

United States Senate
WASHINGTON, DC 20510

May 4, 2021

Secretary Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Becerra:

We write to urge you to use new funding authorized by Congress in the American Rescue Plan Act of 2021 and your authority under the Public Health Service Act to take immediate and aggressive action to help manage COVID-19 outbreaks in federal, state, and local correctional facilities.

Although the U.S. is now making considerable progress in rolling out COVID-19 vaccinations, the virus continues to spread in communities throughout the country.¹ Some of the individuals who continue to be at the greatest risk from the virus are individuals in correctional facilities—both incarcerated people and correctional staff. Mitigation remains an enormous challenge in correctional settings, and according to recent research, incarcerated individuals are infected at a rate over five times greater than the average rate of the non-incarcerated population, and die at three times that average rate.² As of today, the virus has already claimed the lives of 2,575 incarcerated people in the U.S., according to the Marshall Project.³

President Biden’s American Rescue Plan, announced in January, called for several actions to manage COVID-19 in correctional facilities, including “expanded testing” to ensure that “vulnerable settings like prisons...can regularly test their populations.”⁴ The Biden

¹ The Wall Street Journal, “Covid-19 Cases Rise in Parts of U.S. Even as Vaccinations Pick Up,” Melanie Grayce West, April 19, 2021, <https://www.wsj.com/articles/u-s-faces-critical-weeks-as-covid-19-cases-rise-again-in-some-places-11618845433>.

² Journal of the American Medical Association, “COVID-19 Cases and Deaths in Federal and State Prisons,” Brendan Saloner, PhD, Kalind Parish, MA, Julie A. Ward, MN, RN, et al, July 8, 2020, <https://jamanetwork.com/journals/jama/fullarticle/2768249>.

³ The Marshall Project, “A State-by-State Look at Coronavirus in Prisons,” Accessed May 5, 2021, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

⁴ The White House, “President Biden Announces American Rescue Plan,” press release, January 20, 2021, <https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-biden-announces-american-rescue-plan/>.

administration also committed to “support[ing] COVID-19 safety in federal, state, and local prisons, jails, and detention centers by providing funding for COVID-19 mitigation strategies, including supplies and physical distancing; safe re-entry for the formerly incarcerated; and the vaccination of both incarcerated people and staff.”⁵

Last month, Congress passed the American Rescue Plan Act of 2021, which provided \$1.9 trillion to help communities around the country manage the public health crisis and recover from the economic crisis caused by the pandemic. That relief package includes \$47.8 billion “to carry out activities to detect, diagnose, trace, and monitor SARS–CoV–2 and COVID–19 infections and related strategies to mitigate the spread of COVID–19.”⁶ It further directed the Secretary of Health and Human Services (HHS) to “implement a national, evidence-based strategy for testing, contact tracing, surveillance, and mitigation with respect to SARS–CoV–2 and COVID–19, including through activities authorized under Section 319(a) of the Public Health Service Act.”⁷

In addition to the specific authority in the American Rescue Plan, the Public Health Service Act provides the Secretary of HHS with the authority to manage public health emergencies, including broad discretion to allocate resources as he or she sees fit to combat those emergencies.⁸ Specifically, the statute states that “the Secretary may take such action as may be appropriate to respond to the public health emergency, including making grants, providing awards for expenses, and entering into contracts and conducting and supporting investigations into the cause, treatment, or prevention of a disease.”⁹ The statute created the Public Health Emergency Fund expressly to fund these efforts. Specifically, these funds may be used to “facilitate coordination between and among Federal, State, local, Tribal, and territorial entities and public and private health care...make grants, provide for awards, enter into contracts, and conduct supportive investigations...facilitate and accelerate, as applicable, advanced research and development of security countermeasures....strengthen biosurveillance capabilities and laboratory capacity to identify, collect, and analyze information regarding such public health emergency or potential public health emergency...[and] carry out other activities, as the Secretary determines applicable and appropriate.”¹⁰

These Public Health Service Act authorities provide you with powerful tools to combat public health emergencies, as well as the broad authority to determine what is needed to respond to them, and Congress has now provided you with \$47.8 billion to take aggressive measures to manage the COVID-19 pandemic. We believe it is critically important that you use the new funding authorized under the American Rescue Plan Act of 2021 to execute the President’s goal to protect incarcerated people and correctional facility workers from COVID-19. You should take actions to help improve the safety of federal correctional facilities, and provide assistance to

⁵ *Id.*

⁶ The American Rescue Plan Act of 2021, H.R.1319, Subtitle E, Section 2401(a), <https://www.congress.gov/bill/117th-congress/house-bill/1319/text?q=%7B%22search%22%3A%5B%22%5C%22American+Rescue+Plan+Act%5C%22%22%5D%7D&r=1&s=1>.

⁷ *Id.* Subtitle E, Section 2401(b)(1).

⁸ Public Health Service Act, Pub. L. No. 104-321; Codified at 42 U.S.C. § 247d, <https://www.law.cornell.edu/uscode/text/42/247d>.

⁹ *Id.*

¹⁰ *Id.*

states for combatting COVID-19 in state and local prisons and jails. While the Fiscal Year 2021 spending bill and COVID-19 relief package passed in December included \$300 million in emergency supplemental funding for the Federal Bureau of Prisons, it is clear that both federal and state and local facilities require additional resources, public health expertise, and organizational capacity to effectively manage COVID-19.¹¹

We urge you to immediately deploy resources and take all necessary steps within your authority to help mitigate the spread of COVID-19 in federal, state, and local correctional facilities in order to protect incarcerated individuals, correctional staff, and their families, as well as the general public. Specifically, we urge you to (1) provide weekly testing to incarcerated people and correctional staff; (2) expand vaccine access for incarcerated people and staff; (3) require federal, state, and local correctional facilities to collect and publicize detailed demographic data on COVID-19 testing and vaccinations; and (4) provide additional support, such as paid leave for correctional staff and transitional services for incarcerated individuals leaving facilities, to help combat the spread of COVID-19. Enclosed, you will find a letter from nearly two dozen academics and correctional facility experts outlining ten specific steps for how federal funding could be used to prevent the spread of COVID-19 in correctional facilities, including through providing weekly diagnostic testing of staff and incarcerated people, engaging with CDC officials to prevent outbreaks, investing in additional personal protective equipment and re-entry support, and funding robust data collection, among other strategies. We urge you to consider taking these steps to help manage the spread of COVID-19 in correctional settings.

Thank you for your attention to this matter.

Sincerely,

/s/
Elizabeth Warren
United States Senator

/s/
Edward J. Markey
United States Senator

/s/
Chris Van Hollen
United States Senator

/s/
Richard Blumenthal
United States Senator

¹¹ Consolidated Appropriations Act, 2021, H.R.133, Sec. 543, <https://www.congress.gov/bill/116th-congress/house-bill/133/actions>.

_____/s/
Tammy Baldwin
United States Senator

_____/s/
Robert Menendez
United States Senator

_____/s/
Cory A. Booker
United States Senator

_____/s/
Amy Klobuchar
United States Senator

_____/s/
Alex Padilla
United States Senator

cc: Attorney General Merrick Garland
U.S. Department of Justice
Office of the Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530