

Congress of the United States

Washington, DC 20515

August 9, 2024

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Mandy K. Cohen
Director
Centers for Disease Control and Prevention
1600 Clifton Rd.
Atlanta, GA 30329

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
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Robert Otto Valdez
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Agency for Healthcare Research and Quality
5600 Fishers Lane
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Carole Johnson
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Health Resources & Services
Administration
5600 Fishers Lane
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Miriam E. Delphin-Rittmon
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Dear Secretary Becerra, Director Cohen, Administrator Johnson, Administrator Brooks-LaSure, Director Valdez, and Assistant Secretary Delphin-Rittmon:

Jails, prisons, and immigration and juvenile detention facilities hold people with some of the most serious unmet health needs in the United States today. The Department of Health and Human Services (HHS) can play a key role in increasing detained individuals' access to care, ensuring that care in custody meets minimum standards to protect patient safety, and expanding the range of critical health data that facilities report. The majority of detained people will return to the community in relatively short order.¹ Ensuring that they return home with a fair chance at health and productivity is therefore not just a moral imperative, but a public safety one.

Each year, millions of people spend time behind bars in jails, prisons, and juvenile and immigration detention facilities.² These populations have disproportionately high rates of mental

¹ See, e.g., U.S. Department of Justice, Bureau of Justice Statistics, "Time Served in State Prison, 2018," Danielle Kaebler, March 2021, p. 1, <https://bjs.ojp.gov/content/pub/pdf/tssp18.pdf>; U.S. Department of Justice, Bureau of Justice Statistics, "Jail Inmates in 2022 – Statistical Tables," Zhen Zeng, December 2023, p. 1, <https://bjs.ojp.gov/document/ji22st.pdf>.

² Prison Policy Initiative, "Mass Incarceration: The Whole Pie 2024," Wendy Sawyer and Peter Wagner, March 14, 2024, <https://www.prisonpolicy.org/reports/pie2024.html>; U.S. Department of Justice, Bureau of Justice Statistics, "Jail Inmates in 2022 – Statistical Tables," Zhen Zeng, December 2023, p. 1, <https://bjs.ojp.gov/document/ji22st.pdf>; U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, "ICE Annual Report,"

illness, chronic medical conditions, substance use disorder, and other health needs.³ In prisons, the scale of unmet health needs will only worsen as the population ages, with the share of incarcerated individuals over age 55 expected to swell from about 15 percent in 2021 to 33 percent by 2030.⁴ Furthermore, these facilities are hotbeds for the spread of infectious diseases, often leading to higher rates of community transmission.⁵

Despite their heightened health needs, detained individuals face routine delays or outright denials of care and rampant structural barriers to accessing care.⁶ New research finds that the vast majority of deaths in immigration detention facilities could have been prevented through clinically adequate medical care.⁷ Meanwhile, almost 70 percent of people with persistent medical conditions in local jails have had no medical examination since their incarceration, and time in custody is associated with shorter life expectancy.⁸ Upon release from jails and prisons,

December 29, 2023, p. 19, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf>; Prison Policy Initiative, “Arrest, Release, Repeat: How police and jails are misused to respond to social problems,” Alexi Jones and Wendy Sawyer, August 2019, <https://www.prisonpolicy.org/reports/repeatarrests.html#methodology>.

³ U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030, “Incarceration,” <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/incarceration>; Prison Policy Initiative, “Addicted to punishment: Jails and prisons punish drug use far more than they treat it,” Emily Widra, January 30, 2024, <https://www.prisonpolicy.org/blog/2024/01/30/punishing-drug-use/>; American Journal of Public Health, “Engaging Individuals Recently Released From Prison Into Primary Care: A Randomized Trial,” Emily A. Wang, et al., September 2012, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3482056/>; University of Pennsylvania, Leonard Davis Institute of Health Economics, “Why Are Immigrants in Detention Facilities Hospitalized?,” Christine Weeks, August 3, 2022, <https://ldi.upenn.edu/our-work/research-updates/why-are-immigrants-in-detention-facilities-hospitalized/>; National Judicial Task Force to Examine State Courts’

Response to Mental Illness, “State Courts Leading Change: Report and Recommendations,” October 2022, p. 9, https://www.ncsc.org/_data/assets/pdf_file/0031/84469/MHTF_State_Courts_Leading_Change.pdf; Prison Policy Initiative, “Chronic Punishment: The unmet health needs of people in state prisons,” Leah Wang, June 2022, <https://www.prisonpolicy.org/reports/chronicpunishment.html>.

⁴ U.S. Department of Justice, Bureau of Justice Statistics, “Prisoners in 2021 – Statistical Tables,” E. Ann Carson, December 2022, p. 22, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/p21st.pdf>; Lancet Healthy Longevity, “Effects of interventions on depression and anxiety in older people with physical health problems in the criminal justice system: a systematic review,” Amanda E Perry, et al., p. 431, <https://www.thelancet.com/action/showPdf?pii=S2666-7568%2823%2900111-3>.

⁵ Politico, “How U.S. Prisons Became Ground Zero for Covid-19,” Taylor Miller Thomas, June 25, 2020, <https://www.politico.com/news/magazine/2020/06/25/criminal-justice-prison-conditions-coronavirus-in-prisons-338022>.

⁶ *See, e.g.*, Johns Hopkins University, Hub, “Chronic Health Conditions May Be Severely Undertreated In U.S. Prison Population,” Bloomberg School of Public Health staff report, April 19, 2023, <https://hub.jhu.edu/2023/04/19/chronic-health-conditions-in-prison/>; Reuters, “Special Report: U.S. jails are outsourcing medical care — and the death toll is rising,” Jason Szep, et al., October 26, 2020, <https://www.reuters.com/article/idUSKBN27B1D6/>.

⁷ American Civil Liberties Union, “Deadly Failures: Preventable Deaths in U.S. Immigrant Detention,” June 21, 2024, p. 26, <https://www.aclu.org/publications/deadly-failures-preventable-deaths-in-us-immigrant-detention>.

⁸ American Journal of Public Health, “The Health and Health Care of US Prisoners: Results of a Nationwide Survey,” Andrew P. Wilper, April 2009, p. 669, <https://ajph.aphapublications.org/doi/epdf/10.2105/AJPH.2008.144279>; National Alliance on Mental Illness, “Mental Health Treatment While Incarcerated,” <https://www.nami.org/Advocacy/Policy-Priorities/Improving-Health/Mental-Health-Treatment-While-Incarcerated/#:~:text=About%20two%20in%20five%20people%20currently%20incarcerated%20have%20a%20history%20person%20with%20a%20mental%20illness>; American Journal of Public Health, “The Dose–Response of Time Served in Prison on Mortality: New York State, 1989–2003,” Evelyn J. Patterson, March 2013, p. 526,

many individuals lack health insurance and return to their communities with severe health needs, leading to high rates of hospitalization and posing financial costs and health risks for the broader public health system.⁹

Amidst these challenges, the current moment presents an unprecedented opportunity for HHS to ramp up its work on health in custody. In recent years, the COVID-19 pandemic and opioid epidemic have helped reveal just how poorly equipped detention facilities are to respond to urgent health needs.¹⁰ But these crises also prompted public health agencies to increase their focus on carceral settings, and corrections departments to begin seeking public health agencies' assistance.¹¹ Additionally, under the Biden Administration, Medicaid has become a new source of funding to improve jail and prison health in more and more states.¹² Meanwhile, we are beginning to see increased funding for health centers to treat incarcerated patients, as well as investments in electronic health data systems and research on carceral health.¹³

We urge HHS to leverage these opportunities by escalating its work on detention-based health care. Populations in jails, prisons, and juvenile and immigration detention are uniquely vulnerable to extreme health risks and too often face egregious medical neglect.¹⁴ Various HHS

<https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2012.301148>; Demography, "The Consequences of Incarceration for Mortality in the United States," Sebastian Daza, et al., April 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7710643/>.

⁹ Journal of General Internal Medicine, "Confined to Ignorance: The Absence of Prisoner Information from Nationally Representative Health Data Sets," Cyrus Ahalt, et al., February 2012, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3270223/>; Pew Charitable Trusts and MacArthur Foundation, "Managing Prison Health Care Spending," October 2013, p. 20, https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2014/pctcorrectionshealthcarebrief050814pdf.pdf; Journal of General Internal Medicine, "Capsule Commentary on Frank et al., Increased Hospital and Emergency Department Utilization by Individuals with Recent Criminal Justice Involvement: Results of a National Survey," Susannah L. Rose, et al., September 2014, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4139517/>; American Journal of Public Health, "Eliminating Gaps in Medicaid Coverage During Reentry After Incarceration," Elaine Michelle Albertson, et al., March 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7002937/>.

¹⁰ Criminal Justice Review, "Incarcerated in a Pandemic: How COVID-19 Exacerbated the 'Pains of Imprisonment,'" Miltonette Olivia Craig, et al., July 27, 2023, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10375228/>; Vox, "How America's prisons are fueling the opioid epidemic," German Lopez, Vox, March 26, 2018, <https://www.vox.com/policy-and-politics/2018/3/13/17020002/prison-opioid-epidemic-medications-addiction>.

¹¹ Centers for Disease Control and Prevention, "Lessons Learned from COVID-19 Response in Correctional and Detention Facilities," Caroline Waddell, et al., March 2024, https://wwwnc.cdc.gov/eid/article/30/13/23-0776_article>

¹² Kaiser Family Foundation, "Section 1115 Waiver Watch: Medicaid Pre-Release Services for People Who Are Incarcerated," Elizabeth Hinton, et al., April 16, 2024, <https://www.kff.org/medicaid/issue-brief/section-1115-waiver-watch-medicicaid-pre-release-services-for-people-who-are-incarcerated/>.

¹³ Health Affairs, "COVID-19 Vaccination Of People Experiencing Homelessness And Incarceration In Minnesota," Riley D. Shearer, June 2022, <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2021.02030>; Health Affairs, "Minnesota Data Sharing May Be Model For Near-Real-Time Tracking Of Drug Overdose Hospital And ED Trends," Riley D. Shearer, November 2023, <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2023.00281>; National Institutes of Health, HEAL Institute, "Justice Community Opioid Innovation Network (JCOIN)," <https://heal.nih.gov/research/research-to-practice/jcoin>.

¹⁴ CNN, "Policymakers, provide adequate health care in prisons and detention centers," Katherine C. McKenzie and Homer Venters, July 18, 2019, <https://www.cnn.com/2019/07/18/opinions/medical-care-prisons-detention-centers-mckenzie-venters/index.html>.

agencies — including the Health Resources & Services Administration (HRSA), the Centers for Disease Control and Prevention (CDC), Centers for Medicare & Medicaid Services (CMS), the Agency for Healthcare Research and Quality (AHRQ), and the Substance Abuse and Mental Health Services Administration (SAMHSA) — can play key roles in increasing the harmonization and transparency of data on detention-based health care, setting robust guidelines for carceral health administration and standards of care, providing technical assistance to facilities to implement those guidelines, and adequately funding health services.

First, HHS should work with state and local public health authorities to implement infrastructure to collect health data from facilities, and work with the Department of Justice and Department of Homeland Security on health data collection from federal facilities. Currently, detention facilities are largely a black box; neither HHS nor the Bureau of Justice Statistics collects robust data on access to or quality of health care in custody, and national public health data typically exclude individuals in correctional facilities.¹⁵ While data transparency alone does not translate into improved health outcomes, it is critical for monitoring health needs, tracking emerging health trends, triaging facilities with health emergencies, and identifying best practices. It is difficult to improve what we do not measure. During the pandemic, some facilities began voluntarily reporting certain COVID-19 data. HHS can leverage lessons learned from the pandemic to work with facilities to report more comprehensive data, about not just infectious diseases, but a range of health concerns, including the prevalence of various conditions, health care utilization rates, facility conditions impacting health, and more.

Already, the CDC is building the infrastructure for states to use interoperable electronic systems to share public health data with the federal government, through its Data Modernization Initiative and Public Health Data Strategy.¹⁶ As part of that ongoing effort, the CDC should make data collection from jails, prisons, and juvenile and immigration detention a priority. Similarly, AHRQ and the National Institutes of Health should expand investments in research and reporting on the unique health problems facing individuals in custody, effective interventions, and how health treatment in custody may diverge from the community standard of care.

Second, HHS should develop more robust health guidelines for detention settings and provide more technical assistance for public health and corrections authorities to implement those guidelines. The CDC has provided facilities with some technical assistance, including with managing infectious disease outbreaks,¹⁷ but the CDC and other HHS agencies should provide intensive assistance with responding to a broader range of health challenges. For example, jails are struggling to implement the Department of Justice’s guidelines on substance withdrawal

¹⁵ Journal of General Internal Medicine, “Confined to Ignorance: The Absence of Prisoner Information from Nationally Representative Health Data Sets,” Cyrus Ahalt, et al., February 2012, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3270223/>.

¹⁶ Centers for Disease Control and Prevention, “Data Modernization Initiative,” last reviewed April 23, 2024, <https://www.cdc.gov/surveillance/data-modernization/index.html>.

¹⁷ See, e.g., Centers for Disease Control and Prevention, “CDC Recommendations for Correctional and Detention Settings,” <https://www.cdc.gov/correctional-health/recommendations/index.html>; Centers for Disease Control and Prevention, “Mpox Toolkit for Correctional and Detention Facilities,” December 8, 2022, <https://archive.cdc.gov/#/details?url=https://www.cdc.gov/poxvirus/mpox/resources/toolkits/correctional-facilities.html>.

management, amidst skyrocketing rates of jail mortality from substances.¹⁸ HHS could develop toolkits for jails, help assess their capacity to implement the guidelines, and assist with implementation. Additionally, facilities routinely fail to appropriately accommodate disabilities.¹⁹ As HHS strengthens its work to protect the rights of people with disabilities,²⁰ it could review the accommodations that facilities provide and set priorities for improved accommodations. HHS, in partnership with state and local health authorities, can offer technical expertise to help facilities implement guidelines on these and other urgent health issues. HHS could house some of this work within AHRQ, as well as HRSA, which has expertise in setting standards for federally qualified health care centers that serve vulnerable populations. HRSA, AHRQ, and other HHS agencies could also develop working groups on correctional care to serve as repositories for detention-based health expertise and to help mainstream a focus on care in custody across the agencies.

Finally, HHS should maximize the impact of Medicaid to improve health in jails, prisons, and juvenile detention. Medicaid financing in custody has historically been rare, primarily because the Medicaid Inmate Exclusion Policy prohibits paying for incarcerated individuals' health care (subject to narrow exceptions).²¹ But CMS has begun approving waivers that allow states to use Medicaid dollars for health care of individuals who will soon be released from custody.²²

Relatedly, HRSA recently made \$51 million available to agency-funded health centers to begin providing health services for incarcerated individuals within 90 days of their release.²³ These changes have the potential to meaningfully improve health service provision for incarcerated community members, particularly those in short-term detention.

¹⁸ U.S. Department of Justice, Office of Public Affairs, "Justice Department Releases New Tool to Manage Substance Withdrawals in Jails," June 22, 2023, <https://www.justice.gov/opa/pr/justice-department-releases-new-tool-manage-substance-withdrawals-jails>, *see, e.g.*, NC Health News, "Many NC jails violate legal requirements by skipping meds for opioid use disorder," Rachel Crumpler, May 16, 2024, <https://www.northcarolinahealthnews.org/2024/05/16/many-nc-jails-violate-legal-requirements-by-skipping-meds-for-opioid-use-disorder/>.

¹⁹ Center for American Progress, "Disabled Behind Bars: The Mass Incarceration of People With Disabilities in America's Jails and Prisons," Rebecca Vallas, July 18, 2016, <https://www.americanprogress.org/article/disabled-behind-bars/>.

²⁰ U.S. Department of Health and Human Services, "Section 504 of the Rehabilitation Act of 1973 Part 84 Final Rule: Fact Sheet," April 30, 2024, <https://www.hhs.gov/civil-rights/for-individuals/disability/section-504-rehabilitation-act-of-1973/part-84-final-rule-fact-sheet/index.html>.

²¹ Pew Charitable Trusts and MacArthur Foundation, "Managing Prison Health Care Spending," October 2013, p. 17, https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes_assets/2014/pctcorrectionshealthcarebrief050814pdf.pdf; Congressional Research Service, "Medicaid and Incarcerated Individuals," Evelyne P. Baumrucker, August 24, 2023, p. 1, <https://crsreports.congress.gov/product/pdf/IF/IF11830>.

²² Department of Health and Human Services, Centers for Medicare and Medicaid Services, "Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated," April 17, 2023, <https://www.medicare.gov/sites/default/files/2023-12/smd23003.pdf>; Kaiser Family Foundation, "Section 1115 Waiver Watch: Medicaid Pre-Release Services for People Who Are Incarcerated," Elizabeth Hinton, et al., April 16, 2024, <https://www.kff.org/medicaid/issue-brief/section-1115-waiver-watch-medicare-pre-release-services-for-people-who-are-incarcerated/>.

²³ U.S. Department of Health and Human Services, "During Second Chance Month, HRSA Takes Policy Action, Releases First-Ever Funding Opportunity for Health Centers to Support Transitions in Care for People Leaving Incarceration," April 10, 2024, <https://www.hhs.gov/about/news/2024/04/10/health-centers-to-support-transitions-in-care-for-people-leaving-incarceration.html>.

But sufficient accountability and transparency are critical to ensure that Medicaid dollars are not misused to simply pad jail and prison budgets without improving access to quality health services. CMS should require states to ensure that jails and prisons meet minimum standards of care in line with Medicaid’s community standard of care, provide an adequate baseline of services, and employ health providers with appropriate credentials and in good professional standing, in order to receive Medicaid reimbursements. Using Medicaid as an incentive, CMS should also push for jails and prisons to report sufficient data on the specific health services provided and on the prevalence of particular health conditions among detainees in order to track unmet health needs. CMS could also urge facility health providers to report health data to public health departments directly, rather than simply reporting to departments of corrections. Furthermore, CMS should discourage states from distributing Medicaid dollars in ways that create a perverse incentive to withhold health services, such as flat-sum capitation models without required performance metrics. We also encourage HHS to work with state public health authorities on models for arranging independent, rigorous audits of facilities to ensure an adequate provision of care and avoid a diversion of health care funding to other expenses. CMS could conduct its own random audits as a backstop.

CMS should also provide sufficient guidance to ensure a smooth rollout of Medicaid’s expansion to jails and prisons. For example, starting January 1, 2025, states will be permitted to use Medicaid to cover health services for incarcerated youth under age 21.²⁴ Yet it appears that states have not yet received clear guidance to prepare for implementation. CMS should promptly provide guidance on how jails and prisons should bill for health services and how states should budget for these additional reimbursements, along with other technical assistance on the mechanics of implementation.

Jails, prisons, and juvenile and immigration detention facilities are facing urgent public health crises. We appreciate the public health community’s growing focus on ensuring that “correctional settings are . . . normalized as a major component of community health.”²⁵ To help the American people understand how HHS plans to bolster its work on health in custody, we request answers to the following questions by August 26, 2024:

1. What specific steps is HHS taking to help address the crisis of poor health and substandard health care in jails, prisons, and immigration detention facilities?
2. What assistance has the CDC provided to states struggling with the management of infectious diseases in jails, prisons, and juvenile and immigration detention, particularly

²⁴ Consolidated Appropriations Act of 2023, Public Law 117–328, Sec. 5122, <https://www.govinfo.gov/content/pkg/PLAW-117publ328/pdf/PLAW-117publ328.pdf>; Kaiser Family Foundation, “Section 1115 Waiver Watch: Medicaid Pre-Release Services for People Who Are Incarcerated,” Elizabeth Hinton, et al., April 16, 2024, [https://www.kff.org/medicaid/issue-brief/section-1115-waiver-watch-medicare-pre-release-services-for-people-who-are-incarcerated/#:~:text=New%20Requirements%3A%20Starting%20January%201,in%20public%20institutions%20\(including%20youth.](https://www.kff.org/medicaid/issue-brief/section-1115-waiver-watch-medicare-pre-release-services-for-people-who-are-incarcerated/#:~:text=New%20Requirements%3A%20Starting%20January%201,in%20public%20institutions%20(including%20youth.)

²⁵ Centers for Disease Control and Prevention, “Lessons Learned from COVID-19 Response in Correctional and Detention Facilities,” Caroline Waddell, et al., March 2024, https://wwwnc.cdc.gov/eid/article/30/13/23-0776_article.

since the end of the COVID-19 public health emergency? What additional assistance will the CDC consider providing?

3. What assistance has the CDC provided or will the CDC provide to jails, prisons, and immigration detention facilities on data collection practices and data interoperability?
4. What assistance does HRSA provide to states on the administration of health care services in jails, prisons, and juvenile and immigration detention, beyond the new \$51 million funding opportunity? What additional assistance will HRSA consider providing?
5. For prisons and jails that receive Medicaid funds pursuant to 1115 waivers of the Medicaid Inmate Exclusion Policy, what data on the health status of individuals in custody or data on health care access and quality will CMS ask facilities to report, if any?
 - a. What additional health data, including data on process and health outcome measures, is CMS considering collecting from jails and prisons that receive Medicaid funds?
6. What safeguards is CMS requiring in 1115 waiver approvals to ensure that funding is allocated to healthcare agencies to increase health services and not to carceral system budgets?
 - a. What standards of care is CMS requiring that jails and prisons meet in order to obtain Medicaid reimbursements?
7. What health-related technical assistance does the CDC currently provide in jails, prisons, and/or immigration detention facilities?
 - a. What health-related data does the CDC collect from such facilities?
 - b. What additional technical assistance or data collection is the CDC considering providing or performing in such facilities?
8. What was HRSA's reasoning for limiting its funding for health services to individuals who are within 90 days of release and for excluding individuals in pre-trial detention?²⁶
9. What guidance is CMS providing to states regarding implementation of the appropriations bill provision expanding Medicaid coverage to juveniles?

²⁶ Health Resources and Services Administration, Bureau of Primary Health Care, "Fiscal Year 2025 Quality Improvement Fund – Transitions in Care for Justice-Involved Populations (QIF-TJI)," p. 24, <https://bphc.hrsa.gov/sites/default/files/bphc/funding/fy-2025-qif-tji-presentation-applicants.pdf>.

10. Please describe HHS's efforts to address health issues in immigration detention facilities.

11. Please explain any HHS regulations or guidelines regarding incarcerated patients' access to their health data.

Thank you for your attention to this important matter.

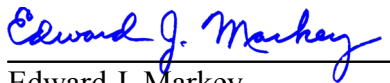
Sincerely,




Elizabeth Warren
United States Senator



David J. Trone
Member of Congress



Edward J. Markey
United States Senator



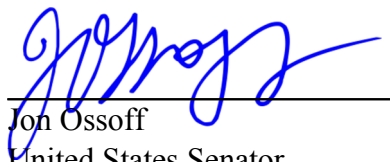
Mary Gay Scanlon
Member of Congress



Raphael Warnock
United States Senator



Shri Thanedar
Member of Congress



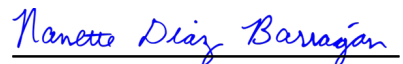
Jon Ossoff
United States Senator



Paul Tonko
Member of Congress



Eleanor Holmes Norton
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Director Ronald L. Davis, United States Marshals Service