

April 3, 2020

The Honorable Charles E. Grassley  
Chairman, Senate Judiciary Committee  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Dianne Feinstein  
Ranking Member, Senate Judiciary Committee  
331 Hart Senate Office Building  
Washington, DC 20510

The Honorable Jerrold Nadler  
Chairman, House Judiciary Committee  
2141 Rayburn House Office Building  
Washington, DC 20515

The Honorable Doug Collins  
Ranking Member, House Judiciary Committee  
1504 Longworth House Office Building  
Washington, DC 20515

**Re: Call for Urgent Action: Release “Old Law” Federal Prisoners**

Leader McConnell, Minority Leader Schumer, Speaker Pelosi, Minority Leader McCarthy:

Lawmakers are recognizing the catastrophic impact the coronavirus could have in our prison and detention systems that, if left unaddressed, could significantly impact the entire country. In particular, we thank the Senate for the attention it has given to the release of federally incarcerated people vulnerable to infection by COVID-19 in its March 23, 2020 letter to Attorney General Barr and BOP Director Carvajal. Emergency legislation passed last week, while critical, will not end the public health threat endangering the lives of people in federal prison.

**We are writing to highlight the situation of 236 "old law" federal prisoners, and to urge you to support their emergency release.** Of the 175,000 people currently in the custody of the U.S. Bureau of Prisons, just 236 people are still serving parole-eligible sentences. These 236 people were sentenced for federal crimes committed before 1987, when parole was abolished in the federal system. Grouped together, these are referred to as "old law" prisoners – people sentenced to indeterminate sentences, dependent on the U.S. Parole Commission (USPC) to grant their release on parole. Every one of these people has been eligible for release for many years, so there is no statutory bar to their release now. No new legislation is necessary. The U.S. Parole Commission could release them immediately without hearings.

Although the Parole Commission was abolished in 1984, it retained jurisdiction over the lives of these people, and continues to deny them parole largely based on their original convictions. However, the nature of their original conviction is not an accurate predictor of risk to public safety upon release, and – especially important while confronting the COVID-19 pandemic – their original conviction should not be considered in a public health evaluation. Many of these "old law" federal prisoners were convicted of crimes of violence, but those original convictions reflect neither their current behavior, nor do they appropriately measure current risk to public safety.

In 2012, the landmark *Unger v. State of Maryland* decision released over 130 people who had been convicted of crimes involving violence and sentenced to life in prison. Most of these people had been incarcerated for over 35 years prior to their release, and their average age was 64. A similar outcome is likely with aging "old law" prisoners to be released on emergency parole due to the coronavirus pandemic. The BOP itself recognizes that people over 50 are exceedingly unlikely to

commit new crimes: "Older offenders were less likely to recidivate after release than younger offenders who had served similar sentences, regardless of the length of sentence imposed."<sup>1</sup>

Because they were all convicted in or before 1987, "old law" prisoners are among the very oldest in the federal system. Many are in their late 60s, 70s, even 80s; the youngest would be 52. All have all been incarcerated at least 30 years, have aged and their health has deteriorated. Many have underlying health conditions like heart and lung disease, diabetes, and advanced cancer. Public health experts are referring to COVID-19 as a geriatric care emergency as they urge release of vulnerable people from prisons and jails.<sup>2</sup> **These federal prisoners are uniquely vulnerable to infection from COVID-19, pose no threat to public safety, and should be released immediately.**

Until enactment of the First Step Act, old law federal prisoners had only one pathway to release, through the U.S. Parole Commission. The First Step Act significantly reformed the compassionate release process, allowing release for "extraordinary and compelling circumstances." A bipartisan letter from the Senate urges the BOP to "immediately issue guidance requiring that "extraordinary and compelling" circumstances be interpreted more broadly and clarify that such circumstances include vulnerability to COVID-19."<sup>3</sup> Release of these elderly "old law" prisoners on parole will not endanger public safety, and most have stable homes and family members to return to.

People in federal prisons are facing the onslaught of a vicious virus, with no means to protect themselves and little hope of adequate care should they fall ill. They are already contracting the coronavirus, and are exposed daily to conditions notorious for a lack of sanitation and negligent medical care. More prisoners and prison guards are being infected every day. The Bureau of Prisons is still transporting people between facilities and guards travel daily between the prisons and their homes, transmitting the virus against all public health warnings. Social distancing is impossible in prisons; basic cleaning supplies and hand sanitizer are illegal contraband. The only intervention instituted by the BOP has been to stop all programming, and all legal and family visits. Yet the virus enters the prisons every day via staff, who have close contact with incarcerated people and all surfaces and objects in the prison.

**We urge you to ensure that these elderly people are included in any emergency legislation to release those with high vulnerability to COVID and to depopulate the federal prisons.** Old law prisoners constitute the group with the lowest risk of recidivism and the highest risk of fatal infection with COVID-19.

We also ask you to call on the U.S. Parole Commission to immediately release the old law federal prisoners under its jurisdiction who are extremely vulnerable to COVID-19 because of their age, medical conditions, and compromised health and who, as a result pose absolutely no risk to public safety. Public health criteria must be prioritized over everything else in these decisions, and all old law federal prisoners should be prioritized for immediate release.

<sup>1</sup> "The Effects of Aging Among Federal Offenders," U.S. Sentencing Commission, December 2018, p.3.

<sup>2</sup> Presentation of Dr. Brie Williams, UCSF Division of Geriatrics, Director Criminal Justice and Health, University of California at San Francisco, March 22, 2020.

<sup>3</sup> Letter to Attorney General Barr and BOP Director Carvajal, March 23, 2020, signed by 14 Senators (Durbin, Grassley, Leahy, Lee, Klobuchar, Crapo, Whitehouse, Tillis, Blumenthal, Cramer, Warren, Hirono, Booker, Harris).

We thank you for your consideration. Please contact Linda Evans ([lindaevans101@gmail.com](mailto:lindaevans101@gmail.com) or 510-219-0297) if you have additional questions.

Sincerely,

American Civil Liberties Union  
Center for Constitutional Rights  
CURE International  
Federal Public and Community Defenders  
Justice Roundtable  
Release Aging People in Prison (RAPP)  
The Sentencing Project  
We Got Us Now