

July 15, 2020

Office of Senator Chuck Grassley
135 Hart Senate Office Building
120 Constitution Ave NE
Washington, DC 20002

Office of Senator Richard Durbin
711 Hart Senate Office Building
120 Constitution Ave NE
Washington, DC 20002

Dear Senators Grassley and Durbin,

In the face of the coronavirus, American values of resilience and compassion are in full view. Now more than ever, we must “remember those in prison” and be a voice for their protection and care. By passing S. 4034, Congress will protect the most vulnerable people behind bars and reduce the risks associated with COVID-19 outbreaks in BOP facilities while respecting the need for proportional punishment and the shared goals of public health and safety.

Contained physical space, limited medical resources, and substantial populations who are aging or immunocompromised make correctional facilities susceptible to acute COVID-19 outbreaks.¹ Nine of the nation’s ten largest coronavirus outbreaks have been in correctional facilities.² As of July 8, Prison Fellowship’s tracking of correctional data now finds over 69,908 positive cases of COVID-19 and 658 related deaths among men and women in prison.³ 8,530 of these cases are in federal prison facilities, where 95 deaths have occurred.⁴ Absent robust congressional action, we risk seeing more incarcerated individuals and corrections staff endure severe medical complications; more impact on regional health care systems; and more community spread of the virus.

Our organizations’ deeply held faith values inspire our commitment to advocate for those behind bars. Federal lawmakers can honor these values during COVID-19 through targeted, appropriate sentencing relief. These adjustments allow medically vulnerable prisoners who do not pose a threat to public safety to be held accountable in environments less prone to rapid spread of COVID-19. Additionally, through careful reductions in correctional populations, those who remain behind bars can better practice social distancing measures.

The COVID-19 Safer Detention Act precisely advances this public health intervention while respecting justice and public safety. The law features vital improvements to compassionate release, a tool used by the Bureau of Prisons and federal courts to reduce sentences for federal prisoners on a case by case basis for “extraordinary and compelling reasons.”⁵ The legislation also

¹ James Ackerman, *An Open Letter to State and Federal Policymakers and Correctional Leaders*, Prison Fellowship (March 2020), <https://www.prisonfellowship.org/2020/03/an-open-letter-to-state-and-federal-policymakers-and-corrections-leaders/>.

² N.Y. Times, *Coronavirus in the U.S.: Latest Map and Case Count*, New York Times (2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

³ Prison Fellowship, *COVID-19 Impact on Prisons by State*, Prison Fellowship (2020), <https://www.prisonfellowship.org/covid19-map>.

⁴ Bureau of Prisons, *COVID-19 Cases*, Department of Justice (2020), <https://www.bop.gov/coronavirus/index.jsp>.

⁵ Nathan James & Michael Foster, *Federal Prisoners and COVID-19: Background and Authorities to Grant Release*, Congressional Research Service (April 23, 2020), <https://crsreports.congress.gov/product/pdf/R/R46297>.

allows federal prisoners, during the covered emergency period, to directly file a compassionate release motion in court ten days after submitting their request to BOP. This provision parallels recommendations by the Administrative Office of the U.S. Courts, which argued current waiting period requirements prevent “district courts from timely reviewing the petitions of vulnerable inmates.”⁶ Building upon recent judgements from federal courts⁷, S. 4034 clarifies that federal judges can rule the presence of CDC-identified risk factors for “severe illness from COVID-19”⁸ as an “extraordinary and compelling reason” to grant compassionate release, provided a defendant does not pose “a danger to the safety of any other person or the community” and that a motion aligns with existing sentencing guidelines.⁹ These and other provisions of S. 4034 will keep the public safe, hold medically vulnerable prisoners accountable for past mistakes in appropriate settings and aid the BOP in slowing the spread of COVID-19 among their staff and those who remain incarcerated.

Those living and working behind bars have dignity and we must acknowledge their practical needs. We implore your colleagues to join you in this effort and to swiftly pass the COVID-19 Safer Detention Act.

Sincerely,

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⁶ “Committee on Budget, Judiciary Seeks Funding, Legislative Changes to Aid COVID-19 Response,” Judicial Conference of the United States (May 5, 2020), https://www.uscourts.gov/sites/default/files/judiciary_covid-19_supplemental_request_to_house_and_senate_judiciary_and_approps_committees.4.28.2020_0.pdf.

⁷ United States v. Green, No. CR TDC-10-0761, 2020 WL 2992855 (D. Md. June 4, 2020); United States v. Harper, No. 7:18-CR-00025, 2020 WL 2046381 (W.D. Va. Apr. 28, 2020); United States v. Joling, No. 6:11-CR-60131-AA, 2020 WL 1903280 (D. Or. Apr. 17, 2020).

⁸ COVID-19 Safer Detention Act of 2020, S. 4034, 116th Cong. § 5 (2020).

⁹ 18 U.S.C. § 3582 (2018).

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