

Updated April 16, 2020

March 27, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Trump:

As you recently declared, the spread of COVID-19 is a national emergency that threatens thousands of lives across our country. According to estimates, the death toll from this virus could range anywhere from tens of thousands to hundreds of thousands or even more than one million in the United States. We, as former United States Attorneys, federal judges, Assistant United States Attorneys, and DOJ lawyers and leaders, understand the obligation to protect the safety and wellbeing of *everyone* in our community. This obligation extends to those in federal detention and correctional centers, where almost 20 percent are over the age of 50 and many have underlying health conditions.¹ This obligation also extends to staff and correctional officers, their families, and the communities where these facilities are located. We write to express our concern that, unless you take immediate action, it will be just a matter of time before there is a COVID-19 outbreak of massive proportions in a federal detention or correctional facility.

We believe that the current crisis creates a need to speak out and urge current leaders to implement a plan to dramatically reduce the number of incarcerated individuals and address the threat of disastrous outbreaks. If and when a COVID-19 outbreak occurs in a Bureau of Prisons facility, the correctional officers and staff will all be at great risk of infection as well. **With all of these concerns in mind, we urge you to support these efforts by:**

- **Using your executive power to sensibly commute sentences (as discussed below);**
- **Encouraging and establishing policies to promote the limitation of *new* custody to only individuals who present a serious and demonstrable risk to public safety;**
- **Creating a bipartisan emergency advisory group to quickly guide this process and ensure that the most vulnerable are protected;**
- **Urging the Bureau of Prisons to take measures to ensure the regular testing, safety and health care support of correctional staff, including full pay if they become sick with the virus; and**
- **Supporting emergency funding for:**
 - **The prevention and treatment of COVID-19 for those who remain in custody;**
 - **Reentry services and supports for those released from custody; and**
 - **Incentivizing state and local governments to take appropriate actions to advance all of these objectives in their jurisdictions and address the immediate public health concerns in their own jails and prisons.**

The CDC and your administration have released guidelines recommending that people avoid gatherings larger than 10 people – and we applaud that cautionary approach to avoid the spread

¹ Federal Bureau of Prisons. Inmate Age. (March 7, 2020).
https://www.bop.gov/about/statistics/statistics_inmate_age.jsp.

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of this potent virus.² Yet there are almost 2.3 million individuals in prisons, jails and detention centers in the United States – 175,000 of whom are in Bureau of Prison facilities – and many of these places hold thousands of people and have two or three inmates confined in a single small cell. The corrections and detention system is a breeding ground for an infectious outbreak. People incarcerated in prisons, jails and detention centers live in close proximity to each other, and have little access to hand sanitizer or the ability to engage in frequent hand washing and other safety measures recommended by the CDC such as staying six feet away from other people.³

Moreover, prisons are not closed environments. Prisons can cause COVID-19 to spread like wildfire and introducing just one carrier of the virus (often individuals who are asymptomatic) could impact not just everyone inside a facility but anyone leaving the facility – whether a person who is released, staff returning back to their homes, or a vendor – who then interacts with the outside community.

To prevent the rapid spread of COVID-19 in facilities under your federal control, we urge you to start **commuting sentences immediately**. While we hope that you will work together with a bipartisan emergency advisory group to quickly guide that process, we recommend that you *immediately* identify and process commutations for three groups: **older persons, persons who are medically vulnerable, and persons who have already served almost all of their sentence**. **Specifically, we urge you to:**

- **Commute sentences for older persons unless there is clear evidence that release would present a serious and demonstrable risk to public safety.** While the virus infects people of all ages, the World Health Organization (WHO) is clear that older people are at a higher risk of getting severe COVID-19 disease and dying.⁴ In fact, the risk of severe disease gradually increases with age, starting from around 40 years. Older people who are released from prison pose little risk to public safety and studies have shown those over 65 hold the lowest rates of reoffending among all incarcerated demographics.⁵ Moreover, studies show “arrest rates among older adults decline to a mere 2 percent by age 50 and are close to zero percent by age 65.”⁶ It is crucial for the public health and safety of all that this group be prioritized for commutation and release.
- **Commute sentences for the medically vulnerable population unless there is clear evidence that release would present a serious and demonstrable risk to public safety.** The WHO advises that persons suffering from cardiovascular disease, diabetes, chronic

² Centers for Disease Control and Prevention. Interim Guidance for Coronavirus Disease 2019 (COVID-19). (March 15, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>.

³ Pavlo, W. Handling Coronavirus In Federal Prison. Forbes. (March 2020).

<https://www.forbes.com/sites/walterpavlo/2020/03/04/handling-coronavirus-in-federal-prison/#3d8394802094>.

⁴ World Health Organization. Coronavirus disease 2019 (COVID-19) Situation Report – 51. (March 11, 2020). <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf>.

⁵ Vera Institute of Justice. Aging Out. (December 2017). <https://www.vera.org/publications/compassionate-release-aging-infirm-prison-populations>.

⁶ The Florence V. Burden Foundation. The High Costs of Low Risk: The Crisis of America’s Aging Prison Population. (July 2014). <http://www.osborneny.org/resources/resources-on-aging-in-prison/osborne-aging-in-prison-white-paper/>.

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respiratory disease, asthma, or cancer are at heightened risk.⁷ In addition to older people, the WHO has identified persons with these underlying medical conditions to be at greater risk for contracting severe COVID-19. While there is little known yet about the effects of COVID-19 on pregnant women, the CDC explains that with viruses from the same family as COVID-19, and other viral respiratory infections, such as influenza, pregnant women have had a higher risk of developing severe illness.⁸ Almost 40 percent of individuals in corrections and detention settings have underlying health conditions and it is crucial that we take steps proactively to ensure their safety and release from densely populated correctional facilities.

- **Commute sentences for persons who have served almost all of their sentence unless there is clear evidence that release would present a serious and demonstrable risk to public safety.** This measure will limit overcrowding that can lead to further spread of the COVID-19 virus and free up beds that will be needed to care for the sick who should be individually quarantined and housed separately from others.

Mr. President, you have the executive power to commute sentences for people in these three groups, and implementing the other steps noted above, while maintaining the interests of justice and without compromising public safety. This is an opportunity for you to substantially reduce the consequences of COVID-19, while setting an example for all local and state officials so they are encouraged to take similar actions in their jails and prisons. The actions you take today will mitigate harm and devastation for millions of people across this country, ensure that America is acting in the best interest of all of us, and will ultimately save lives. There is not a moment to lose.

Sincerely,

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⁷ *Ibid.*

⁸ Centers for Disease Control and Prevention. Pregnancy & Breastfeeding: Information about Coronavirus Disease. (2019). https://www.cdc.gov/coronavirus/2019-ncov/prepare/pregnancy-breastfeeding.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fpregnancy-faq.html.

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