

United States Senate

December 18, 2020

Michael Carvajal
Director
Federal Bureau of Prisons
320 First Street NW
Washington, DC 20534

Dear Director Carvajal:

With the coronavirus (COVID-19) pandemic continuing to afflict our country, we request that you provide us with data on compassionate release and *CARES Act* home confinement requests made during this pandemic, including the number of requests denied and the reasons for their denial.

Compassionate Release

In the *Sentencing Reform Act of 1984*, Congress allowed people incarcerated in federal prisons to petition the BOP for early release if they present “extraordinary and compelling” reasons. Upon review of a compassionate release request, BOP could make a motion asking the federal court to grant or deny the sentence reduction. The *GRACE Act* (a provision of the *First Step Act*), changed this process by allowing individuals to directly petition the sentencing court after administrative exhaustion or the lapse of 30 days, whichever is earlier. Even after the *GRACE Act*, however, BOP retains the power to file compassionate release motions on individuals’ behalf.

Recent reporting by *The Marshall Project* indicates that compassionate release has not been granted to most applicants during this crisis. In the first three months of the pandemic, the BOP received 10,940 compassionate release requests during the first three months of the pandemic. Of those requests, wardens reportedly approved only 156—all but 11 of which were overturned by upper management in the BOP. In no instance did upper management ever overturn a *denial* of compassionate release. As a result, it appears that each of the 1,600 people who were granted compassionate release since the beginning of the pandemic did so on their own motion, with no assistance from BOP.ⁱ

Accordingly, we request that you respond to the following questions about BOP’s use of compassionate release:

- 1) Since the start of the COVID-19 pandemic, please provide the total number of compassionate release requests, categorized by the criteria relied on as the grounds for the reduction in sentence, received by BOP wardens. In addition, please provide the total number of compassionate release requests, categorized by criteria, received by federally contracted private prisons. How many were forwarded with recommendations to the Office of the General Counsel (also categorized by criteria)? Of those, how many were granted and how many were denied by the Bureau of Prisons Director? How many motions did BOP initiate in federal court after granting internal approval for

compassionate release? How many petitioners contracted the coronavirus while waiting for a response to their request for compassionate release, or while exhausting their appeals? How many died before receiving a response to their request or exhausting their appeals? For all requests, whether disposed of by the warden, private prison, or the Office of the General Counsel, and for both denials and grants, what reasons did BOP give for its decisions?

- 2) Since the start of the COVID-19 pandemic, please provide the total number of compassionate release requests—categorized by criteria—that were denied by BOP but granted by a federal court upon the motion of an individual seeking compassionate release. In addition, please provide the total of compassionate release requests—categorized by criteria—that did not receive a response from BOP in 30 days.
- 3) What actions can BOP take to increase the use of compassionate release during the COVID-19 pandemic? What additional actions will BOP take to reduce the number of aging and sick people in federal prisons to avoid preventable deaths?

Home Confinement (*CARES Act*)

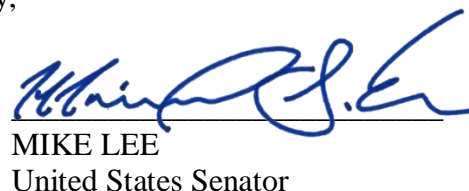
We understand that under the *CARES Act* and guidance from the Attorney General, the BOP has released over 18,000 incarcerated persons with COVID-19 risk factors to home confinement since March.ⁱⁱ We request that you respond to the following questions about BOP's use of home confinement under the *CARES Act*:

- 1) Since the start of the COVID-19 pandemic, please provide the total number of home confinement requests, categorized by the criteria relied on as the grounds for home confinement, received by BOP wardens. In addition, please provide the total number of home confinement requests, categorized by criteria, received by federally contracted private prisons. How many petitioners contracted the coronavirus while waiting for a response to their request for compassionate release, or while exhausting their appeals? How many died before receiving a response to their request or exhausting their appeals? For all requests, whether disposed of by the warden, private prison, or the Office of the General Counsel, and for both denials and grants, what reasons did BOP give for its decisions?
- 2) Since the start of the COVID-19 pandemic, please provide the total of home confinement requests—categorized by criteria—that did not receive a response from BOP in 30 days.

Thank you for your attention to this matter, and we look forward to your written response.

Sincerely,


BRIAN SCHATZ
United States Senator


MIKE LEE
United States Senator

ⁱ Keri Blakinger, Joseph Neff, “Thousands of Sick Federal Prisoners Sought Compassionate Release. 98 Percent Were Denied.” The Marshall Project, 7 Oct. 2020, <https://www.themarshallproject.org/2020/10/07/thousands-of-sick-federal-prisoners-sought-compassionate-release-98-percent-were-denied>.

ⁱⁱ Federal Bureau of Prisons, “Frequently Asked Questions regarding potential inmate home confinement in response to the COVID-19 pandemic,” BOP.gov, accessed December 2, 2020, https://www.bop.gov/coronavirus/faq.jsp#hc_eligibility.