

United States Senate
WASHINGTON, DC 20510

October 2, 2020

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

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 with concern regarding reports of the Federal Bureau of Prisons' (BOP) use of restricted housing, commonly known as solitary confinement, in managing the spread of coronavirus disease 2019 (COVID-19) in BOP facilities, and to request information about the steps BOP is taking to ensure that appropriate and humane procedures are in place to medically isolate or quarantine individuals infected with COVID-19 and those who have been exposed to individuals suffering from the virus.

COVID-19 has spread like wildfire in prisons, jails, and other carceral facilities across the country. According to BOP, approximately 15,000 incarcerated individuals and 1,880 BOP staff have been infected with the novel coronavirus, and 124 incarcerated individuals and 2 BOP staff have died after contracting COVID-19.¹ And these numbers may only be a fraction of the true infection and death rates. Isolating individuals who are infected with or exposed to COVID-19 is key to containing the virus. The Centers for Disease Control and Prevention (CDC) recommends that individuals who develop COVID-19-related symptoms or test positive for the virus be “immediately placed under medical isolation in a separate environment from other individuals, and medically evaluated,” but it cautions that correctional facilities should “[e]nsure that medical isolation for COVID-19 is distinct from punitive solitary confinement of incarcerated/detained individuals, both in name and in practice.”²

Despite these recommendations, recent reports indicate that federal facilities have relied on solitary confinement in responding to the spread of COVID-19. In April, for instance, BOP instituted a nationwide 14-day lockdown in response to the pandemic—during which time

¹ The Federal Bureau of Prisons, “COVID-19 Coronavirus,” Accessed October 1, 2020, <https://www.bop.gov/coronavirus/index.jsp>.

² The US 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#Medicalisolation>.

incarcerated individuals were confined to their cells.³ And reports of the use of solitary confinement in response to COVID-19 cases have continued after the nationwide lockdown. At Federal Medical Center Carswell in Fort Worth, Texas, for example, one report stated that “women who test positive for COVID-19 are quarantined in solitary confinement.”⁴ And at the minimum security satellite camp at Federal Correctional Institution (FCI) Otisville in Otisville, New York, a report indicated that, as of July 16, “inmates [were] locked up in cells since mid-June, already twice the United Nations standard for cruel and inhumane” punishment.⁵ Individuals subject to solitary confinement may be “locked in small cells for 23 hours each day of the week and 24 hours on the weekend,” and may face restrictions on educational programs and treatment.⁶

Just this week, a report based on a recent inspection of FCI Lompoc in Lompoc, California found that “[i]nmates who initially fell very ill before they were tested said they were reluctant to report their symptoms because of sick call delays or fear of being placed in solitary confinement, and expressed concerns their medical records erroneously document them as asymptomatic and/recovered from the disease.”⁷ The inspector, Dr. Homer Venters, also reported that incarcerated individuals had been threatened with solitary confinement by correctional officers if they did not help present the facility in a positive light during the facility’s inspection.⁸

Concerns about BOP’s overuse of solitary confinement are not new. In 2012, the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights held a hearing on the human rights, fiscal, and public safety consequences of solitary confinement.⁹ At the time, 7.7 percent of Federal inmates—13,600 out of a total population of 177,000 in Bureau of Prisons (BOP) facilities—were held in some form of restricted housing.¹⁰ After the hearing, BOP took steps to reduce the population and, by the time of a second subcommittee hearing in 2014, approximately 6.5 percent of Federal inmates were held in restricted housing.¹¹

³ The Federal Bureau of Prisons, “Bureau of Prisons COVID-19 Action Plan: Phase Five,” March 31, 2020, https://www.bop.gov/resources/news/pdfs/20200331_press_release_action_plan_5.pdf.

⁴ The Fort Worth Star-Telegram, “Women say life is ‘like a scary movie’ as coronavirus spreads in Fort Worth prison,” Kaley Johnson, July 13, 2020, <https://www.star-telegram.com/news/coronavirus/article244167007.html>.

⁵ Forbes, “Bureau Of Prisons Using Solitary Confinement As A Means To Curb Covid-19 Contagion,” Walter Pavlo, July 16, 2020, https://www.forbes.com/sites/walterpavlo/2020/07/16/bureau-of-prisons-using-solitary-confinement-as-a-means-to-curb-covid-19-contagion/?fbclid=IwAR0c_1572bLLyezgIleVCpSv-m-D7yBzA5gO4sQRrAJbjiBdifo4XTXk5o#687c8a6b193a.

⁶ Unlock The Box, “Solitary Confinement is Never the Answer,” June 2020, <https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860e0d57d0ce8195/1592247570889/June2020Report.pdf>.

⁷ The Lompoc Record, “Screening shortcomings, lack of timely care identified in federal report on Lompoc prison response to COVID-19,” Dave Minsky, September 30, 2020, https://lompocrecord.com/news/local/crime-and-courts/screening-shortcomings-lack-of-timely-care-identified-in-federal-report-on-lompoc-prison-response-to/article_f86389af-c8f0-54c0-a66f-1a5a0861370c.html.

⁸ *Id.*

⁹ Hearing Before the Subcommittee on the Constitution, Civil Rights and Human Rights of the Senate Judiciary Committee, “Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences,” June 19, 2012, <https://www.govinfo.gov/content/pkg/CHRG-112shrg87630/pdf/CHRG-112shrg87630.pdf>.

¹⁰ *Id.* at 669.

¹¹ Hearing Before the Subcommittee on the Constitution, Civil Rights and Human Rights of the Senate Judiciary Committee, “Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences,”

In early 2016, the Department of Justice (DOJ) released a report on the use of solitary confinement in the federal prison system with recommendations for reform.¹² In response to the report, President Obama announced that he would ban the use of solitary confinement for juveniles in the federal system and accept DOJ's other recommendations to ensure that the practice would "be used rarely, applied fairly, and subjected to reasonable constraints."¹³ After BOP began implementing these changes, the numbers continued trending downwards. Unfortunately, under the Trump Administration, the use of solitary confinement increased, once again reaching 2012 levels.¹⁴ The use of solitary confinement during the COVID-19 pandemic has now shifted this already troubling increase toward a crisis situation.

Although BOP uses terms such as "restrictive housing" or "extended placement" and claims that it does not practice solitary confinement,¹⁵ a July 2017 report by the DOJ Office of the Inspector General "found inmates, including those with mental illness, who were housed in single-cell confinement for long periods of time, isolated from other inmates and with limited human contact."¹⁶

Solitary confinement can inflict severe and long-term physical and psychological trauma on incarcerated individuals and place them at higher risk of suicide.¹⁷ One study of over 220,000 formerly incarcerated people in North Carolina published in the *Journal of the American Medical Association* found that, "[c]ompared with individuals who were incarcerated and not placed in restrictive housing, individuals who spent any time in restrictive housing were 24% more likely to die in the first year after release, especially from suicide (78% more likely) and homicide (54% more likely); they were also 127% more likely to die of an opioid overdose in the first 2 weeks after release."¹⁸ Under the United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules, prolonged solitary confinement, defined as "solitary confinement for a time period in excess of 15 consecutive

February 25, 2014, at 239, <https://www.govinfo.gov/content/pkg/CHRG-113shrg28394/pdf/CHRG-113shrg28394.pdf>.

¹² U.S. Department of Justice, "Report and Recommendations Concerning the Use of Restrictive Housing," January 2016, <https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing>.

¹³ *Id.*; Washington Post, "Barack Obama: Why we must rethink solitary confinement," Barack Obama, January 25, 2016, https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html.

¹⁴ See Letter from Senators Richard J. Durbin, Christopher A. Coons, Patrick Leahy, Elizabeth Warren, Cory A. Booker, and Kamala D. Harris to Hugh Hurwitz, Acting Director, Federal Bureau of Prisons, March 7, 2019, <https://www.durbin.senate.gov/imo/media/doc/3-7-19%20Letter%20to%20BOP%20on%20restricted%20housing.pdf>.

¹⁵ U.S. Department of Justice, Office of the Inspector General, "Review of the Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness," July 2017, <https://oig.justice.gov/reports/review-federal-bureau-prisons-use-restrictive-housing-inmates-mental-illness>.

¹⁶ *Id.*

¹⁷ Unlock The Box, "Solitary Confinement is Never the Answer," June 2020, <https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860e0d57d0ce8195/1592247570889/June2020Report.pdf>.

¹⁸ JAMA Network, "Association of Restrictive Housing During Incarceration With Mortality After Release," Lauren Brinkley-Rubinstein et. al., October 4, 2019, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350>.

days,” and indefinite solitary confinement are considered forms of cruel, inhuman or degrading treatment or punishment.¹⁹

In addition to inflicting significant harm on incarcerated individuals, the use of solitary confinement to respond to COVID-19 in carceral facilities may backfire and increase the spread of COVID-19. Individuals experiencing COVID-19 symptoms may decline to report to BOP staff if they fear being placed in solitary confinement, as was recently reported at FCI Lompoc.²⁰ In addition, solitary confinement may require more physical interactions between correctional staff and incarcerated individuals to escort people to showers or deliver meals, for example, increasing the risk of transmission.²¹ Solitary confinement can also weaken the immune systems of incarcerated individuals²²—increasing their risk of complications from COVID-19.

Unlike solitary confinement, medical isolation involves “isolating incarcerated people from the rest of the prison population when they show signs or test positive for COVID-19 in order to stem the risk of COVID-19 transmission throughout the prison.”²³ According to guidance released by Amend, a program at the University of California, San Francisco led by a group of public health and corrections experts, medical isolation should include: oversight by medical staff; free access to TV, music, tablets, email, and reading materials; free daily phone calls; daily access to outdoor exercise for at least 1-2 hours; access to property and commissary; at least daily access to medical care staff; at least daily access to mental health staff; removal from medical isolation as soon as cleared by medical care staff; daily updates from health care staff on why medical isolation is necessary and how long it might last; transparency with the public and family; and sufficient ventilation and temperature.²⁴ In short, medical isolation should be a humane public-health focused treatment and response to COVID-19, not a punishment for those who have the disease or may have been exposed.

We urge BOP to ensure that its facilities adopt ethical medical isolation procedures and take additional steps to reduce the prison population, including by releasing more individuals who

¹⁹ UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), January 2016, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

²⁰ See, e.g., The Appeal, “In San Quentin Prison, Getting the Flu Can Land You In Solitary,” Juan Moreno Haines, February 20, 2020, <https://theappeal.org/san-quentin-prison-flu-solitary-confinement/>; The Journal of General Internal Medicine, “Medical Isolation and Solitary Confinement: Balancing Health and Humanity in US Jails and Prisons During COVID-19,” David H. Cloud et. al., July 6, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7338113/>; The Lompoc Record, “Screening shortcomings, lack of timely care identified in federal report on Lompoc prison response to COVID-19,” Dave Minsky, September 30, 2020, https://lompocrecord.com/news/local/crime-and-courts/screening-shortcomings-lack-of-timely-care-identified-in-federal-report-on-lompoc-prison-response-to/article_f86389af-c8f0-54c0-a66f-1a5a0861370c.html.

²¹ Unlock The Box, “Solitary Confinement is Never the Answer,” June 2020, <https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860e0d57d0ce8195/1592247570889/June2020Report.pdf>.

²² The Independent, “What are the effects of total isolation? An expert explains,” Sarita Robinson, January 8, 2019, <https://www.independent.co.uk/news/science/total-isolation-solitude-social-withdrawal-removal-loneliness-a8716831.html>.

²³ AMEND, “COVID-19 in Correctional Facilities: Medical Isolation,” Accessed September 22, 2020, <https://amend.us/covid-19-in-correctional-facilities-medical-isolation/>.

²⁴ *Id.*

qualify to home confinement. In order to better understand the steps BOP is taking to address our concerns, we request that you answer the following questions no later than October 16, 2020:

1.
 - a. How many individuals in BOP custody are in any form of special, restrictive, or extended housing?
 - b. How many individuals are in special, restrictive, or extended housing due to COVID-19 illness or exposure?
2. How many individuals in BOP custody are in medical isolation due to COVID-19 illness or exposure?
3. How many individuals in BOP custody are in quarantine due to COVID-19 illness or exposure?
4. What is BOP's policy for medically isolating individuals who have tested positive for or exhibit symptoms of COVID-19? Please provide any documents or materials describing this policy.
5. What is BOP's policy for quarantining individuals who have been exposed to COVID-19? Please provide any documents or materials describing this policy.
6.
 - a. How does BOP ensure that medical isolation and quarantine are implemented ethically and appropriately and are distinct from solitary confinement or restrictive housing? Please provide any guidance or procedures BOP has provided to facilities on administering medical isolation and quarantine.
 - b. What procedures does BOP have in place to ensure that individuals in medical isolation or quarantine are overseen by medical staff?
 - i. Do they have at least daily access to medical care staff?
 - ii. Do they have at least daily access to mental health staff?
 - iii. Are they removed as soon as they are cleared by medical staff?
 - iv. Are they provided daily updates from health care staff on why medical isolation or quarantine is necessary and how long it might last?
 - c. What is BOP's process for providing updates to these individuals and their family members?
 - d. What is BOP's process for ensuring that the spaces in which individuals are isolated have sufficient ventilation and temperature control?
7. What are BOP's procedures for ensuring that individuals in medical isolation or quarantine are granted:
 - a. Free access to TV, music, tablets, email, and reading materials?
 - b. Free daily phone calls?
 - c. Daily access to outdoor exercise for at least 1-2 hours?
 - d. Access to property and commissary?
8. How does BOP monitor the use of special, restrictive, or extended housing due to COVID-19 illness or exposure at the private facilities with which it contracts?
9.
 - a. How does BOP plan to regularly update the public on the status of individuals in medical isolation or quarantine?
 - b. Will BOP commit to adding information about medical isolation and quarantine on its website?

We appreciate your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Warren". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Elizabeth Warren
United States Senator

A handwritten signature in blue ink that reads "Dick Durbin". The signature is cursive and stylized, with a horizontal line underneath it.

Richard J. Durbin
United States Senator