

Congress of the United States
House of Representatives
Washington, DC 20515

December 15, 2020

The Honorable Robert R. Redfield
Director
Centers for Disease Control and Prevention
395 E St SW
Washington, D.C. 20024

The Honorable Michael Carvajal
Director
Federal Bureau of Prisons
20 1st St NW
Washington, D.C. 20024

Dear Director Redfield and Director Carvajal,

As you consider guidelines for the allocation of the initial doses of COVID-19 vaccine, we urge you to include incarcerated individuals as a priority population. The national vaccine distribution strategy will place competing priorities on our collective resources and public health system. However, ignoring the growing COVID-19 infection crisis in American jails and prisons would be a dire mistake and undermine any national effort to contain the virus. COVID-19 is spreading four times faster in prisons than the general public.¹ To put the matter in perspective, the virus is moving through the prison population three times faster than it did on commercial cruise ships at the start of the pandemic.²

The Bureau of Prisons has provided informal information regarding the vaccine distribution plan. We are deeply concerned that the current plan places the most vulnerable incarcerated individuals who have a cancer diagnosis, chronic kidney disease, chronic obstructive pulmonary disease, heart conditions, compromised immune systems, sickle cell, diabetes, and individuals 65 years or older in priority level 3 behind incarcerated individuals in minimum security facilities who are in open bay housing and are currently listed in priority group 2. Incarcerated individuals with these types of medical conditions are at a high risk of complications if they contract COVID-19 as it spreads through federal prisons yet are slated to receive the vaccine after prison staffers in phase 1 and other incarcerated individuals listed in phase 2.

Outbreaks in prisons are difficult to control due to the conditions of confinement. Incarcerated individuals have been unable to protect themselves from infection through social distancing³ and

¹ Roni Caryn Rabin, *Prisons Are Covid-19 Hotbeds. When Should Inmates Get the Vaccine?* The New York Times, <https://www.nytimes.com/2020/11/30/health/coronavirus-vaccine-prisons.html>

² Edmund L. Andrews, *Why Prisons and Jails Have Become COVID Hotspots*, Stanford Engineering, <https://engineering.stanford.edu/magazine/article/why-prisons-and-jails-have-become-covid-hotspots>

³ *Examining Best Practices for Incarceration and Detention During COVID-19: Hearing Before the S. Comm. On the Judiciary*, 116th Cong. (2020)

they often lack adequate access to handwashing and sanitizing facilities. Without a national testing strategy, local sheriffs and prison officials have been unable to test and quarantine newly arrested individuals and intra-prison transfers are still occurring. The result has been soaring infection rates within prison facilities and virus hotspots in surrounding communities.⁴ Over 250,000 of the more than one million people in prison have fallen ill or been killed by this virus⁵. The current vaccine distribution plan prioritizes staff members who enter and exit prison facilities daily but fails to recognize that a newly sentenced individual or intra prison transferee can also introduce the virus into a prison facility because current screening methods have proven inadequate for asymptomatic carriers of COVID-19.

The challenge of the COVID-19 pandemic tests the foundational principles of our justice and carceral system. The legal authority the government claims when it deprives an individual of liberty is rooted in the Constitution and must conform to the requirements of due process. Individuals serving a sentence or awaiting trial should not be left to the arbitrary and capricious punishment of a virus or suffer a death sentence. To deny priority vaccination to individuals in forced confinement is to abdicate our responsibility at a time when the public has called for a reckoning of the criminal justice system and racial injustice.

A difficult path lies ahead, but the most effective and humane method to deal with this crisis is to vaccinate every incarcerated individual and staff member within a prison or jail facility and expand the use of compassionate release to those individuals who present a low risk to public safety and are vulnerable to infection. Many incarcerated individuals in the federal system are in a high-risk category for infection due to chronic medical conditions⁶ and many of these same individuals could be safely released, so that only those in close confinement would receive a priority vaccination. However, efforts to release low-risk individuals during the pandemic have faltered and resulted in an increase in compassionate release petitions in federal courts.⁷

In light of this extraordinary crisis, we urge you to use the considerable power and tools at your disposal to curb the extrajudicial death and suffering of those entrusted to your custody. Your departments cannot abdicate your duty to these individuals, their families, and the communities they will return to any longer. Please answer the following questions:

1. How is the BOP working with the CDC to create and implement a plan to ensure that the vaccine will reach incarcerated persons expeditiously?
2. How are CDC and BOP working together to stop outbreaks among prison populations?

⁴ *America is Letting the Coronavirus Rage Through Prisons*, The New York Times, <https://www.nytimes.com/2020/11/21/opinion/sunday/coronavirus-prisons-jails.html>

⁵ The Marshall Project, *A State-by-State Look at Coronavirus in Prisons*, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>

⁶ Wilper, A. P., Woolhandler, S., Boyd, J. W., Lasser, K. E., McCormick, D., Bor, D. H., & Himmelstein, D. U. (2009). The health and health care of US prisoners: results of a nationwide survey. *American journal of public health*, 99(4), 666–672. <https://doi.org/10.2105/AJPH.2008.144279>

⁷ Andrew Cohen, *Bureau of Prisons response to COVID-19 has been dangerous. The public deserves answers.*, <https://www.usatoday.com/story/opinion/policing/2020/05/21/bureau-prisons-response-covid-dangerous-public-deserves-answers/5220095002/>

3. When and in what phase of the general vaccine distribution plan will BOP vaccinate the following individuals within its facilities:
- a. prison staff (including guards)?
 - b. incarcerated individuals in high-risk infection categories according to CDC guidance and criteria?
 - c. all incarcerated individuals currently in BOP facilities?

We look forward to your prompt response.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Member of Congress

/s/
MARCY KAPTUR
Member of Congress

/s/
DAVID PRICE
Member of Congress

/s/
ELEANOR HOLMES NORTON
Member of Congress

/s/
NYDIA M. VELÁZQUEZ
Member of Congress

/s/
SHEILA JACKSON LEE
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GWEN MOORE
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ANDRÉ CARSON
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