



September 6, 2022

Director Colette Peters
Federal Bureau of Prisons
320 First St., NW
Washington, DC 20534

Re: Formerly Incarcerated People and Advocacy Organizations Urge Reform of US Bureau of Prisons

Dear Director Peters:

Congratulations on your appointment. As people formerly incarcerated in US Bureau of Prisons facilities and organizations dedicated to civil rights and justice, we know well the challenges that await you and hope to share with you our concerns and advice for advancing the systemic reform you have pledged to achieve. We have all witnessed the Bureau's failure to provide adequate medical care, safe conditions, and rehabilitative programs. We ask you to bring the Bureau into compliance with federal law and to lead the Bureau toward a more humane future grounded in transparency and accountability. Over 157,000 people – thousands of sons, daughters, mothers, fathers, and grandparents – are confined within federal prisons and relying on you for justice.

Bureau of Prisons Facilities are Unsafe and Inhumane

Federal prisons are plagued by inadequate medical care, overcrowding, staff shortages, unsanitary conditions, violence, and abuse. These conditions are well-documented in media coverage,¹ Office of Inspector General² and Bureau reports,³ and congressional testimony.⁴ Following a recent oversight hearing on July 26, Senator Ossoff observed within FCI Atlanta

¹ C. Willson (Feb. 11, 2022), *Inmates at Oregon's only federal prison report dire medical care*, OPD, <https://www.opb.org/article/2022/02/11/oregon-prison-federal-sheridan-covid-inmate-death/>; A. Lacey (July 26, 2022), *Federal Prison Officials Knew of Misconduct, Corruption, and Abuse, Senate Investigation Finds*, The Intercept, <https://theintercept.com/2022/07/26/atlanta-prison-suicide-senate-investigation/>; C. Thompson (May 31, 2022), *How the newest federal prison became one of the deadliest*, NPR, <https://www.npr.org/2022/05/31/1100954134/federal-prison-deaths-usc-thomson-illinois-prison>.

² Office of the Inspector General (Nov. 16, 2021), *Management Advisory Memorandum: Impact of the Failure to Conduct Formal Policy Negotiations on the Federal Bureau of Prisons' Implementation of the FIRST STEP Act and Closure of Office of the Inspector General Recommendations*, <https://oig.justice.gov/sites/default/files/2021-11/11-16-2021.pdf>.

³ 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>.

⁴ Homeland Security and Governmental Affairs Permanent Subcommittee On Investigations (July 26, 2022), *Witness Opening Statements in PSI Hearing Investigating Corruption, Abuse, & Misconduct at U.S. Penitentiary Atlanta*, <https://www.hsgac.senate.gov/subcommittees/investigations/media/watch-witness-opening-statements-in-psi-hearing-investigating-corruption-abuse-and-misconduct-at-us-penitentiary-atlanta>.

that “conditions for inmates were abusive and inhumane” and that “stunning failures of federal prison administration” “likely contributed to the loss of life.”⁵ FCI Atlanta is not unique; all federal prisons urgently need reform.

Persistent staff shortages pre-dating the COVID-19 pandemic have dramatically worsened prison conditions and threatened the safety of everyone within prison walls.⁶ The widespread practice of “augmentation,” reassigning staff hired as teachers, technicians, nurses, and cooks to act as correctional officers has severely compromised the functioning and safety of federal prisons. Basic repairs fail to occur, denying incarcerated people clean water.⁷ Kitchens are unsanitary and infested with rats and cockroaches, endangering the health of all those who consume the food produced there.⁸ Severely rationed and delayed access to medical and dental care is commonplace for lack of sufficient medical staff or security staff to escort individuals to medical units.⁹ The impact on programming has been significant: the waitlist for literacy education has grown to over 23,000 individuals and over 4,000 are awaiting placement in the Sex Offender Treatment Program.¹⁰ Access to mental healthcare is nearly nonexistent.

Conditions were only worsened by the COVID-19 pandemic, heightening the urgent need for action. When COVID-19 first threatened federal prisons, the Bureau could have embraced compassionate release as a tool to reduce the prison population and protect the most vulnerable people in federal prisons. Instead, the Bureau chose to attempt to use solitary confinement and lockdowns to reduce the spread of COVID-19, a practice internationally condemned as torture. Today, COVID-19 restrictions still define life within federal prisons, including 78 level three facilities which remain under intense modifications with minimal access to rehabilitative programming.¹¹ The Bureau’s failed focus on preventing the spread of COVID-19 through confinement rather than medical care has cost the lives of 302 men and women.¹² Yet the Bureau continues to fail to provide adequate COVID-19 medical care, such as providing the life-saving

⁵ K. Johnson (July 26, 2022), *Atlanta federal prison 'lacked regard for human life'; weapons, drugs trafficked*, Senate panel says, USA Today, <https://www.usatoday.com/story/news/politics/2022/07/26/atlanta-federal-prison/10151488002/>.

⁶ Associated Press (May 21, 2021), *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>.

⁷ K. Blakinger (Jan. 14, 2022), *People in the Scandal-Plagued Federal Prison System Reveal What They Need in a New Director*, The Marshall Project, <https://www.themarshallproject.org/2022/01/14/people-in-the-scandal-plagued-federal-prison-system-reveal-what-they-need-in-a-new-director>.

⁸ C. Wilson (Feb. 11, 2022), *Inmates at Oregon’s only federal prison report dire medical care*, OPB, <https://www.opb.org/article/2022/02/11/oregon-prison-federal-sheridan-covid-inmate-death/>; A. Lacey (July 26, 2022), *Federal Prison Officials Knew of Misconduct, Corruption, and Abuse, Senate Investigation Finds*, The Intercept, <https://theintercept.com/2022/07/26/atlanta-prison-suicide-senate-investigation/>.

⁹ *Id.*

¹⁰ Department of Justice (2022), *Federal Prison System FY2023 Performance Budget Congressional Submission*, <https://www.justice.gov/file/1492946/download>, 33-34 & 43.

¹¹ Federal Bureau of Prisons (2022), *BOP COVID-19 Operational Levels*, https://www.bop.gov/coronavirus/covid19_modified_operations_guide.jsp.

¹² Federal Bureau of Prisons (2022, February 10), *Covid-19 Coronavirus*, <https://www.bop.gov/coronavirus/>.

medication Paxlovid.¹³ People within federal prisons were 50% more likely to die of COVID-19 in 2020 and were 20% more likely in 2021 than the general population.¹⁴ Without action, that pattern will only continue, costing more lives.

The people confined in federal prisons and the many people who love them deserve better. No families should have to fear that their loved ones do not have clean water, safe food, protection from violence, or medical treatment. We urge you to act swiftly to protect the thousands of people in your custody.

More People Deserve Compassionate Release

Compassionate release can save the lives of medically vulnerable people, ease staff shortages by reducing the prison population, and provide mercy.

Yet the Bureau rarely uses its power to file motions for compassionate release in extraordinary or compelling circumstances. The Bureau's criteria for Compassionate Release/Reduction in Sentence include "terminal medical condition," "debilitated medical condition," and "elderly (65 or older) inmates with medical conditions." Federal courts have recognized that COVID-19 vulnerability is an extraordinary and compelling circumstance under the law and acted with urgency, in 2020 granting 21% of the compassionate release requests they considered.¹⁵ Meanwhile, over the first 13 months of the pandemic, the Bureau only ultimately approved 36 compassionate release requests, fewer than in 2019.¹⁶ You have the power to change that. We urge you to normalize the use of compassionate release to save lives, reunite families, and make federal prisons safer.

Tragically, some of the oldest and sickest individuals within federal prisons, people sentenced under the "old law" prior to 1987, remain arbitrarily ineligible for compassionate release. Some congressional leaders have recognized this error: the bipartisan COVID-19 Safer Detention Act, if passed, would finally give "old law" individuals in federal custody access to compassionate release.¹⁷ Until Congress acts, however, these disproportionately elderly men and women, some of whom are serving life without parole sentences for conduct that would have received a far lower sentence today, will remain in federal prisons without hope. As the Office of the Inspector

¹³ N. Florco (May 5, 2022), *Prisons didn't prescribe much Paxlovid or other Covid-19 treatments, even when they got the drugs*, StatNews, <https://www.statnews.com/2022/05/05/prisons-paxlovid-incarcerated-people-covid-19/>.

¹⁴ M. Anderson and H. Jingnan (Mar. 7, 2022), *As COVID spread in federal prisons, many at-risk inmates tried and failed to get out*, NPR, <https://www.npr.org/2022/03/07/1083983516/as-covid-spread-in-federal-prisons-many-at-risk-inmates-tried-and-failed-to-get->.

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.

¹⁶ 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>.

¹⁷ Congressional Budget Office (May 12, 2022), *S. 312, COVID-19 Safer Detention Act of 2021*, <https://www.cbo.gov/publication/58109>.

General established, federal prisons are poorly equipped to care for elderly individuals.¹⁸ We urge you to call on Congress to rectify this grave injustice.

The Bureau of Prisons is not complying with the First Step Act

In 2018, Congress passed the First Step Act, a vital piece of legislation that gave many people hope. Congress recognized that people grow and change, and that it was in the interest of the American people and public safety to allow individuals to earn the ability to come home sooner by completing rehabilitative programs. But today, almost five years later, the Bureau has still failed to fully implement the First Step Act.

The Bureau's delays in calculating and applying time credits are keeping people from their loved ones months after they should have qualified for release to community corrections.¹⁹ And the Bureau's use of the PATTERN algorithm to limit eligibility to earn credits is deeply troubling. This algorithm overpredicts that people of color will commit new crimes or violate rules after leaving prison.²⁰ The color of someone's skin should not dictate whether they are able to return to their family months or years earlier. We urge you to correct these deeply concerning issues.

Abuse, misconduct, and corruption are pervasive

Misconduct, corruption, and abuse are common within BOP facilities and they endanger everyone within the walls of federal prisons. For example, this month, people inside FCI Sheridan have faced violent retaliation by correctional officers for complaints.²¹ In February, an AP investigation found a culture of rampant sexual abuse and retaliation by correctional officers against women incarcerated at FCI Dublin.²² And the Bureau's newest prison, FCI Thomson, has proven especially heinous and deadly. Correctional officers have intentionally stoked conflicts between individuals placed in "double solitary," contributing to five suspected homicides and two alleged suicides since 2019. Men incarcerated at Thomson bear "Thomson tattoos" – scars on their wrists, ankles, and abdomen from frequent shackles and four-point restraints – in violation of Bureau policies.²³

¹⁸ Office of the Inspector General (Feb. 2016), *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, <https://oig.justice.gov/reports/2015/e1505.pdf>.

¹⁹ W. Pavlo (July 6, 2022), *Bureau of Prisons holding inmates for longer than law allows*, Forbes, <https://www.forbes.com/sites/walterpavlo/2022/07/06/bureau-of-prisons-holding-inmates-for-longer-than-law-allow/?sh=a6c8ad236e62>.

²⁰ 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>.

²¹ C. Wilson (Aug. 1, 2022), *Vicious beatings, possibly in retaliation for lawsuits, claimed at Oregon's federal prison*, OPB, <https://www.opb.org/article/2022/08/01/vicious-beatings-possible-retaliation-for-lawsuit-claimed-at-sheridan-oregon-federal-prison/>.

²² M. Balsamo and M. Sisak (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>.

²³ C. Thompson (May 31, 2022), *How the newest federal prison became one of the deadliest*, NPR, <https://www.npr.org/2022/05/31/1100954134/federal-prison-deaths-usp-thomson-illinois-prison>.

Abuse, corruption, and misconduct have been apparent within the Bureau for decades, but leadership has too often failed to act. In 2019, the House Subcommittee on National Security found that misconduct in the federal prison system is widespread and routinely covered up or ignored, including by senior officials. The recent oversight hearing on FCI Atlanta highlighted decades of corruption and abuse and inaction by the Bureau Director.²⁴ We urge you to set a new standard and lead the Bureau towards transparency and accountability.

The men and women incarcerated in federal prisons deserve safety, health, compliance with federal law, and to be treated with dignity.

We urge you to consider our concerns and take action.

We ask you to remember the humanity of the people in your custody and listen to their voices by visiting at least six prisons, at every security level, in your first six months and meeting individually with incarcerated people. We encourage you to lead the Bureau towards systemic transformation by meeting with groups of stakeholders including formerly incarcerated people, their families, and advocacy groups within your first 90 days in office. Finally, we urge you to prioritize expanding compassionate release for elderly and vulnerable people behind bars. To arrange a meeting or for further information, please contact Bill Underwood, Senior Fellow at The Sentencing Project, at bunderwood@sentencingproject.org.

Sincerely,

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²⁴ A. Lacey (July 26, 2022), *Federal Prison Officials Knew of Misconduct, Corruption, and Abuse, Senate Investigation Finds*, The Intercept, <https://theintercept.com/2022/07/26/atlanta-prison-suicide-senate-investigation/>.

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American Civil Liberties Union
All Things Art, Inc. (Boston, MA)
California Coalition for Women Prisoners (CCWP)
CAN-DO Clemency
Church of Scientology National Affairs Office
Coyote RI
CURE (Citizens United for Rehabilitation of Errants)
DC Reentry Task Force
Dream.Org (formerly Dream Corps)
Drug Policy Alliance
Fair and Just Prosecution
Families With A Future
Federal Public and Community Defenders
FedFam4Life
Freedom Archives
Illinois Alliance for Reentry and Justice
Interfaith Action for Human Rights
Justice 4 Housing
Justice Strategies
Justice Support Project, Inc
Let's Get Free: The Women & Trans Prisoner Defense Committee
National Association of Criminal Defense Lawyers
National Council of Churches
National Religious Campaign Against Torture
NETWORK Lobby for Catholic Social Justice
More Than Our Crimes
Out For Justice, Inc.
Release Aging People in Prison (RAPP) Campaign
The National Council for Incarcerated and Formerly Incarcerated Women and Girls
The Sentencing Project
The Taifa Group
Tzedek Association
WE GOT US NOW
Witness to Mass Incarceration, Inc