

United States Senate

March 19, 2020

Mr. Michael Carvajal
Director
Federal Bureau of Prisons
320 First Street NW
Washington, DC 20534

Dear Director Carvajal:

I write to follow-up on my letter to the Bureau of Prisons (BOP) dated March 5, 2020.

Emerging research has demonstrated how dangerous coronavirus is for the elderly and those with underlying conditions and compromised immune systems.¹ Unfortunately, many incarcerated individuals fall within those high risk categories. In 2015, as Attorney General of California, I launched OpenJustice, a groundbreaking data initiative that provided key criminal justice information to the public. Through OpenJustice, the California Department of Justice identified 6,837 deaths in custody between 2005 and 2014, and learned that approximately 61 percent of those deaths resulted from “natural causes.” Many of those deaths resulted from the fact that individuals had underlying conditions, which were often compounded by the poor health care offered in prisons and jails.²

Given the number of high risk individuals in our prison systems, the risk of coronavirus and community spread is not hypothetical. In fact, on March 13, 2020, *The Mercury News* reported that two jail inmates in Santa Clara, California are in quarantine after they were visited by an attorney who tested positive for coronavirus. Other inmates who were in contact with the two exposed individuals are now being quarantined as well.³

In the midst of this crisis, BOP should be taking reasonable steps to reduce the incarcerated population and guard against potential exposure to coronavirus. On March 19, the chief physician of Rikers Island called on state and local judges and prosecutors to reduce the incarcerated population wherever possible, explaining that “the luxury that allows you to protect yourselves, carries with it an obligation to those you detain.”⁴ We need the same show of leadership at BOP. At this time, BOP—in coordination with the U.S. Department of Justice — can and should request the release of low-risk individuals who are in pretrial detention because of money bail. BOP and the Justice Department also have a responsibility to direct federal, state,

¹ Umair Irfan and Julia Belluz, *Why Covid-19 is so dangerous for older adults*, VOX (March 13, 2020), <https://www.vox.com/2020/3/12/21173783/coronavirus-death-age-covid-19-elderly-seniors>.

² Attorney General Kamala D. Harris launches first-of-its-kind criminal justice open data initiative, STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE (Sept. 2, 2015), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-launches-first-its-kind-criminal-justice-open>.

³ Robert Salonga, *Coronavirus: Inmates quarantined at Santa Clara County jail after defense attorney tests positive*, THE MERCURY NEWS (March 13, 2020), <https://www.mercurynews.com/2020/03/13/coronavirus-inmates-quarantined-at-santa-clara-county-jail-after-defense-attorney-tests-positive/>.

⁴ *Coronavirus: U.S. doctors demand immediate release of prisoners and detainees to avert disaster*, THE INDEPENDENT (March 19, 2020), <https://www.independent.co.uk/news/world/americas/coronavirus-us-prison-release-doctors-medical-workers-symptoms-a9410501.html>.

and local courts to consider the risk of coronavirus in any pretrial release decision-making. But instead, it appears that BOP is responding to the threat of coronavirus with extreme measures that both maintain current levels of incarceration and penalize the incarcerated community—including by suspending social and legal visitation, suspending inmate facility transfers, and potentially locking down institutions.⁵ These measures are unjust and insufficient. At this exceedingly perilous time, it is imperative that BOP thoughtfully prepare for the challenges ahead, and provide immediate, comprehensive, and humane treatment to our incarcerated population.

Therefore, I request a response to my prior letter dated March 5, 2020, as well as the following questions, **by Monday, March 23, 2020**:

1. What is the current ratio of health care providers to inmates at BOP facilities?
2. What is the current ratio of health care providers to federal inmates in private prisons?
3. How many coronavirus testing kits does BOP have at each of its federal and private prisons? If testing is not available in each facility, please describe in detail BOP's plan to make testing available for federal inmates and staff.
4. How many ventilators does BOP have at each of its federal and private prisons? If ventilators are not currently available, please describe in detail BOP's plan to make ventilators available in each facility.
5. Please describe in detail BOP's plan to provide preventative care to federal inmates who have compromised immune systems or existing illnesses.
6. Please describe in detail BOP's plan to provide hospital care to federal inmates who test positive for coronavirus.
7. Please describe in detail any contingency planning that BOP is requiring of private prisons during the coronavirus outbreak, including any social distancing protocols.
8. Please describe in detail BOP's plan to provide sufficient quantities of soap, tissue, and other hygiene supplies to federal inmates.
9. Please describe in detail any extra precautions that BOP is taking in food preparation and in sanitizing utensils, trays, and eating facilities in federal and private prisons.
10. Please describe in detail any extra precautions that BOP is taking to disinfect and clean living quarters and common spaces in federal and private prisons.

⁵ *Federal Bureau of Prisons COVID-19 Action Plan*, Bureau of Prisons (March 13, 2020), https://www.bop.gov/resources/news/20200313_covid-19.jsp; see also *Coronavirus puts prisons in tight spot amid staff shortages, threats of lockdown*, Kaiser Health News (March 13, 2020), <https://khn.org/news/coronavirus-puts-prisons-in-tight-spot-amid-staff-shortages-threats-of-lockdown/>.

11. Please describe in detail BOP's plan to transport inmates in a manner consistent with the U.S. Centers for Disease Control and Prevention's (CDC) guidance on social distancing.
12. What arrangements will be made to provide free videoconferencing and telephone calls to incarcerated individuals to ensure the maintenance of familial and community relationships?
13. What arrangements will be made to provide free, privileged and confidential videoconferencing and telephone calls to incarcerated individuals to ensure continuity in legal access and representation?
14. What measures has BOP taken, in coordination with U.S. Probation and Pretrial Services, to increase the number of federal inmates eligible for home confinement and halfway houses?
15. From January 19, 2020 to present, has BOP increased the number of inmates allowed to serve 10% of their terms of imprisonment or 6 months in home confinement, as expressly permitted by 18 U.S.C. § 3624(c)(2) and expanded by Section 602 of the First Step Act, Pub. L. 115-391? Has BOP increased the number of inmates eligible for this home confinement program who are elderly and/or have compromised immune systems?
16. From January 19, 2020 to present, have you and/or Attorney General Barr evaluated whether to release any federal inmates in halfway houses in order to create additional space for inmates who may need to be relocated as a result of coronavirus?
17. From January 19, 2020 to present, have you and/or Attorney General Barr extended the elderly home confinement program to any individuals based on their higher risk of death from coronavirus?
18. From January 19, 2020 to present, have you and/or Attorney General Barr implemented any processes to expedite compassionate release? If yes, please describe those measures in detail.
19. From January 19, 2020 to present, have you and/or Attorney General Barr extended compassionate release to any elderly individuals who are at higher risk of death from coronavirus?
20. From January 19, 2020 to present, have you and/or Attorney General Barr extended compassionate release to any individuals with compromised immune systems who are at higher risk of death from coronavirus?
21. From January 19, 2020 to present, have you and/or Attorney General Barr extended compassionate release to any pregnant women who may be at higher risk of death or serious illness from coronavirus?
22. From January 19, 2020 to present, have you and/or Attorney General Barr requested that federal, state, or local judges consider an individual's risk of death from coronavirus

before deciding whether to place that individual in pretrial detention? If yes, please describe the request(s) in detail.

23. From January 19, 2020 to present, have you and/or Attorney General Barr requested that state and/or local authorities immediately release individuals who are in pretrial detention because of cash bail? If yes, please describe the request(s) in detail.
24. From January 19, 2020 to present, have you and/or Attorney General Barr issued any guidance to federal, state, or local courts to stop re-incarcerating individuals for technical violations of parole, probation, community corrections, or supervised release during the coronavirus outbreak? If yes, please describe the guidance in detail.
25. From January 19, 2020 to present, have you and/or Attorney General Barr requested that any federal judges consider an individual's risk of death from coronavirus when deciding whether to extend an individual's surrender date to BOP? If yes, please describe the request(s) in detail.

I look forward to your prompt response to this matter.

Sincerely,



KAMALA D. HARRIS
United States Senator