

United States Senate
WASHINGTON, DC 20510

May 15, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

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

Dear Attorney General Barr and Director Carvajal:

We write to you concerning the health and safety of pregnant incarcerated women who are at risk given the dangers presented by the novel coronavirus (COVID-19).¹ We request that you immediately take steps to transfer to home confinement or release eligible medically vulnerable individuals in Bureau of Prisons (BOP) custody, including medically vulnerable pregnant women, and make publicly available the facilities at which pregnant women in BOP custody are detained, and the numbers of pregnant women at each facility by May 19, 2020. We further request that you work with the federal public defender and other organizations that provide legal services to incarcerated individuals in each relevant jurisdiction to ensure that every pregnant woman has access to counsel during the pandemic. Prisons have become hotspots for the novel coronavirus and the Department of Justice has failed to adequately protect pregnant women and other vulnerable people in its care. This needs to change immediately.

The urgency of this request is underscored by the tragic death of Andrea Circle Bear, an incarcerated pregnant woman, who died from COVID-19 in BOP custody on April 28, just four weeks after giving birth to her daughter while on a ventilator.² Her death raises many questions about the precautions BOP is taking to protect the health and safety of pregnant women. Ms. Circle Bear, a citizen of the Cheyenne River Sioux Tribe, was serving an approximately two-year

¹ Talha Burki, *Prisons are 'in no way equipped' to deal with COVID-19*, *The Lancet* (May 2, 2020), [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(20\)30984-3.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(20)30984-3.pdf)

² Inmate Death at FMC Carswell, Federal Bureau of Prisons (April 28, 2020), https://www.bop.gov/resources/news/pdfs/20200428_press_release_crw.pdf

sentence on a drug related offense that took place in Eagle Butte, South Dakota in 2018.³ At her sentencing in January 2020, she was in her second trimester. She was detained at Winner City Jail in South Dakota, where there were no reported cases of COVID-19. Then, on March 20, 2020, a week after BOP stated that it was restricting movement of individuals under its custody to address the outbreak, Ms. Circle Bear was transferred to a facility in Texas, FMC Carswell. This transfer occurred despite concerns about travel during the outbreak, and despite the fact that Ms. Circle Bear has five other children in South Dakota, whose ages range from two to ten.

Ms. Circle Bear reportedly tested positive for the novel coronavirus on April 4, 2020. After developing COVID-19 like symptoms, she was transferred to a hospital, where medical providers performed an emergency Caesarean section to deliver her premature baby. Ms. Circle Bear gave birth while on a ventilator. She struggled to survive in the hospital for four weeks before she passed away. The newborn was returned to relatives in South Dakota.

Ms. Circle Bear, one of 52 federally incarcerated individuals to die of COVID-19 according to the Bureau of Prisons, appears to be the first pregnant woman to die from COVID-19 while in custody.⁴ Previously, many of us have urged you to develop and implement policies to transfer to home confinement or release eligible individuals who are especially vulnerable to the coronavirus, including medically vulnerable pregnant women. Prisons are hotspots for the novel coronavirus, and urgent, immediate action is required as social distancing measures are nearly impossible to implement inside these facilities.⁵ For example, FMC Carswell in particular houses many sick, elderly, and pregnant women. After BOP failed to take adequate initial steps to protect individuals at FMC Carswell, staff at the facility reportedly filed a whistleblower complaint that warned a “catastrophe” will happen unless “extraordinary measures” are taken to prevent further spread of the virus.⁶

And yet, while your March 26 and April 3 memoranda instructing officials to opt for home confinement demonstrate an acknowledgement of the risks associated with COVID-19, your directives have not been implemented with the urgency and coordination this pandemic requires. The BOP has a population of 138,954 but only approximately 2,643 people have been transferred to home confinement in recent weeks. Moreover, public reports indicate that confusing, shifting guidance has resulted in uneven implementation even though thousands of lives are at stake.⁷ In short, DOJ has failed to respond appropriately to this global pandemic. Swift, urgent action is required to prevent more tragedies like the death of Ms. Circle Bear.

³ Eagle Butte Woman Sentenced for Maintaining a Drug Involved Premises. U.S. Attorney’s Office for the District of South Dakota (January 15, 2020), <https://www.justice.gov/usao-sd/pr/eagle-butte-woman-sentenced-maintaining-drug-involved-premises>>

⁴ Bureau of Prisons COVID-19 Webpage (May 1, 2020), <https://www.bop.gov/coronavirus/>

⁵ Talha Burki, *Prisons are ‘in no way equipped’ to deal with COVID-19*, *The Lancet* (May 2, 2020), [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(20\)30984-3.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(20)30984-3.pdf)

⁶ Regina Warren, *Letter to Senator Cornyn, American Federation of Government Employees Council of Prison Locals – 33, FMC Carswell Local 1006* (April 7, 2020), <https://www.documentcloud.org/documents/6879694-2020-04-07-14-16-14.html>

⁷ Cassidy McDonald, *Federal Prison Workers Say Conflicting Orders on Coronavirus Response is Putting Lives at Risk*, *CBS News* (Mar. 19, 2020), <https://www.cbsnews.com/news/coronavirus-prison-federal-employees-say-conflicting-ordersputting-lives-at-risk-2020-03-19/>

These steps we are requesting are also not without precedent. For example, the New York State Department of Corrections has begun releasing some pregnant and postpartum women.⁸

We request that you immediately take measures to transfer to home confinement or release eligible medically vulnerable pregnant women in your custody and work with federal public defenders and other organizations that provide legal services to incarcerated individuals to ensure they have access to counsel, and further, to provide the information requested previously regarding pregnant women under BOP custody. If you have any questions, please contact Jaron Goddard at jaron_goddard@murray.senate.gov or at 202-224-6935.

Sincerely,

/s/

Patty Murray
United States Senator

/s/

Richard J. Durbin
United States Senator

/s/

Elizabeth Warren
United States Senator

/s/

Kamala D. Harris
United States Senator

/s/

Ron Wyden
United States Senator

/s/

Sheldon Whitehouse
United States Senator

/s/

Edward J. Markey
United States Senator

/s/

Sherrod Brown
United States Senator

⁸ Bernadette Hogan and Tamar Lapin, *New York State Corrections begins releasing pregnant, non-violent offenders*, New York Post (April 30, 2020), https://nypost.com/2020/04/30/nys-corrections-begins-releasing-pregnant-non-violent-offenders/?utm_campaign=iphone_nyp&utm_source=message_app

/s/

Kirsten Gillibrand
United States Senator

/s/

Richard Blumenthal
United States Senator

/s/

Tammy Baldwin
United States Senator

/s/

Bernard Sanders
United States Senator

/s/

Cory A. Booker
United States Senator

/s/

Mazie K. Hirono
United States Senator

/s/

Robert P. Casey
United States Senator

/s/

Thomas R. Carper
United States Senator

/s/

Amy Klobuchar
United States Senator

/s/

Christopher A. Coons
United States Senator