United States Senate

WASHINGTON, DC 20510

February 28, 2019

Hugh J. Hurwitz
Acting Director
Federal Bureau of Prisons
320 First St., NW
Washington, DC 20534

Dear Acting Director Hurwitz:

We are writing to follow up on a letter sent by U.S. senators to the Bureau of Prisons (BOP) on November 8, 2017, which concerned the agency's establishment of clear policies for the preparation for and response to extreme weather events, as well as climate resiliency plans. We raise concerns with BOP's response to the incident in Metropolitan Detention Center (MDC) Brooklyn, during which more than 1,600 people were stranded in their cells for a week in freezing conditions. The failure of MDC Brooklyn to proactively respond to these inhuman conditions contradicts the response to the letter sent by senators, in which BOP noted that "Each extreme weather event is carefully monitored and assessed."

The inquiry highlighted BOP's response to Hurricanes Harvey, Irma, and Maria in 2017. But the letter also raised concerns about temperatures in prisons, noting the heat waves in the Southwest. As the letter noted, "requirements for livable temperatures vary across detention facilities, as well as geographic regions." In response, BOP stated "The Bureau mandates detailed contingency plans for natural disasters and evacuations. Each of the 122 federal prisons has a specific plan that is drafted to ensure the safety of the public, staff, and inmates."

However, BOP's response to the freezing conditions at MDC Brooklyn did not follow a clear contingency plan response to an extreme weather event—i.e. the January 2019 polar vortex that affected Midwest and Northeast portions of the country, in which temperatures dropped to as low as two degrees Fahrenheit in the area.[1] Each BOP facility must be prepared to respond to extreme weather events and their lingering effects, be they hurricanes and flooding, extreme temperature fluctuations such as heatwaves and polar vortexes, or even wildfires and subsequent smoke.

As *The New York Times* documented in its reporting, the problems at MDC Brooklyn began on January 27, 2019 with a fire that affected power at the facility.[2] There were conflicting reports of the origins and the severity of the freezing conditions, but people were held in lockdown at the facility with limited to no heating.[3] Lawyers had limited access to their clients, and family

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[1] Annie Correal, "How We Learned About the Freezing Federal Jail in New York," *The New York Times*, 9 Feb. 2019, https://www.nytimes.com/2019/02/09/reader-center/metropolitan-detention-center-cold-jail.html.
[2] Ibid.
[3] Ibid.

members.[4] In a statement, BOP asserted that "Cells have heat and hot water, there is lighting in the common areas and inmates are receiving hot meals."[5] This assertion was quickly contradicted by both union leaders and defense lawyers, and after a court order forced BOP to allow lawyers into the facilities, a clearer picture of the conditions formed.

While a lack of heat was the main problem at MDC Brooklyn, the lack transparency and a clear plan of action exacerbated the conditions and extended the crisis unnecessarily. If MDC Brooklyn allowed the continued contact with outside legal counsel and family members, both officials in the facility and the public could have ascertained a better picture of the conditions inside. If BOP had not issued inaccurate and easily rebuttable statements about the conditions, and response could have been formed more quickly. And if MDC Brooklyn had a "detailed contingency plan," the facility could have avoided criticisms that its response was slow and ad hoc.

We recognize the safety concerns for both BOP staff and the public that BOP must consider when developing responses to extreme weather events. However, we would like to reiterate the questions raised in the November 8, 2017 letter, and request that you provide the following information by March 28, 2019:

1) Please provide the relevant policies, plans, and guidance across all BOP facilities that govern preparations for and response to extreme weather events—including, but not limited to, hurricanes, extreme temperature fluctuations such as heatwaves and polar vortexes, wildfires, etc. If necessary, please ensure that these policies, plans, and guidance are updated and improved to reflect the lessons learned from the MDC Brooklyn incident.
2) Please provide the policies and procedures across all BOP facilities that govern visitation by counsel and family members during extreme weather events. If necessary, please ensure that these policies and procedures are updated and improved to reflect the lessons learned from the MDC Brooklyn incident.
3) Please provide policies and procedures across all BOP facilities that govern accurate and consistent reporting on facilities' responses to, or failures to respond to, extreme weather events. If necessary, please ensure that these policies and procedures are updated and improved to reflect the lessons learned from the MDC Brooklyn incident.

Thank you for your attention to this matter, and we look forward to your timely response.

Sincerely,

BRIAN SCHATZ
United States Senator

RICHARD BLUMENTHAL
United States Senator

[4] Ibid.
[5] Annie Correal, "No Heat for Days at a Jail in Brooklyn Where Hundreds of Inmates Are Sick and 'Frantic'," *The New York Times*, 1 Feb. 2019, https://www.nytimes.com/2019/02/01/nyregion/mdc-brooklyn-jail-heat.html.

CORY A. BOOKER
United States Senator

CHRIS VAN HOLLEN
United States Senator

JEFFREY A. MERKLEY
United States Senator

CHRISTOPHER A. COONS
United States Senator

SHERROD BROWN
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United States Senator

SHELDON WHITEHOUSE
United States Senator

TAMMY BALDWIN
United States Senator

RON WYDEN
United States Senator

TAMMY DUCKWORTH
United States Senator

KIRSTEN GILLIBRAND
United States Senator

TINA SMITH
United States Senator

cc: The Honorable William Barr
Attorney General
U.S. Department of Justice

encl: (1) November 18, 2017 Senate Letter to BOP re. Extreme Weather Events
(2) January 11, 2018 Response from BOP re. Extreme Weather Events

United States Senate

WASHINGTON, DC 20510

November 8, 2017

General Mark S. Inch
Director
Federal Bureau of Prisons
320 First St., NW
Washington, DC 20534

Dear Director Inch:

We are writing to inquire about the ability of prison officials to establish clear policies for the preparation for and response to extreme weather events. Recent examples have raised concerns about unsafe conditions at federal and state prison facilities for corrections officers, prison staff, and incarcerated people. These events are becoming increasingly severe due in part to the effects of climate change. As a result, prisons should have effective climate resiliency plans prior to extreme weather events.

In the wake of Hurricanes Harvey, Irma, and Maria, the country's prison infrastructure was ill-equipped to manage and respond to extreme and increasingly frequent weather events. Reports of conditions in Texas federal prisons during and after Hurricane Harvey illustrated a lack of preparation and planning for disasters response. For example, the Houston Chronicle reported that incarcerated people at the Federal Correctional Institute in Beaumont, Texas were left in their cells as the city flooded.[i] As *The Dallas Morning News* reported, some facilities in the storm's path were evacuated and some were not.[ii] Those incarcerated people who were left behind faced clean water shortages and lived in unsanitary conditions for days after the hurricane.[iii]

This problem is not isolated to Texas. In Florida, Hurricane Irma prompted the largest evacuation of people in prisons in the state's history.[iv] However, there were reports that nearly 4,500 incarcerated individuals were left in facilities located in Miami-Dade County's evacuation zones prior to Hurricane Irma.[v] In the wake of Hurricane Maria, *The Marshall Project* reported that most of Puerto Rico's prison facilities were located along coastal and high-risk flood areas.[vi] Prior to the storm, preparations and evacuations were inconsistent across Puerto Rico's 29 territorial and federal prisons.[vii]

These unsafe conditions are not unique to hurricanes. As the Gulf Coast responded to its hurricanes, the *Phoenix New Times* reported on indoor temperatures in many Arizona prisons reaching over 100 degrees.[viii] During the heatwaves in the summer of 2017, temperatures in Arizona reached as high as 113 degrees in one state prison.[ix] Other prisons may have been inaccurately reporting on their indoor temperatures.[x]

These high temperatures can be fatal for some people. A Columbia Law School report notes that certain psychotropic medication can make individuals more susceptible to heat, as can high blood pressure, other health conditions, and old age.[xi] Requirements for livable temperatures vary across detention facilities, as well as across geographic regions.[xii] Many corrections facilities lack proper air conditioning in areas most vulnerable to extreme heat. A report from *The Marshall Project* found that four out of five incarcerated individuals in Texas prisons have no access to air conditioning in their cells.[xiii]

Reporting on these unsafe conditions, as well as the health effects and deaths related to extreme weather events, is irregular and often incomplete. Most of the information is disseminated through prison advocates, news reports, and lawsuits.

We recognize the real public safety interest prison officials must consider when developing policies that cover responses to natural disasters. However, considering the clearly unsafe conditions in many corrections facilities, we ask that you provide the following information regarding responses to these extreme weather conditions.

1. Are there clear guidelines across federal correctional facilities that govern preparations for and response to extreme weather events? If so, how can these plans be improved to ensure that they are executed consistently?
2. Are there clear reporting requirements for the aftermath of extreme weather events? If not, how can facilities better ensure accurate and consistent reporting?
3. How can Congress assist in better preparing prisons facilities and officials for these conditions?

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

CHRISTOPHER A. COONS
United States Senator

CORY A. BOOKER
United States Senator

TAMMY DUCKWORTH
United States Senator

ELIZABETH WARREN
United States Senator

AL FRANKEN
United States Senator

MAZIE K. HIRONO
United States Senator

BERNARD SANDERS
United States Senator

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[i] Gabrielle Banks, "Texas prisons take hit from Harvey, complaints of water, sewage problems surface," *Houston Chronicle*, 4 Sept. 2017.

[ii] Brandi Grissom, "A look inside Texas prisons damaged by Harvey, where workers and inmates pitching in to clean up," *The Dallas Morning News*, 14 Sept. 2017.

[iii] Ibid.

[iv] Mary Ellen Klas and Kristen M. Clark, "Irma forces largest evacuation of prisoners in Florida history," Tampa Bay Times, 7 Sept. 2017.

[v] Taylor Dover, "Trapped in Irma's path," *Vice News*, 9 Sept. 2017.

[vi] Yolanda Martinez and Anna Flagg, "Puerto Rico Puts Its Prisons Near Flood Zones," *The Marshall Project*, 9 Sept. 2017.

[vii] Ibid.

[viii] Antonio Noori Farzan, "Some Arizona Prisons Report Temps Up to 113; Others May Be Fudging Logs," *Phoenix New Times*, 12 Sept. 2017.

[ix] Ibid.

[x] Ibid.

[xi] Daniel W. E. Holt, "Heat in US Prisons and Jails: Corrections and the Challenge of Climate Change," Sabin Center for Climate Change Law, Columbia Law School, Aug. 2015

[xii] Ibid.

[xiii] Maurice Chammah and John Carlos Frey, "'Cooking Them to Death': The Lethal Toll of Hot Prisons," *The Marshall Project*, 11 Oct. 2017.

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

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January 11, 2018

The Honorable Brian Schatz
United States Senate
Washington, DC 20510

Dear Senator Schatz:

Your letter to Mark S. Inch, Director, Federal Bureau of Prisons (Bureau), has been forwarded to me for response. You seek information regarding the policies and procedures the Bureau has in place to respond to extreme weather events.

The Bureau mandates detailed contingency plans for natural disasters and evacuations. Each of the 122 federal prisons has a specific plan that is drafted to ensure the safety of the public, staff, and inmates. The final decision to evacuate an entire institution is made by the Director, with input from the Regional Director. In these extreme situations, implementation of evacuation plans are coordinated by the Warden and the Regional Director with assistance from the Office of Emergency Preparedness in headquarters.

During most significant weather events, sheltering in place is the safest alternative for inmates. Institutions followed this protocol during the recent hurricanes. During Hurricane Harvey, the Federal Correctional Complex (FCC) Beaumont received minor flooding and the Federal Detention Center (FDC) Houston sustained substantial flooding outside the facility; however, inmates were safely housed at both locations with ample food, water, and medical supplies. Consistent with conditions in the community, the facilities experienced intermittent loss of power and phone service. When able to do so in a safe manner, Regional Office staff successfully replenished supplies and inmates were able to use the telephone and email services. During Hurricane Irma, our prison facilities in Florida suffered minimal damage and disruption. We are thankful that neither Hurricane Harvey nor Irma resulted in any injuries to staff or inmates and at no time were inmates denied medicine or medical care.

During Hurricane Maria, the Metropolitan Detention Center (MDC) Guaynabo, Puerto Rico, also sheltered in place. Unfortunately, the island of Puerto Rico suffered extraordinary

destruction. The Bureau made a decision to evacuate the facility several days after the hurricane to allow for repairs to be made to the facility and to ensure limited resources on the island could be diverted to local priorities. With the assistance of our law enforcement partners, the United States Marshals Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and local law enforcement in Guaynabo, Bureau staff transported inmates to mainland facilities. At all times, inmates were accounted for and safe. No injuries to staff or inmates were reported and at no time were inmates denied medical care.

Each extreme weather event is carefully monitored and assessed. The need to evacuate an entire institution is rare. Prior to the recent evacuation of MDC Guaynabo, the last necessary evacuations were conducted in 2004. Specifically, from August 14, 2004, to September 26, 2004, the South and Southeastern coast was struck with four consecutive major hurricanes, including Charley, Frances, Ivan and Jeanne. Due to these four major hurricanes effecting the same region, in a short amount of time, it was necessary to evacuate 5,277 inmates from seven institutions. The evacuations involved movement of inmates and staff at facilities in Miami, Florida; Williamsburg, South Carolina; Pensacola, Florida; Yazoo City, Mississippi; Marianna, Florida; Coleman, Florida; Forrest City, Arkansas; McCreary, Kentucky; and Tallahassee, Florida. There were no accidents, use of force incidents or security breaches associated with the inmate movement. These evacuations demonstrated that when necessary, the Bureau is able to safely evacuate an institution.

All facilities in Texas and Florida are now operational. The Bureau will continue to monitor the situation in Puerto Rico and will return MDC Guaynabo to normal operations as quickly as possible, in a safe and secure manner. Furthermore, the Bureau's assessments and responses to significant weather-events demonstrates the effectiveness of our contingency plans in reducing risk to inmates, staff and the community.

I trust this response has addressed your concerns.

Sincerely,

Judi Simon Garrett
Assistant Director for
Information, Policy and
Public Affairs