

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Sixteenth Congress

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

Dear Director Washington:

We write concerning urgent issues related to the U.S. Marshals Service (USMS) and the protection and treatment of detainees under your care during the COVID-19 crisis. It is critical that the USMS provide Congress and the public information about its response to the COVID-19 pandemic and take immediate steps to ensure the health and safety of the detainees in its care.

This letter follows up on a letter sent by Chairman Jerrold Nadler on March 12, 2020, to Attorney General William P. Barr, in which Chairman Nadler asked several questions about the activities the U.S. Marshals Service (USMS) was undertaking in response to the COVID-19 pandemic. Later, on March 19, 2020, we wrote a joint letter to Attorney General Barr expressing our desire to receive answers to the questions Chairman Nadler had posed a week earlier about the USMS and the Bureau of Prisons (BOP). The Attorney General wrote back to us on March 21, 2020, with a brief description of what the USMS was doing in relation to COVID-19. Among other things, the Attorney General stated that USMS personnel had been provided with COVID-19-specific guidance for screening prisoners being transported by the USMS. The Attorney General also reported no confirmed cases of COVID-19 among USMS detainees and one staff member with a confirmed positive case.

The USMS is responsible for the care of individuals charged with federal offenses, from the time they are arrested and ordered detained pretrial to the time they are either ordered released from USMS custody or are convicted and transported to serve their sentences in a BOP facility. The USMS does not operate its own jails, but it contracts with approximately 1,200 state and local government agencies, as well as with private facilities, for housing detainees.¹ At any given time, the USMS is responsible for housing approximately 52,000 detainees in federal, state, local, and private jails throughout the United States.² An additional 10,500 individuals are

¹ See U.S. Marshals Service website, *Fact Sheet: Prisoner Operations 2020*, https://www.usmarshals.gov/duties/factsheets/prisoner_ops.pdf (reporting fiscal year 2019 figures) (last viewed May 13, 2020).

² See *id.* (reporting that, for fiscal year 2019, the total average daily population was 41,511 detainees in state and local facilities, 10,403 detainees in private facilities, and 9,575 in BOP facilities).

held pretrial in BOP facilities.³ The USMS is also responsible for transporting detainees between detention facilities and courthouses, as well as from detention facilities to BOP facilities.⁴ Under normal operations, the Justice Prisoner and Alien Transportation System (JPATS) manages an average of more than 1,000 detainee and prisoner trips a day.⁵ We are pleased that all this information is easy to find on the official website of the USMS and in other publicly available materials.

However, we are not aware of any publicly available information about the total number of the 52,000 to 66,000⁶ detainees in the care of the USMS who are presently infected, or may have at one time been infected, with COVID-19. Nor do we know how many of these detainees, if any, have died. The page of the USMS website dedicated to COVID-19 consists merely of a series of links to other government websites and an assertion that the USMS “continues to pay close attention to the Coronavirus (COVID-19) situation and will follow recommendations of CDC as well as state and local public health agencies where USMS offices are located.”⁷ Indeed, the USMS’s official website contains *no information at all* about the total number of detainees in USMS care who are infected, or have been infected, with COVID-19, nor does it include links to reports on the infection rates at individual contract jails⁸. This absence of public information must be corrected.

In fact, we have received alarming information about increasing numbers of infected detainees at jails with USMS contracts. One article, updated on April 9, 2020, states that, on that date, there were 45 infected USMS detainees and 37 infected USMS staff members.⁹ On April 20, 2020, the West Tennessee Detention Facility reported 28 detainees as positive for COVID-19. And, on April 22, 2020, the 222-bed Queens Detention Center, operated by the GEO Group under contract with the USMS, reported 38 COVID-19-positive federal pretrial detainees and 21 positive staff.¹⁰ The CoreCivic and GEO Group data is from two facilities alone—and it shows numbers clearly greater than the number of infections reported by the USMS on April 9th. Most recently, about 400 pretrial detainees at CoreCivic’s Central Arizona Florence Correctional

³ *See id.*

⁴ *See* U.S. Marshals Service website, *Fact Sheet: Prisoner Transportation 2020*, https://www.usmarshals.gov/duties/factsheets/prisoner_trans.pdf (last viewed May 13, 2020).

⁵ *Id.*

⁶ *See* Kirstin Garris, *U.S. Marshals Report 28 Prisoners Test for COVID-19 at Private Detention Facility*, Fox 13 Memphis, <https://www.fox13memphis.com/news/local/28-prisoners-inside-west-tennessee-detention-facility-test-positive-covid-19-official-says/NNTOUXH5JZCY71PUJU3U3ZN5YQ/> (report on the West Tennessee Detention Facility and reporting that “[t]he USMS is responsible for the care and custody of approximately 66,000 prisoners each day through agreements or contracts with [State, local, private and BOP] facilities”).

⁷ U.S. Marshals Service website, *United States Marshals Service – Coronavirus (COVID-19)*, <https://www.usmarshals.gov/coronavirus> (last viewed May 12, 2020).

⁸ The terms “contract jail,” “contracting jail,” or “contract facility” are all used in this letter to refer to facilities that have a contract with the USMS to house federal pretrial detainees, whether these facilities be state, local, or private jails.

⁹ *See* Seth Freed Wessler, *The Coronavirus Has Spread to the U.S. Marshals’ Detention Empire*, Mother Jones, Apr. 1, 2020 (updated Apr. 9, 2020), <https://www.motherjones.com/politics/2020/04/us-marshals-coronavirus-pretrial-detainees-updated/>.

¹⁰ Andrew Denny, *Coronavirus Cases Surge at NYC’s Lone Privately Run Jail*, N.Y. Post, Apr. 22, 2020, <https://nypost.com/2020/04/22/coronavirus-cases-surge-at-nycs-lone-privately-run-jail/>.

Complex were placed in quarantine after 13 detainees tested positive for COVID-19.¹¹ It is undeniable that COVID-19 is spreading in USMS contract facilities, just as it is in other jails across the country.

We have also received multiple reports about the substandard manner in which the jails contracting with the USMS are caring for federal detainees during the current crisis.¹² One detainee went so far as to describe the spread of COVID-19 inside the West Tennessee Detention Facility, a USMS contract jail owned and operated by CoreCivic, as a situation in which he and his fellow detainees were “left for dead.”¹³ At CoreCivic’s Central Arizona Florence Correctional Complex, detainees recently filed a class action lawsuit and have reported conditions that fall far below the COVID-19 CDC guidance for correctional and detention facilities¹⁴:

People detained at CoreCivic report insufficient access to soap, masks, and gloves. They also report no measures to ensure appropriate social distancing and report, in fact, policies and practices requiring close physical contact. At CoreCivic, detainees are housed in pods with up to 80 people and live in cells with up to 14 people, sleeping on stacked bunk beds spaced only several feet apart.¹⁵

...

Plaintiffs [i.e., detainees] have received only one or two masks, and when these masks are broken or lost, Defendants [i.e., Core Civic et al.] have required Plaintiffs to share and swap each other’s masks in order to leave the pod for things like laundry and legal calls. Plaintiffs receive, only once per week, a small amount of soap and shampoo. Plaintiffs have not received additional or different hygiene products since COVID-19 spread to Arizona. These bathroom supplies frequently are not enough to last the week.... When people run out of their weekly allotment of soap, they must purchase more—if they can afford to do so—from the

¹¹ Craig Harris, *About 400 Inmates Quarantined at CoreCivic Prison in Florence, After 13 Test Positive for COVID-19*, AZ Republic, May 8, 2020, <https://www.azcentral.com/story/news/local/arizona-health/2020/05/08/coronavirus-cases-multiple-inmates-test-positive-corecivic-prison-covid-19/3093348001/>.

¹² See Wessler, *supra* note 9.

¹³ See Garris, *supra* note 6.

¹⁴ See Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Mar. 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>; see also Centers for Disease Control and Prevention, *Mortality and Morbidity Report, COVID-19 in Correctional and Detention Facilities—United States, February-April 2020*, May 6, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm> (update).

¹⁵ *Lucero-Gonzalez, et al. v. Kline, et al.*, CV 20-901 (D. Ariz. 2020), Class-Action Complaint for Declaratory and Injunctive Relief and Petition for Writs of Habeas Corpus (May 8, 2020) [Dkt. 1], at 3.

commissary at CoreCivic. If they cannot afford to do so, they have no soap at all.¹⁶

If this account is accurate, these conditions are simply unacceptable in a facility that has a contract with the U.S. government.

On April 1, 2020, a spokeswoman for the USMS stated that, “[a]ll training protocols, quarantine decisions or policy adjustments are made at the facility level.”¹⁷ In the Attorney General’s March 21 letter, he stated something similar to us: “As a general matter, individual detention facilities are responsible for the medical care of USMS prisoners.” While we understand that contract jail autonomy in these areas is the operating procedure during normal times, we are today in the midst of the most serious public health crisis the world has faced in over a century; the USMS simply cannot sit on the sidelines now. Because the USMS contracts with so many state, local, and private jails, we need to be assured that the agency is doing all it can to ensure that the facilities with which it contracts are doing all *they* can to protect the health and well-being of the federal detainees in their care. Indeed, the USMS *must* play an active role in ensuring this.

Therefore, it is critical that we be informed of how many USMS detainees nationwide are currently, or have in the past been, infected with COVID-19. At this time, neither we, nor the public, know the answer to this question because the USMS does not make any of this information public. We urge you to correct this immediately and begin reporting publicly the COVID-19 infection statistics you are obtaining about each of the jails under contract with the USMS. Greater transparency about this critical issue is urgently needed. We seek to know, broken down by facility and geographic area, how many USMS detainees:

- (a) have tested positive for COVID-19 and, of these, how many required hospitalization;
- (b) have been suspected of suffering from COVID-19 and, of these, how many were quarantined and how many were isolated;
- (c) have recovered from COVID-19; and
- (d) have died from COVID-19 and, of those who have died, whether they were suffering, and whether the contracting jail knew that they were suffering, from underlying health conditions that made them more susceptible to COVID-19.

At a minimum, this data should also be made available publicly on the USMS website. We further urge you to collect and report this information in relation to relevant demographic data, such as age, race, ethnicity, and gender.

In addition, we seek answers to the following questions:

¹⁶ *Id.* at 15.

¹⁷ *See* Wessler, *supra* note 9.

- (1) Have you designated a point person within the USMS to address issues pertaining to COVID-19? If so, please provide the name and title of the person so designated and their qualifications for the position.
- (2) In his March 21 letter, the Attorney General informed us that USMS personnel have been provided guidance for screening USMS detainees. Please provide copies of this guidance, along with information about the date of issuance of the guidance and how it was communicated to USMS staff, as well as any adjustments to the guidance, if any have been made, and the date and manner in which such adjustments were communicated to USMS staff. Please provide, as well, information about how this guidance was developed, particularly the extent to which the guidance and adjustments are based on CDC guidelines.
- (3) Please provide information regarding the operation of JPATS during the national emergency in relation to COVID-19. Specifically, how many prisoner-transportation flights have been operated daily by JPATS since January 1, 2020?
- (4) Does the USMS have a stockpile of personal protective equipment (PPE) and cleaning products? If so, in what quantities? Has the stockpile been used during the COVID-19 national emergency?
- (5) Are individual deputies issued PPE and cleaning products? If so, what specific PPE is issued, in what quantities, and how frequently are these issued? In what instances, if any, are deputies required to wear PPE?
- (6) Have PPE and cleaning products from the USMS stockpile, or otherwise obtained by the USMS, been made available to any contracting jails? If so, to which contracting jails, and why? If so, who made the decision to make these supplies available to the contracting jails?
- (7) Are USMS personnel being tested regularly? If so, what category of USMS employees (e.g., those who have direct contact with detainees) are being tested regularly, and since when? If so, from where have test kits been obtained?
- (8) In his March 21 letter, the Attorney General stated that the USMS was at the time not directly providing test kits to contract facilities, or state or local facilities housing USMS detainees and that, if needed, the contract facility would request testing from the state or local health department. Since the March 21 letter, has the USMS received any requests for testing kits from any contract facilities? If so, were any testing kits provided to these contract facilities? If so, how many and in what locations?
- (9) How many U.S. Marshals or deputies have tested positive for COVID-19? To what facilities are the deputies who have tested positive assigned? Please indicate whether

these individuals have recovered and, if so, when they tested positive, and whether and when they returned to work.

- (10) In his March 21 letter, the Attorney General stated that, “[l]ike BOP, state, local and private detention facilities have existing infectious disease management procedures that follow established protocols.” Has the USMS canvassed contracting jails to determine to what extent they are following CDC guidelines and what changes, if any, have been made to the contracting jails’ normal operations in response to COVID-19? If contracting jails have not been canvassed on their adherence to CDC guidelines, why not? If contracting jails have been canvassed, has the USMS independently assessed whether contracting jails are following the CDC guidelines to the extent possible, and what have you found?
- (11) Please provide copies of any COVID-19-specific guidance that the USMS has provided to contract facilities.
- (12) Has the USMS amended any of its contracts with contracting jails to ensure they are abiding by CDC guidelines relative to COVID-19? If so, please provide copies of any such amendments.
- (13) Has the USMS provided any guidance to contracting jails to ensure that staff at those facilities are able to take leave if they develop symptoms of COVID-19? If so, how is the USMS ensuring compliance with this guidance? How is the USMS ensuring that contracting jails have adequate staffing levels at all times?
- (14) Please provide specific data on any contracting jails that have been subject to COVID-19-related OSHA, or other, complaints by staff, including any lawsuits filed. Please note the nature of the complaints.
- (15) Please provide specific data on the numbers of staff at contract jails who have tested positive for COVID-19, broken down by facility.
- (16) In the event a USMS detainee tests positive for COVID-19, is there a specific protocol for notifying the detainee’s attorney and family members? If not, why not?
- (17) Have you provided guidance to contracting jails requiring that contracting jails, in spite of the COVID-19 emergency, maintain access to counsel and confidential communications between detainees and their attorneys?

We note and understand that there are some limitations to what the USMS can do regarding the daily operations of its contracting jails. But there are, nevertheless, things the USMS can do on behalf of the detainees in its care during this pandemic. For instance, the USMS can encourage facilities to send detainees off-site for treatment; the USMS can assist

contracting jails with access to PPE, sanitation supplies, and testing for detainees and staff; and the USMS can ensure that detainees have full, confidential access to their lawyers. If you are doing any of these things, please let us know and please make this information available to the public on your website.

The federal government and the USMS are responsible for safeguarding the health and safety of tens of thousands of men and women detained pretrial under the authority of the United States. This is a serious responsibility and one which requires that appropriate steps be taken during this public health crisis. Accordingly, we look forward to receiving answers to our questions as soon as possible.

Sincerely,



Jerrold Nadler
Chairman



Karen Bass
Chair, Subcommittee on Crime,
Terrorism, and Homeland Security

cc: William P. Barr, U.S. Attorney General
Michael E. Horowitz, Inspector General, Department of Justice
Jim Jordan, Ranking Member
John Ratcliffe, Ranking Member
Subcommittee on Crime, Terrorism,
and Homeland Security