



RESEARCH AND ADVOCACY FOR REFORM

The Honorable Karen Bass
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism and
Homeland Security
Washington, DC 20515

The Honorable Jim Jordan
U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515

December 2, 2020

Re: Oversight Hearing for the Federal Bureau of Prisons and the U.S. Marshals Service

Dear Chairwoman Bass and Ranking Member Jordan:

Thank you for holding today's critical oversight hearing of the Bureau of Prisons (BOP) and Marshals Service as these two agencies confront a deadly pandemic that is expected to grow worse as COVID-19 infections increase across the nation. The Sentencing Project is deeply concerned that despite warnings from public health experts, including the Centers for Disease Control and Prevention, regarding the heightened risk that incarcerated people face from COVID-19 due to overcrowded and unsanitary conditions of confinement, officials at every level of government have not done enough to protect the lives of incarcerated people and correctional workers.

According to *The New York Times*, over [250,000 people](#) in prisons and jails nationwide have tested positive for COVID-19 as of November 30, 2020, a rate four times higher than the general public. The federal prison system reports the second highest number of cases among correctional systems, exceeding [24,000](#) since March. At least 145 people incarcerated in BOP custody and two staff members have died due to the virus. A November 17 report from the [Marshall Project](#) also finds that the new surges in the virus are outpacing previous infection peaks; over 1,000 people in federal facilities tested positive the week of November 17 alone. Moreover, as of early November, [6,676 people](#) in Marshals Service custody had tested positive for coronavirus and 20 people have died.

Despite the high number of cases and the strong likelihood of increased infections in carceral settings, public health guidelines are not adequately followed by agency officials. Indeed, a report from the [Office of the Inspector General](#) for the Department of Justice in November found the Bureau failed to appropriately isolate individuals who tested positive for COVID-19 from the general population and corrections staff were not always equipped with protective gear or informed about the health status of sick individuals they were charged with overseeing. In August, a *Marshall Project* expose quoted frightened correctional workers who alleged that [Marshals Service](#) transfer protocols were endangering the health of incarcerated people and BOP employees. They recounted multiple cases of Marshals arriving at BOP facilities with infected individuals who had never been tested and no one wore appropriate face coverings.

The Sentencing Project joins with [experts in public health](#) and correctional medicine in calling for a significant reduction in incarceration levels to limit the spread of infections in BOP facilities and to save lives.

1705 DeSales St. NW, 8th Floor, Washington, DC 20036 • Tel. 202.628.0871 •
Fax 202.628.1091 • www.sentencingproject.org

The Bureau of Prisons has been operating overcrowded prisons for decades and staffing shortages persist. Congress granted the Department of Justice authority under the CARES Act to help reduce the federal prison population by expediting transfers to home confinement. The Attorney General severely limited the effect of this new authority, however, by creating a long list of eligibility criteria, including that individuals must have a PATTERN risk score of minimum, have completed at least 50 percent of their sentence, and reside in a low- or minimum-security facility. Currently, only about 5% of the total federal prison population is serving their sentence on home confinement despite [criminological evidence](#) that if released many incarcerated people would not pose an unreasonable public safety risk.

The Sentencing Project regularly corresponds with an individual confined at the prison camp at FCI Cumberland in Maryland which is a dormitory style low security housing unit where large groups of men sleep three feet apart from one another in bunk beds. Dozens of people share a bathroom. Unfortunately, despite this individual's history of chronic asthma and approval from the warden for transfer to home confinement, the Bureau of Prisons has denied his request because he has not completed 50 percent of his sentence. The Sentencing Project urges this Committee to use its oversight authority for the Bureau of Prisons to ensure that the CARES Act's expansion of home confinement is implemented as Congress intended.

The Department of Justice's limited strategy to reduce crowding ignores research that finds older people in prison have very low rates of recidivism upon release regardless of their offense type or history of violent behavior. Known as "aging out of crime," this phenomenon has been long established and should be considered in decisions to determine whether or not an individual presents a threat to public safety and is suitable for release.

U.S. District Judge M. Casey Rodgers applied this evidence in granting a petition for compassionate release for Andre Williams, 78, who was serving a life sentence for bank robbery and weapons possession. The judge's order stated, "given Williams' age, serious health problems, the substantial amount of time he has already served and his exemplary prison record ... the court finds that the risk of him engaging in further criminal conduct is minimal." Over DOJ objections, the court ordered Williams' release on April 1. While still in custody on April 5, Williams tested positive for COVID-19. Tragically, he died April 12 still incarcerated.

It is this Committee's obligation to ensure that the Department of Justice, the Bureau of Prisons and Marshals Service do everything in their power to protect the lives of people in federal custody, which includes expediting releases and transfers of elderly and vulnerable people who do not present a credible threat to public safety during this health crisis. The potential consequence of failing to take significant action to reduce the spread of infection is staggering.

Thank you for considering the concerns of The Sentencing Project. We look forward to working with you to protect people during this crisis. Please contact Kara Gotsch, Director of Strategic Initiatives at The Sentencing Project, at kgotsch@sentencingproject.org if you need additional information.

Sincerely,



Amy Fettig
Executive Director