

United States Senate  
WASHINGTON, DC 20510

May 29, 2020

Michael Carvajal  
Director  
Federal Bureau of Prisons  
320 First Street, N.W.  
Washington D.C. 20534

Dear Director Carvajal:

In light of the continued spread of coronavirus disease 2019 (COVID-19) within the federal prison system, we write to urge the Federal Bureau of Prisons (BOP) to immediately conduct universal diagnostic testing of all incarcerated individuals and correctional staff—including those at privately-managed facilities—and to publicly release comprehensive data on the number of incarcerated individuals and staff who have been tested for COVID-19 in its daily reports of COVID-19 cases in federal prisons.

Since the beginning of the outbreak, public health experts have warned that incarcerated individuals are particularly vulnerable to COVID-19, as they are confined in close quarters and are unable to take precautionary steps to protect themselves, including social distancing and increased personal hygiene. On March 10 and March 24, we wrote to BOP along with a group of our colleagues requesting information on the steps it was taking to prevent and manage the COVID-19 outbreak in federal prisons.<sup>1</sup> Unfortunately, the concerns raised in those letters have been borne out, as prisons and jails across the country have become hotspots for the rapid spread of the virus.<sup>2</sup>

According to BOP's most recent public reporting, 1,693 individuals incarcerated in the federal system have been infected and 64 have died as a result of COVID-19. Additionally, 187 BOP staff have been infected and none have died, based on BOP reports.<sup>3</sup> This data suggests that the federal prison population's average infection rate is more than 5 times higher than the national average.<sup>4</sup>

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<sup>1</sup> Senator Elizabeth Warren, "Warren and Colleagues Question Bureau of Prisons and Private Prison Contractors About Plans to Prepare for and Manage Coronavirus at Federal Prisons," March 10, 2020, <https://www.warren.senate.gov/oversight/letters/warren-and-colleagues-question-bureau-of-prisons-and-private-prison-contractors-about-plans-to-prepare-for-and-manage-coronavirus-at-federal-prisons>; Senator Elizabeth Warren, "Warren, Colleagues Demand Answers to Questions About Federal Bureau of Prisons and Private Prison Company's Readiness for Coronavirus Pandemic," March 24, 2020, <https://www.warren.senate.gov/oversight/letters/warren-colleagues-demand-answers-to-questions-about-federal-bureau-of-prisons-and-private-prison-companys-readiness-for-coronavirus-pandemic>.

<sup>2</sup> CBS News, "CDC report details extent of coronavirus outbreaks in U.S. jails and prisons," Justin Carissimo, May 6, 2020, <https://www.cbsnews.com/news/coronavirus-outbreaks-jails-prisons-cdc-report-covid-19/>.

<sup>3</sup> The Federal Bureau of Prisons, "COVID-19 Cases," May 19, 2020, <https://www.bop.gov/coronavirus/>.

<sup>4</sup> The Marshall Project, "A State-by-State Look at Coronavirus in Prisons," Katie Park and Tom Meagher, May 28, 2020, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>; The New

The nearly 150,000 individuals incarcerated in the federal system and around 36,000 correctional staff are dependent on BOP to effectively manage the COVID-19 crisis and implement measures to protect them from infection.<sup>5</sup> However, little information has emerged about the COVID-19 diagnostic testing being conducted by BOP. Earlier this month, BOP announced in a tweet that “of the roughly 2,700 inmates tested, approximately 70% have tested positive for COVID-19.”<sup>6</sup> This extremely high positive test rate suggests that BOP is not testing sufficient numbers of incarcerated individuals and staff.

Widespread and continued diagnostic testing is crucial to controlling the COVID-19 pandemic. A Centers for Disease Control and Prevention (CDC) report published earlier this month stated that “[p]rompt identification of COVID-19 cases and consistent application of prevention measures are critical to protecting incarcerated and detained persons, correctional and detention facility staff members, and the communities to which they return.”<sup>7</sup> Because many of the individuals carrying COVID-19 may be asymptomatic, widespread testing is critical to understanding the extent of the outbreak in the incarcerated population, and making informed decisions to limit further spreading of the virus.<sup>8</sup>

Throughout the COVID-19 public health emergency, the Trump Administration has repeatedly refused to take responsibility for creating a national testing strategy and ramping up testing capacity, instead pushing the burden to states.<sup>9</sup> BOP has also not been forthcoming with specific testing protocols or capabilities of its own. BOP has stated that testing of inmates “is conducted in accordance with CDC and local health department guidance,” but BOP has not made the testing capabilities of each facility clear and has not specified what exact policies are in place to determine who is tested and how often retesting occurs at each facility.<sup>10</sup> While BOP announced the expansion of COVID-19 testing through the use of Abbott ID Now, it did not specify whether or not it would follow U.S. Food and Drug Administration warnings and recommendations related to the potential inaccuracies of Abbot ID’s test results.<sup>11</sup> We therefore request BOP provide information about its testing policies and capabilities at each BOP facility.

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York Times, “Coronavirus Map: Tracking the Global Outbreak,” [Sarah Almukhtar et. al.](https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html), May 28, 2020, <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

<sup>5</sup> The Federal Bureau of Prisons, “COVID-19 Cases,” May 29, 2020, <https://www.bop.gov/coronavirus/>.

<sup>6</sup> Twitter, Federal Bureau of Prisons, May 1, 2020, <https://twitter.com/OfficialFBOP/status/1256207531820662785>.

<sup>7</sup> Centers for Disease Control and Prevention, “COVID-19 in Correctional and Detention Facilities — United States, February–April 2020,” May 6, 2020,

[https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm?s\\_cid=mm6919e1\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm?s_cid=mm6919e1_w).

<sup>8</sup> CNN, “2 studies show many people who tested positive for Covid-19 displayed no symptoms,” Rosa Flores, Sara Weisfeldt and Arman Azad, April 25, 2020, <https://www.cnn.com/2020/04/24/us/2-asymptomatic-coronavirus-studies/index.html>.

<sup>9</sup> Associated Press, “Federal coronavirus testing plan puts burden on states,” May 25, 2020, <https://apnews.com/95b4123551de95bbab96ec4c82e1ee4d>.

<sup>10</sup> Bureau of Prisons, “Correcting Myths and Misinformation About BOP and COVID-19,” [https://www.bop.gov/coronavirus/docs/correcting\\_myths\\_and\\_misinformation\\_bop\\_covid19.pdf](https://www.bop.gov/coronavirus/docs/correcting_myths_and_misinformation_bop_covid19.pdf).

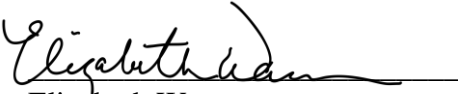
<sup>11</sup> Bureau of Prisons, “Bureau of Prisons to Expand Testing Capabilities,” May 7, 2020, [https://www.bop.gov/resources/news/pdfs/20200507\\_press\\_release\\_expanding\\_rapid\\_testing.pdf](https://www.bop.gov/resources/news/pdfs/20200507_press_release_expanding_rapid_testing.pdf); U.S. Food and Drug Administration, “Coronavirus (COVID-19) Update: FDA Informs Public About Possible Accuracy Concerns with Abbott ID NOW Point-of-Care Test,” May 14, 2020, <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-informs-public-about-possible-accuracy-concerns-abbott-id-now-point>.


In addition to widespread testing, it is critical that BOP collect and publicly release comprehensive, facility-by-facility data on the status of COVID-19 in the federal population. While BOP releases some information on COVID-19 cases, including the number of confirmed positive tests, recoveries, and COVID-19-related deaths, much more information should be released, including the number of tests administered, disaggregated by the type of test; the number of hospitalizations; and the case fatality rates. Furthermore, to better inform the pandemic response, the data should be disaggregated by race, ethnicity, sex, age, primary language, disability status, and whether the individual had an underlying health condition that made them more susceptible to COVID-19 related complications as defined by the CDC.<sup>12</sup>

In order to protect incarcerated individuals, correctional staff, and the general public, we urge BOP to immediately implement COVID-19 diagnostic testing of all incarcerated individuals in BOP custody and BOP correctional staff, and mandate that all incarcerated individuals and staff in privately-managed facilities be tested. We also request that BOP publicly release information about its COVID-19 testing policies and the testing capabilities of each BOP facility. Finally, we urge BOP to release the numbers of incarcerated individuals and staff who have been tested for COVID-19, along with comprehensive data on the results of those tests in its daily reporting of COVID-19 cases in federal prisons.

Thank you for your attention to this matter.

Sincerely,

  
Elizabeth Warren  
United States Senator

  
Cory A. Booker  
United States Senator

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<sup>12</sup> Centers for Disease Control and Prevention, “Coronavirus Disease 2019 (COVID-19), If You Are at Higher Risk,” May 28, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.