

The COVID-19 Crisis in Federal Detention | September 2020

COVID-19 is ripping through the Federal Bureau of Prisons (BOP), infecting incarcerated individuals at a rate 4 times the general population, and causing deaths at nearly twice the national rate. BOP is “making it worse,” said Joe Rojas, the regional vice president of the American Federation of Government Employees Council of Prison Locals. “They’re making the virus explode.”

There have now been 126 reported deaths of incarcerated individuals, an incalculable loss.¹ They were parents, siblings, and children. [They were us](#). Some of their deaths were surely preventable. BOP’s [press releases](#) reveal that the majority—93—were at higher risk of complications from COVID-19 and BOP knew it. At least a quarter of those who have died in BOP’s care were seventy or older. Last month, BOP [told](#) the Washington Post that at least 18 individuals died while their requests for compassionate release were pending. **To date, we have identified 19 individuals who died in BOP custody after filing—and in some cases, even after being granted—requests for release:** [Andre Williams](#), [George Escamilla](#), [Guadalupe Ramos](#), [James Lino](#), [Stephen Cook](#), [Daniel Morris](#), [Dongfan Greg Chung](#), [Donnie Grabener](#), [Eugene Griffin](#), [James Giannetta](#), [John Dailey](#), [Luis A. Velez](#), [Saferia Johnson](#), [Sandra Kincaid](#), [Steve Arthur Robinette](#), [Taiwan Davis](#), [William E. Miller](#), [Marie Neba](#), and [Veronica Martinez Carrera-Perez](#).

The government’s response to COVID-19 at Federal Medical Center (FMC) Carswell, the site of Andrea High Bear’s tragic death, exemplifies “a culture of cruelty and disregard for the well-being of incarcerated people.” Five more women have died; three after requesting compassionate release. [Marie Neba](#) was a stage 4 cancer patient with twin 10-year-old sons and a 19-year-old daughter. Months before her death, she [wrote](#) to the court: “I don’t think I will make it here if I continue under such horrible conditions.” But the government opposed each of her requests for relief, claiming that she was being well cared for. [Veronica Martinez Carrera-Perez](#), the only living parent of a nine-year-old child, died after she was [reportedly](#) transferred into a cell with a woman who had already tested positive for COVID-19. She had asked to go home four months earlier. [Sandra Kincaid](#) was 69 years old, and suffering from end-stage metastatic liver cancer in hospice care at BOP. The government opposed her requests for compassionate release, and BOP [denied](#) her transfer to home confinement. **For those who remain, Carswell is a “house of horror.”** In August, 73 women incarcerated at Carswell [filed](#) over 200 pages of testimony [describing](#) “meals of rotten food, negligent medical care, and malicious treatment as COVID-19 ran through the prison.” Women held in quarantine [report](#) they have “no contact with medical staff,” and have “urinated or defecated on themselves because they were not let out to use the restroom.”

The conditions at FMC Carswell are not unique. “When [COVID-19] comes in, it spreads like wildfire because we can’t distance ourselves,” [reported](#) Rob Norcross, who is incarcerated at FCI-Jesup in Georgia. There, individuals in the prison camp are barred from using hand sanitizer, lack cleaning supplies, and lack space to social distance. The [Office of Inspector General \(OIG\) of the DOJ](#), along with court-appointed experts, like [Dr. Michael Rowe](#) and [Dr. Homer Venters](#), confirm reports that facilities lack proper cleaning equipment, room to social distance, personal protection equipment, or hygiene products. When it comes to the pandemic, the fates of incarcerated individuals, guards, and their communities are intertwined. “[W]e do not feel safe,” [said](#) Karen ‘Troy’ Troitino, a Miami prison guard.

Courts across the country have recognized that BOP undertreats or ignores COVID-related symptoms, despite CDC findings that COVID-19 can “result in prolonged illness even among persons with milder . . . illness.” Media [accounts](#) confirm that many who test positive for COVID-19 in BOP receive [virtually no care](#), and that staff have “ignored or minimized . . . COVID-19 symptoms, and mixed the sick and healthy together in haphazard quarantines.” Those without COVID-19 also suffer: during the pandemic medical care for chronic conditions has been delayed and, in many cases, withheld entirely. “[Kafkaesque quarantines](#)” continue: individuals are “[quarantined in filthy buildings that had been vacant for years or in tents that flooded during rainstorms](#),” or left to “[succumb to infection by attrition in the ‘quarantine’ building](#).” At least four individuals—[Adrian Slarzano](#), [Gerald Porter](#), [Robert Hague-Rogers](#), and [Marie Neba](#)—died of COVID-19 after either testing negative or after BOP erroneously pronounced them “recovered.” Across federal facilities, rolling lockdowns and arbitrary quarantines have restricted movement and increased solitary confinement. A June [report](#) found a 500% increase in solitary confinement in federal and state jails in response to the

¹ Seven deaths that occurred in private prisons are reported in a separate link [buried](#) on the BOP’s website; 4 reported deaths occurred while on home confinement.

outbreak of the COVID-19 pandemic. Public health experts warn that “The emotional toll of lockdowns, where people are confined to their cells all day, every day, with little to no access to yard time is profound.”

Conditions will worsen if there is no change. Public health experts agree that prison populations must drop to create space. 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.” Recent guidance from the CDC emphasized the importance of testing in correctional facilities to stop the spread of COVID-19. But three months after Dir. Carvajal assured the Senate Judiciary Committee that BOP was “working diligently to expand its own testing strategies for asymptomatic populations,” approximately a third of BOP’s population has been tested. Of the 51,393 completed tests, 12,975 are positive, a 25% infection rate, and surely an undercount. BOP still refuses to test its staff at work. The union president at the United States Penitentiary Thomson reported that “[s]taff . . . can’t get tested due to being forced to work double 16-hour shifts almost on a daily basis.” Senator Marco Rubio recently wrote to AG Barr “with dissatisfaction,” noting that his “office has been made aware that facility management [at FCI Coleman in Florida] may have been ordered to return to work despite testing positive.”

“Nobody should be forced to risk deadly exposure to COVID-19 while awaiting trial,” but across the country, conditions of pretrial confinement are harsh, restrictive, and sometimes deadly. The United States Marshals Service (USMS)—the federal authority that houses over 55,000 individuals in federal, state, local, and private jails, most of whom have been convicted of no crime—has not answered requests from Congress regarding its handling of COVID-19. **But BOP employees are blowing the whistle**, revealing that USMS does not test individuals prior to transfer, even as DOJ “pump[s] thousands of new people into the system.” USMS doesn’t publicly post data on infections, but media reports indicate that, as of early August, almost **3,500 individuals in its custody had tested positive for COVID-19 and 13 had died**. The pandemic has sharply curtailed pretrial access to counsel, a right “inextricably linked to the legitimacy of our criminal justice system.” At Nevada Southern Detention Center (NSDC), a private facility contracted by the USMS, federal defenders detailed unsafe, unsanitary, and inhumane conditions in a lawsuit: one individual collapsed after testing positive for COVID-19, and was “picked him up off the floor, placed . . . in a wheelchair, handcuffed . . . and wheeled . . . to the hole,” where he could not call his attorney for five days, and was not permitted to take a shower for seven days.

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 4.4%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.” The Department of Justice (DOJ) has not released demographic data on the individuals BOP has approved for home confinement, despite congressional demands. At a time when transparency is more important than ever, the federal incarceration system is a black box. “The problem is that prisons in the U.S. are not accustomed to oversight and transparency.”

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 30 days after the warden’s receipt of a request. But during the COVID-19 crisis, this 30-day delay, coupled with DOJ’s routine opposition, prevents vulnerable defendants from obtaining critical relief. At FMC Carswell, a medical facility that houses the most medically vulnerable women in BOP, “fewer than 20 women” have reportedly received compassionate release. **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.