

The COVID-19 Crisis in Federal Detention | December 2020

Eight months into the pandemic, the failure to control COVID-19 in federal detention remains **“both a public health catastrophe and a moral one.”** In the Federal Bureau of Prisons (BOP), the disease is infecting incarcerated individuals at a rate at least [4.77 times](#) the general population. The U.S. Marshals Service (USMS) doesn’t publicly post data on infections, but in statements to the media, it has reported that as of mid-November, [6,676 individuals in its custody had tested positive for COVID-19 and 20 had died](#). **Federal officials have the power to protect individuals in federal custody from harm, but have failed to do so.**

Public health experts [agree](#) that [interventions](#) such as widespread testing, PPE, hygiene and cleanliness, and responsible release of high-risk patients could help stop the disease from spreading. The National Academies of Sciences, Engineering, and Medicine (NAS) has [concluded](#) that lowering prison populations is an essential step to save lives and control the spread of COVID-19. Indeed, BOP Dir. Carvajal acknowledged in June that [“\[p\]risons by design are not made for social distancing. They are on the opposite made to contain people in one area.”](#) Interventions are needed even after COVID-19 has swept through a facility: [“Re-infection with \[COVID-19\] has been documented, with some individuals presenting with more severe disease than the first infection,”](#) and [“\[p\]risons are prime spaces for re-exposures.”](#)

Allowing the disease to rage unchecked in prisons is a far greater threat to public safety than lowering prison populations. NAS [explains](#) that “[r]esearch on recidivism suggests that correctional authorities could decarcerate in a manner that would pose relatively little risk to public safety.” In contrast, failure to control COVID-19 in prisons is a grave threat to us all: [“The virus ripples outward . . . engulfing the families and communities of inmates and workers. The coronavirus does not respect prison walls any more than it respects state or national borders. It will not be confined.”](#)

There have now been 157 reported deaths of individuals incarcerated in BOP, a devastating loss.¹ They were parents, siblings, and children. [They were us](#). And some of their deaths surely were preventable. BOP’s [press releases](#) reveal that the majority—117—were at higher risk of complications from COVID-19 and that BOP knew it. Nearly a third of those who have died in BOP’s care were sixty-five or older.

At least 25 individuals died in BOP custody after filing—and in some cases, even after being granted—requests for release. Many wrote to the court to plead for their lives in the days, weeks, and months preceding their deaths. **“I don’t think I will make it here if I continue under such horrible conditions.”** -[Marie Neba](#), a stage 4 cancer patient with [twin 10-year-old sons and a 19-year-old daughter](#), incarcerated at FMC Carswell. **“We feel like sitting ducks, waiting for the virus to come and infect us.”** -[Waylon Young Bird](#), 52, who [wrote 17 letters pleading to be freed](#) from Springfield Medical Center, tested positive the day after writing his final letter, and died exactly one week later. **“Sir the chances of me surviving COVID-19 is impossible all because I have a weak immune system. Sir I beg the courts to release or give me time serve...I’m barely alive.... Please help sir I don’t want to die from COVID.”** -[Torrick Lyles](#), who suffered from end-stage kidney disease, four months before his death. [“With countless lives in the balance, the costs of over-criminalization should now be clear to everyone.”](#)

The United States is not fulfilling its duty to maintain safe, secure, and humane detention facilities. Courts across the country have recognized that BOP [undertreats](#) or [ignores](#) COVID-related symptoms, despite CDC [findings](#) that COVID-19 can “result in prolonged illness even among persons with milder . . . illness.” Media [accounts](#) confirm that many who test positive for COVID-19 in BOP receive [virtually no care](#), and that staff have [“ignored or minimized . . . COVID-19 symptoms, and mixed the sick and healthy together in haphazard](#)

¹ Twelve deaths that occurred in private prisons are reported in a separate link [buried](#) on the BOP Covid-19 website; 4 reported deaths occurred while on home confinement. This number [does not include two men](#), Alan Hurwitz and Efreem Stutson, who were rushed to a hospital shortly after being released from prison and died shortly thereafter.

[quarantines](#).” The Department of Justice Office of Inspector General (OIG) recently [found](#) that “[m]aintaining a safe, secure, and humane prison system remains a challenge for DOJ and the BOP.” Those in federal detention who have been spared by COVID-19 still suffer: during the pandemic medical care for chronic conditions has been delayed and, in many cases, withheld entirely. An [OIG inspection](#) of Metropolitan Detention Center (MDC) Brooklyn, found that “sick call requests dating to early July 2020 had not been scheduled or seen as of late September 2020.” At Butner Federal Medical Center, [a lawsuit alleges](#) that when people do get sick with COVID-19, “treatment is almost nonexistent,” and that people are generally not transferred to a hospital until “they are already experiencing respiratory failure.”

BOP and AG Barr have barely used the tools Congress gave them to safely lower prison populations. The CARES Act authorized AG Barr to dramatically expand the use of home confinement to protect the most vulnerable from COVID-19. Instead, AG Barr and BOP issued restrictive guidance and memos, each “[more confusing than the next](#),” that together establish a “[complex set of procedural and logistical hurdles to home confinement](#).” The OIG found that BOP failed to use its early-release authorities to transfer vulnerable individuals to safety in its reviews of hard-hit facilities like [Lompoc Federal Correctional Complex \(FCC\)](#) and [Oakdale FCC](#). During the first three months of the pandemic, [BOP approved only 11 of the 10,940](#)—0.1%—of compassionate release requests it received. The First Step Act of 2018 [expanded](#) compassionate release so that individuals may file a motion directly with the court 30 days after the warden’s receipt of a request, but that delay, coupled with routine opposition to release by DOJ, prevents vulnerable defendants from obtaining critical relief. **Based on a survey of defense attorneys representing clients across the country, we are not aware of a single BOP-initiated motion for compassionate release based on heightened risk of severe illness from COVID-19 infection.**

[“Nobody should be forced to risk deadly exposure to COVID-19 while awaiting trial,”](#) but across the country, [conditions of pretrial confinement](#) are harsh, restrictive, and sometimes deadly. As of August 2020, the USMS had custody of [over 61,000 individuals](#) awaiting trial, sentencing, or transfer into BOP, about 70% of whom were held in over 850 different state, local, or tribal facilities under the terms of intergovernmental agreements. **Federal defenders across the country report dire conditions in USMS facilities:** “Our clients are scared, worn out, and can see no light at the end of the tunnel for when court proceedings will return to normal”; “Clients on medications that require regular delivery, such as HIV drugs which must be given daily and at the same time each day, miss doses”; **“A client in my office died in the hospital from COVID....He died in the middle of the night without ever talking to his wife or kids after he went to the hospital (a period of about 4-5 days) and the Marshals were not the first people to advise us”;** “[T]hose testing positive rarely receive any treatment unless severe symptoms appear, necessitating transfer to an outside medical facility.”

USMS’s failures are consistent with a history of indifference to prison conditions and resistance to oversight. In a [2013 report](#), the OIG found that USMS resisted efforts to force non-federal detention facilities to maintain safe, secure, and humane conditions, and that “USMS often does not ensure ... state and local ... facilities take corrective action on deficiencies identified during ... inspections.” Former USMS officials [have reported](#) that the agency operates with “an attitude of indifference,” and that they leave “the jails to do what they will.” **Reports indicate that USMS’s recklessness is contributing to the spread of COVID-19 across the country.** State officials [have criticized](#) federal agencies, like USMS, that share state facilities for communication failures and allowing staff to “crisscross” between federal facilities. **BOP employees are blowing the whistle,** revealing that USMS does not test individuals prior to transfer, even as DOJ [“pump\[s\] thousands of new people into the system.”](#)

The current administration has failed to use its [existing authorities](#) to respond to this crisis, and Congress has not adequately intervened. Swift action is needed to halt the unnecessary loss of lives, and to stop the spread of COVID-19 through federal detention. [Prison health is public health.](#)