and surrounding communities. The limited publicly available data on infection rates in correctional facilities are 40% – 80%,^{4,5} strikingly higher than the general population. Further oversight and guidance from the CDC is necessary to protect front-line correctional staff, incarcerated people, and the general population.

Therefore, we, the undersigned, believe the CDC should update its current guidance for adult and juvenile correctional facilities with the following measures to both slow the high rate of COVID-19 transmission within correctional facilities and ensure effective compliance with existing guidelines.

1. Issue clear guidance to local, state and federal corrections officials, judges, and law enforcement agencies on reducing adult and juvenile jail and prison intakes and population size to reduce the spread of COVID-19. This guidance should include prioritizing releasing those who are pregnant, those age 50 and older, and persons with pre-existing medical conditions as these populations are especially vulnerable to COVID-19. Release should be prioritized for people who are within two years of finishing a sentence and people who are detained while awaiting trial. The guidance should also prioritize the use of alternative methods to detention whenever possible.⁶

⁴ Cary Aspinwall & Joseph Neff, *These Prisons Are Doing Mass Testing For COVID-19—And Finding Mass Infections*, The Marshall Project (Apr. 24, 2020), <https://www.themarshallproject.org/2020/04/24/these-prisons-are-doing-mass-testing-for-covid-19-and-finding-mass-infections>.

⁵ Sarah Volpenhein, *Marion Prison’s Virus Outbreak Seeps into Public*, Columbus Dispatch (Apr. 25, 2020), <https://www.dispatch.com/news/20200425/marion-prisons-virus-outbreak-seeps-into-public>.

⁶ For an extensive discussion of ways to address the unique challenges faced by correctional facilities during COVID-19, see Brie Williams, et al., *Correctional Facilities In The Shadow Of COVID-19: Unique Challenges And Proposed Solutions*, Health Affairs (Mar. 26, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/> and Benjamin A. Howell, *Protecting Decarcerated Populations In The Era of COVID-19: Priorities For Emergency Discharge Planning*, Health Affairs (Apr. 13, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200406.581615/full/>.

Corrections officials, law enforcement agencies, and other relevant actors can safely de-populate their facilities by using the following criteria:

- a) avoiding new custodial arrests for crimes that do not pose an unreasonable safety risk to a specific person or persons;
- b) halting all new state prison sentences unless the individual has been formally charged with an offense involving the intentional use of force to cause serious bodily injury;
- c) drastically limiting the use of pretrial detention
- d) eliminating incarceration as a response to non-payment of fines and fees
- e) releasing all people held on probation, parole, technical violation detainers or sentences and halting incarceration for supervision violations;
- f) implementing a practice of automatic release for all people serving a misdemeanor sentence;
- g) commuting the sentences of imprisoned people with less than two years remaining on their sentences
- h) reviewing all felony sentences and moving for release for the elderly and those who are medically vulnerable; and
- i) releasing all persons, adults, and children detained in youth and immigrant detention, including those on parole.

2. Issue public health guidelines distinguishing “solitary confinement” from “quarantine” and “medical isolation” to prevent punitive conditions for those who contract COVID-19.

The purpose of quarantine and medical isolation is public health-related and *not* punitive.⁷ Medical staff, and not security staff, supervise and determine the length of isolation and quarantine, and amenities and human contact are *not* more limited in isolation and quarantine than in the general population.⁸ To that effect, we ask the CDC to make clear that those in quarantine and medical isolation will still be able to: make calls, have cell phone or video-based contact with loved ones, have outdoor recreation in large spaces (albeit with masks, in small groups, and with appropriate physical distancing), access the canteen, and retain other privileges available to those in the main jail/prison population. Medical staff should also give incarcerated individuals daily information about how many days they have left in quarantine or isolation. Explaining these distinctions is vital to stemming the spread of COVID-19 in correctional facilities because the use of solitary confinement for known or suspected cases of COVID-19 often dissuades people from reporting symptoms, facilitating the rapid spread through correctional populations.

3. Assemble a formal CDC working group on COVID-19 and prisons. This CDC working group should include personally affected individuals, frontline corrections staff, academics in medical fields, and should examine prison health care issues beyond just COVID-19. This crisis has demonstrated the unique vulnerability of detained people and the importance of maintaining focus on this population even after the pandemic ends.

⁷ See David H. Cloud et al., *Medical Isolation and Solitary Confinement: Balancing Health and Humanity in US Jails and Prisons During Covid-19*, 2020 J. General Internal Med. 1 (2020).

⁸ See *id.* at tbl. 2.

4. Segregate suspected and documented COVID-19 cases from the general correctional population. As stated above, medical isolation and quarantine are important measures of infection control, particularly in a correctional facility where social distancing is nearly impossible. If COVID-19 cases are detected in a facility, incarcerated individuals and correctional staff who have tested positive or come into close contact with COVID-positive individuals must be medically isolated and provided alternative housing arrangements. Decarceration will be required to free up the extra space needed for quarantine and medical isolation space.

5. Make soap and hand sanitizer freely accessible to all people incarcerated and working in correctional facilities, and make gloves mandatory for all staff. Although the CDC has already recommended that soap be freely accessible, a recent survey [A⁹] revealed that 25% of correctional staff still do not have access to hand sanitizer on-the-job. Practices and protocols across states are inconsistent. The CDC should work closely with individual states to ensure all facilities have soap and water with a place to wash hands and/or hand sanitizer. Social distancing in correctional facilities is virtually impossible, and some facilities have poor ventilation. This makes the need for gloves, soap, and hand sanitizer vitally important for both staff and incarcerated populations.

We implore the CDC to work closely with governors, state public health officials, and state Departments of Corrections and juvenile justice agencies about the recommended measures and urge them to comply with these minimum standards. We also urge the CDC to consult with formerly and currently incarcerated people, including young people, to better understand how CDC guidance will work on the ground in prisons and jails. Unlock the Box is ready to partner with the CDC in these efforts. As an organization, we advocate for the rights of incarcerated people and aim to protect them during this dangerous pandemic. Please do not hesitate to contact us with any questions or opportunities for collaboration. We can be reached at jsandoval@unlocktheboxcampaign.org.

We look forward to hearing from you about an immediate course of action.

Sincerely,

Unlock the Box Campaign, and the undersigned

Allard K. Lowenstein International Human Rights Clinic at Yale Law School

American Civil Liberties Union

Americans for Democratic Action (ADA)

⁹ Letter from One Voice: Uniting Corrections and American Correctional Officers Intelligence Network (ACOIN) to Centers for Disease Control and Prevention (Apr. 28, 2020).

Andrew Goodman Foundation
Autistic Women and Nonbinary Network
California Coalition for Women Prisoners
California Families Against Solitary Confinement
Campaign for Alternatives to Isolated Confinement (CAIC)
Catholic Migration Services
Center for Children's Law and Policy
Church of Scientology National Affairs Office
Church World Service
Citizen Action of New York
Common Cause
Correctional Association of NY (CANY)
DC Justice Lab
Defender Impact Initiative
Defending Rights & Dissent
Disability Rights Washington
Drug Policy Alliance
End Solitary Santa Cruz County (CA)
Fair Chance Project
Family and Emergency Nurse Practitioners
Families United to End LWOP - FUEL
First Unitarian Church
Free Minds Book Club and Writing Workshop
Haitian Bridge Alliance
Health in Justice Action Lab, Northeastern University School of Law
Health Resources in Action

Human Rights Campaign
Human Rights Watch
Immigrant Legal Defense
Innocence Project
International Community Corrections Association
Justice Policy Institute
Justice Roundtable
Juvenile Law Center
Lambda Legal
Law Enforcement Action Partnership
League of Women Voters of the United States
LIFE Progressive Services Group Inc.
Louisiana Stop Solitary Coalition
Matthew Shepard Foundation
Mommieactivist and Sons
NAACP
National Association of Criminal Defense Lawyers
National Association of Counsel for Children
National Association of Social Workers
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Churches
National Employment Law Project
National Juvenile Defender Center
National Juvenile Justice Network
National Partnership for Women & Families

National Religious Campaign Against Torture
New Hampshire Public Health Association
New Sanctuary Coalition
One by 1, Inc.
Pacific Juvenile Defender Center
Pennsylvania Institutional Law Project
Physicians for Criminal Justice Reform, Inc.
Physicians for Human Rights
Prison Law Office
Project On Government Oversight
RocACTS Criminal Justice Task Force
Safer Foundation
Social Workers and Allies Against Solitary Confinement
SPLC Action Fund
Stop the Drug War
T'ruah
The Bronx Defenders
The Campaign for Youth Justice
The Florence Immigrant & Refugee Rights Project
The Leadership Conference on Civil and Human Rights
The Sentencing Project
The Wright Institute
University of New Mexico Physicians for Human Rights Chapter
University of New Mexico School of Medicine Physicians for Human Rights
Uptown People's Law Center
Washington Lawyers' Committee for Civil Rights and Urban Affairs

Wilco Justice Alliance

Individuals (signing ONLY in their individual capacity; credentials and affiliation for identification only)

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