

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515–6216  
One Hundred Sixteenth Congress

April 10, 2020

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Barr:

We would like to begin by acknowledging the steps you and Bureau of Prisons (BOP) Director Michael Carvajal have taken in recent days to release 789 prisoners from BOP custody,<sup>1</sup> but we must also express that the extent of your actions in response to this crisis to date are inadequate given the threat posed by COVID-19 and that there are approximately 175,000 individuals in your custody. Unfortunately, since the last time we wrote to you, there have been at least eight deaths in BOP custody<sup>2</sup> and there are at least three BOP facilities—FCI Oakdale, FCI Elkton, and FCI Danbury—that are experiencing “significant levels of infection.”<sup>3</sup> A report

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<sup>1</sup> See Attorney General William P. Barr, Memorandum for Director of Bureau of Prisons (“Barr April 3 Memorandum”), Apr. 3, 2020, <https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000>; see also Josh Gerstein, *U.S. Prisons’ Virus-Related Release Policies Prompt Confusion*, Politico, Apr. 10, 2020, <https://www.politico.com/news/2020/04/10/us-prisons-virus-related-release-policies-prompt-confusion-178691>

<sup>2</sup> See Press Release, Bureau of Prisons, *Inmate Death at FCI Elkton*, Apr. 4, 2020,

<sup>3</sup> See Barr April 3 Memorandum, at unnumbered page 1.

[https://www.bop.gov/resources/news/pdfs/20200404\\_press\\_release\\_elk.pdf](https://www.bop.gov/resources/news/pdfs/20200404_press_release_elk.pdf); Press Release, Bureau of Prisons, *Inmate Death at FCI Oakdale I*, Apr. 3, 2020, [https://www.bop.gov/resources/news/pdfs/20200403\\_press\\_release\\_oak.pdf](https://www.bop.gov/resources/news/pdfs/20200403_press_release_oak.pdf); Press Release, Bureau of Prisons, *Inmate Death at FCI Elkton* (Apr. 3, 2020), [https://www.bop.gov/resources/news/pdfs/20200403\\_press\\_release\\_elk.pdf](https://www.bop.gov/resources/news/pdfs/20200403_press_release_elk.pdf); Press Release, Bureau of Prisons, *Inmate Death at FCI Oakdale I*, Apr. 2, 2020, [https://www.bop.gov/resources/news/pdfs/20200402\\_press\\_release\\_oak.pdf](https://www.bop.gov/resources/news/pdfs/20200402_press_release_oak.pdf); Press Release, Bureau of Prisons, *Inmate Death at FCI Elkton*, Apr. 2, 2020, [https://www.bop.gov/resources/news/pdfs/20200402\\_press\\_release\\_elk.pdf](https://www.bop.gov/resources/news/pdfs/20200402_press_release_elk.pdf); Press Release, Bureau of Prisons, *Inmate Death at FCI Oakdale I*, Apr. 2, 2020, [https://www.bop.gov/resources/news/pdfs/20200402\\_press\\_release\\_covid19\\_oak.pdf](https://www.bop.gov/resources/news/pdfs/20200402_press_release_covid19_oak.pdf); Press Release, U.S. Dept. of Justice, Bureau of Prisons, *Inmate Death at FCI Elkton*, Apr. 2, 2020, [https://www.bop.gov/resources/news/pdfs/20200402\\_press\\_release\\_elk.pdf](https://www.bop.gov/resources/news/pdfs/20200402_press_release_elk.pdf); Press Release, U.S. Dept. of Justice, Bureau of Prisons, *Inmate Death at FCI Oakdale*, Apr. 1, 2020, [https://www.bop.gov/resources/news/pdfs/20200401\\_press\\_release\\_oak\\_death\\_a.pdf](https://www.bop.gov/resources/news/pdfs/20200401_press_release_oak_death_a.pdf); Press Release, U.S. Dept. of

from Oakdale published on April 9, 2020 in the Washington Post paints a particularly devastating picture:

The virus is festering at Oakdale as older inmates and prisoners with serious medical conditions live among the general population. Prisoners, fearing they may be abandoned in an isolation cell and left for dead, are not reporting their symptoms. Prison staff walk the grounds, often without masks and gloves, failing to observe social distancing with either inmates or themselves.<sup>4</sup>

We urge swift action to address the outbreaks in these facilities—and to get ahead of the curve to prevent similar tragedies in other BOP facilities around the country. The lives of prisoners and staff are on the line.

On April 3, 2020, you issued a memorandum recognizing these emergency circumstances and directing the BOP to move vulnerable prisoners into home confinement, with due “dispatch.”<sup>5</sup> We encourage you, once again, to be as expansive as you can be regarding release and to ensure that the BOP is acting as quickly as possible system-wide, not just to react to outbreaks, on a facility-by-facility basis. We note that all eight of the deaths in BOP custody, recorded as of today, have involved prisoners with “long-term, pre-existing medical conditions” who were housed in low-security facilities. This raises the question of why, if BOP was aware that these low-security prisoners had long-term health conditions, it did not see fit to take action concerning these individuals before it was too late. BOP must do better than this.

We write again now because we continue to be concerned about information that we have received, coming from within BOP facilities. We ask the questions below in an effort to understand what has been done, and is being done, to abate the spread of COVID-19 in BOP. Please provide answers to the questions that follow, in the most expedited manner possible.

- (1) As a general matter, before President Trump’s declaration of a national emergency, how many prisoners in BOP custody were scheduled for release in 2020? How many were scheduled for release in the six months following the President’s declaration?
- (2) Of the prisoners who have died in BOP custody, were any of them under review for release under the expanded home confinement authority of the CARES Act, or under any authority available to the Attorney General or the Director of the BOP? If not, why not?

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Justice, 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](https://www.bop.gov/resources/news/pdfs/20200328_press_release_oak_death.pdf).

<sup>4</sup> Kimberly Kindy, *Inside the Deadliest Federal Prison, the Seeping Coronavirus Creates Fear and Danger*, Wash. Post, Apr. 9, 2020, [https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0\\_story.html](https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0_story.html)

<sup>5</sup> Barr April 3 Memorandum, at unnumbered page 1.

- (3) As noted above, your April 3, 2020 memorandum directs the Director of the BOP to move prisoners who are “vulnerable” into home confinement, with “dispatch.” It also refers to Oakdale, Elkton, and Danbury as experiencing “significant levels of infection.”
  - a. Have you provided guidance to the Director of the BOP as to who is a “vulnerable” prisoner? If so, please provide that to us.
  - b. Have you provided guidance to the Director as to what kind of time frame he has to accomplish this movement of prisoners? In effect, what is due “dispatch”?
  - c. Besides Oakdale, Elkton, and Danbury, which other facilities are currently experiencing “significant levels of infection”? How is this standard defined?
- (4) How many vulnerable prisoners are currently housed at Oakdale, at Elkton, and at Danbury?
- (5) At the present time, do you know how many vulnerable prisoners are housed system-wide in BOP? If you do not have a precise number, do you have an estimate?
- (6) Reports from inside the Oakdale facility indicate that there is a continuing lack of availability of personal hygiene products and that general sanitation is lacking.<sup>6</sup>
  - a. Please provide specific information about the amount of soap that is currently available per prisoner at Oakdale, Elkton, and Danbury.
  - b. With regards to soap, please indicate whether this is liquid soap or bars of soap. Are individual soap dispensers available? Are prisoners expected to share bars of soap?
  - c. Are individual hand sanitizer products available? If so, in what amounts?
  - d. Are hand towels being made available to prisoners at the three facilities? If so, in what amounts per facility?
- (7) Is BOP proactively dispensing personal protective equipment (PPE) to vulnerable prisoners? If not, is BOP entertaining requests for PPE from prisoners who have specific health concerns? What about requests for additional personal hygiene products from such prisoners?
- (8) At the present time, is hot water widely available at Oakdale, Elkton, and Danbury? If not, why not?
- (9) How many shower stalls are available per number of inmates at each of the three facilities? Is tiered showering being enforced to ensure social distancing? How frequently are shower stalls being cleaned and by whom?

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<sup>6</sup> See e.g. Sadie Gurman et al., *Coronavirus Puts Prison Under Siege*, Wall Street Journal, Apr. 6, 2020, <https://www.wsj.com/articles/inside-oakdale-prison-our-sentences-have-turned-into-death-sentences-11586191030>; Nicholas Chrastil, *Louisiana Federal Prison No Longer Testing Symptomatic Inmates for Coronavirus Due To ‘Sustained Transmission,’* The Lens, Mar. 31, 2020, <https://thelensnola.org/2020/03/31/louisiana-federal-prison-no-longer-testing-symptomatic-inmates-for-coronavirus-due-to-sustained-transmission/>.

- (10) How frequently is laundry done at each of these facilities? How are items for laundering being collected?
- (11) What specific measures are being taken to ensure that quarantine procedures are safe at Oakdale, Elkton, and Danbury? For example:
- a. is showering segregated for prisoners in quarantine?
  - b. how is food being distributed to quarantined prisoners?
- (12) The CDC recently updated its recommendations to include “wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain...**especially** in areas of significant community-based transmission.”<sup>7</sup>
- a. Are any masks, or cloth face coverings currently being made available to prisoners and staff at Oakdale, Elkton, and Danbury? If not, when do you expect that these will be made available, per the CDC’s recommendation?
  - b. If masks or cloth face coverings are being made available at the one, two, or all three of these facilities, how frequently are prisoners and staff being provided with new masks, or in the case of cloth face coverings, how many are being issued per prisoner and what kind of instructions are being provided to prisoners to keep them clean?
- (13) Besides masks and/or cloth faced coverings, is any other PPE being distributed at Oakdale, Elkton, and Danbury? For staff? For prisoners?
- (14) How are the facilities currently addressing requests for release to home confinement? Or administrative requests for furloughs? How about grievance requests? How many of each such requests have been received at each facility since March 13, 2020?
- (15) How are Oakdale, Elkton, and Danbury addressing communication with family and friends of prisoners, who are on the outside?

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<sup>7</sup> Centers for Disease Control and Prevention, *Recommendations for Cloth Face Covers*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html> (last visited on Apr. 8, 2020) (emphasis in original).

- (16) Reporting indicates that social distancing is not being practiced in BOP facilities because of the numbers of prisoners in custody.<sup>8</sup> Even with masks or cloth face coverings, CDC guidance is still for individuals to remain six feet apart from each other.<sup>9</sup>
- In relation to Oakdale, Elkton, and Danbury, what square-footage of living space is available per inmate?
  - Does the layout of these facilities permit six-foot distancing between prisoners who are currently housed at the facilities?
  - At each of these facilities, how far apart are bunks from each other?
  - At each of these facilities, how far apart are the bunks for those in quarantine?
- (17) Reports emerged last week that a correctional officer at Oakdale, while wearing only gloves as PPE, transported a prisoner on March 19, 2020 to a local community hospital for tests.<sup>10</sup> Two days later, the tests came back positive for COVID-19 and the prisoner subsequently died.<sup>11</sup> The correctional officer was in contact with the prisoner for several hours and, although the officer expected to be ordered to self-quarantine for 14 days after the test came back positive, he was apparently ordered to return to work.<sup>12</sup> At the time of these events, what guidance was being given to correctional officers for medical transportation of prisoners who displayed COVID-19 symptoms?
- (18) Because of the large numbers of infected staff and prisoners at the three facilities, how is BOP handling gaps in staffing? What kind of contingency plans exist for staffing if multiple other facilities simultaneously reach the levels of infection being experienced in Oakdale, Elkton, and Danbury?
- (19) What testing and treatment protocols have been implemented by BOP as facilities experience “significant levels of infection”?

Although 789 prisoners throughout the 122 BOP facilities have recently been released, these individuals represent 0.0045 percent of the 175,000 men and women currently in BOP’s care. To address the crowded conditions in these prisons, social distancing will not be accomplished with these meager numbers, and the lives of prisoners and staff are in jeopardy. Your staff has indicated that, as of April 7, 2020, there were 456 prisoners in isolation and 3,850 prisoners in quarantine in BOP facilities across the country, and 193 people quarantined in

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<sup>8</sup> See e.g. Ryan Lucas, *‘They’re All Really Afraid’: Coronavirus Spreads In Federal Prisons*, National Public Radio, Apr. 7, 2020, <https://www.npr.org/2020/04/07/828319691/they-re-all-really-afraid-coronavirus-spreads-in-federal-prisons>; Courtney Bublé, *Federal Prisons Pose ‘Imminent Danger’ in Spreading COVID-19, Union Says*, Gov. Executive, Apr. 6, 2020, <https://www.govexec.com/oversight/2020/04/federal-prisons-pose-imminent-danger-spreading-covid-19-union-says/164390/>; Jim Mustian & Michael Balsamo, *ACLU Seeks Release of Federal Prison Inmates Where 5 Died*, Associated Press, Apr. 6, 2020, <https://apnews.com/30b80aa20ea4f552b43a708e6ad0c4b8>.

<sup>9</sup> See Centers for Disease Control and Prevention, *supra* note 7.

<sup>10</sup> Joseph Neff & Keri Blakinger, *Federal Prisons Agency “Put Staff in Harm’s Way” of Coronavirus*, The Marshall Project, Apr. 3, 2020, <https://www.themarshallproject.org/2020/04/03/federal-prisons-agency-put-staff-in-harm-s-way-of-coronavirus>.

<sup>11</sup> See Press Release, U.S. Dept. of Justice, Bureau of Prisons, *Inmate Death at FCI Oakdale I*, Mar. 28, 2020.

<sup>12</sup> See Joseph Neff & Keri Blakinger, *Federal Prisons Agency “Put Staff in Harm’s Way” of Coronavirus*.

residential reentry centers. These statistics underscore the need to act. As the unfortunate and alarming situations at Oakdale and a growing number of other BOP facilities indicate, the degree and speed of your actions must be commensurate with the urgency and scope of the threat. We urge you to make full use of your authorities to respond, including the expanded use of home confinement under the recently-enacted CARES Act.

In addition, the public and the families of individuals in BOP custody deserve transparency with respect to what is taking place in these facilities and the actions you are taking to respond to this crisis. Therefore, we ask that the BOP provide regular, public briefings on these issues.

Sincerely,



Jerrold Nadler  
Chairman



Karen Bass  
Chair, Subcommittee on Crime,  
Terrorism, and Homeland Security

cc: Jim Jordan, Ranking Member  
John Ratcliffe, Ranking Member  
Subcommittee on Crime, Terrorism,  
and Homeland Security