

Congress of the United States
Washington, DC 20510

May 15, 2020

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

Dear Director Carvajal:

We write with urgent concern regarding the actions the Federal Bureau of Prisons (BOP) is taking to prevent and manage the spread of the coronavirus disease 2019 (COVID-19) at Federal Medical Center Devens (FMC Devens), a federal prison facility for incarcerated individuals needing specialized or long-term medical care in Ayer, Massachusetts, with an adjacent minimum security camp.¹ We have received correspondence from individuals incarcerated at FMC Devens as well as their advocates and loved ones concerned that FMC Devens is failing to move quickly and appropriately to mitigate the spread of the virus. In order to protect incarcerated individuals, correctional staff, and the general public, we urge you to immediately implement widespread COVID-19 testing of all incarcerated individuals and staff at FMC Devens, and to swiftly release vulnerable individuals who do not pose specific and substantial risks to public safety to home confinement as soon as possible.

Our nation is in the midst of an unprecedented public health crisis that has claimed the lives of nearly 86,000 individuals and infected over 1.4 million people in the U.S.² In Massachusetts, there have been over 80,000 confirmed cases of COVID-19 and over 5,400 deaths.³ Since the start of the pandemic, public health experts have warned that incarcerated individuals are especially vulnerable to COVID-19 because they are confined in close quarters and are dependent upon the government to take steps—such as social distancing and access to personal hygiene products—to mitigate the spread of the disease. That warning has been borne out by reports that prisons and jails have become hotspots for the rapid spread of COVID-19.⁴ A Centers for Disease Control and Prevention (CDC) report released last week showed confirmed cases of COVID-19 among incarcerated individuals and staff in the vast majority of correctional

¹ Federal Bureau of Prisons, FMC Devens, <https://www.bop.gov/locations/institutions/dev/>; FMC Devens, Inmate Admission and Orientation Handbook, October 2017, https://www.bop.gov/locations/institutions/dev/DEV_aohandbook.pdf.

² Johns Hopkins University & Medicine, Coronavirus Resource Center, COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University, <https://coronavirus.jhu.edu/map.html>.

³ *Id.*

⁴ 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/>.

and detention facilities in jurisdictions that reported data.⁵ Already, one incarcerated individual has died and at least ten incarcerated individuals and two employees at FMC Devens have tested positive for COVID-19,⁶ and those numbers may dramatically underrepresent the true toll of the disease if BOP has not tested all individuals and staff at FMC Devens.

Rapid, widespread testing is key to mitigating the spread of COVID-19. According to the CDC, “[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.”⁷ Because many individuals with COVID-19 may be asymptomatic,⁸ widespread testing is critical to ensuring that officials understand the full scope of the problem and can take swift measures to stop the spread of the virus.

In addition to testing, it is critical that the BOP depopulate prisons to the maximum extent safely possible to reduce overcrowding and assist regulators and prison administrators in taking the steps necessary to address the spread of the virus. The BOP is already required to take this important step: Attorney General William Barr has directed the BOP to maximize the use of home confinement for vulnerable inmates,⁹ including individuals who have COVID-19 risk factors.¹⁰ Despite this directive, BOP has been slow to release individuals to home confinement, and its process for doing so has been described as “confusing and chaotic.”¹¹ So far, the BOP has placed only 2,643 incarcerated individuals in home confinement in response to this directive,¹² a tiny fraction of the nearly 168,000 incarcerated individuals in federal custody.¹³ By design, FMC Devens holds individuals who need specialized medical care—individuals who may be at higher risk of serious illness if they contract COVID-19. These individuals should be prime candidates for home confinement.

⁵ 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.

⁶ Federal Bureau of Prisons, COVID-19 Cases, <https://www.bop.gov/coronavirus/>.

⁷ 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.

⁸ 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>.

⁹ Memorandum from the Attorney General for the Director of the Federal Bureau of Prisons, “Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic,” March 26, 2020, https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf.

¹⁰ Memorandum from the Attorney General for the Director of the Federal Bureau of Prisons, “Increasing the Use of Home Confinement at Institutions Most Affected by COVID-19,” April 3, 2020, <https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000>.

¹¹ The Marshall Project, “Few Federal Prisoners Released Under COVID-19 Emergency Policies,” Joseph Neff and Keri Blankinger, April 25, 2020, <https://www.themarshallproject.org/2020/04/25/few-federal-prisoners-released-under-covid-19-emergency-policies>.

¹² Federal Bureau of Prisons, “Frequently Asked Questions regarding potential inmate home confinement in response to the COVID-19 pandemic,” <https://www.bop.gov/coronavirus/faq.jsp>.

¹³ Federal Bureau of Prisons, “Population Statistics,” https://www.bop.gov/mobile/about/population_statistics.jsp.

We urge you to act without delay to prevent the spread of COVID-19 at FMC Devens and save lives by mandating that all incarcerated individuals and staff be tested for COVID-19, and implementing a plan to repeat testing on a regular basis. In addition, we request that you release to home confinement individuals incarcerated at FMC Devens who are medically vulnerable and do not pose specific and substantial safety risks.

We appreciate your prompt attention to this urgent matter.

Sincerely,



Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator



Lori Trahan
Member of Congress