

# **Judges, Senators, DOJ Officials: Action Required by President, AG to Protect Inmate Population during COVID-19 Crisis**

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In a letter to the President dated tomorrow (March 27, 2020), several hundred federal judges, former U.S. Attorneys, Assistant U.S. Attorneys, and Department of Justice (DOJ) officials are asking the government to implement a plan to dramatically reduce the number of incarcerated individuals in the federal prison system and to address “the threat of disastrous outbreaks” resulting from the current Coronavirus (COVID-19) pandemic.

A bipartisan group of 14 U.S. Senators sent a similar letter to Attorney General William Barr earlier this week imploring DOJ and the Federal Bureau of Prisons (BOP) to take action to protect “the health and wellbeing of federal prison staff and inmates in federal custody, especially those who are most vulnerable to infection.”

According to government statistics, nearly 20 percent of those currently in BOP custody are over the age of 50, and many have underlying health conditions. A significant percentage of those presently serving federal sentences are there for white collar or non-violent offenses and present no risk to public safety.

Conditions within most prisons and correctional centers do not afford staff or inmates the opportunity to take steps to protect themselves, such as regular use of disinfectants or hand sanitizers, and social distancing. Most facilities, even those described as “minimum” security, are plagued by overcrowding. Often, multiple inmates are confined in a small cell or space, and dining arrangements force the residents into close quarters with one another. This current situation poses a substantial threat for the rapid spread of the virus within the prison population, once it enters the facility by and through an infected incoming inmate or a prison guard who may have contracted it from an outside source.

According to the judges and prosecutors, to address this significant potential risk, the President and DOJ should take several important steps, including: (1) use the executive power to commute sentences, especially those of older persons, the medically vulnerable, and inmates who have served almost all of their sentence; (2) establish policies to promote the limitation of new custodial sentences only for individuals who present a serious risk to public safety; and (3) provide emergency funding for the prevention and treatment for those who remain in custody, for reentry services for those to be

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released from custody, and to incentivize state and local governments to address immediate public health concerns in their own jails and prisons.

In addition to these recommendations to the President, the group of bipartisan U.S. Senators urged the Attorney General to use the existing authority available to him under the First Step Act, which was passed by Congress in December 2018. Included among the available legal mechanisms suggested for use by the Senate is the Elderly Home Detention Pilot Program to place elderly and terminally ill inmates in home confinement. They also recommend a broader use and implementation of the compassionate release program for inmates facing “extraordinary and compelling” circumstances. Finally, they urge, to the extent possible, that lower risk inmates who are at high risk for complications from COVID-19 also be transferred to home confinement.

The media has recently reported on unsuccessful efforts to obtain immediate release from custody by such detained persons as Michael Cohen (the President’s former personal attorney), Michael Avenatti (recently convicted of extorting Nike by a New York jury), and Julian Assage (WikiLeaks founder incarcerated in the UK and awaiting extradition to the United States). Clearly a balance must be struck between those seeking to use the current health crisis as a possible avenue to avoid accountability for their criminal conduct, and the necessary and legitimate actions needed to protect those who are most vulnerable – – if it can be done without creating or increasing a safety risk to the public.

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