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United States Senate
WASHINGTON, DC 20510-3805

April 1, 2020

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Barr:

I write to express my serious and ongoing concerns regarding the preparation and response of the federal prison system related to the COVID-19 pandemic. On March 20, 2020, I sent a letter to the Bureau of Prisons (BOP) Director Michael Carvajal raising several questions and concerns regarding the BOP's inmate transfer policies, supply of personal protective equipment (PPE) for correctional officers and other general concerns related to the BOP's preparation for COVID-19. While I have not yet received a response from Director Carvajal, I have continued to receive reports from inmates' family members and BOP staff—some of whom have asked to remain anonymous—regarding serious health and safety concerns at BOP facilities. In response to these concerns, I am requesting additional information regarding the preparation and response for COVID-19 in the federal prison system across all agencies under the Department of Justice (DOJ).

As you likely know, on March 28, 2020, the BOP reported the first death of an incarcerated individual at FCI Oakdale I in Oakdale, Louisiana.¹ Following this death, media reports have quoted BOP employees indicating that FCI Oakdale is currently “ground zero” of the COVID-19 pandemic in the BOP system.² The *Washington Post* reports that there have been at least 30 positive test results at the Oakdale facility and at least 60 inmates are in quarantine, with an unknown number of staff self-quarantining at home.³ As of this letter, BOP has only officially confirmed ten cases in Oakdale.⁴ Across all BOP facilities, the BOP has reported 29 inmate cases and 30 staff cases—including one case in my home state of Pennsylvania at USP Canaan.⁵

The growing numbers at BOP facilities track the larger concerns developing across our country—both in our local communities and in our prisons. As of April 1, 2020, over 190,000

¹ Press Release, Bureau of Prisons, Inmate Death at FCI Oakdale I (Mar. 28, 2020), https://www.bop.gov/resources/news/pdfs/20200328_press_release_oak_death.pdf.

² Keegan Hamilton, *Inside the Federal Prison That's 'Ground Zero' for the Coronavirus Outbreak*, VICE NEWS (Mar. 20, 2020), https://www.vice.com/en_ca/article/pke4qv/inside-the-federal-prison-thats-ground-zero-for-the-coronavirus-outbreak.

³ Kimberly Kindy, *An Explosion of Coronavirus Cases Cripples A Federal Prison In Louisiana*, WASH. POST (Mar. 29, 2020), https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d_story.html.

⁴ *COVID-19 Coronavirus*, BUREAU OF PRISONS, <https://www.bop.gov/coronavirus/> (last visited Apr. 1, 2020).

⁵ *Id.*

COVID-19 cases have been reported in the United States, with over 4,100 deaths.⁶ The White House coronavirus task force has indicated that the United States death toll could reach 100,000 to 200,000.⁷

Unfortunately, as you know, social distancing is very difficult in densely populated prison facilities and the numbers are beginning to reflect that reality. On Monday night, Dr. Ross MacDonald, the chief medical officer for New York City's correctional health services, wrote that the situation unfolding inside the Rikers Island prison complex is a "public health disaster unfolding before our eyes."⁸ So far, at least 167 incarcerated individuals and 137 correctional staff have tested positive for the virus at New York City's jails.⁹

As New York City struggles to contain the outbreak within its prisons, other states have attempted to implement strong measures to prevent similar outbreaks throughout their systems. In Pennsylvania, the Department of Corrections recently implemented a statewide inmate quarantine after the first incarcerated individual tested positive in the Pennsylvania state prison system.¹⁰ To address the risk of a COVID-19 outbreak, other states and localities have moved to consider releasing sick or vulnerable individuals, while other states have ordered some individuals incarcerated for low-level offenses to be released from their facilities.¹¹

Based on these state actions, I was mostly pleased to read your recent directive to Director Carvajal encouraging him to "prioritize" his authority to release non-violent and vulnerable prisoners to home confinement.¹² Nonetheless, after years of understaffing and mismanagement at BOP facilities—as well as questions over the BOP's willingness to fully utilize home confinement—I question whether the BOP is in a position to quickly and effectively implement your guidance in the middle of an urgent and deadly health pandemic. As you referenced in your March 26 press conference, one-third of those incarcerated in the federal system have a pre-existing condition and another 10,000 are over the age of 60.¹³ These individuals are particularly vulnerable and would be at most risk if the federal prison system were to become—in your

⁶ *Coronavirus Disease 2019 (COVID-19): Cases in the U.S.*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last updated Mar. 31, 2020).

⁷ Bobby Allyn, *Fauci Estimates that 100,000 to 200,000 Americans Could Die from the Coronavirus*, NPR (Mar. 29, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/29/823517467/fauci-estimates-that-100-000-to-200-000-americans-could-die-from-the-coronavirus>.

⁸ Meagan Flynn, *Top Doctor at Rikers Island Calls the Jail A 'Public Health Disaster Unfolding Before Our Eyes'*, WASH. POST (Mar. 31, 2020), <https://www.washingtonpost.com/nation/2020/03/31/rikers-island-coronavirus-spread/>.

⁹ Jan Ransom & Alan Feuer, *We're Left for Dead': Fears of Virus Catastrophe at Rikers Jail*, N.Y. TIMES (Mar. 30, 2020), <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html>.

¹⁰ Press Release, PA Dep't of Corrections, Department of Corrections Quarantines State Prison System to Fight COVID-19, Protect Inmates and Staff (Mar. 30, 2020), https://www.media.pa.gov/Pages/corrections_details.aspx?newsid=455.

¹¹ Tracey Tully, *1,000 Inmates Will Be Released from N.J. Jails to Curb Coronavirus Risk*, N.Y. TIMES (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html>.

¹² Memorandum from the Honorable William Barr, U.S. Att'y Gen., to Michael Carvajal, Dir., Bureau of Prisons (Mar. 26, 2020).

¹³ Alexander Mallin, *AG William Barr Pushes Expansion of Home Confinement to Reduce Prison Populations Amid Coronavirus*, ABC NEWS (Mar. 26, 2020), <https://abcnews.go.com/Politics/ag-william-barr-pushes-expansion-home-confinement-reduce/story?id=69816504>.

words—“petri dishes” for the rapid spread of the virus similar to what is occurring in New York City.¹⁴

Furthermore, since my letter on March 20, 2020 to Director Carvajal, I have received numerous reports from BOP employees and family members expressing concerns over a significant lack of testing, personal protective equipment (PPE) and social distancing procedures at BOP facilities. Several of these concerns have been reinforced and supported by national media reports.¹⁵ In one report, I was informed that the BOP is no longer requiring staff members to self-quarantine if they come into contact with an individual displaying COVID-19 symptoms and instead, the BOP is ordering them back to work within 48 hours of contact. This goes against the recommendations from public health experts, including the Centers for Disease Control and Prevention (CDC).

In addition, I am aware that the BOP continues to accept and transfer incarcerated individuals from the United States Marshals Service (USMS) and between BOP facilities. I recognize that the BOP may not be in a position to unilaterally cease any and all movement between facilities and I appreciate that the BOP has indicated that it is taking certain steps to prevent the spread of the virus. As you know, the BOP recently implemented new “Phase Five” guidance—effective today—to limit social interactions in BOP facilities and “significantly decrease incoming movement” over the next fourteen days.¹⁶ Nonetheless, as more states enact “stay-at-home” orders to significantly curtail travel and social interaction of private citizens,¹⁷ the continuation of *any* prison transfers may place correctional staff and the general prison population at greater risk for transmission of the virus.

The BOP has committed to screening incarcerated individuals for symptoms prior to transfer, but without testing each individual prior to transfer, it is impossible to determine whether these movements are facilitating the spread of COVID-19 between facilities. The Director of the CDC recently warned that as many as 25 percent of those infected with COVID-19 may appear completely asymptomatic.¹⁸ Consequently, it is likely that asymptomatic individuals carrying the virus would not be caught by BOP’s typical screening procedures. In fact, I have received multiple reports of incarcerated individuals developing symptoms while in transit, thus potentially and needlessly exposing more correctional officers and other individuals to COVID-19 because of the lack of preemptive testing. I urge you to clarify transfer policies and ensure that all agencies under your authority, including the BOP and USMS, are using the same guidelines for managing the transport of incarcerated individuals. Furthermore, I urge you to

¹⁴ *Id.*

¹⁵ *E.g.*, Kindy, *supra* note 3.

¹⁶ Press Release, Bureau of Prisons, COVID-19 Action Plan: Phase Five (Mar. 31, 2020), https://www.bop.gov/resources/news/pdfs/20200331_press_release_action_plan_5.pdf.

¹⁷ See Alicia Lee, *These States Have Implemented Stay-At-Home Orders. Here's What That Means For You*, CNN (Mar. 31, 2020), <https://www.cnn.com/2020/03/23/us/coronavirus-which-states-stay-at-home-order-trnd/index.html> (explaining that more than two-thirds of the country’s population are under a “stay-at-home” warning as of March 30).

¹⁸ See Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, N.Y. TIMES (Mar. 31, 2020), <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html> (“As many as 25 percent of people infected with the new coronavirus may not show symptoms, the director of the Centers for Disease Control and Prevention warns.”).

ensure that all agencies are *testing* incarcerated individuals before they are transferred to a BOP facility.

Additionally, as we both know, an outbreak at a BOP facility will impact far more people than simply those inside the facility. If the staff and general prison population are not adequately tested, they will be more likely to unknowingly spread the disease to other staff members and incarcerated individuals. Furthermore, without proper PPE, those correctional officers will then subsequently be more likely to take the virus home with them and spread it unknowingly to their family and friends. Infected individuals from BOP facilities may also strain local healthcare facilities, particularly in small rural communities similar to the towns scattered across Pennsylvania housing BOP facilities. It would be deeply irresponsible and significantly damaging to any community housing a BOP facility if a COVID-19 outbreak were to occur at that facility without the DOJ ensuring that complete and comprehensive preventive measures were being fully deployed at BOP facilities across the country.

With these significant concerns in mind, I respectfully request a response to the following questions by Wednesday, April 8, 2020:

Coordination Among Agencies

1. How are agencies under the DOJ currently working with other federal agencies, including the CDC, to ensure that they are responding appropriately to the COVID-19 pandemic?

Home Confinement

1. How is the BOP currently implementing your directive to Director Carvajal calling on him to prioritize releasing non-violent and vulnerable prisoners to home confinement?
2. How many individuals have been released to home confinement since your directive to Director Carvajal?
3. How has the passage of the CARES Act, which broadened your authority to release prisoners to home confinement, impacted your initial guidance to Director Carvajal?
4. How are you utilizing your broadened authority under the CARES Act?
5. Is the BOP testing all individuals it releases to home confinement to ensure that it is not facilitating the transmission of COVID-19 into our communities? If not, what steps are being taken by the BOP to ensure that it is not releasing asymptomatic individuals carrying COVID-19 to home confinement and potentially infecting the larger community?

Transfers

1. What policies and procedures are in place for all agencies under the DOJ related to the transportation and transfer of incarcerated individuals to BOP facilities?
2. How are you ensuring that these policies and procedures are consistent across all agencies under the DOJ?
3. What criteria are considered when determining whether to transfer incarcerated individuals from one BOP facility to another during the COVID-19 pandemic?
4. Will you commit to ensuring that all incarcerated individuals are tested for COVID-19 prior to transferring them to a BOP facility? If not, why? What resources would you need to ensure that all individuals are tested prior to transfer?

Tests, PPE and Personal Care

1. How are you ensuring that the BOP and USMS have adequate levels of:
 - PPE inventory, including gowns, eye guards, gloves and facemasks?
 - Personal care products, such as hand soap and hand sanitizer?
 - COVID-19 diagnostic tests?
2. What alternative supply chain options are being utilized by the DOJ to ensure that all BOP facilities have adequate levels of PPE inventory or personal care products?

Quarantine Policies

1. What are the BOP's quarantine policies for staff members who have come into contact with an individual displaying COVID-19 symptoms?
2. What are the BOP's quarantine policies for incarcerated individuals displaying COVID-19 symptoms or who have come into contact with an individual displaying symptoms?
3. What public health experts or other federal agencies, such as the CDC, assisted the BOP in reviewing and implementing best practices related to its quarantine policies?
4. Where are incarcerated individuals being quarantined in BOP facilities? Do these quarantined units share ventilation systems with other areas of the prison? If so, what controls have been implemented to minimize the likelihood that the virus may be inadvertently transmitted through the prison's ventilation system?

I thank you for your attention to this matter. Should you have any questions, I encourage you to contact my staff at 202-224-6324 or via email at adam_fontaine@casey.senate.gov.

Sincerely,



Robert P. Casey, Jr.
United States Senator