

United States Senate

WASHINGTON, DC 20510

August 3, 2017

Dr. Thomas R. Kane
Acting Director
Federal Bureau of Prisons
320 First St., NW
Washington, DC 20534

The Honorable J. Rod Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Director Kane and Deputy Attorney General Rosenstein:

We are writing to ask that you take a serious look at the Bureau of Prison's (BOP) use of compassionate release. We would also appreciate it if you would provide us data on compassionate release and an explanation of BOP's plans to increase the use of compassionate release based on the recently revised guidance issued by the U.S. Sentencing Commission (the Commission).

Congress authorized compassionate release in the *Sentencing Reform Act of 1984*. It allows federally incarcerated people to appeal for early release if they present certain "extraordinary and compelling" reasons. Upon approval of the request, BOP makes a motion to a federal judge for a sentence reduction. The Commission sets the "extraordinary and compelling" criteria, which include, but are not limited to, age and terminal illness. The program essentially allows BOP to seek the release of certain elderly and terminally ill inmates, as well as those with special family circumstances, before the end of their prison sentences rather than keep those inmates in prison when they are no longer a significant risk to the community and when they are draining away substantial and valuable BOP resources.

In a 2013 report, the Department of Justice (DOJ) Inspector General (IG) reviewed BOP's use of compassionate release and recommended reforms to the program.¹ In another report, the IG found that federal prisons house an increasingly large number of aging individuals who often have serious medical conditions, and that medical care is one of the biggest expenses of the federal prison system.²

¹ <https://oig.justice.gov/reports/2013/e1306.pdf>.

² <https://oig.justice.gov/reports/2015/e1505.pdf>.

The IG pointed out that using compassionate release will help address rising prison spending, a serious concern, especially in our current budget environment. The elderly are the fastest growing population in federal prison, expected to represent 28% of the total population by 2019. Incarceration costs for the elderly and terminally ill in prisons are substantially greater than for the general population. In fiscal year (FY) 2015, BOP spent \$1.1 billion on medical care for incarcerated people, an increase of nearly 30% in 5 years. BOP's budget request for FY 2018 represents 29.9% of DOJ's overall budget.

The appropriate use of compassionate release also should not impact public safety. People released under compassionate release have a 3.5% recidivism rate, the lowest rate among all those formerly incarcerated. Additionally, incarcerated individuals 50 years and older have a 15% re-arrest rate, compared to a 41% re-arrest rate for the general federal prison population.

After the issuance of the IG's report, BOP adopted new policies to expand its criteria for compassionate release, delineating three categories of applicants: medical, non-medical, and age-based. BOP also attempted to streamline its process for considering petitions under compassionate release.

However, as the IG report found, BOP did not have clear standards or a formal timeline standard when making its compassionate release decisions. At a 2016 hearing before the Commission, the IG related that in the 13 months since BOP's changes, "93 elderly inmates applied under the non-medical provision, resulting in 2 releases, while none of the 203 elderly inmates who applied under the medical provision had been approved for release."³

Due in part to the fact that the BOP brought very few motions for compassionate release, in November 2016, the Commission amended its sentencing guidelines pertaining to "extraordinary and compelling reasons."⁴ The Commission, which already recognized terminal and debilitating conditions as well as exceptional family circumstances, expanded and clarified the criteria for age and family circumstances.

Importantly, the amendment directly encourages BOP to file a motion for compassionate release if the defendant meets any of the criteria set by the Commission, explaining that the sentencing court, rather than the BOP, is best suited to decide if the prisoner deserves compassionate release.⁵

We agree that under current law, it is the appropriate purview of the sentencing court to determine if a defendant's circumstances warrant a sentence reduction under compassionate release. But BOP needs to take a hard look at expanding the use of compassionate release of certain federal prisoners as a way to focus scarce BOP resources and improve public safety. In light of the recent changes the Commission made that expand compassionate release, we ask that you respond to the following questions about BOP's use of compassionate release:

³ <https://oig.justice.gov/testimony/t160217.pdf>.

⁴ http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20160428_RF.pdf.

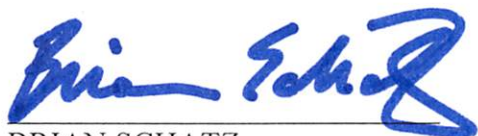
⁵ See U.S.S.G. sec. 1B1.13 comment (n4).

1. In the past three years, how many compassionate release requests, categorized by criteria, have BOP wardens received? How many were forwarded with recommendations to the Central Office (also categorized by criteria)? Of those, how many were granted and how many were denied? For both categories, how long on average did petitioners wait before receiving an answer? While waiting, how many petitioners died before receiving a response to their request for compassionate release? For all requests, whether disposed of by the warden or the Central Office, and for both denials and grants, what reasons did BOP give for its decisions?
2. What steps has BOP taken to respond to the Commission's directive to expand the use of compassionate release? If BOP has made no compassionate release policy changes or has not increased the number of compassionate release motions filed in the courts since the guideline change, please explain why and how BOP intends to remedy those problems?
3. What actions can BOP take to increase the use of compassionate release? What additional actions can BOP take to reduce the number of aging and sick people in federal prisons and reduce spending on incarceration without harming public safety?

Congress gave the Commission the authority to determine the conditions by which an individual in federal prison could be released for "extraordinary and compelling reasons." It authorized federal courts to reduce a defendant's sentence if that individual meets the criteria set by the Commission. And Congress gave BOP the administrative task of filing motions in federal court if the defendant meets the Commission's criteria for compassionate release. We are deeply concerned that BOP is not fulfilling its role in the compassionate release process.

BOP should make the compassionate release process more efficient and use that authority to the full extent provided by the Commission's guidance. Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



BRIAN SCHATZ
United States Senator



SHELDON WHITEHOUSE
United States Senator



JEFFREY A. MERKLEY
United States Senator



CORY A. BOOKER
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