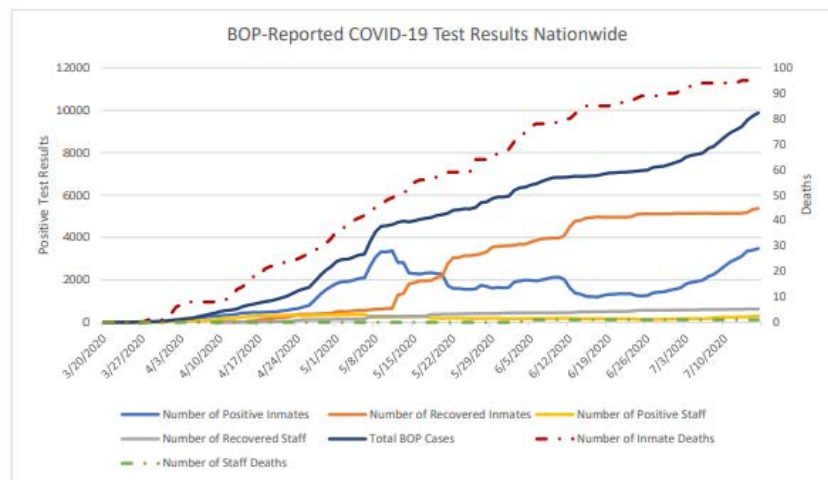


The Worsening COVID-19 Crisis in Federal Detention

COVID-19 is ripping through the Federal Bureau of Prisons (BOP), infecting incarcerated individuals at a rate [5.95 times](#) higher than the general population. This crisis is occurring in a system that, due to structural racism, is [disproportionately populated by Black and Hispanic](#) people. And Attorney General Barr and BOP are using a risk assessment tool (PATTERN)—that likely has an [outsized negative impact on Black men](#)—to prioritize eligibility for home confinement. The Department of Justice (DOJ) has not provided demographic data on the individuals BOP has approved for home confinement, despite [congressional demands](#), and the only public data it has provided on PATTERN indicate just [7% of Black men](#) qualify compared to 30% of white men. **As the public rises to demand a reckoning with institutional racism, we cannot allow these conditions to persist.**

On June 2, BOP Director Carvajal told Congress “We are beginning to [flatten](#) the curve.” He was [wrong](#).



BOP reports at least [107](#) deaths of incarcerated individuals.¹ The highest number of deaths in BOP prisons have occurred in Texas (currently the site of the [three worst federal prison outbreaks](#) in the country), North Carolina, California, Ohio, Kentucky, and Louisiana. Some of these deaths were surely preventable. BOP’s [press releases](#) reveal that the majority of these individuals—83—were known to be at higher risk of complications from COVID-19. **Over a quarter of the people who have died in BOP’s care were seventy years old or older.** But they were never moved to a place of safety. And at least five died after asking—and some even being approved—for compassionate release or home confinement:

- **Andre Williams** was 78-years old and had undergone a quadruple-coronary bypass while incarcerated at FCI Butner, NC. For months before COVID-19 hit the prisons, he sought compassionate release. Finally, on April 1, a court granted his petition. Relief came too late. Four days after the grant, he tested positive for COVID-19. On April 13, he [died](#).
- **George Escamilla** asked for compassionate release from the Prison Camp in Oakdale, LA on April 24, 2020. He was wheelchair-bound; both of his legs had been amputated. BOP said it would send him to home confinement in March 2020, but [delayed](#). Mr. Escamilla [died](#) on May 8, 2020.
- **Guadalupe Ramos** filed a motion seeking compassionate release from the Federal Medical Center in Fort Worth, TX on April 21. By Friday, April 28, he had been placed on a ventilator. He [died](#) on May 10, 2020.
- **James Lino** asked the court to recommend BOP transfer him from Terminal Island FCI to home confinement on May 6. His release date was only six months away. He [died](#) on May 13, 2020.
- **Stephen Cook** sent a letter to the court in Tennessee on May 18, asking for compassionate release or to be sent to home confinement from the Federal Medical Center in Lexington, Kentucky. He suffered from sickle-cell anemia, and required monthly off-site treatment. The government opposed his release. Mr. Cook [died](#) on June 3, 2020.

¹ Four deaths that occurred in private prisons are reported in a separate link [buried](#) on the BOP’s website.

As the death count rises, Dir. Carvajal and the United States Marshals Service (USMS) are silent. On June 2, 2020, Dir. Carvajal appeared before the Senate Judiciary Committee to assure lawmakers that the crisis was in hand. But he has since discontinued his regular video updates about BOP's handling of COVID-19. Meanwhile, USMS, the federal authority that houses [over 55,000 individuals](#) in federal, state, local, and private jails, has not answered [requests from Congress](#) to provide answers regarding their handling of COVID-19 for those in federal pretrial custody. At least one man has [died in federal pretrial custody](#) while presumed innocent, [awaiting trial for a drug offense](#). In the absence of public reporting from the USMS, there is no way to know the actual number of those who have died, the rate of infection, or even the [rate of testing](#).

Conditions of confinement have become more restrictive and harsher. Programming at BOP facilities has been shuttered; there is no opportunity for incarcerated individuals to realize the promise of the [First Step Act's prison reforms](#). Rolling lockdowns and ["Kafkaesque quarantines"](#) have restricted movement and increased [solitary confinement](#). Incarcerated individuals [report](#), as does the [Office of Inspector General \(OIG\) of the DOJ](#), that facilities lack proper cleaning equipment, personal protection equipment, or hygiene products. At FMC Carswell, incarcerated women ["stopped getting two meals a day and instead receive one sack lunch with a cold sandwich inside."](#) Reports from our clients and their families confirm that these untenable conditions are widespread. One client reported that he had not exited his cell for 170 hours, and that he had asked to call his lawyer every day for a week but was denied. Another informed us that "The sick now are being treated as if they are on disciplinary lockdown instead of sick inmates. We are not being treated like humans but animals." And yet another wrote that: "THINGS ARE REALLY BAD HERE RIGHT NOW WE ARE LOCKED INTO OUR ROOMS AND CAN ONLY COME OUT AND GET A SHOWER EVERY 3 DAYS FOR 15 MIN...."

Conditions will worsen if there is no change. Public health experts [agree](#) that prison populations must drop to create space for distancing and separation. And Dir. Carvajal acknowledges that ["\[p\]risons by design are not made for social distancing. They are on the opposite made to contain people in one area."](#) Robust testing is [critical](#) to stop the spread and to resume normal operations, but two months after Dir. Carvajal assured the Senate Judiciary Committee that BOP was ["working diligently to expand its own testing strategies for asymptomatic populations,"](#) [less than a quarter](#) of BOP's [population](#) has been tested and BOP [refuses to test](#) correctional officers, who are left to rely on community testing options. Public health experts, including the CDC, expect the death rate will rise when the country hits a [second wave](#) of infections during the fall and winter months. And the Journal of American Medicine recently concluded that the COVID-19 death rate in federal and state prisons is [3 times higher](#) than the general population.

BOP and DOJ have ignored the tools Congress gave them to lower prison populations safely. The bipartisan CARES Act authorized AG Barr to dramatically expand the use of home confinement to protect the most vulnerable from COVID-19. But in response, AG Barr and BOP have issued restrictive guidance and memos, each ["more confusing than the next,"](#) that together establish a ["complex set of procedural and logistical hurdles to home confinement."](#) **To date BOP has approved for transfer to home confinement only 4%² of the 174,923 who were in custody on February 20.** The DOJ OIG examined BOP's response to COVID-19 at one of BOP's hardest-hit facilities, [Lompoc Federal Correctional Complex](#), and found that BOP's use of home confinement at FCC Lompoc was ["extremely limited."](#) As of May 13, over 900 people incarcerated in Lompoc—a medical facility for some of the most vulnerable in BOP—had contracted COVID-19. OIG's independent analysis identified **957** individuals potentially eligible for home confinement at Lompoc, even under AG Barr's restrictive guidance. **But at the time of the OIG study only 8 had been transferred to home confinement.**

Thanks to the First Step Act of 2018, individuals no longer must depend on BOP to initiate a motion for compassionate release. Post-FSA, defendants may file a motion directly with the court after administrative exhaustion, or 30 days after the warden's receipt of a request, whichever is earlier. But during the COVID-19 crisis, this "exhaust or wait" requirement, coupled with DOJ's opposition to the majority of release petitions, prevents vulnerable defendants from obtaining critical relief. **Based on a survey of defense attorneys representing clients across the country, we are not aware of a single BOP-initiated motion for compassionate release based on heightened risk of severe illness from COVID-19 infection.**

² The rate of transfers to home confinement under CARES is likely even lower. BOP appears to include in its reports the number of individuals who enter home confinement in the normal course of their sentence.