

United States Senate

WASHINGTON, DC 20510

April 21, 2020

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Inspector General Horowitz:

We commend you for opening a review of the Bureau of Prisons (BOP) to assess whether facilities housing BOP inmates are complying with available guidance and best practices regarding preventing, managing, and containing potential COVID-19 outbreaks in correctional and residential reentry settings. We write to request that your review include the implementation of relevant legislative authorities, directives from the Attorney General and the BOP Director, and guidance from the Centers for Disease Control and Prevention (CDC), as detailed below.

As of April 20, BOP reports that 319 BOP staff and 497 BOP inmates have tested positive for COVID-19, and 22 inmates have died. Conditions of confinement often do not afford individuals the opportunity to take proactive steps to protect themselves, and prisons can create the ideal environment for the transmission of contagious disease. As the CDC states, “Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.” For these reasons, it is important that, consistent with the law and taking into account public safety and health concerns, the most vulnerable inmates be considered for release or transfer to home confinement.

COVID-19 is an unprecedented crisis for our nation, including our inmate population. The CDC has issued “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities” that advises facilities to, among other things, “require staff to stay home if sick,” “provide no-cost access to soap and encourage frequent hand washing,” “plan for how to medically isolate and care for sick people,” “limit non-medical transfers in and out of the facility,” “screen all new entrants, staff, and visitors prior to entering the facility,” “be on the lookout for symptoms and address them immediately,” and “use multiple social distancing strategies.” The CDC guidance specifies that if there are COVID-19 cases in a facility, the facility should “give any person who is sick a face mask and separate them from others,” and “quarantine any close contacts.”

Additional steps can be taken, however, given Congress’ action in equipping DOJ and BOP with tools to use to maximize their efforts to overcome these daunting times, particularly authority to quickly release or transfer to home confinement non-violent offenders who are at high risk for suffering complications from COVID-19. For example, the First Step Act (FSA) reauthorized and expanded the Elderly Home Detention Pilot Program to place eligible elderly and terminally ill inmates in home confinement. The FSA also reformed the compassionate release program for people facing “extraordinary and compelling” circumstances. Additionally, 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. Finally, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, permits the BOP Director to lengthen the maximum amount of time for which a prisoner may be placed on home confinement when the Attorney General “finds that emergency conditions will materially affect the functioning” of BOP.

On March 26, Attorney General Barr sent a memorandum to BOP Director Michael Carvajal stating, “I am hereby directing you to prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic.” On April 3, the Attorney General issued an additional memorandum in which he exercised emergency authority under the CARES Act, “to expand the cohort of inmates who can be considered for home release.”

We are concerned that BOP is not fully and expeditiously implementing relevant statutory authority and directives from the Attorney General. We are also concerned about how closely BOP is following CDC guidance or taking other preventive measures to adequately protect BOP staff and inmates from the spread of COVID-19. We also worry that BOP is significantly underestimating the rate of COVID-19 infection in BOP facilities because BOP has not yet conducted the number of tests on staff or inmates appropriate for facilities where a highly contagious virus can be easily spread.

We ask that you include the following issues in your review and eventual report:

Personal Protective Equipment

- Whether BOP policy regarding the acquisition and distribution of Personal Protective Equipment (PPE) to, and use of PPE by, staff and inmates is consistent with CDC guidance and best practices, and is adequately protecting staff and inmates from the spread of COVID-19.
- Whether facilities housing BOP inmates have fully and expeditiously implemented BOP policy regarding the distribution and use of PPE.

COVID-19 Testing

- Whether BOP’s efforts to acquire and administer COVID-19 tests are consistent with CDC guidance and best practices and are adequately protecting staff and inmates from the spread of COVID-19.
- Whether BOP’s policy of not testing inmates is consistent with CDC guidance and best practices and has negatively impacted its ability to track and contain the spread of COVID-19 in BOP facilities.

Screening, Social Distancing, Isolation, and Quarantine

- Whether BOP has required staff who have been in close contact with individuals with COVID-19 to continue to work, thereby endangering staff and/or inmates.

- Whether BOP policies for staff and inmate screening, social distancing, isolation, and quarantine are consistent with CDC guidance and best practices and adequately protect staff and inmates from the spread of COVID-19.
- Whether facilities housing BOP inmates are fully and expeditiously implementing BOP policies for staff and inmate screening, social distancing, isolation, and quarantine.

Home Confinement

- Whether BOP is fully and expeditiously implementing relevant legislative authorities and directives from the Attorney General to release or transfer vulnerable inmates to home confinement to help slow the spread of COVID-19.
- Whether the Attorney General's guidance regarding the release or transfer of vulnerable inmates is consistent with best practices to help slow the spread of COVID-19.

Electronic Mail, Phone and Video conferencing

- Whether BOP has ensured that inmates have access to their families by telephone, electronic mail and video visitation, including inmates in general population, quarantine, isolation, or field tents or spaces on-campus.
- Whether BOP has ensured that inmates have confidential access to their attorneys.
- Whether facilities housing BOP inmates are fully and expeditiously implementing BOP policies for electronic mail, phone and video conferencing.

Public Transparency

- Whether BOP's reporting on the spread of COVID-19 in facilities housing BOP inmates has accurately and adequately informed Congress and the public on the scope of the threat and the authorities and resources needed to combat it.

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

Sincerely,


RICHARD J. DURBIN
United States Senator


CHUCK GRASSLEY
United States Senator