

December 17, 2021

Via USPS and email (FSCDems@mail.house.gov)

The Honorable Maxine Waters, Chairwoman
United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

United States House of Representatives
2221 Rayburn House Office Building
Washington, DC 20515

Re: Alabama's planned use of \$400 million in COVID relief funds on building prisons

Dear Chairwoman Waters,

We, the undersigned civil rights, social justice, and community-based organizations, are writing to you with deep concern about the State of Alabama's plan to spend \$400 million in American Rescue Plan Act (ARPA) funds on the construction of new state prisons. Directing COVID relief funds to a massive prison construction plan that long predates the pandemic is an absurd and inappropriate use of ARPA funds. Far from healing Alabama communities from the devastating harms of the pandemic, this plan will simply exacerbate existing, racist harms of mass incarceration for decades to come. This planned use of federal COVID relief dollars violates the purpose for which Congress allocated those funds, and it must not be allowed to proceed. We are requesting that the U.S. House Financial Services Committee, under your leadership, exercise its authority to review this matter and prevent this misuse of COVID relief funds from proceeding by investigating this issue, demanding tighter guidelines from the Department of the Treasury, holding oversight hearings, or requesting additional information from Alabama state officials.

Issue Overview

In late September 2021, Alabama Governor Kay Ivey called a special legislative session to consider the construction of multiple new state prisons.¹ State lawmakers passed a \$1.3 billion package that provides for the construction of two new 4,000 bed prisons for men in Elmore and Escambia counties, with plans for a future new women's prison as well.² Funding for the prison construction plan is slated to come from two sources: \$400 from ARPA funds, and \$785 million from forthcoming bond

¹ Governor Kay Ivey, "[2021 First Special Session Proclamation.](#)" (September 23, 2021).

² *NBC News*, "[Alabama to use Covid rescue funds to build prisons.](#)" (October 2, 2021).

issues.³ This prison construction plan consumes about 20 percent of Alabama’s total COVID relief funds from the American Rescue Plan Act.⁴

Alabama officials claim that state prison construction is an appropriate, permitted use of ARPA funds. While White House Press Secretary Jen Psaki stated that she “would be surprised if that was the intention of the funding,”⁵ Alabama officials will proceed with using COVID relief funds for prison construction unless Congress or Biden Administration officials take action to prevent that from happening. While these ARPA funds have been allocated to build prisons, construction has not yet begun and these funds have not yet been spent. As a result, there is a small window of time remaining for Congress to review this matter and take action.

Important Context

- Alabama’s prison population reflects stark, racist disparities. 53 percent of the people incarcerated by the Alabama Department of Corrections (ADOC) are Black,⁶ which is a massive overrepresentation in a state where Black people comprise 27 percent of the overall population.⁷ One in four people incarcerated by the ADOC are age 50 or older,⁸ and there are serious racial disparities in who bears the brunt of lengthy sentences. For example, among those people in ADOC custody who are sentenced to life without parole whose most serious offense was robbery, 75 percent are Black.⁹ The prisons managed by ADOC are among the most lethal in the nation, and Black men are more than three times as likely to suffer violent deaths while in ADOC custody as compared to their white counterparts.¹⁰
- The Department of Justice recently sued the State of Alabama and ADOC for routinely violating the Eighth and Fourteenth Amendment rights of incarcerated people.¹¹ In the DOJ’s investigation reports leading up to the lawsuit, they made explicit that “new facilities alone will not resolve the contributing factors to the overall unconstitutional condition of ADOC prisons,” citing corruption and a litany of other issues before providing a list of recommendations.¹² State officials have so far refused those recommendations and have pursued prison construction with single-minded focus despite the DOJ’s warning. Even during the September 2021 special session where they committed to spending more than a billion dollars on new prisons, lawmakers refused

³ CNN, [“Alabama GOP governor signs bills to use Covid-19 relief funds to build prisons into law,”](#) (October 1, 2021).

⁴ *The Hill*, [“Alabama using COVID funds to build prisons — is that Biden’s vision?”](#) (October 13, 2021).

⁵ *Business Insider*, [“Alabama lawmakers approve controversial plan to use \\$400 million in COVID-19 relief funds to build 2 new prisons.”](#) (October 2, 2021).

⁶ Alabama Department of Corrections, [“Monthly Statistical Report for August 2021,”](#) (August 2021).

⁷ United States Census Bureau, [“Alabama Quick Facts.”](#) (2021).

⁸ Alabama Appleseed Center for Law & Justice, [“New Prisons for Old Men?”](#) (September 2021).

⁹ Alabama Appleseed Center for Law & Justice, [“Condemned: Hundreds of men are sentenced to die in prison for crimes with no physical injury. They haven’t given up on life.”](#) (2021).

¹⁰ Alabama Appleseed Center for Law & Justice, [“Death Traps: An examination of the routine, violent deaths of people in the custody of the State of Alabama,”](#) (November 2020).

¹¹ The United States Department of Justice, [“Justice Department Files Lawsuit Against the State of Alabama for Unconstitutional Conditions in State’s Prisons for Men.”](#) (December 9, 2020).

¹² The United States Department of Justice, [“Investigation of Alabama’s State Prisons for Men,”](#) (April 2019)

to act on any of the DOJ's recommendations and declined to pass even modest criminal justice reforms that were under consideration.

- Alabama is one of the poorest states in the nation, and among the states hit hardest by the COVID-19 pandemic. Alabama is the nation's seventh poorest state,¹³ and more than one in four Alabama children live in poverty (the poverty rate is even higher for Black and Hispanic children in Alabama, at 42 and 43 percent respectively).¹⁴ Alabama recently ran out of ICU beds,¹⁵ and there are 30 rural hospitals currently at risk of closure across the state.¹⁶ Alabama is ranked 47th for COVID-19 vaccination rates, with well fewer than half of the state's residents being fully vaccinated.¹⁷ So many people have been killed by COVID-19 that our state had more deaths than births for the first time in its history.¹⁸ There are many, desperately needed uses of ARPA funds that will go unfunded if the State of Alabama is permitted to spend 20 percent of its funds on building prisons. 42 Alabama organizations penned a letter to the governor outlining their hopes for how the state will invest ARPA funds, including, but not limited to:
 - Modernizing and improving state unemployment insurance (UI) technological infrastructure, application and payment systems.
 - Upgrading water and sanitation systems, prioritizing communities with a history of unsafe water quality and waste-water disposal.
 - Providing critical infrastructure and equipment (such as trucks, refrigeration, trailers, lift gates, etc.) to local food banks and food pantries to expand emergency food distribution.
 - Expanding Alabama's affordable housing capacity, stabilizing families and communities and reducing homelessness by seeding the Affordable Housing Trust Fund with \$25 million and providing grants for eligible new construction, renovation and maintenance.¹⁹
- This prison construction plan repackages a prior, failed plan for prison construction that had nothing to do with the COVID-19 pandemic. Governor Ivey has been attempting to build new prisons in Elmore and Escambia counties since before the pandemic began. She announced a plan to build and lease private prisons in February 2019, more than a year before the first COVID case arrived in Alabama.²⁰ When that same prison construction plan was finally defeated by grassroots activists and impact investors in May 2021,²¹ Governor Ivey immediately pivoted to this prison construction plan and called a special legislative session to advance it the next month. The plan that passed through the legislature even included carve-out exemptions from Alabama's competitive bid laws so that the contractors for the prior version of the prison

¹³ Alabama Possible, "[2021 Barriers to Prosperity Data Sheet](#)," (2021).

¹⁴ Voices for Alabama Children, "[Alabama Kids Count Data Book](#)," (2020).

¹⁵ NPR, "Alabama Hospitals Have Run Out of ICU Beds as COVID-19 Surges," (August 19, 2021).

¹⁶ Center for Healthcare Quality and Payment Reform, "[Rural Hospitals at Risk of Closing](#)," (July 2021).

¹⁷ Mayo Clinic, "[U.S. COVID-19 Tracker](#)," (2021).

¹⁸ *New York Times*, "[Covid-stricken Alabama had more deaths than births last year, a first in its recorded history](#)," (September 18, 2021).

¹⁹ *Alabama Arise*, "[To strengthen the common good: Six principles for allocating Alabama's ARPA funding](#)" (July 7, 2021)

²⁰ *Montgomery Advertiser*, "[Alabama prison plan: Ivey to solicit bids for three new men's prisons](#)," (February 12, 2019).

²¹ *Bloomberg News*, "[Stifel No Longer Part of Scuttled Alabama Prison Bond Deal](#)," (May 10, 2021).

construction plan would still get to build the prisons as had been planned before the deal collapsed.²² This prison construction plan is not a response to the COVID-19 pandemic, but the State of Alabama still wants to dedicate 20 percent of our ARPA relief funds to paying for it.

- Alabama officials have repeatedly stated that this use of \$400 million in ARPA funds is simply intended to subsidize the issuance of new debt. The State of Alabama intends to take out \$785 million in new debt via a bond issue in conjunction with the use of these \$400 million in ARPA funds. In September, Governor Ivey justified using ARPA funds on this prison construction plan because it will allow the State to “pay cash” and decrease future interest payments associated with a bond issue, adding that because of the ARPA funds provided by the federal government, “We don’t have to borrow quite as much money [to build these prisons] and pay all that money back.”²³ The Republican bill sponsor for using ARPA funds to build prisons, Rep. Steve Clouse, was similarly candid, sharing that “by using part of [Alabama’s ARPA funds], we’re going to be able to lower our interest payments on the bonds, which will save money in the general fund.”²⁴ As the Department of the Treasury’s Interim Final Rule on Coronavirus State and Local Fiscal Recovery Funds states that “Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts,” this is a major concern and a violation.²⁵ Gov. Ivey did not solicit any public input about how the funding should be utilized.
- The prison construction plan will not reduce overcrowding or increase staffing. One of the State of Alabama’s talking points has been that new prisons are necessary because existing prisons are so overcrowded and understaffed, but there is no sign that the new prison plan will address these issues. For every new prison bed created by this plan, it will be offset by the coinciding closure of several existing state prisons.²⁶ ADOC officials have admitted that these brand new prisons would be overcrowded on the first day they are open.²⁷ Relatedly, ADOC officials have vaguely claimed that consolidating incarcerated people into two mega-prisons in Elmore and Escambia counties would resolve long standing staffing issues that are the subject of a federal court order.²⁸ But ADOC cannot even fully staff the substantially smaller prisons that already exist in Elmore and Escambia counties. The proposed plan will not reduce overcrowding or increase staffing, but will instead create powder kegs where thousands of people are packed into even more densely populated, understaffed carceral settings.
- There is no demonstrated relationship between this prison construction plan and the COVID-19 pandemic. The proposal for these new prisons contained no details about how they would be responsive to the COVID-19 pandemic; lawmakers never even saw building designs before voting on them. Furthermore, lawmakers have stated that these prisons will be completed no earlier than 2025.²⁹ It is too little, too late. Alabama’s new prisons will not only remain

²² *AL.com*, “[Alabama’s new prison-building plan skips bid process for earlier start on construction.](#)” (October 5, 2021).

²³ *AP News*, “[Alabama lawmakers weigh using virus funds to build prisons.](#)” (September 26, 2021).

²⁴ *WSFA*, “[Draft of Alabama prison plan calls for \\$785M in additional funding.](#)” (September 22, 2021).

²⁵ Department of the Treasury, “[Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule.](#)” page 26796 (May 17, 2021).

²⁶ *AL.com*, “[St. Clair prison named as 5th facility to close as part of Alabama overhaul.](#)” (September 28, 2021).

²⁷ [Testimony of ADOC Commissioner Jeff Dunn to the Alabama Senate Budget Committee.](#) (July 9, 2020).

²⁸ *Associated Press*, “[Judge: Prison staffing levels will be issue on DOJ lawsuit.](#)” (October 11, 2021).

²⁹ *AL.com*, “[Alabama plan for new prisons moves closer to approval.](#)” (September 30, 2021).

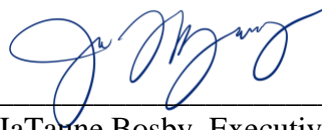
overcrowded, but they also remain under the management of the ADOC which has never demonstrated diligence in addressing even longstanding challenges in its current facilities. According to the DOJ in an amended complaint in November 2021, the ADOC “In the two and a half years following the United States’ original notification to the State of Alabama of unconstitutional conditions of confinement, prisoners at Alabama’s Prisons for Men have continued daily to endure a high risk of death, physical violence, and sexual abuse at the hands of other prisoners.” This negligence is systemic and an example of the “deliberate indifference” that characterizes ADOC and state leadership and distributing funds to prison construction cannot change this. Utilizing these funds for prison construction means that millions that could be going toward mitigating the spread of COVID-19 in the current facilities among those in custody and staff are not going to be prioritized and the devastation effects of COVID-19 will continue in the state’s prisons while we simply wait for new facilities.

How the U.S. House Financial Services Committee Can Take Action

Alabama’s brazen attempt to violate the purpose for which Congress allocated ARPA funds must be met with Congressional review. The House Financial Services Committee has the power to investigate this proposed use of ARPA funds, call witnesses, confer with the Treasury Department, and issue statements related to this use of funds. We ask that you consider all of the above options to take action. The State of Alabama’s ill-conceived plan to use the \$400 million ARPA funds to subsidize an accompanying, forthcoming public bond issue is a plain violation of the law and is an area of particular interest for the House Financial Services Committee.

Please take action to ensure that Alabama does not get away with squandering critical COVID relief funds on prison construction that will haunt local communities for decades to come.

Sincerely,



JaTaune Bosby, Executive Director
ACLU of Alabama

In partnership with:

Adelante Alabama Worker Center

AIDS Alabama

Alabama Appleseed Center for Law & Justice

Alabama Arise

Alabama Civic Engagement (ACE) Coalition

Alabama Coalition for Immigrant Justice

Alabama Justice Initiative

Alabama Non-Violent Offenders Organization

Black Warrior Riverkeeper

Books Inside Inc.

Faith and Works

Faith in Action Alabama

Fight Toxic Prisons

GASP

Greater Birmingham Ministries

Hometown Action

Montgomery Bailout Fund

Project Hope to Abolish the Death Penalty

Reclaiming Our Time

SPLC Action Fund

The Sentencing Project

Vine and Fig Tree

The Woods Foundation

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Rev. Diana Jordan Allende

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Sister Mary McGehee

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