

To: President-Elect Biden DOJ Transition Team

From: Federal Public and Community Defenders

Date: January 7, 2020

Re: First 100 Days: Addressing the COVID-19 Crisis in Federal Detention

To confront the COVID-19 crisis in federal detention, the Biden Department of Justice must take steps to swiftly and safely lower prison populations, end the inhumane conditions of incarceration now common across the country, and to stop the spread of COVID-19 in federal detention.

- Appoint a BOP Director who will take urgent action in response to COVID-19, use existing authorities to lower prison populations, and prioritize rehabilitation and humane living conditions.
- Appoint a USMS Director who will prioritize oversight of conditions & care at state, local, and private facilities where individuals are held in U.S. Marshals Service Custody.
- Categorically commute the sentences of: 1) individuals a year from their expected release date; 2) Individuals who are age 65 or older, with less than five years remaining on their sentence (accounting for good conduct time); 3) Individuals incarcerated for technical violations on probation or supervised release.
- Expand CARES Act Home Confinement Relief:
 - Rescind memoranda issued by Attorney General Barr to BOP that imposed complex, arbitrary and confusing criteria for home confinement, and any BOP memoranda implementing that guidance.
 - Create presumptive eligibility for home confinement modeled on the definition of “covered individual” in the HEROES Act, H.R. 6800, § 191102(b)(2), unless the BOP finds (and documents) clear and convincing evidence that the individual poses a specific and substantial risk of serious, imminent injury to a reasonably identifiable person (*see* § 191103(a)(1)).¹
- Direct BOP to expansively use its authority to reduce prison populations through tools like medical furlough under 18 U.S.C. § 3622.
- Safety and Hygiene
 - Implement universal and ongoing testing of all individuals in the custody of or employed by the Bureau of Prisons and U.S. Marshals.
 - Ensure adequate PPE for individuals detained or employed by the Bureau of Prisons, U.S. Marshals, and individuals in U.S. Marshals custody.
- Presentence Policy
 - Decline or suspend prosecutions, except in cases involving a specific and substantial risk that a person will cause bodily injury to or use violent force against the person of another.
 - Seek arrest warrants only in cases involving a specific and substantial risk that a person will cause bodily injury to or use violent force against the person of another.
 - Decline to seek detention of individuals at their initial appearance in court and consent to the release of those already detained, except in cases involving a specific and substantial risk that a person will cause bodily injury to or use violent force against the person of another.

¹ If President Trump’s declaration of a national emergency due to the COVID-19 global pandemic has lapsed, but the pandemic persists, redeclare a national emergency with respect to COVID-19 in order to trigger expanded CARES act home confinement relief. *See* Coronavirus Aid, Relief, and Economic Security Act (CARES Act), H.R. 748, § 12003(b)(2) (2020).