



February 14, 2022

Hon. Merrick Garland, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue
NW Washington, DC 20530-0001

Dear Attorney General Garland:

The Sentencing Project, a national research and advocacy organization focused on promoting a fair and effective justice system, urges the Department to hire a new Bureau of Prisons Director who is capable of and committed to leading the Bureau through systemic reform.

The Bureau of Prisons incarcerates over 150,000 people in often crowded conditions with grossly inadequate healthcare and limited access to vital programming. Despite decreases from all-time population highs in the wake of sentencing reforms enacted by Congress and the U.S. Sentencing Commission, the federal prison population still remains excessive: 600% higher than the prison population in 1980.¹ Meanwhile, the Bureau has been plagued by mismanagement, corruption, misconduct, and staffing shortages. And fundamentally, the culture of the Bureau is incompatible with justice. As Robert Barton, a DC resident currently incarcerated in the Coleman Federal Correctional Complex in Florida, wrote in a recent op-ed in *Politico*: “[There’s] a culture within the Bureau of Prisons that views its main function as warehousing, and sees its residents as adversaries—animals even....”²

The incoming Bureau of Prisons Director must be prepared to ensure that the Bureau achieves its mission of rehabilitation, complies with federal law, and develops a culture of accountability and transparency. Given the need for sweeping reform of the Bureau, The Sentencing Project recommends that the Department hire an individual from outside the Bureau, with a demonstrated commitment to reform, and experience leading a correctional system through organizational transformation. The incoming Director’s success will also ultimately rely on the Department’s strong support for their agenda of reform.

The Director Must Improve Conditions of Confinement

The incoming Director must urgently improve conditions within federal prisons by providing access to adequate healthcare, addressing staff shortages and overcrowding, and improving

¹ Congressional Research Service. (2013). *The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options*. (R42937). <https://nicic.gov/federal-prison-population-buildup-overview-policy-changes-issues-and-options>

² Barton, R. (2022, Feb. 10). *Frequent Prison Lockdowns Backfire. I Know From Experience*. *Politico*. <https://www.politico.com/news/agenda/2022/02/10/frequent-prison-lockdowns-backfire-00007797>

safety without relying on draconian restrictions and isolation/solitary confinement that harms the health, wellbeing, and rehabilitation of people in Bureau custody.

Longstanding poor conditions in federal prisons were exacerbated by the COVID-19 pandemic. Rather than immediately embracing compassionate release as a vital tool for reducing contagion within federal facilities or rapidly providing basic Personal Protective Equipment, the Bureau responded by making extensive use of solitary confinement and lockdowns to attempt to isolate the spread of COVID-19 within facilities. Those efforts failed: thus far, 284 people in federal custody and 7 Bureau staff members have died of COVID-19 and over 50,000 people in federal custody were infected with COVID-19, risking long-term disability.³

Today, COVID-19 restrictions continue within federal facilities. Level three facilities remain under intense modifications, including minimal access to rehabilitative programming.⁴ And despite COVID-19 emergency measures and the passage of the First Step Act, the Bureau ended 2021 with its first population increase in 6 years.⁵

According to the Bureau's own reports, medium and high security prisons remain overcrowded with staff shortages.⁶ Roughly one-third of federal correctional officer jobs are vacant.⁷ Persistent understaffing threatens the safety of both incarcerated people and Bureau staff, and dramatically worsens prison conditions. For lack of adequate supervision, people are confined to their cells for longer, with staff even resorting to locking prisoners in their cells on weekends.⁸ Medical care worsens for lack of sufficient medical staff or security staff to escort individuals to medical units.⁹

Pervasive mismanagement has exacerbated inhumane conditions. For example, the Metropolitan Detention Center in Brooklyn, NY, was described by U.S. District Judge William Kuntz as “an ongoing disgrace” for its repeated losses of electricity, water, and hot food, including repeated heat outages and freezing temperatures during the winter of 2019.¹⁰ The Bureau's internal report on the 2019 crisis assigned responsibility to then-warden Herman Quay, citing significant mechanical neglect throughout the building and a lack of simple repairs. Rather than facing accountability, Quay was then promoted to overseeing a larger facility in Allenwood,

³ Federal Bureau of Prisons. (2022, February 10). *Covid-19 Coronavirus*. <https://www.bop.gov/coronavirus/>

⁴ Federal Bureau of Prisons. (2022). *BOP COVID-19 Operational Levels*. https://www.bop.gov/coronavirus/covid19_modified_operations_guide.jsp

⁵ Federal Bureau of Prisons. (2021, Dec. 31). *Program Fact Sheet*. https://www.bop.gov/about/statistics/docs/program_fact_sheet_20220202.pdf

⁶ *Id.*

⁷ Associated Press. (2021, May 21). *Federal Prisons Forced To Use Cooks, Nurses To Guard Inmates Due To Staff Shortages*. <https://www.nbcnews.com/news/us-news/federal-prisons-forced-use-cooks-nurses-guard-inmates-due-staff-n1268138>.

⁸ Ivory, D. and Dickerson, C. (2018, June 17). *Safety Concerns Grow as Inmates Are Guarded by Teachers and Secretaries*. The New York Times. <https://www.nytimes.com/2018/06/17/us/prisons-safety-substitute-guards.html>

⁹ *Id.*

¹⁰ Federal Bureau of Prisons. (2019). *After Action Report: Partial Electrical and Reported Heating Outage Civil Disturbance*, <https://www.documentcloud.org/documents/20982240-bop-after-action-report-on-2019-freezing-conditions-at-mdc-federal-jail>.

Pennsylvania, where he remains the complex warden.¹¹ The mismanagement of MDC is not an outlier, but rather consistent with a pattern of neglect and incompetence throughout Bureau facilities.

To address these and many other deficiencies in Bureau prison conditions, we urge the Department to hire a leader with a record of successfully improving correctional conditions and a strong commitment to protecting the lives and dignity of all people in Bureau custody.

The Director Should Increase the Rate of Compassionate Release

In light of the ill and aging federal prison population and continuing COVID-19 pandemic, the incoming Director should work to dramatically increase the rate of compassionate release. The Bureau, through the United States Attorney's Office, is empowered to file motions for compassionate release with the sentencing court in extraordinary or compelling circumstances. Bureau criteria for Compassionate Release/Reduction in Sentence is based on medical or mental health conditions to include "terminal medical condition," "debilitated medical condition," and "elderly (65 or older) inmates with medical conditions." Federal courts have overwhelmingly recognized that COVID-19 vulnerability qualifies as an extraordinary and compelling circumstance under the law and have made robust use of reduction in sentence orders under 18 U.S.C. § 3582(c)(1)(A)(i) as COVID-19 outbreaks continue in federal prisons. Despite the federal courts' recognition of the need for urgent action, Bureau motions for compassionate release remain extremely rare.

During the first three months of the COVID-19 pandemic, the Bureau rejected or failed to respond to 98% of compassionate release requests.¹² Those denials included terminally ill individuals like Marie Neba, a 56-year old woman with stage 4 cancer incarcerated at Carswell medical prison in Texas for medicare fraud. She died of COVID-19 in federal custody.¹³ Over the first 13 months of the pandemic, the Bureau ultimately approved only 36 compassionate release requests, fewer than in 2019.¹⁴

Federal courts have become the primary source of compassionate release, frequently granting relief over Bureau objections. In 2020, federal judges approved 21% of the compassionate release requests they considered.¹⁵ And ultimately between January 1, 2020 and June 30, 2021,

¹¹ Pinto, N. (2019, July 17). *The warden tried to cover up a crisis at his freezing Brooklyn jail - then he got promoted*. The Intercept. <https://theintercept.com/2019/07/17/mdc-brooklyn-jail-warden-promoted/>

¹² Federal Bureau of Prisons (2020, Oct.). *Reduction in Sentence Requests March - May 2020*. <https://www.themarshallproject.org/documents/7217918-Reduction-in-Sentence-Requests-March-Through-May>

¹³ Neff, J. and Blackinger, K. (2020, Oct. 7). *Thousands of Sick Federal Prisoners Sought Compassionate Release. 98 Percent Were Denied*. The Marshall Project. <https://www.themarshallproject.org/2020/10/07/thousands-of-sick-federal-prisoners-sought-compassionate-release-98-percent-were-denied>

¹⁴ Blackinger, K and Neff, J. (2021, June 11). *31,000 Prisoners Sought Compassionate Release During COVID-19. The Bureau of Prisons Approved 36*. The Marshall Project. <https://www.themarshallproject.org/2021/06/11/31-000-prisoners-sought-compassionate-release-during-covid-19-the-bureau-of-prisons-approved-36>

¹⁵ U.S. Sentencing Commission. (2021, June). *Compassionate Release Data Report: Calendar Year 2020*. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20210609-Compassionate-Release.pdf?utm_medium=email&utm_source=govdelivery

over 20,000 motions for compassionate release were filed in federal courts and over 3,500 individuals were granted relief.

In contrast, the Bureau reported in response to Senator Schatz's December, 2020 bipartisan oversight letter, that since March 1, 2020, it had received 30,969 compassionate release requests and of those requests, had approved 36, or .1%. The Bureau also reported that U.S. Attorneys filed a mere 37 successful compassionate release motions on behalf of the Bureau and 35 people died while waiting for BOP to review their compassionate release petitions.

We urge the Department to hire a Director with a strong vision for improving the Bureau's compassionate release practices and a dedication to ending the incarceration of the thousands of vulnerable men and women in federal prisons who can safely return to their communities.

The Director Must Ensure Compliance with the First Step Act

The incoming Director must ensure that the Bureau complies with the First Step Act. Three years after the passage of the First Step Act, the Bureau is still calculating and applying the earned time credit provisions established by the law. This delay in full implementation is concerning, as are the Bureau's implementation rules, in particular the Bureau's use of the PATTERN algorithm to limit eligibility to earn credits toward early release.

To help determine who is eligible to earn credits toward early release, the US Department of Justice created the PATTERN risk assessment tool to predict the likelihood that a person who is incarcerated will reoffend. The initial iterations of PATTERN produced significant racial disparities and errors, including placing roughly 14,000 individuals into the wrong risk category. Although PATTERN has since been revised and reevaluated, it continues to produce racially disparate results. As the Justice Department has noted in its December 2021 report, the algorithm overpredicts the risk that many Black, Hispanic and Asian people would commit new crimes or violate rules after leaving prison.¹⁶

Furthermore, the Bureau's response to the COVID-19 pandemic has also limited the availability of the programming necessary for individuals to earn credits toward release. We urge the Department to hire a Director with strong commitment to First Step Act implementation, and a robust vision for rapid compliance that does not exacerbate or create racial disparities.

The Director Must Create a Culture of Transparency and Accountability

The incoming Director must address the lack of transparency and widespread corruption within the Bureau. The Bureau has persistently failed to release critical data and information and is consistently less transparent than many state correctional systems.¹⁷ For example, the Bureau's

¹⁶ National Institute of Justice. (2021, Dec.). *2021 Review and Revalidation of the First Step Act Risk Assessment Tool*. <https://nij.ojp.gov/library/publications/2021-review-and-revalidation-first-step-act-risk-assessment-tool>

¹⁷ See, for example, the monthly reports of the Alabama Department of Corrections compared to Bureau monthly statistics. Alabama Department of Corrections (2021, Nov.). *Monthly Statistical Report for November 2021*. <http://www.doc.state.al.us/docs/MonthlyRpts/November%202021.pdf>; Federal Bureau of Prisons (2022, Feb.) *Inmate Statistics*. https://www.bop.gov/about/statistics/statistics_inmate_age.jsp

COVID-19 dashboard fails to include accurate COVID-19 cumulative case counts,¹⁸ hospitalization numbers, or disaggregated data based on demographic categories¹⁹ – hindering an effective response to the COVID-19 pandemic. Furthermore, the Bureau has stymied effective oversight, often limiting the access of defense counsel and legislators to facilities.²⁰

Meanwhile, pervasive misconduct and a culture of impunity endangers the safety of incarcerated people and staff within Bureau facilities. For example, a February 6, 2022 AP investigation found a culture of rampant sexual abuse and retaliation by correctional officers against incarcerated women at FCI Dublin.²¹ In November 2021, an Associated Press investigation found that more than 100 federal prison workers have been arrested, convicted or sentenced for crimes since the start of 2019. Those crimes include sexual abuse, murder, accepting cash to smuggle drugs and weapons, and theft of property. In some cases, the agency failed to suspend the arrested officers.²² In 2019, a report by the House Subcommittee on National Security likewise found that misconduct in the federal prison system is widespread and routinely covered up or ignored, including among senior officials. Among other findings, the report documented more than a dozen allegations against five federal prison wardens, which included assaulting an inmate, embezzlement, harassment, retaliation and creating a hostile work environment; all opened and closed within a single day.²³ The report echoed a 2018 New York Times investigation of federal prisons that documented rampant sexual harassment and retaliation against female correctional officers, and minimal accountability for those responsible.²⁴

The men and women incarcerated in federal prisons and Bureau staff alike deserve safety, due process, and a culture of respect. We urge the Department to hire a Director with a proven track record of leading a correctional system through organizational change that prioritizes transparency and accountability at all levels.

The Department Must Share and Support the Director’s Commitment to Reform

Systemic change inevitably encounters roadblocks and opposition. No Director, regardless of their experience and vision, will succeed in reforming the Bureau without the Department’s strong and consistent support. We urge the Department to embrace this opportunity: hire a bold

¹⁸ Manson, J. and DeWolf L. (2021, April 2). *The Federal Bureau of Prisons is even less transparent than we thought*. UCLA COVID-19 Behind Bars Data Project. <https://uclacovidbehindbars.org/blog/bopdata>

¹⁹ Federal Bureau of Prisons. (2022, Feb. 10). *Covid-19 Coronavirus*. <https://www.bop.gov/coronavirus/>

²⁰ See Collins, D. (2022, Jan. 26). *Senators Say They Were Denied Full Access to Federal Prison*. Associated Press. <https://apnews.com/article/coronavirus-pandemic-health-connecticut-richard-blumenthal-chris-murphy-fb011a9862236c4652b45774e064292a>

²¹ Balsamo, M. and Sisak, M. (2022, Feb. 6). *AP investigation: Women’s prison fostered culture of abuse*. Associated Press. <https://apnews.com/article/coronavirus-pandemic-health-california-united-states-prisons-00a711766f5f3d2bd3fe6402af1e0ff8>

²² Balsamo, M. and Sisak, M. (2021, Nov. 14). *Workers at federal prisons are committing some of the crimes*. Associated Press. <https://apnews.com/article/federal-prisons-5be574b4103a2f5420e0d9da2daf5c9c>

²³ House Committee on Oversight and Reform (2019, Jan. 2). *Memorandum from Majority Staff, Subcommittee on National Security Regarding Independent Investigations and Employee Discipline at the Bureau of Prisons*. <https://republicans-oversight.house.gov/wp-content/uploads/2019/01/Memo-to-Chairman-Russell-re-BOP.pdf>

²⁴ Dickerson, C. (2018, Nov. 17). *Hazing, humiliation, terror: working while female in federal prison*. The New York Times. <https://www.nytimes.com/2018/11/17/us/prison-sexual-harassment-women.html>

and proven leader with a more humane vision for the Bureau and provide them with the tools and partnership they need to realize that vision.

Thank you for considering the concerns of The Sentencing Project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy Fettig". The signature is fluid and cursive, with the first name "Amy" written in a larger, more prominent script than the last name "Fettig".

Amy Fettig
Executive Director