



April 21, 2020

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

Dear Director Carvajal:

The 69 undersigned organizations are writing to urge the Federal Bureau of Prisons (BOP) to include certain demographic information in its daily reporting<sup>1</sup> of COVID-19 cases within federal facilities. When publicly reporting each day, BOP should include the age, race, ethnicity, religion, gender, gender identity, sexual orientation, and disability for incarcerated persons and staff who have contracted, recovered from, and died from COVID-19. BOP should also include this same demographic information in its reporting of people released to home confinement. Additionally, BOP should be reporting the number of people released through compassionate release with demographic information.

BOP is currently providing data on the number of COVID-19 cases among those incarcerated and staff. Each day, at approximately 3:00 p.m. (EST), BOP reports the number of incarcerated persons and staff who have contracted, recovered from, and died from COVID-19. BOP also indicates how many federal facilities and residential reentry centers (RRCs) have been impacted, as well as the number of people who have been released to home confinement.<sup>2</sup>

As of April 20, BOP reports 497 incarcerated persons and 319 staff tested positive for COVID-19. Twenty-two incarcerated persons have died. Among these numbers, BOP reports 238 people have recovered from COVID-19. Almost 40 percent of BOP prisons are impacted, with 45 of 122 facilities indicating COVID-19 cases. Another 14 RRCs have positive cases. To date, a little over 1,280 people have been moved to home confinement.<sup>3</sup>

Without demographic information, however, these numbers do not present an accurate picture of the COVID-19 impact on federal prisons. Furthermore, we understand that BOP's reporting is an undercount given the varied and insufficient testing protocols throughout facilities.<sup>4</sup> BOP has acknowledged that its

<sup>1</sup> FEDERAL BUREAU OF PRISONS, COVID-19 CORONAVIRUS, <https://www.bop.gov/coronavirus/index.jsp> (last visited Apr. 21, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Walter Pavlo, *Bureau of Prisons Underreporting COVID-19 Outbreaks in Prison*, FORBES (Apr. 1, 2020, 9:31 AM), <https://www.forbes.com/sites/walterpavlo/2020/04/01/bureau-of-prisons-underreporting-outbreaks-in-prison/#3c9554ec7ba3>.

current reporting will merely provide “insight.”<sup>5</sup> Therefore, BOP should flesh out this data with information on age, race, ethnicity, religion, gender, gender identity, sexual orientation, and disability. BOP should also clarify whether the data point on positive tests includes those incarcerated persons and staff who have recovered from COVID-19. If BOP is deducting recoveries from positives, it should state that clearly on its website.

Additionally, with 70 percent of the BOP population being Black<sup>6</sup> and Latinx,<sup>7</sup> we are concerned that people of color will bear the brunt of COVID-19 outbreaks in federal facilities. Also, with BOP’s reliance on the PATTERN risk assessment tool to identify people for home confinement, we are concerned that people of color will be disproportionately excluded for such release.<sup>8</sup> According to a National Institute of Justice (NIJ) analysis of PATTERN, just 7 percent of Black men, in comparison to 30 percent of White men, would be classified at the minimum risk level that BOP is using to identify who is eligible for home confinement in the wake of COVID-19.<sup>9</sup> Finally, with women now the fastest growing segment of the incarcerated population,<sup>10</sup> we are concerned that they could be disproportionately represented among COVID-19 cases in BOP. Demographic data can help respond to these concerns.

With recent reports indicating that COVID-19 is disproportionately impacting Black people, elected officials have called for health agencies to collect and report demographic data on COVID-19.<sup>11</sup> We are asking BOP to do the same. Again, in a manner consistent with privacy laws, BOP should include in its daily, public reporting the age, race, ethnicity, religion, gender, gender identity, sexual orientation, and disability for incarcerated persons and staff who have contracted, recovered from, and died from COVID-19. BOP should also provide data on home confinement and compassionate release, along with demographic information, in this accounting.

Thank you for considering this request. If you have any questions, please contact Kanya Bennett, Senior Legislative Counsel, American Civil Liberties Union, at [kbennett@aclu.org](mailto:kbennett@aclu.org), or Sakira Cook, Justice Reform Project Director, The Leadership Conference on Civil and Human Rights, at [cook@civilrights.org](mailto:cook@civilrights.org).

Sincerely,

African American Ministers In Action  
American-Arab Anti-Discrimination Committee (ADC)  
American Civil Liberties Union

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<sup>5</sup> *Id.*

<sup>6</sup> FEDERAL BUREAU OF PRISONS, STATISTICS: INMATE RACE, [https://www.bop.gov/about/statistics/statistics\\_inmate\\_race.jsp](https://www.bop.gov/about/statistics/statistics_inmate_race.jsp), (last visited Apr. 20, 2020).

<sup>7</sup> FEDERAL BUREAU OF PRISONS, STATISTICS: INMATE ETHNICITY, [https://www.bop.gov/about/statistics/statistics\\_inmate\\_ethnicity.jsp](https://www.bop.gov/about/statistics/statistics_inmate_ethnicity.jsp) (last visited Apr. 20, 2020).

<sup>8</sup> Letter from The Leadership Conference on Civil & Human Rights to William P. Barr, Attorney General, Dep’t of Justice (Apr. 3, 2020), <https://civilrights.org/resource/letter-to-attorney-general-barr-re-the-use-of-the-pattern-risk-assessment-in-prioritizing-release-in-response-to-the-covid-19-pandemic/>.

<sup>9</sup> DEPARTMENT OF JUSTICE, THE FIRST STEP ACT OF 2018: RISK AND NEEDS ASSESSMENT SYSTEM 60 (2019), [https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system\\_1.pdf](https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf).

<sup>10</sup> ACLU, Facts about the Over-Incarceration of Women in the United States, <https://www.aclu.org/other/facts-about-over-incarceration-women-united-states> (last visited Apr. 17, 2020).

<sup>11</sup> Press Release, Sen. Sherrod Brown, Brown, Warren, Harris Join Bicameral Legislation to Require Federal Government to Collect and Report Coronavirus Demographic Data – Including Race and Ethnicity (Apr. 15, 2020), <https://www.brown.senate.gov/newsroom/press/release/brown-warren-harris-join-bicameral-legislation-to-require-federal-government-to-collect-and-report-coronavirus-demographic-data--including-race-and-ethnicity>.

Amnesty International  
Association of University Centers on Disabilities  
Bazelon Center for Mental Health Law  
Black and Pink  
Campaign for the Fair Sentencing of Youth  
Campaign for Youth Justice  
Center for American Progress  
Center for Disability Rights  
Center for Popular Democracy  
Church of Scientology National Affairs Office  
College and Community Fellowship  
Common Cause  
Defending Rights & Dissent  
Disability Rights Education and Defense Fund  
Drug Policy Alliance  
Equity California  
Equity Matters  
Federal Public and Community Defenders  
Government Information Watch  
Florida Rights Restoration Coalition  
Hip Hop Caucus  
Human Rights Campaign  
Human Rights for Kids  
Human Rights Watch  
Innocence Project  
Immigrant Legal Resource Center  
Just Futures Laws  
Justice Roundtable  
Lambda Legal  
The Leadership Conference on Civil and Human Rights  
LatinoJustice PRLDEF  
Legal Action Center  
Mommieactivist and Sons  
MomsRising  
Movement Advancement Project  
Muslim Advocates  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
National Action Network  
National Association of Criminal Defense Lawyers  
National Association of Social Workers  
National Council of Churches  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Immigrant Justice Center  
National LGBTQ Task Force  
National Organization for Women  
National Religious Campaign Against Torture  
NETWORK Lobby for Catholic Social Justice  
Operation Restoration  
People For the American Way

PFLAG  
PolicyLink  
Positive Women's Network-USA  
Prison Policy Initiative  
The Sentencing Project  
Sero  
Silver State Equality-Nevada  
South Asian Americans Leading Together (SAALT)  
Southern Poverty Law Center Action Fund  
Students for Sensible Drug Policy  
UnidosUS  
Union for Reform Judaism  
United We Dream  
The United Methodist Church – General Board of Church and Society  
334 East 92nd Street Tenant Association