

Congress of the United States
Washington, DC 20510

September 21, 2020

Donald W. Washington
Director
U.S. Marshals Service
United States Department of Justice
Washington, D.C. 20530

Dear Director Washington:

I write to request information about the steps that the United States Marshals Service (USMS) is taking to manage the spread of coronavirus disease 2019 (COVID-19) among individuals in its custody, USMS employees, and the broader federal prisoner population, and to urge USMS to immediately implement testing of all detained individuals prior to transfers between facilities.

USMS is responsible for “hous[ing] and transport[ing] all federal prisoners from the time they enter federal custody until they are either acquitted or convicted and delivered to their designated federal Bureau of Prisons facility.”¹ Although USMS does not operate its own detention facilities, it “partners with state and local governments using intergovernmental agreements to house prisoners,” and “houses prisoners in Federal Bureau of Prisons (BOP) facilities and private detention facilities.”² Across the various facilities that partner with USMS, USMS has approximately 61,000 individuals in its custody at any given time.³ USMS also handles the transportation of detained individuals between detention centers, court houses, and federal prisons, completing more than 1,000 prisoner movements per day in any given year.⁴

The spread of COVID-19 in U.S. prisons and jails is out of control, with over 125,692 confirmed cases and at least 1,066 prisoner deaths to date.⁵ All 15 of the largest “clusters” of COVID-19 in the U.S. are correctional facilities, and in some facilities the overwhelming majority of the detained individuals have been infected with coronavirus.⁶

The uncontained spread of coronavirus in federal prisons and jails endangers the federal prison population, correctional staff, and the general public. Because USMS holds individuals in federal

¹ United States Marshals Service, “Defendants in Custody and Prisoner Management,” Accessed September 10, 2020, <https://www.usmarshals.gov/prisoner/index.html>.

² United States Marshals Service, “Factsheet – Prisoner Operations – 2020,” February 25, 2020, https://www.usmarshals.gov/duties/factsheets/prisoner_ops.pdf.

³ *Id.*

⁴ United States Marshals Service, “Fact Sheet - U.S. Marshals Service - 2020,” <https://www.usmarshals.gov/duties/factsheets/overview.pdf>.

⁵ The Marshall Project, “A State-by-State Look at Coronavirus in Prisons,” Accessed September 10, 2020, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>

⁶ The New York Times, “Covid in the U.S.: Latest Map and Case Count,” Sarah Almukhtar et. al., Accessed September 10, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#clusters>; <https://www.cnn.com/2020/08/08/us/federal-prison-coronavirus-outbreak-invs/index.html>

custody and transports individuals who are sentenced to and from various facilities—which risks spreading the virus to facilities and communities all around the country—the agency has a unique responsibility to take every possible precaution to prevent the further spread of COVID-19. Specifically, the Centers for Disease Control and Prevention (CDC) recommends that law enforcement agencies “put plans in place with other jurisdictions to prevent individuals with confirmed and suspected COVID-19 and their close contacts from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, release, or to prevent overcrowding.”⁷

Despite this recommendation, reports suggest that USMS has not instituted the necessary protocols to contain the virus, including failing to implement widespread diagnostic testing of detained individuals in its custody.⁸ This means that, in some cases, “[i]nmates are NEVER tested for the Coronavirus disease until they reach a BOP facility,” according to The Council of Prison Locals, the union that represents BOP correctional staff.⁹

As a result, USMS is failing to prevent the further spread of COVID-19 in prisons and communities all across the U.S., and in fact is actively making matters worse. The consequences of the inability or unwillingness to take the necessary actions to stop the spread of coronavirus are dire: already, 120 federal prisoners in BOP facilities and at least two BOP staff members have died due to COVID-19.¹⁰

In addition to not conducting adequate testing, USMS is also not reporting any information about COVID-19 among the detained individuals in its custody or USMS staff.¹¹ Detailed data on COVID-19 cases and testing is critical to manage the spread of the virus in correctional facilities, and it is imperative that USMS begin releasing such data to the public. The COVID-19 in Corrections Data Transparency Act, which I recently introduced with Representative Pressley and several of our colleagues, would require USMS, BOP, and state governments to collect and publicly report detailed data about COVID-19 in federal, state, and local correctional facilities.¹² However, this legislation should not be necessary, because USMS and BOP already have the authority to collect and publish this data. Indeed, BOP already publishes limited information, updated daily, about COVID-19 in its facilities on its website.¹³

⁷ The Centers for Disease Control and Prevention, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” July 22, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Preparedness>.

⁸ The Marshall Project, “‘Con Air’ Is Spreading COVID-19 All Over the Federal Prison System,” Keegan Hamilton Keri Blakinger, August 13, 2020, <https://www.themarshallproject.org/2020/08/13/con-air-is-spreading-covid-19-all-over-the-federal-prison-system>.

⁹ American Federation of Government Employees, “Letter to Senator Doug Jones and Senator Richard Shelby,” August 4, 2020, <https://www.documentcloud.org/documents/7033928-FCI-Aliceville-Union-Letter-to-Alabama-Senators.html>.

¹⁰ The Bureau of Prisons, “COVID-19 – Coronavirus,” September 10, 2020, <https://www.bop.gov/coronavirus/>.

¹¹ United States Marshals Service, “Coronavirus - (COVID-19),” September 10, 2020, <https://www.usmarshals.gov/coronavirus/>.

¹² COVID-19 in Corrections Data Transparency Act, S. 4536, <https://www.congress.gov/bill/116th-congress/senate-bill/4536/text?q=%7B%22search%22%3A%5B%22S.4536%22%5D%7D&r=1&s=4>.

¹³ The Bureau of Prisons, “COVID-19 – Coronavirus,” September 10, 2020, <https://www.bop.gov/coronavirus/>.

In addition to these concerns, my office has received reports that detained individuals in USMS's custody have had inadequate access to counsel during the COVID-19 pandemic, in part because of the inability to contain the virus. Lawyers—who may be understandably reluctant to visit clients in person when conditions may be unsafe—have reported uneven and limited availability of phone and video calls, and difficulty accessing their clients during critical stages of their case. These hurdles have created significant challenges in preparing for cases and building trust with clients.¹⁴

I urge USMS to immediately take concrete steps to help prevent the spread of COVID-19 and protect USMS detained individuals and USMS staff, including the following measures: 1) implement all relevant CDC guidance and monitor implementation by establishing an audit process for all facilities where detained individuals are held; 2) publicly release comprehensive data on COVID-19 cases and testing among all detained individuals in its custody as well as USMS staff; and 3) adopt rigorous protocols to make all transfers safer, including by implementing diagnostic testing of all detained individuals prior to transfers, and transferring individuals only if they have tested negative for COVID-19 immediately before being transferred. In addition, USMS must adopt comprehensive protocols to ensure that those detained in its custody have robust access to counsel, including provisions for safe attorney-client meetings or video access.

I also ask that you please respond to the following questions no later than October 5, 2020:

1. What steps is USMS taking to ensure the safety of detained individuals in its custody and USMS staff from COVID-19?
 - a. What is USMS's protocol for isolating and providing medical care to individuals in its custody that have tested positive for COVID-19?
 - a. How many detained individuals in USMS custody are considered "high-risk" according to current CDC guidelines?
 - i. What special precautions or protections does USMS utilize to lessen the risk of serious illness or death among these "high-risk" individuals as a result of COVID-19 during detention and transit?
2. What steps is USMS taking to ensure USMS is not contributing to the spread of COVID-19 through transfers of detained individuals between detention centers, courthouses, and correctional facilities?
 - a. Are individuals in USMS custody screened daily for symptoms of COVID-19?
 - b. What COVID-19 screening tool is utilized before the transportation of a detained individual?
 - c. What are the testing expectations before a detained individual is transported?
 - d. How often during transit are staff and detained individuals rescreened and what occurs if an individual or staff show symptoms of COVID-19 during transport?
 - e. Does USMS have access to an adequate number of tests, and can test results be obtained in a timely fashion?
3. What steps is USMS taking to ensure that the various detention facilities that it partners with are following CDC protocols for containing COVID-19 in their facilities?

¹⁴ Jordan S. Rubin, *Chaos in Courts: 'Keep Everyone in Jail and We'll Sort it Out'* (Aug. 7, 2020) (*Chaos in Courts*) <https://news.bloomberglaw.com/us-law-week/chaos-incourts-keep-everyone-in-jail-and-well-sort-it-out>.

- a. Has USMS issued any guidance to its contract facilities regarding COVID-19? If so, please provide copies of this guidance.
4. Please indicate which protocols in CDC’s “Guidance for Correctional & Detention Facilities” USMS is following or requiring of those with which it contracts. If USMS is not following CDC guidance or requiring those with which it contracts to do so, please explain why not.
 - a. If USMS is requiring state and local detention facilities to implement the CDC guidance, how is USMS monitoring implementation of those procedures? Is it auditing those facilities? If so, please provide copies of those audits
5. To the extent USMS has been able to obtain this information from its contractors, please provide detailed data on the following metrics, disaggregated by sex, sexual orientation, gender identity, age, race, ethnicity, disability, and geography:
 - a. the numbers of detained individuals in USMS custody who have been tested for COVID-19, and the type of tests performed;
 - b. the results of COVID-19 tests, including the numbers of confirmed negative tests, confirmed positive cases, pending tests, and the average time to obtain test results; and
 - c. the outcomes of COVID-19 cases, including the numbers of people who were hospitalized, recovered, placed in or released from quarantine or medical isolation, or died from COVID-19.
6. If USMS has not obtained this data in Question 5, please disclose COVID-19-related metrics that USMS is tracking, and provide the detailed data USMS has gathered to date
7. By what date will USMS commit to testing of all individuals in its custody prior to all transfers?
8. What steps is USMS taking during the pandemic to ensure that individuals detained in its custody pretrial have adequate access to counsel, and that access is provided in a safe fashion for both detainees and counsel?

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator



Cory A. Booker
United States Senator



Ted Deutch
Member of Congress