



SUMMARY OF RECOMMENDATIONS TO THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW (UPR) OF THE UNITED STATES OF AMERICA ON COVID-19 AND U.S. PRISONS, JAILS, AND IMMIGRATION DETENTION

INTRODUCTION

In the United States, there are over 630,000 confirmed cases of COVID-19 and over 31,000 deaths caused by the virus.¹ The number of COVID-19 cases is expected to grow exponentially. The United States Centers for Disease Control and Prevention (“CDC”) projects that without swift and effective public health interventions, over 200 million people in the U.S. could be infected with COVID-19 over the course of the epidemic, with as many as 1.7 million deaths.² COVID-19 is a particularly contagious disease made even more difficult because of the prominence of asymptomatic transmission—people who are contagious but who exhibit no symptoms, rendering ineffective any screening tools dependent on identifying disease symptoms.³

People over the age of fifty face greater chances of serious illness or death from COVID-19.⁴ People of any age who suffer from certain underlying medical conditions are also at elevated risk. For these vulnerable populations, the symptoms of COVID-19, particularly shortness of breath, can be severe, and complications can manifest at an alarming pace. Most people in higher risk categories who develop serious illness will need advanced medical support. This level of supportive care requires highly expensive and specialized equipment, including ventilators, that are in limited supply.

The only way to prevent complications and the enormous risk to medically vulnerable people is to prevent them from becoming infected. The CDC and other public health agencies have universally prescribed social distancing and rigorous sanitation.⁵

COVID-19 FOR INDIVIDUALS IN JAILS, PRISONS AND IMMIGRATION DETENTION FACILITIES

People in custody throughout the United States are particularly vulnerable to COVID-19—because people incarcerated in jails, prisons, or immigrant detention facilities are systemically impeded from practicing social distancing or personal hygiene, and lack access to adequate medical care or supplies, and they disproportionately have the preexisting medical conditions that increase the chance of COVID-19 related death. For example, one study estimates that up to 15% of people who are in custody have asthma, 10% of people in custody live with a heart condition that requires medical care, 10% live with diabetes, and 30% have hypertension.⁶ Incarceration itself drastically hurts people’s health as it leads to higher rates of morbidity (illness rates) and mortality (i.e. it lowers the age at which people die).⁷ Additionally, Black and Brown people are disproportionately represented in the criminal legal system and in the populations of people who have preexisting medical conditions that increase the chance of COVID-19 related death, making the potential devastation of COVID-19 a racial justice issue of paramount importance.

People in custody are also particularly vulnerable because none of the recommended measures for mitigating the spread of COVID-19 are available in prisons, jails and immigration detention facilities. Correctional and immigration detention facilities are inherently congregate environments, where large groups of people are confined, eat, and sleep in close contact with one another. It is impossible to achieve social distancing standards in these settings.⁸ Therefore, infectious diseases, particularly airborne diseases, such as COVID-19, are more likely to spread rapidly between individuals in correctional and immigration detention facilities.⁹

The risk of contracting an infectious disease is also higher in correctional and immigration detention facilities because the facilities are not sanitary environments. People share toilets, sinks, and showers, and often have limited access to soap, hand sanitizer, hot water, and other necessary hygiene items. Surfaces are infrequently washed, if at all, and there are often shortages of cleaning supplies.¹⁰ These needs are now multiplied and also compounded by the lack of personal protective equipment (PPE) such as masks and gloves for either staff or prisoners. This means there are more people who are susceptible to getting infected confined together in a setting in which fighting the spread of an infection is nearly impossible.

Additionally, many correctional and immigration detention facilities lack an adequate medical care infrastructure to address the spread of infectious disease, like COVID-19, and treat high-risk people in custody.¹¹ Prison health units are not equipped with sufficient emergency medical equipment, such as oxygen tanks, nasal cannulae, and oxygen face masks, to respond to an outbreak of patients with respiratory distress. For these reasons, among others, experts have warned that, “widespread community transmission of COVID-19 within a correctional institution is likely to result in a disproportionately high COVID-19 mortality rate.”¹² Incarcerated people are not the only ones at risk of this; staff are at risk, too, and may carry COVID-19 from a facility in which it is rapidly transmitted to a community they return to after their shift.

RECOMMENDATIONS

The history of other epidemiologic outbreaks in correctional facilities, such as Tuberculosis, influenza, and MRSA, confirms expectations that COVID-19 will ultimately readily spread in prisons, jails and other places of detention.¹³ Public health experts have thus recommended limiting the number of people placed into custody and releasing from custody those most vulnerable to COVID-19 to protect the communities inside and outside the prisons, and to slow the spread of the infection. Simultaneously arresting fewer people and releasing more people already in detention protects the people with the greatest vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk mitigation for all people held or working in a correctional facility. Because prisons are often located in small rural communities, removing the most vulnerable people from custody also reduces the burden on those regions’ limited health care infrastructures by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time and require hospitalization in these small communities.

Despite some steps at the federal and state levels to reduce the population of people in custody, the United State’s response has been insufficient, given the massive scale of incarceration. At present, the vast majority of people in custody—including the elderly and those who are medically vulnerable— will remain confined during the pandemic. As public health and safety measures to prevent the spread of COVID-19 cannot be fully achieved in correctional facilities, other steps must be taken to save lives and protect the spread of the infection in these communities. Proactive risk mitigation, including eliminating close contact in congregate environments, is the only effective way to prevent the spread of the COVID-19 infection. In fact, a study published in the Journal of Travel Medicine found that the number of cases on the Diamond Princess cruise ship would have been more than eight times lower if the ship had been evacuated in a timely manner, rather than requiring the passengers to quarantine within the close confines of the ship.¹⁴

Measures to Limit and Reduce the Number of Individuals In Custody:

Reduction of the population in custody should be the highest priority. All fifty states of the U.S. and the federal government have some statutory authority to use executive clemency, commutation,

medical quarantine or home detention as an alternative to incarceration. Major reductions in arrests and the mass release of people who pose no threat to public safety — including the older and elderly and medically vulnerable — is the only way to address COVID-19 in prisons, jails and other places of detention.

1. The United States should avoid further expansion of the incarcerated and detained population by using alternatives to incarceration and detention.¹⁵

- Arrests should be limited to situations where there is a clear and present danger of imminent physical harm, in which the individualized public safety justification for arrest demonstrably outweighs the enormous public health concerns with respect to detaining and jailing people. Police should cease arresting individuals for all offenses that do not inherently involve physical harm or intentional threats of physical harm to another person, including public order offenses and crimes related to substance use.¹⁶
- Reduce requests for pretrial detention and carceral-based sentences, as well as for conditions of release that may limit a person's ability to seek medical help or care for loved ones.¹⁷
- Cease in-person parole check-ins, allow voice or video call parole check-ins (or waive check-ins where a person on supervision does not have access to that technology), suspend detainers, and stop incarceration for technical (crimeless) rule violations.¹⁸

2. The United States should reduce the total number of people detained through targeted release programs that prioritize high risk individuals.

- Release any individual held without a sufficient legal basis.¹⁹
- Commute or grant clemency to people who have served over twenty years in custody and who pose no public safety concerns.
- Release every person in custody and who is medically vulnerable²⁰ and/or over the age of 50, (2) immunocompromised, (3) currently at healthcare clinics but could be treated from home, (4) seen at chronic clinics, or (5) pregnant/nursing.²¹ unless an individualized review has determined that the individual's release would pose a substantial danger to the physical safety of an identifiable person or persons and that the danger outweighs the threat to the individual's health and the public health threat posed by their continued incarceration.²²
- Release any individuals currently incarcerated because of a misdemeanor and/or who are held in custody for parole/probation violations.
- Maximize the grants of discretionary good time to increase the numbers of release-eligible individuals and release all individuals who would be releaseable but for the reduction in good time credit.²³
- Release all incarcerated people with a term of 12 months or less into home custody,²⁴
- For those incarcerated individuals who are unable to be released, yet may be vulnerable to the virus, place them on home confinement.²⁵
- Utilize all federal statutory authority providing for release to home confinement, including that provided under compassionate release,²⁶ First Step Act²⁷ and CARES Act.²⁸

Measures to Protect Individuals in Custody:

As noted above, given the scale of the U.S. incarcerated population and the minimal standards of health and sanitation maintained within facilities, releases through the mechanisms identified should be prioritized. For the remaining (and drastically reduced) incarcerated population, the United States should adopt the following measures.

3. ***The United States should adopt preventative measures to protect the detained and imprisoned population from exposure through outside contact.***
 - Screen and temperature-check all individuals entering the prison, including staff and visitors. Depending on the level of risk in the particular area, non-essential staff and visitors should be limited.
 - Any individuals who show symptoms should be provided with a face mask and held in circumstances that allow them to practice social distancing but that are *not* tantamount to solitary confinement or lockdown.²⁹
 - Provide all staff and people in custody who perform work duties personal protective equipment.

4. ***The United States must ensure facilities are equipped to provide preventative health and life-saving interventions to protect incarcerated individuals and staff.***³⁰
 - Screen and temperature check all incarcerated individuals daily. If single-accommodation quarantine is not possible, quarantine individuals with similar risk factors together.³¹
 - Provide information resources throughout the facility detailing the symptoms of COVID-19, instructions for proper hand hygiene, and restrictive measures taken. Information must be understandable for non-English speakers, those with limited literacy, and individuals with disabilities.
 - Provide sanitation supplies sufficient for frequent handwashing and cell cleaning unconditionally and at no-cost to incarcerated individuals.
 - Ensure a sufficient stock of cleaning supplies and medical supplies. Clean surfaces and objects, such as radios, service weapons, and handcuffs, several times per day.
 - Implement social distancing in common areas, recreational spaces, dining facilities, and living spaces.
 - Restrict transfers to and from other facilities unless necessary for medical evaluation, to prevent overcrowding, or for extenuating security concerns.
 - Instruct staff to leave the facility as soon as possible if they develop symptoms while on duty.

5. ***The United States should ensure the civil and human rights of individuals in custody while adopting any preventative or responsive measures to COVID-19 .***
 - All restrictive measures taken should have a legal basis.³²
 - Exposure to the virus should not be used as an excuse to increase detention times or to mandate solitary confinement.³³ Guarantee that no incarcerated people will be placed in solitary confinement for health-related reasons.³⁴
 - Provide fundamental rights, such as daily access to food, water, and open air.³⁵
 - Substitute any personal visitation time lost with increased access to free phone or virtual visitations.³⁶
 - Ensure that all detained persons enjoy the same standard of healthcare and have access to any necessary services irrespective of their class, race, ethnicity, immigration status, gender, sex, sexuality, or religion.
 - Guarantee in particular that those detainees who are pregnant, have preexisting conditions, or disabilities continue to receive adequate health care services.³⁷
 - Eliminate all co-pays and other financial charges for health care for detained persons.

Measures to Ensure Safe Release of Individuals in Custody:

Releases must take place in a manner that protects both those being released and the receiving communities. Social service support as well as medical supervision are critical to a responsible release mechanism.

6. The United States should ensure detention facilities provide resources and support that continually support prisoners as they are released from detention.

- Before release, screen for COVID-19 symptoms.³⁸ If individuals are sick, provide them with necessary housing and medical support in their community.
- Identify home placement options. Individuals should be connected with the local municipality for assistance with housing or with family members that will directly house the individual without a required period in transitional housing.³⁹ Burdensome requirements that deny host site approvals should be eliminated.
- Immediately upon release, provide individuals with state identification and medical records to obtain medications and other necessities for health and financial stability.
- Employ measures for continuity of care include providing individuals with at least one month of medication supplies when released; scheduling appointments with outside physicians in the individual's new community; providing a resource list for home services, mental health, health care providers, and legal services; providing Medicaid/Medicare applications; providing medical records without charge.⁴⁰
- Medicaid/Medicare enrollment should be simplified and expedited. An example measure to achieve this goal would be to create a category of presumptive eligibility for those released.⁴¹

Measures Specific to Immigrant Detention:

The current administration has dramatically increased civil immigration enforcement operations. As a result, the population of migrants in U.S. custody has been increasing exponentially. Given the current pandemic, the United States should immediately increase the use of previously proven and effective alternatives to detention.

7. The United States should endeavor to release immigrants in detention while simulatenously halting operations that lead to deportations.

- Suspend civil immigration enforcement including immigration raids, local enforcement operations, and deportations immediately.⁴²
- All individuals should be released immediately from civil immigration detention. The criminal legal system, and not the civil immigration system, is the appropriate system for dealing with any public safety concerns.
- Vulnerable populations such as those who are medically vulnerable to serious illness or death due to COVID-19 should receive priority, including pregnant people, those with chronic illnesses and the elderly.⁴³
- Unaccompanied minors should be released immediately to suitable custodians.⁴⁴
- Eliminate in-person ICE check-ins and mandatory court appearances.⁴⁵
- Employ alternatives to detention for individuals awaiting status determinations such as telephonic check-ins and employer verification.

For any questions or inquiries, please reach out to humanrights@aclu.org.

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- ¹ Coronavirus Disease 2019 (COVID-19): Cases in U.S., Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-in-us.html (last visited Apr. 17, 2020).
- ² Sheri Fink, Worst-Case Estimates for U.S. Coronavirus Deaths, N.Y. Times, (Mar. 13, 2020), <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>
- ³ Johnny Milano, Infected but Feeling Fine: The Unwitting Coronavirus Spreaders, N.Y. Times, <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html> (last visited Apr. 1, 2020).
- ⁴ Dylan Scott, The COVID-19 Risks for Different Age Groups, Explained, Vox (Mar. 23, 2020), <https://www.vox.com/2020/3/23/21190033/coronavirus-covid-19-deaths-by-age>
- ⁵ Coronavirus Disease 2019 (COVID-19): How to Protect Yourself, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html (last visited Apr. 16, 2020).
- ⁶ Laura M. Marushack et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, U.S. Dept. of Justice (2015).
- ⁷ Haney Aff., Exhibit 3.
- ⁸ Greifinger Aff., Exhibit 1; Haney Decl., Exhibit 3.
- ⁹ Beyrer Aff., Exhibit 4; Meyer Decl., Exhibit 2.
- ¹⁰ Greifinger Aff., Exhibit 1; Meyer Decl., Exhibit 2; Beyrer Decl., Exhibit 4; Haney Decl., Exhibit 3.
- ¹¹ Greifinger Aff., Exhibit 1; Meyer Decl., Exhibit 2.
- ¹² “COVID-19 in Correctional Settings: Unique Challenges and Proposed Responses”, AMEND (March 23, 2020), <https://amend.us/wp-content/uploads/2020/03/COVID-in-Corrections-Challenges-and-Solutions-1.pdf>; see also “Correctional Facilities In The Shadow Of COVID-19: Unique Challenges And Proposed Solutions,” Health Affairs Blog, March 26, 2020, available at: <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>.
- ¹³ Beyrer Decl., Exhibit 4.
- ¹⁴ Sandoiu, supra (Citing Rocklov J., Sjodin H., Wilder-Smith A., COVID-19 Outbreak on the Diamond Princess Cruise Ship: Estimating the Epidemic Potential and Effectiveness of Public Health Countermeasures, J. of Travel Med. (Feb. 28, 2020), <https://academic.oup.com/jtm/advance-article/doi/10.1093/jtm/taaa030/5766334>
- ¹⁵ Comm. for the Prevention of Torture (CPT), Statement of Principles Relating to the Treatment of Persons Deprived of their Liberty in the Context of the Coronavirus Disease (COVID-19) Pandemic *1 (Mar. 20, 2020) (“As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty.”).
- ¹⁶ Letter from Northwestern Pritzker School of Law and the University of Chicago Law School to the City of Chicago Department of Law *2 (Mar. 23, 2020).
- ¹⁷ Udi Offer, *Police, Prosecutors, Sheriffs, Parole Officers, and Governors can Help Stop the Spread of COVID-19 — Here’s How*, ACLU (Mar. 18, 2020), <https://www.aclu.org/news/smart-justice/police-prosecutors-sheriffs-parole-officers-and-governors-can-help-stop-the-spread-of-covid-19-heres-how/>.
- ¹⁸ Id.
- ¹⁹ *Urgent Action Needed to Prevent COVID-19 “Rampaging Through Places of Detention” – Bachelet*, OHCHR (Mar. 25, 2020) <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>. (“Now, more than ever, governments should release every person detained without sufficient legal basis, including political prisoners and others detained simply for expressing critical or dissenting views.”) (internal quotation marks omitted).
- ²⁰ Medically vulnerable people are defined as people who have a pre-existing condition and have an increased risk of serious harm or death from COVID-19 as result of that condition. Pre-existing conditions include but are not limited to people with respiratory conditions including chronic lung disease or moderate to severe asthma; people with heart disease or other heart conditions; people who are immunocompromised as a result of cancer, HIV/AIDS, or any other condition or related to treatment for a medical condition; people with chronic liver or kidney disease or renal failure (including hepatitis and dialysis patients); people with diabetes, epilepsy, hypertension, blood disorders (including sickle cell disease), inherited metabolic disorders; people who have had or are at risk of stroke; and people with any other condition specifically identified by CDC either now or in the future as being a particular risk for severe illness and/or death caused by COVID-19.
- ²¹ COVID Recommendations Memorandum to the Illinois Department of Corrections **1-2 (Mar. 23, 2020);supra, n. 21 (“The High Commissioner urged governments and relevant authorities to work quickly to reduce the number of people in detention Authorities should examine ways to release those particularly vulnerable to COVID-19, among them older detainees and those who are sick, as well as low-risk offenders. They should also continue to provide for the specific health-care requirements of women prisoners, including those who are pregnant, as well as those of inmates with disabilities and of juvenile detainees.”). See, e.g., Jon Seidel, *Civil Rights Attorneys Launch Legal Challenge to Free Prisoners at Risk of Coronavirus* (Chicago Sun Times, Apr. 2, 2020) (“Ten Illinois prisoners are named as plaintiffs in the federal lawsuit. They are serving sentences for crimes ranging from murder to drug offenses, records show. The lawsuit also describes underlying health issues for most of them. It seeks relief for prisoners in six categories, ranging from people with serious underlying medical conditions that put them at particular risk of serious harm or death from the coronavirus, to people who are scheduled to be released within 180 days.”).
- ²² See ACLU, Letter to DOJ and BOP on Coronavirus and the Criminal Justice System (Mar. 18, 2020) <https://www.aclu.org/letter/aclu-letter-doj-and-bop-coronavirus-and-criminal-justice-system>.
- ²³ COVID Recommendations and Appendix to the Washington, D.C. Department of Corrections *2 (Mar. 26, 2020); COVID Recommendations Memorandum to the Illinois Department of Corrections *3 (Mar. 23, 2020).
- ²⁴ See 18 U.S.C. § 3624(c).
- ²⁵ COVID Recommendations and Appendix to the Washington, D.C. Department of Corrections *6 (Mar. 26, 2020)
- ²⁶ 18 U.S.C. §§ 3582, 4205(g).
- ²⁷ 18 U.S.C. § 3582(c)(1)(A).
- ²⁸ Public Law No: 116-136.
- ²⁹ Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention Interim Guidance, WHO (Mar. 15, 2020); supra, n. 17 (WHO guidelines on fighting the pandemic as well as national health and clinic guidelines consistent with international standards must be respected and implemented fully in all places of deprivation of liberty.”).
- ³⁰ No exceptions with COVID-19: “Everyone has the right to life-saving interventions” – UN experts say, OHCHR (Mar. 26, 2020).

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- ³¹ Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention Interim Guidance, WHO, 21 (Mar. 15, 2020).
- ³² *supra*, n. 17 (“Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time.”).
- ³³ Letter from Northwestern Pritzker School of Law and the University of Chicago Law School to the City of Chicago Department of Law **1-2 (Mar. 23, 2020); Concluding Observations on the Fourth Periodic Report of the United States of America, Human Right Committee ¶ 20 (“[State Parties] should impose strict limits on the use of solitary confinement.”) (Apr. 23, 2014). Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, Committee Against Torture ¶ 20 (“[T]he Committee remains concerned about reports of extensive use of solitary confinement and other forms of isolation in United States prisons, jails and other detention centres, for purposes of punishment, discipline and protection, as well as for health-related reasons.”) (Dec. 19, 2014).
- ³⁴ Concluding Observations on the Fourth Periodic Report of the United States of America, Committee against Torture ¶ 20 (“While noting that the State party has indicated that there is ‘no systematic use of solitary confinement in the United States’, the Committee remains concerned about reports of extensive use of solitary confinement and other forms of isolation in United States prisons, jails and other detention centres, for purposes of punishment, discipline and protection, as well as for health-related reasons.”).
- ³⁵ *supra*, n.21 (“Measures taken amid a health crisis should not undermine the fundamental rights of detained people, including their rights to adequate food and water.”); *supra*, n. 17.
- ³⁶ *supra*, n. 17.
- ³⁷ *supra*, n.21 (“[Authorities] should also continue to provide for the specific health-care requirements of women prisoners, including those who are pregnant, as well as those of inmates with disabilities and of juvenile detainees.”).
- ³⁸ Coronavirus Response Recommendations to the Washington Department of Corrections *2.
- ³⁹ COVID Recommendations and Appendix to the Washington, D.C. Department of Corrections *5 (Mar. 26, 2020)
- ⁴⁰ COVID Recommendations Memorandum to the Illinois Department of Corrections **6-7 (Mar. 23, 2020).
- ⁴¹ *Id.* at *6.
- ⁴² Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America, Committee on the Elimination of Racial Discrimination ¶ 18 (“The Committee is concerned at the increasingly militarized approach to immigration law enforcement...increased criminal prosecution for breaches of immigration law; mandatory detention of immigrants for prolonged periods of time; and deportation of undocumented immigrants without adequate access to justice.”) (Sep. 25, 2014); Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, Committee Against Torture, ¶ 18 (“The Committee is concerned by the expansion of expedited removal procedures, which do not adequately take into account the special circumstances of asylum seekers and other persons in need of international protection.”) (Dec. 19, 2014).
- ⁴³ Concluding Observations on the Fourth Periodic Report of the United States of America, Human Right Committee ¶ 15 (“The Committee recommends that the State party review its policies of mandatory detention and deportation of certain categories of immigrants...and identify ways to facilitate access to adequate health care...” (Apr. 23, 2015).
- ⁴⁴ Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, Committee Against Torture, ¶ 19 (“The Committee observes that, despite the increased placement of unaccompanied children and separate children in foster care, many children continue to be held in group homes and secure facilities, which closely resemble juvenile correctional facilities.” (Dec. 19, 2014).
- ⁴⁵ Letter from Detention Watch Network to the United States Immigration and Customs Enforcement (Mar. 19), 2020, <https://www.detentionwatchnetwork.org/sites/default/files/ICE%20Response%20to%20Coronavirus%20for%20People%20Detained%20-%20Organizational%20Sign%20on%20Letter%20-%20Final.pdf>