

Attorney General Merrick Garland  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

July 15, 2021

Dear Attorney General Merrick Garland,

The undersigned organizations are demanding that the Biden Administration end a federal Bureau of Prisons (BOP) program to deprive people who they incarcerate of their ability to receive physical mail.

BOP has contracted with a private company, Smart Communications, to pilot its MailGuard system at two federal prisons. MailGuard converts personal mail to electronic scans that are provided to incarcerated people either as a print out, through a personal tablet, or via a public kiosk. Smart Communications promotes the MailGuard system as being more secure than physical mail.

In fact, the program has a negligible impact on safety — but has devastating consequences to incarcerated people, severely affecting their emotional well-being, weakening family ties, and hindering their ease of reentry upon release. The mail-scanning program also undermines crucial confidential communications, including between incarcerated survivors of sexual abuse and outside advocates, as required by the Prison Rape Elimination Act.

The program also threatens to effectively eliminate access to mail communications for people with certain disabilities or for people without the means to purchase tablets. In short, MailGuard places profit-based incentives above the well-being of incarcerated people with minimal to no security benefit. The Biden Administration must halt the MailGuard pilot program immediately and ensure that all incarcerated people continue to receive traditional physical mail.

**Eliminating physical mail is needlessly cruel, and particularly harmful for incarcerated survivors of sexual abuse, people with a mental illness, LGBTQ people, and other at-risk communities.** Physical mail is a lifeline for people who are incarcerated. It provides a palpable link to the outside world. Letters from family members, drawings from children, and greeting cards from loved ones help maintain family and community connections that are critical to incarcerated people's ability to serve their time safely while maintaining a sense of hope for the future. Numerous academic and public health studies have documented the positive effects of receiving letters on incarcerated peoples' mental health, which, in turn, leads to better reentry outcomes.<sup>1</sup> Indeed, BOP itself recognizes the vital role of strong familial contacts, noting on its

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<sup>1</sup> Nancy G. La Vigne et al., "Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships," *Journal of Contemporary Criminal Justice*, Vol. 21 No. 4 (November, 2005);

website that it “encourages inmates to write to family, friends, and other community contacts to maintain these ties during incarceration.”<sup>2</sup>

Written correspondence is especially crucial for people who have endured sexual abuse behind bars and rely on outside communication from advocates and loved ones to help them. Referring to the first letter he received from Just Detention International, a health and human rights organization, after being raped multiple times while in a California prison, the late Joe Booth — a longtime survivor advocate — once said, “If you had offered me a bar of gold for that letter, I wouldn’t have traded it.” People in prison treasure the mail that they receive, and many save letters to read again and again to remind them that there are people on the outside who are thinking of them and who care about them.

While mail-scanning is harmful on its own, the MailGuard program could lead to the elimination of any correspondence to people who are in solitary. BOP policy permits people held in segregation to have full correspondence privileges,<sup>3</sup> but it is unclear how and if that includes scanned personal mail. The extra procedures necessary to deliver electronic mail to a person in segregation could eliminate access to mail outright. Because people with mental illness are much more likely to be placed in segregation than people without a mental illness,<sup>4</sup> the elimination of personal correspondence will have an even greater negative impact on them. Similarly, due to their over-incarceration, increased likelihood of being placed in segregation, and high risk for sexual abuse, LGBTQ people — and especially LGBTQ people of color — are disproportionately harmed by restrictive mail policies.<sup>5</sup>

**MailGuard compromises confidential communication.** Mail-scanning by third-party vendors severely undermines confidential communications with incarcerated survivors of sexual abuse — a cornerstone of rape crisis advocacy. Survivors need to feel comfortable sharing highly personal, painful feelings and experiences with outside advocates to heal from abuse and develop healthy coping skills. Many community-based rape crisis centers negotiate with corrections agencies to ensure that their mail to survivors is delivered “in as confidential a manner as possible,”<sup>6</sup> consistent with national Prison Rape Elimination Act standards. Yet it is significantly harder to enforce these agreements when mail is processed by third-party vendors, which

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“Family Relationships and the Incarcerated Individual,” Evidence-Based Professionals Society (October, 2016), [www.ebpsociety.org/blog/education/221-family-relationships-incarcerated-individual](http://www.ebpsociety.org/blog/education/221-family-relationships-incarcerated-individual)

<sup>2</sup> “Stay in touch,” The Federal Bureau of Prisons website (accessed March 11, 2021), [www.bop.gov/inmates/communications.jsp](http://www.bop.gov/inmates/communications.jsp)

<sup>3</sup> “Correspondence: § 40.16 Inmate correspondence while in segregation and holdover status,” Bureau of Prisons Program Statement, OPI: CPD/CPB; number: 5265, April 5, 2011, [www.bop.gov/policy/progstat/5265\\_014.pdf](http://www.bop.gov/policy/progstat/5265_014.pdf)

<sup>4</sup> “Study: Prisoners with mental illness much more likely to be placed in solitary confinement,” Crime and Justice Research Alliance, March 9, 2021, [www.eurekalert.org/pub\\_releases/2021-03/cajr-spw030921.php](http://www.eurekalert.org/pub_releases/2021-03/cajr-spw030921.php)

<sup>5</sup> Black & Pink, *Coming out of Concrete Closets: A Report on Black & Pink’s National LGBTQ Prisoner Survey*, (October 2015), [www.issueab.org/resources/23129/23129.pdf](http://www.issueab.org/resources/23129/23129.pdf); Ilan H. Meyer, PhD, et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011–2012*, (*American Journal of Public Health*, February 2017, Vol 107, No. 2); “Visualizing the unequal treatment of LGBTQ people in the criminal justice system,” Prison Policy Initiative, March 2, 2021, [www.prisonpolicy.org/blog/2021/03/02/lgbtq/](http://www.prisonpolicy.org/blog/2021/03/02/lgbtq/)

<sup>6</sup> National Standards To Prevent, Detect, and Respond to Prison Rape, § 115.53, 28 CFR 115 (Department of Justice, 2012), [www.federalregister.gov/d/2012-12427/p-1520](http://www.federalregister.gov/d/2012-12427/p-1520)

typically are not involved in negotiations and often lack an awareness of requirements around confidential mail.

**Making mail accessible only through crude scans or tablets is devastating for people with disabilities and people with limited resources.** People with certain disabilities can be especially disadvantaged under mail-scanning programs. Incarcerated people are three times more likely than people in the community to have a visual impairment,<sup>7</sup> which can make kiosk screens and printed scans less accessible than physical material sent by advocates or loved ones who understand their needs. While personal tablets allow for a measure of privacy, some jurisdictions charge for them, making them out of reach for most people serving time. The high cost of tablets creates power disparities and scarcity among incarcerated people, which allow abuses to flourish. What's more, many people in prison, especially the elderly, have limited experience using tablets, and few prisons offer training.

Worse still, prison kiosks — the only option for many incarcerated people to read their mail under MailGuard — afford little privacy; they are located in public places, such as dayrooms, and are only accessible at certain times of day and within a set time limit. The BOP provides virtually no accommodations for incarcerated people who are blind or who have a serious visual impairment, such as text readers and reading tools. Typically, incarcerated people who are blind or have a visual impairment rely on others to read their correspondence aloud to them, wherever they can find the most privacy. If a public kiosk is their only option, many people with visual impairments are likely to forego their mail instead of having it read to them — especially if the correspondence is from a rape crisis advocate. The kiosks will pose the same problems for many people with certain disabilities, including people with educational limitations and some people who are Deaf with limited skills interpreting written English.

**MailGuard incentivizes corporations to profit from incarceration.** The Biden Administration has staked out strong positions against prison privatization. But the embrace of third-party mail vendors like Smart Communications perpetuates the very model of profit-driven incarceration that the Administration's position opposes. Indeed, while scans of letters may be provided for free, the clear intention of Smart Communications' program is to push incarcerated people, along with their advocates and loved ones, toward exorbitantly priced paid services like email or phone calls.

**The claimed benefit of MailGuard and similar programs is that they prevent contraband drugs from entering facilities.** Certainly, corrections officials are obligated to provide a secure environment free of contraband. But mail-scanning is a misguided approach. While incoming letters laced with drugs may present a problem in some prisons, state-level data indicates that mail-scanning programs have had a negligible effect on the overall rates of contraband entering facilities.<sup>8</sup> If an incarcerated person is caught with drugs, it could provide a basis for thoroughly screening or even scanning that person's mail — but it does not provide a legitimate basis for

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<sup>7</sup> Jennifer Bronson, Ph.D., et al, *Disabilities Among Prison and Jail Inmates, 2011–12* (Bureau of Justice, December 2015), [www.bjs.ojp.gov/content/pub/pdf/dpji1112.pdf](http://www.bjs.ojp.gov/content/pub/pdf/dpji1112.pdf)

<sup>8</sup> Pennsylvania Department of Corrections, Drug Interdiction Indicators (accessed on March 11, 2021) [www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/Drug-Interdiction-Indicators.pdf](http://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/Drug-Interdiction-Indicators.pdf)

punishing everyone living inside the prison. By doing away with MailGuard, BOP can spend more money on treatment, mental health programming, and other measures that help people get back on their feet — not on measures that exacerbate their isolation.

**Banning physical mail harms the well-being of incarcerated people, while offering no meaningful benefits.** Yet despite MailGuard’s flaws, BOP is in no hurry to cancel it; in fact, the agency has signaled that it may expand the program to additional facilities. At the same time, state departments of correction and county jails are rolling out similar mail restrictions; if the federal government continues to endorse MailGuard, more jurisdictions are likely to follow suit. Supporting the program is enabling a business model wherein a private company can make a profit by replacing the cheapest and safest form of communication available to incarcerated people — physical mail — with a service that is inaccessible, inequitable, and that fails to meet basic privacy requirements.

People who are incarcerated deserve better. Their loved ones, and their advocates in the community, have long relied on mail to maintain healthy relationships and offer emotional support. The Administration should be looking for ways to encourage such connections, rather than adopting policies that undermine them. BOP must immediately end MailGuard and any other policies that restrict incarcerated people’s access to their personal mail.

Sincerely,

American Friends Service Committee  
BiNet USA  
Boston Area Rape Crisis Center  
CAN-DO Foundation  
Center for American Progress  
Center for Disability Rights  
Coalition for Civil Freedoms  
Coalition of Labor Union Women  
College and Community Fellowship  
CURE (Citizens United for Rehabilitation of Errants)  
DC Rape Crisis Center  
Defending Rights & Dissent  
Electronic Frontier Foundation  
Equal Justice Under Law  
Equality Federation  
Exchange for Change  
Flikshop  
Florida Cares Advocacy Group  
FORGE, Inc.  
Grassroots Leadership

Health in Justice Action Lab  
Human Rights Defense Center  
Insight Prison Project  
International Alianza de Mujeres Negrx  
Jesus ' Prayer Ministry  
Just Detention International  
Juvenile Justice Coalition  
Mazzoni Center  
Movement Advancement Project (MAP)  
NAMI NYS  
National Association of Counsel for Children  
National Center for Transgender Equality  
National Disability Rights Network  
National Juvenile Defender Center  
National Sexual Violence Resource Center  
New York State Coalition Against Sexual Assault  
Oasis Legal Services  
Pennsylvania Coalition Against Rape  
Prison Policy Initiative  
Students for Sensible Drug Policy  
Texas Association Against Sexual Assault  
Texas Criminal Justice Coalition  
The Real Cost of Prisons Project  
The Sentencing Project  
Transgender Law Center  
Transgender Resource Center of New Mexico  
TransLatin@ Coalition  
Valor US  
Worth Rises