

# United States Senate

WASHINGTON, DC 20510

March 23, 2020

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

Director Michael Carvajal  
Federal Bureau of Prisons  
U.S. Department of Justice  
320 First Street NW  
Washington, D.C. 20534

Dear Attorney General Barr and Director Carvajal:

On March 13, 2020, President Trump declared a state of emergency concerning the novel coronavirus disease (COVID-19) outbreak. We write to express our serious concern for the health and wellbeing of federal prison staff and inmates in Federal custody, especially those who are most vulnerable to infection, and to urge you to take necessary steps to protect them, particularly by using existing authorities under the First Step Act (FSA).

We have reviewed the Federal Bureau of Prisons (BOP) COVID-19 Action Plan, which covers health screening, limits on outside visits, staff travel, and inmate transfers, but notably does not include any measures to protect the most vulnerable staff and inmates. The Centers for Disease Control and Prevention (CDC) has issued guidance indicating that adults over 60 years old and individuals with chronic medical conditions, such as lung disease, heart disease, and diabetes, are at a higher risk of contracting COVID-19 and suffering more severe illness and death. The CDC has advised these individuals to avoid crowds and stay at home as much as possible. Conditions of confinement do not afford individuals the opportunity to take proactive steps to protect themselves, and prisons often create the ideal environment for the transmission of contagious disease. For these reasons, it is important that consistent with the law and taking into account public safety and health concerns, that the most vulnerable inmates are released or transferred to home confinement, if possible.

COVID-19 is an unprecedented crisis for our nation, including our inmate population. However, Congress has equipped BOP and the Department of Justice (DOJ) with tools to use to maximize their efforts to overcome these daunting times. For example, the FSA reauthorized and expanded the Elderly Home Detention Pilot Program to place eligible elderly and terminally ill inmates in home confinement. This pilot program permits the Bureau of Prisons (BOP) to transfer nonviolent offenders to home detention if they are sixty years or older and have served 2/3 of their term of imprisonment, among other requirements. We call on BOP and DOJ to

review and expedite the current cases where the Elderly Home Detention Pilot Program would allow for an early transfer – where appropriate – of terminally ill and eligible elderly inmates to home confinement. Since elderly offenders are the most vulnerable to infection and the least likely to reoffend, we urge BOP’s speedy review and processing of these cases for early release.

In addition, the FSA reformed the compassionate release program for people facing “extraordinary and compelling” circumstances. However, since enactment, BOP has opposed the vast majority of petitions. According to a report recently filed by BOP, in 2019, 1,735 requests for release were initiated by or on behalf of inmates, of which 1,501 were denied by wardens and 226 were forwarded to the BOP Director. Of these 226, BOP approved only 55 requests and denied 171 requests. We urge you to immediately issue guidance requiring that “extraordinary and compelling” circumstances be interpreted more broadly and clarify that such circumstances include vulnerability to COVID-19.

Finally, Section 602 of the FSA directed BOP, to the extent practicable, to transfer lower-risk inmates to home confinement for the maximum amount of time permitted under the law, which is the shorter of 10 percent of the term of imprisonment or six months. Given the current state of emergency, we urge you to consider the use of this authority to quickly transfer non-violent offenders who are at high risk for suffering complications from COVID-19 to home confinement.

Thank you for your time and consideration. We look forward to your prompt response.

Sincerely,



RICHARD J. DURBIN  
United States Senator



CHARLES E. GRASSLEY  
United States Senator



PATRICK LEAHY  
United States Senator



MIKE LEE  
United States Senator



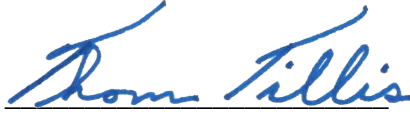
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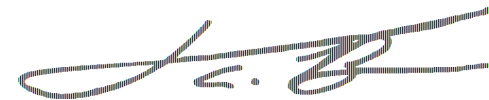
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