



January 12, 2022

The Honorable Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530-0001

Dear Attorney General Garland:

As Covid-19 again makes its way through federal prisons around the country, we urge you to direct the Bureau of Prisons (BOP) to act now to protect medically vulnerable people. Specifically, we ask that you prioritize compassionate release and CARES Act home confinement to remove people from harm's way.

Over the past few weeks, we have received disturbing reports from people in prison and their family members about the BOP's reaction to the latest wave of Covid-19 cases in federal prison. We are hearing about lapses in medical treatment, failures to notify and/or separate people who tested positive from others, and other instances in which the BOP has failed to follow its own guidelines regarding mitigation of Covid-19 spread. We know you have received similar reports from Senators Richard Blumenthal (D-CT) and Chris Murphy (D-CT) regarding FCI Danbury.

FCI Danbury is not the only facility experiencing such problems. We are hearing similar concerns from people at many other prisons. In every case, the failure to follow Covid-19 protocols is compounded by a lack of information and transparency about how staff responds to the virus's spread. This opacity can cross the line to cruelty. Just last week, we learned of a woman serving time at FPC Alderson for a nonviolent drug offense. She was taken to a local hospital and intubated after contracting Covid-19. Though she lay dying, her daughter was not allowed to see her or talk to her doctors at the hospital for days. Only after a judge granted the woman compassionate release was the daughter allowed to visit her mother, who died a few days later.<sup>1</sup>

Neither this woman nor many of the other 275 people who have died in BOP custody because of Covid-19 were sentenced to die in prison. The BOP has the authority and responsibility to identify vulnerable people on whose behalf it can bring motions for compassionate release. Sadly, it turned its back on sick and dying prisoners. Of the 3,602 compassionate release motions granted by federal courts from 2020-2021, only 32 were brought by the BOP. And while the United States brought or joined defense motions in 99 cases during that time, federal

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<sup>1</sup> BOP Program Statement 6031.04 requires that the BOP promptly notify next of kin when a seriously ill prisoner is transferred to a community hospital and consider whether a family visit is possible. We tracked a number of instances over the last two years in which federal facilities failed to follow the rules and alert family of a prisoner's transfer and condition.



prisoners who brought motions for release routinely encountered stiff opposition from the government.<sup>2</sup> Those mistakes should not be repeated. The BOP, which is closest to vulnerable people threatened by COVID should vigorously pursue their compassionate release and prosecutors should consent to, or not oppose, worthy defendant-initiated motions.

In addition, Congress passed the CARES Act in 2020 to empower you and the BOP to mitigate the spread of Covid-19 by moving people to home confinement. These tools have been used to move more than 10,000 people out of harm's way since the pandemic began. With the Omicron variant spreading in the prisons now, and the potential for new variants to spread in the future, we urge you to use these authorities aggressively to protect at-risk people in federal custody.

Finally, we add that the disturbing details we have learned from our incarcerated members and family members are likely just the tip of the iceberg. The full extent of the BOP's failure to protect staff and prisoners is unknown because the BOP is subject to such little oversight. Last year, the Justice Department's Office of Inspector General (OIG) reported audits of some BOP facilities during the pandemic, but these inspections were limited to only a small fraction of facilities and information gathered primarily from BOP staff. Even these limited inspections revealed significant failures, including staffing and supply shortages. We have been urging Congress to establish a body to provide regular and independent oversight of federal prisons, and we hope the Justice Department will support this proposal.

Thank you for your considering our views on this matter, and please do not hesitate to contact us if we can provide additional information.

Sincerely,



Kevin A. Ring  
President

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<sup>2</sup> United States Sentencing Commission, Compassionate Release Data Report, Calendar Years 2020 to 2021 (September 2021).