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OVERSIGHT OF THE FEDERAL BUREAU OF PRISONS

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APRIL 15, 2021, 10:00 A.M.

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

OVERSIGHT OF THE FEDERAL BUREAU OF PRISONS

THURSDAY, APRIL 15, 2021

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chairman of the Committee, presiding.

Present: Senators Durbin [presiding], Feinstein, Klobuchar, Blumenthal, Booker, Padilla, Ossoff, Grassley, Cornyn, Lee, Cruz, Sasse, Hawley, Cotton, Tillis, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS, CHAIRMAN OF THE COMMITTEE

Chair DURBIN. The hearing will come to order.

Today, the Senate is holding its first oversight hearing of the Federal Bureau of Prisons, the first time since 2019. Director Carvajal, thanks for joining us.

To start today's hearing, I would like to show a short video that offers a look behind bars for the more than 152,000 people in our Nation's Federal prison system.

[Video shown.]

Chair DURBIN. I might just add that I know Alton Mills, the gentleman who was just on the video here, sentenced to life in prison at age 23 for a nonviolent drug offense. He was released because of the work of this Committee and changes in the law that have taken place. I thank Senator Grassley for joining me in that effort. Senator Cornyn was part of it as well, and it was signed into law by President Trump. Alton Mills has a job. He has worked ever since he has gotten out of prison. He is reunited with his family. He is no threat to society. He is making a positive contribution.

For years I have sought to address the injustices and challenges that impact the lives of incarcerated families along with the staff who are responsible, the men and women who go into these Federal prisons and work there. Their health and well-being is our concern certainly as much as if not more than the inmates.

I have worked across the aisle, as I mentioned, with Senator Grassley to pass bipartisan legislation like the Fair Sentencing Act and the FIRST STEP Act to reform Federal sentencing laws and help inmates successfully return. I have held hearings on the conditions of confinement. I think some of the most memorable hearings of my life were in this room with those who had been held in virtual solitary confinement, some for as long as a decade. I have

dealt with the issue of treating incarcerated individuals with mental illness. I think over and over again of the sheriff of Cook County, Tom Dart, who is a personal friend of mine, who says without any challenge from any side whatsoever, he runs in the Cook County Jail the largest mental health institution in the United States. Many of these prisoners are suffering from mental illness.

We still have a lot of work to do. When the pandemic began, many of us feared that, barring immediate and decisive action, our Nation's prisons were headed for catastrophe. In March of last year, I joined Senator Grassley along with 12 of our colleagues in sending a bipartisan letter to Director Carvajal and the former Attorney General. In it we urged you to use your authority under the FIRST STEP Act to swiftly—swiftly transfer vulnerable inmates to home confinement. We sent that letter out of concern for the health and well-being of the inmates as well as 37,000 Americans working in our Federal prisons. At the time we sent the letter, only three inmates and three staff members had tested positive for COVID–19.

What happened? In the months that followed, tens of thousands of Federal prisoners tested positive for COVID–19. At times the infection rate for the Federal prison population has been nearly six times higher than in the community at large. As a result, 230 incarcerated individuals at least have died from COVID–19, nearly all of whom had preexisting conditions that made them particularly and obviously vulnerable. Several were within months of being released, and 55 died after their request for compassionate release was denied and while the request was pending.

One preventable death was noted in this video, Andrea High Bear, 8 months pregnant when a Bureau of Prisons official sent her to the Federal Medical Center in Carswell. She came down with COVID–19 and gave birth to her premature daughter while on a ventilator. Nearly a month later, Ms. High Bear died without ever getting a chance to hold her baby.

Thousands of BOP staff members have also contracted COVID–19. At least four have passed away, including Ruark ″Mac″ Macarthur, a 42-year-old correctional officer at the Federal penitentiary in Thompson, Illinois.

These were preventable deaths. It is clear that the Bureau has been far too rigid in approving transfers to home confinement and compassionate release to reduce prison populations and to prevent the spread of COVID–19.

Unfortunately, this is part of a broader pattern. The Bureau has failed to implement many of the FIRST STEP Act's reforms. Let me give you an example. The FIRST STEP Act required the Department of Justice and the Bureau of Prisons to develop a risk and needs assessment, but the PATTERN tool that the agencies created is deeply flawed. The Trump administration itself forecast that the tool would result in stunning racial disparities in inmate security classification.

In December, the Independent Review Committee appointed by the Trump Justice Department released a report that found that the Bureau of Prisons has failed to develop, and I quote, ″a fully integrated and comprehensive needs assessment system to diagnose the programming needs of individual inmates,″ a system the

FIRST STEP Act requires you to develop. I might add that part of the FIRST STEP Act was constructed by Senator Cornyn and Senator Whitehouse on the prison reform side of the equation.

The law also mandates that BOP provide all prisoners with opportunities to participate in programming to prepare them to return to their communities. However, many inmates still struggle to access programming to help vocational skills and receive mental health and other services.

The simple fact of the matter is—and we know it—the majority of Federal prisoners today will be out in society at some point soon in their lives. We have to anticipate it. We want that to be a constructive positive experience and not create another crime victim.

The legislation also requires inmates to participate in programming through earned time credits, but the Bureau of Prisons proposed rule for earned time credits severely limits the ability to earn these credits, and that undermines participation. The Bureau's failure to implement the FIRST STEP Act reforms speaks to a broader issue of mismanagement that has impacted everyone in our prison system, from the incarcerated to your own loyal employees. For years the Bureau of Prisons has been plagued by chronic understaffing. It has been worsened by the previous administration's decision in 2017 to implement a hiring freeze that led to the elimination of more than 6,000 Bureau of Prisons positions. Today there are still thousands of vacant positions.

To compensate for staff shortages, the Bureau has come to rely on widespread and often mandatory overtime as well as augmentation. Augmentation is a practice that forces noncustodial staff like secretaries, teachers, and librarians to work as correctional officers. The Council of Prison Locals, which represents most BOP employees, notes in testimony for the record today that, ″The staffing crisis in the Bureau of Prisons not only creates a large clear and present danger to every employee, inmate, and the community at large, but has made the response to the COVID–19 pandemic nearly impossible. The Americans working in our prison system are overworked, overextended, and undersupported. As a result, incarcerated individuals and the communities to which they return are put at risk.″

Simply put, our prison system at the Federal level is failing. It is failing to fulfill its fundamental purpose: the rehabilitation of incarcerated individuals. As I said, most of the individuals are going to return to society. Instead of preparing them, we are failing them and failing the American people who want, of course, safety in our communities.

Part of that failure includes the excessively punitive and unjust practices to maintain order in our prisons, practices like administrative separation or solitary confinement. Following my hearings in 2012 and 2014, there were significant reductions in the use of solitary confinement, but I am troubled that the number of Federal inmates in restrictive housing increased significantly over the last 4 years. I am gravely concerned that during the pandemic the Bureau has used extensive solitary confinement as a means to enforce social distancing. You just cannot separate people 23 hours a day without an impact on their mental health.

This oversight hearing is an opportunity to get a clear accounting of what is going wrong in our Federal prisons and what we need to do to fix it. We can start by vaccinating our inmates in a timely manner, not only for their protection but the protection of all the men and women in the Federal employment who maintain these prisons. I am eager to hear about the Bureau's plans. When are we going to implement the FIRST STEP Act? How are we going to build on the reforms that we passed on a bipartisan basis, signed by President Trump? We cannot keep wasting valuable resources and taxpayer dollars to let people languish in prison. More than wasteful, it is inhumane.

Too many lives have been lost, too many spirits broken by abuse and mistreatment, too many families torn apart.

Let me turn to Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Before I start my statement, I want to make two points.

One would be to ask, without objection, for the record a statement by the National Association of Assistant U.S. Attorneys be included.

Chair DURBIN. Without objection, it will be.

[The prepared statement appears as submission in the record.]

Senator GRASSLEY. Then you reminded me of something when you talked about Senator Cornyn's involvement in our FIRST STEP Act. You and I keep referring to your and my cooperation on it, but we have not forgotten—I know you have not—Senator Cornyn, Senator Lee, Senator Booker is here now, and I am——

Chair DURBIN. Senator Whitehouse.

Senator GRASSLEY. Yes, and I am probably leaving somebody out, but at least those. Then we have got to remember, when you and I were starting out with a small group of people on this, that when it finally passed, it passed 87–12. We wondered: Where did all this opposition come from for so long a period of time with such an overwhelming passage of our legislation? I make these points because too often you and I refer to each other, and neither one of us intends to leave out other people that cooperated.

Chair DURBIN. We should always mention those other people one time for sure.

Senator GRASSLEY. Yes. No more than one time, right?

[Laughter.]

Senator GRASSLEY. Okay. Let us go to Director Carvajal. We welcome you. We thank you for being here. I look forward to your answers to the Committee's questions as the issues before us are very extremely important.

The Committee last held an oversight hearing with the Bureau of Prisons in 2019. That was pre-COVID and before the first anniversary of the FIRST STEP Act, and obviously, as Senator Durbin has said, a lot has changed. It is about time that we dig in and discuss these issues.

In December 2018, President Trump signed the FIRST STEP Act. Getting the FIRST STEP Act passed was a very difficult effort, as I have already referred to. It required buy-in from nearly all

Members of Congress, the White House, the Federal agencies, including your agency. Chairman Durbin and I teamed up to get the FIRST STEP Act passed 2 and 1/2 years ago, and I am grateful for the continued collaboration that I have with the Chairman, working together. I consider the passage of the FIRST STEP Act as one of my good things that I have done since being a Senator.

It is because of the hard work and overwhelming bipartisan nature of the FIRST STEP Act that I am disheartened with the lackluster implementation. It seems as though the Justice Department and, within that Department, the Bureau of Prisons are implementing the FIRST STEP Act as if they want it to fail. I hope this is not true, but actions speak louder than words, and the inaction of the Justice Department and the BOP on this I think paints a very difficult picture.

I understand that the COVID–19 pandemic hijacked many of the implementation efforts, but your agency must do better and follow the law without excuse. An example of half-hearted implementation is the prison programming. Programming is critical for inmates. It prepares them to successfully reenter society and allows them to earn time credit toward their sentences. Without effective programming, inmates will leave prison unequipped and possibly prone to reoffend. But the agency has been slow to resume programs for prisoners in light of COVID–19 restrictions. The lack of programming is setting inmates up to fail.

The Justice Department still has not issued a complete needs assessment tool as required by the act. The risk and needs assessment system is critical in evaluating inmates' individual recidivism risk and tailoring appropriate programming to combat those risks. Without complete needs assessment tools, the law is only partially fulfilled, so another failure of implementation.

Last, a current Justice Department position on home confinement fails to comply with the spirit of the FIRST STEP Act. In March 2020, Attorney General Barr responded to calls by this Senator and Chairman Durbin to increase the use of authorities in the FIRST STEP Act to place inmates in home confinement to mitigate the risk of the virus spreading. Earlier this year, the Justice Department released a memo stating that when the pandemic ends, nearly 4,000 nonviolent inmates who are currently at home in confinement will be returned to the prisons' secure custody program. This means that almost 4,000 people who have abided by the terms of home confinement will be removed from their homes and returned to the facility. Obviously, if they can stay where they are, it is going to save the taxpayers a lot of money, and it would also help people who are not prone to reoffend and allows inmates to successfully reenter society as productive citizens.

Mr. Director, I look forward to our discussion on how you can reexamine and prioritize this important legislation. We must also at this time discuss the Bureau of Prisons' response to the COVID–19 pandemic. As of April 14th, 230 Federal inmates and agency staff members died from COVID. People are incarcerated to pay their debts to society, but they should not have to pay with their lives.

I urge you to use your position as Director to ensure that not one more life is lost from the virus, and I hope that this hearing allows

us to look forward. I am encouraged by your optimism, Mr. Director, for the future of the Bureau of Prisons. Your job is difficult and often thankless, and I suppose I have not been very thanking to you in my remarks, but it is critically important for the job to get done. The weight of success of the FIRST STEP Act is on your shoulders, and your leadership will undoubtedly be critical in navigating Federal corrections in a post-virus world.

Finally, I want to remind you that the Bureau of Prisons has responsibility to respond to all congressional inquiries, including those from the minority, in a timely and complete manner. I sent you a letter in March 2020, and it has been more than a year with no response, and that should be considered by everybody, including you, as unacceptable. When I was Chairman, I made the same point on behalf of my Democratic colleagues. That responsibility falls to you. The Justice Department and FBI seem to have a real problem with that responsibility. I strongly urge you to answer the letter. I look forward to working with you.

Thank you, Mr. Chairman. Sorry I took so much time.

Chair DURBIN. No, that is just fine. Thank you very much, Senator Grassley.

Let me tell you in today's hearing, after I introduce and swear in Director Carvajal, we will have 5-minute rounds of questions.

I would say by way of introduction of the Director that Michael Carvajal began his career with the Bureau of Prisons as a correctional officer in Texas in 1992. In July 2016, he was promoted to Regional Director of the Northeast Region and became the Assistant Director for the Correctional Programs Division in 2018. Former Attorney General William Barr appointed him as BOP Director in February 2020.

Director Carvajal, would you please stand to be sworn in? Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CARVAJAL. I do.

Chair DURBIN. Let the record reflect that the Director answered in the affirmative. Please be my guest and make your opening statement.

STATEMENT OF MICHAEL D. CARVAJAL, DIRECTOR, FEDERAL BUREAU OF PRISONS, WASHINGTON, DC.

Mr. CARVAJAL. Thank you, and good morning, Chairman Durbin, Ranking Member Grassley——

Chair DURBIN. Could you check your microphone and maybe pull it a little closer? That is great. Thank you. There should be a red light there.

Mr. CARVAJAL. Good morning, Chairman Durbin, Ranking Member Grassley, and other distinguished members of the Committee.

It is my privilege to speak today on behalf of the 37,000 Bureau of Prisons corrections professionals who work day in and day out to support our critical law enforcement mission. I am committed to ensuring that these dedicated men and women are guided by the core values of respect, integrity, correctional excellence, and courage.

I appreciate this opportunity to discuss the Bureau's response to the pandemic along with our efforts to provide inmates with the necessary programming to return to the community and to their families. I have spent the majority of my professional life in career service to this agency. After serving in the United States Army, I joined the Bureau as a correctional officer and moved up through the ranks to my current position as Director. I care deeply about our work and the personal sacrifices the Bureau's law enforcement officers make and have made during the pandemic and, more importantly, our way forward.

COVID numbers have dropped significantly across nearly all of our institutions, even as inmate movement has resumed and despite communities reopening. We are taking the steps to normalize operations in stages as safety and security permit, including inmate movement, food service, and ramping up programming. All of these efforts will have a positive impact on staff, inmates, and the Bureau operations.

As we have throughout the pandemic, we continue to assess and adjust our operations as guidance evolves and, more importantly, to incorporate the lessons learned. In close coordination with the CDC and Federal Government's COVID–19 vaccine therapeutics operation, we pursued an aggressive strategy to administer the vaccine. All staff have been offered the vaccine, and by mid-May we anticipate all inmates within our institutions have been provided the opportunity to be vaccinated.

The Bureau has also assisted in administering the COVID–19 vaccination to other DOJ personnel. We worked with the DOJ leadership in planning two vaccine clinics—one in Miami, one in New York—to assist the DEA, FBI, and other law enforcement components to receive the vaccination. Through these clinics, more than 1,100 law enforcement personnel were vaccinated. And while it has been an extraordinary year with many challenges, we continue to move forward and advance our priorities.

There has been much discussion about the Bureau's staffing needs and the use of augmentation and overtime to accomplish our mission. We are committed to addressing these issues by increasing our staffing levels nationwide and retaining our staff.

We initiated a hiring campaign focused solely on external hiring to maximize staffing levels, and we are using all available recruitment and retention incentives, marketing strategies, and social media to reach potential candidates.

In the last calendar year, despite the pandemic, we hired 3,800 staff. In the past 8 weeks, we have hired over 500 new staff into the agency. Our aggressive hiring initiatives, our use of incentives, along with a revised method for calculating bed capacity will provide clarity, transparency, and have a significant impact on our staffing efforts moving forward. Our staffing efforts are central to the successful implementation of the FIRST STEP Act.

I am pleased to tell you that, despite the pandemic, we are on track to meet the requirements of the FIRST STEP Act. Staff positions allotted under the FIRST STEP Act have already been utilized to expand capacity in our female programs, our drug treatment, and vocational training. Other innovations are underway to enhance programs such as life skill laboratories to teach the skills

to basic inmates with the greatest needs, provide STEM career technical education for female offenders, and modernizing our inmate education platform to include the use of tablets to make programming more accessible. We are committed to successful implementation of the FIRST STEP Act and its impact on reducing recidivism.

Finally, a key priority we are squarely focused on is our work with the Government Accountability Office related to the management of staff and resources. In an effort to accelerate this work, I have established a cross-agency task force to develop an action plan to resolve the issues in a timely manner. Our work will focus on strengthening new programs and initiatives that will help inmates prepare for a successful return to the community. We are working to develop stronger data analytics platforms which will enhance monitoring and evaluation of our programs and spending. To this end, we are engaging external organizations to assist in assessing a broad range of operations to further these goals.

On behalf of all the staff, we are working tirelessly to carry out our important mission. I thank you for the opportunity to speak with you today and for your continued support to move these priorities forward.

Chairman Durbin, Ranking Member Grassley, and other distinguished members of the Committee, this concludes my statement.

[The prepared statement of Mr. Carvajal appears as submission in the record.]

Chair DURBIN. Thanks, Director Carvajal.

Last March, Senator Grassley and I, along with a bipartisan group of 12 additional Senators, wrote to you and to the Attorney General, William Barr, to express serious concerns about the health and well-being of prison staff and inmates. At the time the number of infected prisoners was reported to be three and staff another three. That was at the earliest, earliest stages of our realization that COVID–19 was a serious threat to the public health. It did not take a degree or Dr. Fauci's resume to realize that our prisons were particularly vulnerable because of so many people gathered in such a limited space.

We know what happened as a result of it. We came up with the FIRST STEP Act and other policies which established the opportunity for home confinement and compassionate release to reduce overcrowding and to allow those prisoners who we perceived not to be a threat to society to have a chance to leave that prison setting.

Let me tell you a story of one of those prisoners. Forbes Magazine reported on a man named Jimmy Monk. Jimmy Monk was a young man, a first-time offender. He was convicted of a nonviolent bank fraud offense. His term in prison was less than a year. He collapsed in the shower and died from COVID–19 at the minimum security Talladega Federal Prison Camp. The Bureau of Prisons reports he had no COVID–19 symptoms, but his emails home and reports from those inside the prison tell a much different story.

The reality was that he had multiple symptoms and received no medical attention. After he passed out in the shower, his fellow inmates rushed to help him, but the guards ordered them to leave him. Unable to even sit in a chair without the help of others, he fell, hit his head, and died on the floor.

Why was a man like Jimmy Monk, a first-time offender convicted of a nonviolent bank fraud offense with less than a year to serve, not placed in home confinement? Were you given orders from above in terms of compassionate release and home confinement to restrict the number of opportunities that would be offered?

Mr. CARVAJAL. No, Chairman Durbin, I was not given any direction like that. On the contrary, I was issued two memorandums by the Attorney General that directed us to consider under the CARES Act everyone eligible for home confinement. In those memorandums was specific guidance for criteria. I assure you that if that individual you are speaking about—I will not speak about individual cases, but, in general, any inmate that is eligible under the criteria presented to me by the Attorney General is on home confinement as we speak.

What keeps them or prevents most cases are that they fall under one of those nondiscretionary hard criteria. If you have a primary offense of violence, a sex offense, terrorism, or a detainer, an order for deportation, you will not be placed on home confinement. As the statute is written, home confinement was not made for long-term placement. It is a reentry program. As you are well aware, Senator, 6 months, 10 percent of your sentence, 12 months in the community. At this point in time we have released inmates under the CARES Act with more time than that, which is appropriate. But that is why the criteria is important. We follow the criteria, Senator.

Chair DURBIN. What is the population—I mean, no one is going to argue with the groups that you have excluded from consideration for compassionate release and home confinement. What is the remaining population that does not fit into those categories among Bureau of Prisons inmates?

Mr. CARVAJAL. Let me give you an example, Senator. When the CARES Act passed, we ran a roster. CARES Act is a medical placement. We ran a roster. At that point, at that day, there were approximately 27,000 inmates eligible for home confinement under the CARES Act. When we applied that criteria, that number was reduced to 4,000 just by those four criteria—okay?—and the other. We had discretion to go beyond that.

Chair DURBIN. Excuse me. Can you clarify? You said 27,000 out of the total Federal prison population?

Mr. CARVAJAL. Who had at least one COVID risk factor, which is what specifically the CARES Act told us to look at, inmates who were vulnerable for COVID.

Chair DURBIN. If you could clarify, please. The total Federal Bureau of Prisons population at the time was over 150,000?

Mr. CARVAJAL. That is correct.

Chair DURBIN. So you identified some 27,000——

Mr. CARVAJAL. Who had at least one COVID risk factor.

Chair DURBIN. Of those, you excluded many for the categories you mentioned of crimes——

Mr. CARVAJAL. We followed the criteria issued by the Director Attorney General at the time.

Chair DURBIN. You said there were 4,000 eligible in the Federal Bureau of Prisons?

Mr. CARVAJAL. The 4,000 was after applying the Attorney General criteria. If you like, I can explain beyond that because——

Chair DURBIN. Let me ask you—I want to stick with the numbers for a minute. How many were actually released or placed in home confinement?

Mr. CARVAJAL. We have released—transferred—because they are still in our custody. We have transferred over 24,000 inmates to home confinement since passage of the CARES Act. Today there are approximately 7,400; 4,500 of those—I am using estimates because these numbers change every day. Approximately 4,500 of those today are on CARES Act home confinement under specific CARES Act.

Chair DURBIN. It is my understanding that the prison staff—and I do not know how large a group that is completely. They have been offered vaccines, and fewer than one-half have accepted the invitation?

Mr. CARVAJAL. Senator, we have offered every staff member in our agency the opportunity to be vaccinated. The rate right now, the last number I got yesterday, was a little bit over 51 percent have accepted.

The one caveat there is that that does not include staff that we are not aware of who received the vaccine on their own through their own care provider. We do know there are people that have done that. We have offered the vaccine. Approximately 51 percent—that is about 18,000 staff of the 37,000—have accepted it.

Chair DURBIN. Is there currently a mask mandate for all staff at BOP facilities?

Mr. CARVAJAL. Yes, there is, Senator. There has been for quite some time.

Chair DURBIN. What type of testing is offered to the staff?

Mr. CARVAJAL. Staff testing is available—each location—keep in mind, as you are well aware, we have 122 locations. We have a national contract laboratory where we can make it available, so there are several types and methods there. Each location worked with their local public health service to establish testing sites. We do not test staff onsite. We do not have the resources to do that.

Chair DURBIN. Could you tell me the percent of prisoners who have been vaccinated?

Mr. CARVAJAL. The percentage this morning—we have administered over 132,000 vaccine—vaccinations. The percentage this morning was a little over 40 percent, about 50,000 or so inmates. Again, the numbers are changing. As I stated in my opening remarks, our projections originally were August for everybody to receive it. By mid-May, 100 percent of the inmates in our custody will have been offered the vaccine. Keeping in mind that it is voluntary, the acceptance rate among inmates is about 66 percent. Again, that changes daily sometimes.

Chair DURBIN. Those who are released, is there any testing before they are released?

Mr. CARVAJAL. Inmates are quarantined, mandatory in and out, quarantined before they are released. If they have symptoms or anything of that nature, then we will provide the test upon release. Otherwise, they are mandatory quarantined, unless they are show-

ing symptoms, at which time they are placed in isolation, which is a whole separate procedure.

Chair DURBIN. I am going to take leave as Chairman to ask one other question, Senator Grassley, if you do not mind.

There was a lot of controversy and votes on the Senate floor about sending the checks, the stimulus checks, the $1,400, to inmates in prison. This was a policy that was originated in the CARES Act that was drawn up on a bipartisan basis and signed into law by President Trump. There have been questions raised about what happens to that money for inmates. Can you tell us what happens?

Mr. CARVAJAL. Absolutely. It goes to the inmate. We processed right about 22,000 checks for about $19 million. We worked with the IRS, the Department of Justice Tax Division, and the Executive Office of the United States Attorneys to make sure that those inmates who were receiving those checks, that we worked through that and they received those checks.

If for some reason, like with anything, if something occurs where somebody does—all they need to do is tell us. We do not know who is entitled to the check, but we have ensured that 22,000 times inmates in our system have received those checks for a total of $19 million.

Chair DURBIN. Out of 150,000 inmates?

Mr. CARVAJAL. Sir, I am not sure who is entitled to them. I do not have that information.

Chair DURBIN. I am just asking you.

Mr. CARVAJAL. Yes, out of our current population of 125,000.

Chair DURBIN. Isn't it true that money placed in a Federal inmate account that exceeds $450 during a 6-month period, including stimulus checks, for example, is assessed by the Bureau of Prisons to pay prisoner debts, including restitution to crime victims and fines?

Mr. CARVAJAL. Senator, part of our policy and part of reentry is teaching responsibility. If an inmate has child support or owes a fine or restitution, that is part of his reentry plan, to be responsible and pay those debts. To my knowledge, the Government—we do not assess that. We do make sure that they participate in the program to pay restitution and things like that. There are those checks and balances, but we are not taking money from an inmate. There is a record of this. Everything is screened and gone through the policy as appropriate.

Chair DURBIN. I want to clarify this. If I am a prisoner and I have received a $1,400 stimulus check, it is my understanding that $950 of that could be assessed to pay any restitution or fines which I have been ordered by the court to pay. Is that true?

Mr. CARVAJAL. I believe so, Senator. I am not entirely sure about the policy. I have not reviewed that policy lately. I am almost certain that if they have a financial responsibility, part of their reentry plan, part of getting them ready to return to society—95 percent of them will—is to be responsible and make their payments.

Chair DURBIN. Child support is the same type of responsibility?

Mr. CARVAJAL. Child support, anything where there are obligations, that is part of being a responsible citizen and paying their bills.

Chair DURBIN. Thank you very much, Mr. Carvajal. Senator Grassley.

Senator GRASSLEY. You said in your statement that implementing the FIRST STEP Act is a priority for you and the current administration, and I hope it is, but I would like to know how we are supposed to know that. Is there some measurable—or goals that you are trying to meet that we can say 6 months from now or a year from now you are doing what you said you were going to do?

Mr. CARVAJAL. That is a great question, Senator, and I wrote a lot of notes through both of your opening statements, and I hope I have the opportunity actually to answer these questions, because I am not sure where you get all your information, but I am glad you called me here to be able to answer this, because we are on track to meet the FIRST STEP Act. Last year, even through COVID, which is a whole other issue, as you well know, we had over 50,000 inmates enrolled in some type of program; 21,000, maybe 25,000 actually completed a program. Those programs are worth earning time credits, which is what the FIRST STEP Act is about. I am not sure who is giving you your information.

Could it have been more? Absolutely. I do not know why someone would think that we would want something that is part of our mission—reentry into society is half of the mission of the Bureau of Prisons. The first one is the obvious one, keeping people safe. Yes, we want the FIRST STEP Act to be successful, Senator, and I appreciate you letting me clarify that.

Senator GRASSLEY. You would do me a favor if you went through my statement and told me what is wrong. Do not do it now, but you can do that in writing.

I am disappointed in the progress that the Justice Department and Bureau of Prisons have made. We are all acutely aware of the impact that COVID–19 has had on prisons. At this point, over 1 year when President Trump declared COVID as a national emergency, I do not think that that national emergency can be used as a scapegoat. Being accountable and moving forward is necessary. I mentioned in my opening statement, which you might tell me again would be wrong, that it seems like the Justice Department and the Bureau of Prisons has failed in this effort. For it being the most significant criminal justice law in a generation, if that is true, what I have been saying, then it is shameful. I certainly hope that this sentiment is false, and even if it is not true, at certain points perception becomes a reality. If it is more an unreasonable perception, how can you assure me and those affected by the FIRST STEP Act that the implementation in this belief is incorrectly held?

Mr. CARVAJAL. Thank you, Senator. First off, you mentioned the risk and needs assessment. That was implemented in January 2020, right before COVID. I do not know why someone would think we do not have a risk and needs assessment. It is public knowledge. The IRC has acknowledged it. We worked with outside stakeholders to create this. We did not create the PATTERN tool. That is the Department of Justice's tool. It was done by independent researchers. It has been vetted. It is under reassessment now.

We have a needs assessment. We have always done it informally. We did not do it very well and formalize it, but our process has

been formalized now. We have identified—again, with the collaboration of outside stakeholders, including correctional experts from other agencies, we established a needs assessment. Thirteen needs were identified. When we go through the risk process, we identify those needs, and then we apply one of over 80 evidence-based recidivism-reducing programs or productive activities that are worth time credits. That is the essence of the FIRST STEP Act. I am a bit confused about where people do not believe that we are doing this, Senator. I believe we are doing it.

Senator GRASSLEY. Okay. I want to go to home confinement. It has been a very vital tool to decrease the prison population during COVID, and it is successful in monitoring inmates. Of the 24,000 inmates who are currently on home confinement, 151 have violated the terms of their release, and only 3 have been arrested for new crimes. This highlights how effective home confinement can be.

Given this, I am concerned that the Justice Department's memo concluding that the Bureau of Prisons would have to recall some nonviolent inmates currently on home confinement back into prison facilities once the pandemic period ends. This policy would result in almost 4,000 inmates on home confinement being forced to return to a facility to complete their sentences. The FIRST STEP Act's goals are to reduce recidivism while ensuring public safety, all while making sure to not burden the taxpayer. This seems—the policy that I referred to from DOJ seems to counter the FIRST STEP Act's goals.

Do you or do you not agree with that? Besides the legal reasons outlined in the Justice Department memo, is there any policy reason that inmates in home confinement under the FIRST STEP Act or the CARES Act should be returned to the Bureau of Prisons facilities if they have not violated the terms of their release or commit a new crime?

Mr. CARVAJAL. Great question, Senator. First off, the portion I will start with is whether or not we are bringing them back. The reason the discussion—and I would presume that the DOJ issued that back in November, was the fact that the statute—the CARES Act did not change the statute. The statute as written allows for 10 percent of their time or 6 months, up to 12 months in the community. CARES Act placement extended that. This program was not designed for people to be out that long. That is the first part. We would need to change the statute or have the authority to adjust it, because we must follow the law and that is what we are doing.

The second piece of this is the President recently extended the national emergency, so there is no rush to bring these back. We are covered by the CARES Act. We are not advocating one way either way. We are planning. We were asked can we accommodate if we need to bring these inmates back because they are still in our custody, yes, we can. You are correct. Your numbers on the 151, the 3 that were new crimes, only one of those was violent. I do not know the details. The rest of those, we would screen those.

I want to make something clear, Senator. For anyone to believe that we arbitrarily want to disrupt the lives of these people after we have put them out, if they have successfully been out there, we are going to use good judgment and common sense and work within

the law to make sure that we place them appropriately. We have plenty of bed space in our minimum security camps. If they prove that they have been out—I simply ask that either the statute is changed so that we can follow the law, because as written we would not be within the law, or that we work with the DOJ, as we do now, and that people understand that we are doing things within the parameters we are given. We are not doing them out of like or dislike or anything. We want this to be successful. It is the entire mission of the Bureau of Prisons to return people to society. I do not know why people believe that we are somehow against this.

I will say that we do it responsibly. Part of the direction the Attorney General stated in there was that we consider the victim, that we consider public safety, and we take that very seriously. When we look at this criteria and we make these decisions, we make sure that we are not causing a burden to the public either. Public safety is part of our—we are a law enforcement agency. I appreciate the opportunity to clear that up because I do not want somebody to believe that the Bureau of Prisons somehow does not want to let people out. That is not accurate. We want to let them out within our authorities and within the law.

Senator GRASSLEY. Thank you, Mr. Chairman.

Chair DURBIN. Senator Grassley, let's you and I work together on that last question because I think it is an important one, and I think Director Carvajal said maybe a change in the statute is necessary.

Senator GRASSLEY. Okay.

Chair DURBIN. We have done things like that before.

Senator GRASSLEY. Obviously, my question would imply I want to work with you.

Chair DURBIN. Good. I look forward to it.

Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chair.

I have spent a lot of my past in prisons, particularly State prisons, under the California indeterminate sentencing laws, sentencing and paroling women convicted of felonies in California. I am very familiar with the atmosphere of these institutions.

I wanted to just ask you, a recent study from the New York Times indicates that at least 39 percent of prisoners in Federal facilities have been infected with COVID, more than four times the general rate of infection in the country. The situation, I believe, seems to be worse at the Terminal Island facility in California where the virus, I am told, has infected over 70 percent of the facility's population and killed ten inmates.

According to a January report by the Department of Justice's IG staff, at Terminal Island struggled to enforce social distancing and may not have been quarantining inmates before moving them to alternative housing. The IG also found that roughly 60 percent of facility staff said they did not have enough personal protective equipment.

In light of this, Director, what efforts have been made to improve adherence to COVID–19 protocols specifically at Terminal Island?

Mr. CARVAJAL. Thank you, Senator. Terminal Island, as you are well aware, was one of our earliest big outbreaks. What you said

is absolutely correct. We had a widespread transmission. Our ability to social distance in a prison we learned early on—prisons are not made for that, first of all. They are made for the complete opposite. Throw on top of that Terminal Island has open dorm and open bays, adds to the problem. It was at capacity or over. I do not remember the exact numbers at the time.

Senator FEINSTEIN. How are you handling that open- wards, open-beds situation?

Mr. CARVAJAL. That is where I am going, Senator.

Senator FEINSTEIN. Good.

Mr. CARVAJAL. We have reduced the population. We have done that throughout our—because of a lesson learned, open bay, open dorm, not conducive for containment. We have lowered the population and spread those inmates out. At the time Terminal Island was something where we tried something new. We actually acquired tents. In a couple of cases, I believe we—at that location we actually partnered with the Coast Guard. We set up temporary housing, not orthodox in a prison. The last thing in the world we want to do is put somebody in a tent outside within the perimeter, but we did that because we saw the effect that social distancing had, so we spread people out.

We have used nontraditional areas to house people. We converted factories in some cases, rooms. Anywhere we could spread people out, we did that early on. Terminal Island was one of those cases. The OIG did go in there—one of the things I will point out about that, and we certainly appreciated working with them. We work hand in hand with them. They review many of our facilities. One of the things I will point out, though, because that was so early on, Senator, everybody was dealing with this. We learned a lot of lessons through COVID. I wish I knew then what I know now about it. We did not know it at the time. COVID was new to everybody. We have a history of dealing with pandemics very well in the Bureau of Prisons, okay? COVID was different. It is extremely contagious. It happened very quickly. Testing resources were not available at the time. They are now; they were not at the time. Things like that, I think that people need to keep into consideration. You cannot just empty a prison overnight. It does not work that way. We have different challenges within the correctional environment, always keeping safety and security first. I appreciate the opportunity to clear that up.

Senator FEINSTEIN. Thank you. In response to a question for the record I submitted after you testified before this Committee last June, you indicated that the Bureau had reviewed 40,000 inmates for potential home confinement at that time, less than one-third of the total number of inmates in the Bureau of Prisons' custody. Director, as of today, approximately how many inmates has the Bureau reviewed for placement in home confinement?

Mr. CARVAJAL. Senator, I wish I could give you a solid answer because the numbers have changed. I will tell you that we have reviewed everyone who is eligible and has a COVID—at least a COVID risk factor. The CARES Act, actually, the way it was written, allowed us to review 100 percent of the inmates. When you apply those hard criteria, the obvious one that we are not going to bend on, the violence, the sex offense, that lowered the number to

the 27,000. If I had to make a guess, because our numbers have shifted over the last year, we——

Senator FEINSTEIN. A percentage would be fine.

Mr. CARVAJAL. I would say 50 to 75 percent, at least.

Senator FEINSTEIN. Have what?

Mr. CARVAJAL. Have been reviewed at this point.

Senator FEINSTEIN. Right. How many have you——

Mr. CARVAJAL. I will have to follow-up with you on the exact numbers. I am sorry?

Senator FEINSTEIN. Do you have the placement facility—the placement numbers?

Mr. CARVAJAL. I am not sure I am understanding your question, Senator.

Senator FEINSTEIN. You indicated that the Bureau had reviewed 40,000 inmates for potential home confinement. What portion of the 40,000—a percent would do—have been home-confined?

Mr. CARVAJAL. I apologize. I was not tracking with you. At this point we have placed over 24,000 in home confinement since the passage of the CARES Act.

Senator FEINSTEIN. Out of the 40,000?

Mr. CARVAJAL. I do not know if it was that specific 40,000, Senator. In general, out of our population, we have placed over 24,000 in home confinement.

Senator FEINSTEIN. Let me ask one other question. It is my understanding that there is an effort to ensure that every inmate in BOP custody receives the individualized review required by the Attorney General's guidance, and my question is: When will that be completed? May we see it?

Mr. CARVAJAL. The guidance, I believe what you are talking about is the direction to take—to individually review every case eligible for home confinement in the totality of circumstances of applying those criteria. That is exactly what we do. We follow the direction of that memo.

Senator FEINSTEIN. May we see the results?

Mr. CARVAJAL. I do not know how I would do that, Senator, but I will certainly talk to my staff. What I mean by that is it is not that—I just do not know how we would accomplish that, but I will get back with you. I will follow-up with you. I just need to talk to my staff about how we would present that to you.

Senator FEINSTEIN. I will write you a formal letter asking for the specifics, and you can either adhere to it or not. That is your choice.

Mr. CARVAJAL. Absolutely.

Senator FEINSTEIN. I believe we are entitled to know this. Thank you.

Mr. CARVAJAL. Absolutely.

Senator FEINSTEIN. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Feinstein. Senator Cornyn.

Senator CORNYN. Mr. Carvajal, you and I may be two of the only three people on the Committee who know where Three Rivers, Texas, is, where you started out your service in the Bureau of Prisons. I just want to say thank you for what you do day in and day out. I cannot imagine the challenges that confront the Director of

the Bureau of Prisons, and I want you to let us know what we can do to help you accomplish your goal.

I am glad you made the point that you want to be able to release inmates when they are no longer a threat after they have served their time. I think the perception is just the opposite, and I am glad you clarified that.

In Texas, as you know, we made a major effort at criminal justice reform focused on people who would take advantage of the opportunity to deal with their addictions, learn a skill, and be prepared for life outside of prison. And it was that State-based experiment that was duplicated around the country that formed the basis of my interest in particular in the FIRST STEP Act. Sheldon Whitehouse from Rhode Island I think was my partner on that, and I want to make sure he is recognized for his contribution, too.

By its name, we did not expect to stop with the first step, and we are interested in your advice and counsel on what the next step should be. For example, I know the experience in Texas in the State system was the legislature continued to look at follow-on services that might be available, because I can only imagine once an incarcerated person is let out of jail, they go to their old neighborhood, subject to a lot of the same influences they had in the first place, and it is hard, it is tough. You have got to admire people who can continue their rehabilitation and want to be constructive members of society, so we want—I will just ask you that question for the record and ask for maybe you and your staff to let us know what additional services Congress should authorize in order to make sure that this recidivism reduction program is successful once people get on the street.

[The information appears as submission in the record.]

Senator CORNYN. Sexual assault in prisons is something that Congress has addressed previously, and what I am interested in is: Do you know how many prisoners in the Federal prison system currently have access to services like telephone hotline services if they have been a victim of sexual assault?

Mr. CARVAJAL. Yes, Senator, all of them. We make sure that that is—that we speak about that. It starts with admission and orientation. Obviously, PREA plays a big role. One hundred percent of our facilities are PREA-compliant. They are reviewed often. We make sure that inmates have the number; they are posted, electronic bulletin boards, regular bulletin boards. We certainly encourage them to come forward, whether it is the staff or by use of the hotline to report things of that nature.

Senator CORNYN. I want to make sure that every victim of sexual assault in our prisons has access to services and that hotline number, and so I am going to follow-up with you and see where we are. I am sure wherever we are, we can always do better.

Senator Durbin asked about stimulus checks for inmates. There were two votes on the floor of the Senate, one in 2021, and Senator Cotton and Senator Cassidy and Senator Cruz offered amendments that would have prohibited the issuance of stimulus checks to prisoners. That failed by a vote of 49–50. There was another one by Senator Cruz and Senator Cotton, joined by Senator Cassidy, that would prohibit any individual who was incarcerated in a Federal

or State prison from getting stimulus checks. That also failed by a vote of 49–50.

Just going back on the history of these stimulus checks under the CARES Act, initially Congress was silent as to whether prison inmates would receive those checks. The IRS took the position that they were not eligible. Then there was a class action lawsuit filed which said that Congress had to—that the IRS had to comply because there was no explicit prohibition.

Did I recite the history of your experience correctly? In other words, originally Congress was silent. Then the IRS took the position they were not entitled. Then there was a class action lawsuit that said since Congress was silent, they had to be provided. Is that correct?

Mr. CARVAJAL. Senator, I do not know about the specifics. I do know that there is a class action lawsuit. I do know that the Bureau of Prisons for a fact is not one of the defendants. As with everything that we do, we follow the law, the legislation, and we do what is within our authorities, and that is what we have done. We have been assured—whoever made the decision and how it was made, once it was there, we followed it. As I stated earlier, we made sure that inmates who received those checks received those checks, working through the IRS, the DOJ, and other appropriate offices. That is what I do know, sir.

Senator CORNYN. Mr. Chairman, may I ask on follow-up question?

You have been asked about prison overcrowding, particularly in the face of the pandemic, and I would note that at the beginning of the Biden administration, there was an Executive order issued by the administration prohibiting the use of private prison facilities. I believe now there are roughly 14,000 Federal inmates in those private facilities. Does that Executive order make it easier or harder for you to deal with the overcrowding issues that were raised earlier? Where are you going to put these folks?

Mr. CARVAJAL. Thank you, Senator. I know that there has been much talk about that. We were working on—we continuously assess our population. It has been trending downward. Long before midyear last year, long before even the election or the change in administration, we determined we did not need a certain amount of beds because of the trending downwards. We had allowed two or three contracts to expire. We are down to eight. There are 11,000 in there right now—13,000 beds. We do not need 2,000 of them. Those are expiring.

This was well in play well before the Executive order. We have 55,000 empty beds in our system right now, so we have ample bed space. Part of my responsibility, as you know, is being a good steward of taxpayer money and utilizing our funds appropriately. If we do not need a contract—I am not a political appointee; I am a careerist. I do my job, and I make sure that we appropriately spend taxpayer money. If we do not need that bed space, it has nothing to do with quality. We have partnered with the privates for years because we did rely on them when our count was at 220,000. We simply do not need the beds right now. That may change in the future. Right now the Bureau of Prisons does not need those beds.

It has nothing to do with quality or anything else. We simply do not need the beds.

Senator CORNYN. That is unrelated to the crowding issues that were raised by the Chair and others?

Mr. CARVAJAL. I am not sure what—crowding is down 7 percent systemwide. Part of that was because we did release inmates. Again, through the CARES Act, 24,000 are on home confinement. That does not count normal releases. We have ample bed space.

At one point in time, we were at 220,000. We absolutely needed help from the privates or people might have been in an unsafe environment. At this point in time today, our population is 125,000, and we have 55,000—approximately 55,000 open beds. It is not an issue right now. The best way for me to explain it.

Senator CORNYN. Thank you, Mr. Chairman.

Chair DURBIN. Senator Cornyn, I would just like to clarify. I think that Director Carvajal made this point, too. It is just that it is the nature of the prison system that social distancing is a challenge for them. I was not talking about crowding per se, but in the context of COVID–19. As the Director has mentioned, the total population has gone down dramatically.

Senator CORNYN. I think though when we were talking about crowding and social distancing, those were related issues. I appreciate your answer. Thank you.

Chair DURBIN. Thank you very much. Senator Booker.

Senator BOOKER. Thank you very much, Mr. Chairman. Director, thank you very much for being here. I really appreciate it.

I first just want to express my sympathies. I know that we lost correctional officers to COVID. I see these as line-of-duty deaths. In fact, I did a wonderful bill with Chuck Grassley to make sure that law enforcement officers who die of COVID get the benefits for their families that they should, that there is a presumption of it being a line-of-duty death. I know that your job in normal times, the officers under your command, it is an incredibly difficult, challenging job that they put themselves at risk in service of safety. I just want to express my gratitude and my sympathies for the officers that were lost during this crisis.

The risk assessment tool called ″PATTERN″ that was designed under the FIRST STEP Act for good-time credits, it has been used for home confinement and compassionate release during this pandemic. However, I have got serious concerns about the tool that we have expressed to your office because of the perception of bias that is built into the analysis. It shows sort of a stunning bias in terms of the number of African Americans versus number of whites who seem to qualify under that PATTERN tool.

I am wondering, will the BOP continue to use the risk assessment tool for purposes of home confinement and compassionate release for COVID–19?

Mr. CARVAJAL. Okay, thank you, Senator. Two things.

First off, I mentioned this earlier, and I think it is important to point out we did not develop PATTERN. We assisted in the development through outside researchers and scientists, outside stakeholder input, and this tool showed across race, gender, and ethnicity it had the highest level of predictivity, and that is why it was chosen. I did not choose it. We are the end user. It is the Depart-

ment's tool. It is being reassessed now. There were some adjustments made in January 2020, Senator, to your point. There was a perceived or actual bias against people of color, so they removed two pieces of that. It was the age of first arrest and age of first conviction and voluntary surrender. That was done to remove that bias or perceived bias, and it also created more transparency and fairness.

Again, I did not select that tool. We are the end user. It goes under review every year. There is independent researchers right now. The National Institute of Justice actually does the contracting for that. It is being assessed now. I do not have anything to do with the assessment. We are the end user of that tool. We will continue to use it as long as we are directed to use it.

Senator BOOKER. I know that you all are consulted and the DOJ works with you as they develop and perfect that tool.

Mr. CARVAJAL. Yes.

Senator BOOKER. Your continued engagement on its fairness is——

Mr. CARVAJAL. Our staff are involved in it, Senator. The same thing with the needs assessment. We worked on the needs assessment with outside consultants, outside stakeholders, some of which were leadership of other correctional agencies, so that we get a good input of subject matter experts, and we developed the needs tool. We did not develop it in a vacuum. We do get input from the outside. I was rather shocked at the IRC's report critiquing the tool when they had review of it and input of it also.

Senator BOOKER. Again, it still seems to be imperfect, and I am hoping that—you guys have been very communicative with my office. I am hoping you will continue to take input with us as we try to get something that is ultimately more fair and——

Mr. CARVAJAL. I understand, Senator. Everything can always be improved, and we certainly understand that.

Senator BOOKER. I appreciate your—this dialogue has been really constructive, and can we get back to just the issue of solitary confinement in the age of COVID? For many months we have been looking at Fort Dix's COVID–19 numbers, and they were said to be low because of the BOP's action plan, and the agency was taking steps in that context. We just believe that that is actually not the case, and that courts were buring—buying the argument, but denying compassionate release that people should have gotten.

Again, to give you an example, there was a man named Mr. Marulanda Trujillo who was an individual incarcerated at Fort Dix whose motion for compassionate release was denied. His underlying health conditions were pretty significant: severe coronary heart disease, heart failure, chronic atrial fibrillation, severe mitral valve regurgitation—I am trying to say these things like I am a doctor, but I am not—multi-vessel coronary artery disease, chronic diastolic heart failure, and more.

Mr. Trujillo was later put into quarantine because of his risk of contracting COVID–19, but Fort Dix's quarantine process appears to have spread rather than contained the virus. Tragically, Mr. Trujillo died.

This is to me a matter of not just justice, but it is a matter of compassion and empathy to keep people that are so frail in their

condition, their risk to the population is so low, and so I just want to continue to be engaged with you on these concerns. We know in New Jersey the virus unfortunately is still stubbornly persistent, and I would like to just maybe end with just a question. You know, what steps are you trying to take to continue to ensure that CDC guidance is being used to prevent more unnecessary deaths and not putting people in solitary confinement but really trying to lean into the idea of that word ″compassionate″ as in compassionate release? I know that we need to move on to my colleagues, but I am hoping that you can give me a brief answer now, but maybe we can continue to have dialogue between my office and yours.

Mr. CARVAJAL. Absolutely, Senator. Two things I want to clarify for you. I appreciate the opportunity.

Number one, I cannot necessarily talk about certain cases, but I will tell you in a case such as the one you described, you know, the compassionate part of all that is the emotion, and I certainly understand. All of those deaths weigh on me. If we did not recommend that individual, there was a very good reason. I will give you an example. They may have had a detainer or something of that nature, which is hard criteria. I have to follow the rules, Senator. Sometimes people do not understand. We are not not letting someone out because we do not want to or do not support it. We are following the rules as given to us. I appreciate the ability to clear that up.

Fort Dix—I oversaw Fort Dix as a Regional Director. As you are well aware, at one point there were over 5,000 inmates there. It was the single largest facility in our agency, one facility, two separate, east and west. It is down about 50 percent capacity. I did that based on my working knowledge of that place. Our goal is to get it down because of the points you said. We learned early on that you cannot social distance in an area like that, open barracks. That is one of the things we did.

The other thing I will point out is from day one we get much criticism about how we responded to COVID, but we have been in lockstep with CDC guidance all along. When it changes, it is difficult for us in a correctional environment sometimes to apply that guidance. We do our best to do it. Our medical director of the agency speaks to the CDC on a weekly basis, sometimes daily basis. I want to stress that to you, that everything we do is in lockstep with CDC. In fact, we had input on the guidance that CDC put out for correctional and detention centers. A lot of that came with our collaborative efforts with them.

I do not want anyone to think that we are making this stuff up as we go along. We are consulting with the experts out there and making adjustments. It is very hard to apply sometimes in a correctional environment because security and safety is always going to be first and foremost of everything. Thank you for allowing me to answer that.

Senator BOOKER. Yes, sir, and, again, the communication is really critical, and I appreciate that you have those open lines, open channels.

Mr. CARVAJAL. Yes, sir.

Senator BOOKER. Thank you.

Chair DURBIN. Thank you, Senator Booker. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thank you, Director Carvajal, for your service, and thanks for being here today.

You testified a month or so ago in front of an Appropriations Subcommittee, and in your testimony, when talking about private facilities, you described, as I understand it, those facilities as safe, indicating that BOP does rely on them, and that they meet your safety standards. I was, therefore, a little bit surprised when the Executive order came out and the Executive order relied in part on the conclusion that private contractors ″consistently underperform.″

Based on your testimony, it sounds like that has not been your experience. Can you tell me, is there an inconsistency between that finding that they consistently underperform and your experience with them?

Mr. CARVAJAL. Yes, Senator. Again, I want to stress the point, for the obvious reasons, that I am not a political appointee.

Senator LEE. I understand.

Mr. CARVAJAL. I am a careerist. You know, some of this I have to be careful how I say it because I do not want to think that I am playing any—I am going to tell you based on my experience. We have partnered with the privates. The determination to quit using them was made well before even the election, much less the Executive order came out. To your point, they are held to a statement of work and a contract. If they were underperforming, we would not utilize them. That is the best way for me to say that.

I will follow-up with one piece. We do have a contract, to your example, that we issued an issue of a notice of violation recently because they were not performing to standard. There is a process for that. I will not get into the facility or why. That is the first time I know of that our agency has done that when——

Senator LEE. You are talking about one contractor, I assume.

Mr. CARVAJAL. Yes. My point is that it can happen like anything else. They are either performing or they are not. We hold them to the standard.

Senator LEE. That makes sense. You talked a few minutes ago about other aspects of the order. What about the part dealing with the U.S. Marshals Service? As I understand it, the U.S. Marshals Service relies heavily on private facilities, particularly for pretrial defendants, and that at any given time you might have as many as 62,000 individuals who have got to be able to make their court dates in Federal Courts throughout the country. Only 14 of those defendants are housed in U.S. Bureau of Prisons facilities, meaning that the other 6—86 percent have got to be housed somewhere else.

In light of that order, what will happen? What will happen to that? Does BOP have the resources to deal with those 62,000 U.S. Marshals Service detainees?

Mr. CARVAJAL. Senator, I will certainly defer to the United States Marshals Service to follow-up with that. I do not think it would be appropriate for me to speak about their operation. As I stated earlier, at this point in time, our private facilities hold about 11,000 inmates. We have approximately 55,000 beds available at this point. Yes, we take in inmates from the Marshals Service. We collaboratively work with them all the time, and part of our mission, which we have been scrutinized early on, is movement. The

judiciary did not stop. As you stated, the Marshals take those inmates, and they eventually come to us.

Senator LEE. Right. To be clear, those 55,000 spaces are not necessarily where you need them——

Mr. CARVAJAL. Exactly.

Senator LEE [continuing] for the U.S. Marshals Service detainees.

Mr. CARVAJAL. Correct.

Senator LEE. Got you. Since the Biden administration has begun, illegal border crossings have reached their highest level in about 15 years. It amounts to about 171,000 people crossing over the border in March, and that is just the ones that Border Patrol has apprehended. That is not too far from the entire population of Salt Lake City crossing the southern border in one single month. Salt Lake City is just under 200,000 people.

If private facilities are no longer available for use to detain criminal aliens, what is the likely effect that this massive increase of potential immigrant detainees, what impact is that going to have on BOP?

Mr. CARVAJAL. Senator, we do not make the determination—obviously, the Department of Homeland Security and Immigration and Customs Service, ICE, they oversee that process. We do hold non-U.S. citizens. It is about 17 percent of our population today. It is about 25,000. We work collaboratively with ICE for hearings, and they make the final determination whether someone is going to be deported or not, and we work with them. We do not house inmates traditionally. We have under emergencies for ICE, but we do work with the Marshals Service. I would defer any questions about how that impacts to the Department of Homeland Security.

Senator LEE. Mr. Chair, I have got just a couple more questions. May I finish those? Thank you.

I want to talk about the FIRST STEP Act, something that Senator Durbin and I spent a great deal of time working on over the years and are proud to have passed. That bill includes, among other things, significant programming for inmates. What specific programs and initiatives have you been able to implement under the FIRST STEP Act for prisoner development rehabilitation?

Mr. CARVAJAL. Yes, Senator, we have over 80 evidence-based recidivism-reducing programs or ″productive activities,″ as we call them. They range everything from GED and literacy to secondary education. Vocational training is something big we are trying to expand, career technical education. You know, part of the whole reentry process is giving someone the skills to apply when they get out. All of the trades, that is a focus to try to teach these people a skill so that when they get out, they will be productive.

We are working on expanding our mental health treatment for, as I mentioned earlier, life skills. Some of our inmates need to learn basic life skills.

One of the things that we learned, obviously, through COVID, like the rest of the world, is the use of virtual. Prisons are not built for that, our infrastructure, so we are working on upgrading our infrastructure so that we can implement virtual programming to inmates so that we do not deal with this need to social distance. They can do it from the safety of their cells. We are looking at imple-

menting tablets, things of that nature, but all of those come with security issues that we have to overcome, you know, infrastructure issues that we have to overcome, things like that.

The biggest focus right now, Senator, is hiring staff to deliver the programs so that we can expand the capacity so that more inmates have the opportunity to earn those time credits.

Senator LEE. Finally, during COVID, a lot of Americans have seen their religious liberties impaired in one way or another. Fortunately for our prison population, there are specific protections in RLUIPA, as you know. It says that the Government cannot substantially burden a prisoner's free exercise of religion without satisfying strict scrutiny. What steps have you been taking to ensure that, despite COVID–19 and other challenges you face, incarcerated individuals are still able to exercise their religious liberties?

Mr. CARVAJAL. Very important to the Bureau of Prisons also, Senator, and that is one of the things that, along with our mental health treatment and our medical treatment, we consider that vital, critical. Our ability to provide religious services, although they have been modified somewhat, have always been available, even through COVID. We have worked on getting volunteers back in here lately toward the end now that people are receiving vaccinations and stuff. Obviously, early on it did impact the ability. We rely heavily on volunteers. We have over 11,000 volunteers; the majority of them are religious-based that come in. We serve over 30 congregate faith groups. There are all types of opportunity. That does not count the individuals who choose to practice whatever faith they believe.

That has always been available during COVID, although it has been modified at times. We have had to make adjustments like everything else. It was never not available.

Senator LEE. Thank you very much, Director Carvajal.

Thank you, Mr. Chairman, for your indulgence.

Chair DURBIN. Thanks, Senator Lee. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you for holding this important hearing. Senator Lee—Senator Lee, thank you for your work on this bill. I know I have been at meetings with you and Senator Durbin and Senator Booker through various administrations where you helped to get the FIRST STEP Act passed, and I want to thank you for that.

I guess I will start with that. I know you have had a few questions about this, Director Carvajal. You know, you talked about what you are doing to implement that bill. I have done a lot of work with drug treatment programs. We have a lot of good treatment programs in my State. According to the Independent Review Committee that was actually established as part of the FIRST STEP Act, BOP has not taken sufficient steps, including prior to the pandemic, so I understand the problems with the pandemic—everyone does—but to provide sufficient access to programming. Do you agree with the assessment? Do you think there is something wrong with the assessment?

Mr. CARVAJAL. Yes, I do, Senator. I cannot speak for anything that happened before. I was not in the process of delivering, but from my time forward, I assumed this position about a month before COVID hit, so I would have to defer or follow-up prior to that.

I will tell you that even through COVID we had over 25,000 inmates complete a program for time credits. The IRC works with us. I am familiar with the report and the recommendations they made. We worked with them to do this. We have expanded our programs. We had over 41,000 inmates participate in drug treatment or education last year of some type in the Bureau of Prisons. I am not sure what it is that we have not provided. I would need some specifics.

Senator KLOBUCHAR. Okay. I think it is in the report that they talked about that there was not sufficient access.

Mr. CARVAJAL. They talked about capacity. We have expanded capacity.

Senator KLOBUCHAR. Okay.

Mr. CARVAJAL. As I stated, over 41,000 inmates participated in a drug treatment or education program last year, even through COVID.

Senator KLOBUCHAR. What you are saying is you acted on those assessments?

Mr. CARVAJAL. Yes. From the time I have been in here, we are taking action to meet the FIRST STEP Act.

Senator KLOBUCHAR. Okay. Let us go to the focus, say, on the pandemic and what has happened there. The fight against the pandemic, as we know, continues to put more incarcerated people at risk. The BOP announced the deaths of eight more incarcerated people in March and April 2021. In addition to the vaccine, of course, testing is one of the best ways to control the spread of the virus, but according to a report by the Pandemic Response Accountability Committee, BOP only tested 30 percent of the inmate population between February and August 2020.

Since August 2020, has the percentage of people in BOP facilities who have been tested increased, and do you have that number?

Mr. CARVAJAL. Senator, I know that we have conducted over half a million tests in the Bureau of Prisons of over 150,000 inmates at least. That may include testing some twice, things like that. I follow the guidance of the CDC and my experts, my medical director. Early on—it is probably accurate—testing resources were not available, Senator, or we would have been applying them.

Senator KLOBUCHAR. There are more available now, but I just want to look at——

Mr. CARVAJAL. Yes, there are.

Senator KLOBUCHAR. I want to look at the percentage, and it is okay if you do not have that.

Mr. CARVAJAL. I do not have the exact——

Senator KLOBUCHAR. If you could give it to me later, that would be great, to go from the 30 percent to where you are since August 2020.

Senator KLOBUCHAR. Last June, I asked about testing of asymptomatic inmates, which BOP said it was doing in consultation with CDC guidelines. Do you know what percentage—again, you can put it in writing later—what percentage of BOP tests have been administered to asymptomatic inmates?

Mr. CARVAJAL. I do not know the number, the percentage, Senator, but our strategy with the testing is in lockstep with CDC and correctional systems. I know that that has changed recently, and

we are working on that now. My medical director is actually working on a plan going forward of how we would apply testing if the guidance changes. We have been following the guidance. At one point asymptomatic testing in our environment was not recommended because it was not a good use of resources.

Senator KLOBUCHAR. Yes, I remember. I know this way back because when my husband had COVID, I did not get a test. You know, things have changed over time, because that was over a year ago.

You testified today when Senator Durbin was asking questions that while all BOP staff have been offered the vaccine, only 51 percent of staff have been vaccinated. Is that right?

Mr. CARVAJAL. Yes, ma'am, it is about 51 percent.

Senator KLOBUCHAR. Okay. Why do you think that half of BOP have accepted the vaccine when offered and that half have not? What steps are you taking to combat the vaccine hesitancy?

Mr. CARVAJAL. Senator, we have done a campaign effort obviously encouraging it. Normally, as a leader, I do not do anything before my staff other than when I want to show them by example. This is one of those cases where I myself was vaccinated to encourage others that it was safe.

Senator KLOBUCHAR. Right.

Mr. CARVAJAL. I have done videos. We collaborated with the national union at the local level and the national level to encourage our staff to be vaccinated. It is a personal choice. We respect that. We do not mandate it. It is in line with firefighters, police, critical infrastructure. I have seen everything——

Senator KLOBUCHAR. I know, but 95 percent of Mayo Clinic doctors have been vaccinated because they do not want to give it to their patients.

Mr. CARVAJAL. I understand.

Senator KLOBUCHAR. I keep thinking of the inmates that are there, you know, obviously incarcerated, but they cannot choose whether or not the people that are close to them have decided to have the vaccination. I guess that is something for us to deal with on another day, but to me, you have literally people who are incarcerated and then you have people that have chosen not to get the vaccine. Then I look at the Mayo Clinic number at 95 percent, and so the people that go to the Mayo Clinic, a place I am very proud of in my State, you know, those patients do not have that same risk as the people that are incarcerated.

My last question is about last May I sent you a letter expressing concern about how the BOP is assessing eligibility for home confinement, particularly after we learned about Andrea Circle Bear who died in Federal custody 4 weeks after giving birth while on a ventilator and after testing positive for the coronavirus. We know that weeks later Paul Manafort and Michael Cohen were transferred to home confinement.

I still do not have the data that I think I need to release information on how cases are prioritized and the demographic data of the people who were transferred. Can we get that? What percentage of transfers were denied because of an inmate's PATTERN score, the BOP's risk assessment tool, which Senator Booker mentioned numerous civil rights and legal organizations have warned is likely to

perpetuate racial disparity in decisionmaking? Can we get those percentage releases so we could look at them?

Mr. CARVAJAL. Yes, Senator, I will speak with my staff and follow-up on that. I would like to—since you mentioned the PATTERN score, we have recently expanded the criteria working with the Department. We are now—have now been given the authority to consider low PATTERN scores going forward, where before it was a minimum PATTERN score was the criteria. Working with the Department of Justice, we have increased that to consider low PATTERN scores now. So we are working to get as many people appropriately out, again, within the criteria we are given, Senator.

Senator KLOBUCHAR. All right. Thank you.

Chair DURBIN. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chair. Mr. Carvajal, welcome. Thank you for your service. Thank you for your testimony.

What currently is happening to Bureau of Prisons inmates who are criminal aliens when their terms of incarceration expire? Are they being transferred immediately to DHS for deportation?

Mr. CARVAJAL. Senator, we have immigration hearing programs at 24 of our sites. We work in conjunction with ICE to do hearings. ICE makes the final determination of whether or not they are going to be deported or not. We have a process that works with that. About 17 percent of our population are non-U.S. citizens. Again, ICE, working with them, they determine whether or not they are going to be deported. Typically they make that determination. There is a timeframe. They come and pick them up, and then they are released to them.

Senator CRUZ. What percent of criminal aliens are being deported after they have served their prison time?

Mr. CARVAJAL. Senator, I do not know that information. You would have to ask the Department of Homeland Security. I do not track that system because it does not—it is not within my authority.

Senator CRUZ. The Bureau of Prisons does not keep records as to whether inmates are being released into the American population or being released into the custody of ICE?

Mr. CARVAJAL. Yes, we do, Senator. I just do not have that number in front of me. We could follow-up with you on that.

Senator CRUZ. Okay. I would ask you to please provide those data.

What does the Bureau of Prisons do with inmates to minimize the risk of COVID transmission?

Mr. CARVAJAL. Like we do with everything else, Senator, we educate them. We enforce the rules. We provide face coverings, PPE. We try to spread our population out as appropriate, as we can, put things in place, barriers—the same thing that I would say everyone else is doing to minimize the risk.

Senator CRUZ. You also have reasonable social distancing so that inmates are not crowded in too closely with each other?

Mr. CARVAJAL. That was a challenge because prisons are made to contain people closely, so that has been one of our biggest struggles. We are doing the best we can at this point, and with a reduced population, we have been able to do that. We are redistributing our population. We put COVID target population numbers on

those open-dorm facilities for the reason you said, so that we can allow more space between them. We have expanded the use of non-traditional areas to spread them out.

Senator CRUZ. A couple of weeks ago, I led a delegation of 19 Senators who traveled to the southern border, traveled to the Rio Grande Valley, and we saw firsthand the crisis that is unfolding on our southern border. We visited the Donna tent facility which was constructed to meet this enormous surge of illegal immigration that is happening right now.

The Biden administration had implemented a ban on media seeing what was happening at the Donna facility. It was an unprecedented ban. Prior administrations did not ban the media from going in. The Trump administration allowed the media in. The Obama administration allowed the media in. The Bush administration allowed the media in. The Clinton administration allowed the media in. The Biden administration blocked reporters and cameras from seeing what happened.

The Donna tent facility is this enormous tent city. It has a capacity of 1,000. It was built to hold 1,000 people. Under COVID restrictions, its capacity is 250. The day we visited the Donna facility, there were over 4,200 people crammed into a facility designed to hold 250 people with COVID restrictions.

We saw firsthand the Biden cages. Joe Biden is building more and more cages filled with children, and the cages are more and more full than they have ever been. In these Biden cages, we saw little boys and little girls. They were not 6 feet apart. They were not 3 feet apart. They were not even 3 inches apart. They were lying side by side by side on the floor. They had no beds. They had no cots. They had no masks. On the floor, holding emergency reflective blankets. The rate of COVID positivity in the Donna facility is over 10 percent. What we saw is inhumane. It is a humanitarian crisis. It is a national security crisis. It is a public health crisis. It was preventable. It is the direct consequence of political decisions made by Joe Biden and the Biden administration.

In the Federal Bureau of Prisons, would it be acceptable for Federal prisoners to be housed in cages where they were side by side lying next to each other, packed in in the midst of a pandemic?

Mr. CARVAJAL. Senator, the simple answer to that is no. We are scrutinized often for how we house our people during COVID. As I stated, it is a challenge, but we absolutely treat everyone with dignity and respect. We have standards, and we meet that regardless of what day it is or what is going on.

Senator CRUZ. Is there any Federal Bureau of Prisons facility that would be allowed to continue at 1,700 percent capacity, which is what the Donna tent facility is right now?

Mr. CARVAJAL. Again, Senator, I have never experienced that. I know we have been overcrowded before. We are fortunate at this point that we have ample bed space. I cannot—I do not want to answer that because I do not know the answer. I have not faced that to be able to tell you that.

Senator CRUZ. All of this is continuing, and it is getting worse, and it is getting worse because of political decisions the Biden administration continues making.

Thank you.

Chair DURBIN. Senator Padilla by remote, I believe.

Senator PADILLA. Thank you, Mr. Chairman.

Chair DURBIN. Senator Padilla, I am sorry. Your transmission——

Senator PADILLA. Can you hear me okay?

Chair DURBIN. It did not start off well. Want to try again? You want to try?

Senator PADILLA. Okay. Is that better?

Chair DURBIN. We will see.

Senator PADILLA. I will try to keep it brief. I know several of the issues I wanted to raise today have already been asked, including clarity and a better picture on home confinement and the numbers of violations, et cetera, so I appreciate Senator Grassley raising that earlier in today's hearing.

I will keep my remarks and questions to one specific issue, and that is this: Recently, California Governor Gavin Newsom announced plans to close a State prison in Susanville, California, that has seen a steady decline in population, with COVID–19 being one of the immediate causes of the decline. In closing the prison, it presents the State a tremendous opportunity to take some of the funds that are saved through that closure and invest elsewhere in State priorities while maintaining public safety. These funds could soon be reallocated for a number of projects and programs for the State.

My question for Director Carvajal is this: the Federal prison population has been steadily declining for years, and the fallout from COVID–19 has further reduced the prison population. Have you considered closing any facilities and allowing an opportunity for the Federal Government to more strategically reallocate funds and address staff shortages at the same time?

Mr. CARVAJAL. Senator, that is a great question. The simple answer is we are not there yet. We are working as we speak on realigning and reworking our capacity. As I stated earlier, one of the biggest challenges of the Bureau of Prisons is our aging infrastructure. Over one-third of our facilities are over 50 years old, and 45 percent of them are over 30 years old, which makes it rather challenging. These things deteriorate at a faster rate because of their consistent 365-day use in harsh conditions sometimes.

As we redistribute our population, again, as I stated earlier, part of my responsibility is to make sure that we put taxpayer money to good use. At some point, working through the Department to see what our needs are, there may be recommendations on just that. At this point, I would say the answer is no. It certainly is not anything that we would rule out in the future.

Senator PADILLA. Okay. I would appreciate a commitment for an ongoing conversation on that front. I think we can be more strategic, more effective, more efficient, frankly, in both maintaining public safety but reforming how we not just house but help inmates who do have an opportunity to reenter society do so on a more constructive basis going forward. Thank you for your testimony today.

Chair DURBIN. Thanks, Senator Padilla. Senator Sasse.

Senator SASSE. Thank you, Chair. Director, thanks for being here, and thanks for your forthright manner thus far in the hearing.

I would like to ask some questions related to the Jeffrey Epstein case. Epstein obviously was a wealthy financier who ran a global sex trafficking ring that preyed on scores and scores of young women, and he and his cronies committed some of the most repugnant crimes imaginable against these young women. Yet he was allowed to die in the Bureau's custody despite being a known suicide risk. He deprived—or the failures of the Bureau in that apparent suicide deprived not only all these young women of having their day in court and justice to be done and meted out in a public way, the way we do in this country, but in addition he took with him to his grave all of the additional evidence he had against many of his co-conspirators.

I would like to ask, can you think of any case that approaches the Epstein case in terms of a crisis of public trust for the BOP? Is there any case that rivals it?

Mr. CARVAJAL. No, Senator, I cannot think of one.

Senator SASSE. We are agreed. Thank you for that answer. We have had Directors of the BOP in the past who gave long-winded, meandering answers so they did not have to acknowledge that we needed to have more resources focused in this case. Obviously, it is the most basic duty of the BOP to keep prisoners alive.

I guess as a strategic management matter, does every prisoner merit equal treatment, or do some inmates such as those at the center of the sex trafficking ring where there is lots of evidence that has not yet been gathered against other conspirators, do some prisoners merit special attention and special measures to make sure that their life is not at risk?

Mr. CARVAJAL. Senator, first off, I would like to say that we certainly treat people fairly, but all of our inmates, the cases like you described there, we apply the appropriate amount of security, needs, things like that. They are all special cases. Without getting into the specifics, which I do not think would be appropriate, about how we do certain things for certain inmates, the simple answer is that is part of our job to assess that and to apply the appropriate amount of supervision and security. And if it requires more in some cases, then we should be doing that. If it does not, we should—that is in essence what we do.

Senator SASSE. Thank you. Can you give us a top line on what went wrong in this case? I recognize that we have two guards who are about to go to trial in the case, so I understand that there is an ongoing investigation. We are also over a year into this investigation, and past Directors of the Bureau have not given this Committee any adequate answers, just bureaucratic nonsense. We are well over a year into the investigation. What can you tell us about what went wrong?

Mr. CARVAJAL. Senator, you are probably not going to like my answer, but it is a statement, it is a fact that I cannot discuss it because it is still under investigation. I had my Deputy Director call the Office of Inspector General last week—a week or so ago—to get the status of the investigation. We were told that the investigation is on hold until which time the trial that is set for June, as you mentioned, takes place. I do not control the investigation. That is up to Inspector General Horowitz. You would have to discuss it

with him. It would be inappropriate for me to talk about anything regarding that other than what I have said already.

Senator SASSE. I understand that there will be things that could be used in court about the prosecution of the two guards that cannot be discussed here. I do not understand why you would not be able to explain to us what we know about the security footage, what particularly is missing and how did that happen. These guards are not being investigated for anything related to their destruction of evidence as far as I am aware. I get that there is an investigation that does touch on a prosecution of two individuals, but many more systemic things went wrong than just the things these two guards are being charged with. A year, a year and a half into the investigation, we do not have anything to publicly say to the taxpayers or to these victims yet?

Mr. CARVAJAL. Senator, here is what I would say to that. Again, I cannot speak about something that is under investigation. Here is what I will commit to: After that investigation is over and all of these things have been appropriately done, I will absolutely follow-up with you on anything regarding what we could do better or different. I do not think it would be appropriate for me to get into any of that right now because there is even a chance. It is under litigation. I have been advised not to speak about it, but not because I do not want to, because it is not appropriate right now.

Senator SASSE. Okay. We will definitely keep you to your word on the pledge for the after-action when this trial is over. Can you explain what processes have changed with regard to high-value targets? There are things you have surely learned that we would want to be implementing to make sure that other high-value targets—obviously, every human life is equal in dignity in the eyes of God, but for the purposes of investigation of co-conspirators, we care more about keeping certain prisoners alive because they are necessary to be evidence and testimony in other cases. What processes have we changed to make sure other high-value targets are not able to commit suicide in a situation like this?

Mr. CARVAJAL. Again, Senator, without getting into specifics, because I do not think it would be appropriate in this forum, I will say that we treat people as appropriate for their security needs. First of all, whether or not someone is valuable to a case or whatever is irrelevant to us. That is someone's job to do. We treat everyone—everyone's life of value. We are going to apply the appropriate security. Again, it is something that I do not think is appropriate to speak about now, but I certainly will follow-up with you at which point I can and have that discussion with you.

Senator SASSE. I have given you credit for being forthright up to this point, but I do not think the answer you just gave aligns with where you started. I think you acknowledged at the beginning that certain prisoners are more important for the purposes of public trust and for other public investigations and other prosecutions that are happening.

Ms. Maxwell, Mr. Epstein's chief of staff or co-conspirator, or whatever we want to call her, she is of greater value to public trust than the median inmate in a facility today. Are you telling me that there is nothing additional that is being done to make sure that

she cannot commit suicide relative to just the median prisoner in any of your facilities?

Mr. CARVAJAL. We apply appropriate security. You asked me a question earlier, what have you learned? Again, without getting into specifics, Senator, the answer is we learned lessons from that, and we have made adjustments. It is just not appropriate for me to discuss them, but not for the investigative reasons or whatever. We assess the security and the needs of someone who comes in. You used the words ″high value,″ ″special security needs,″ whatever. We are going to apply the appropriate security that we think we need to do to protect that individual, protect the staff, protect everyone. We do that individually assessing these cases.

Senator SASSE. I have got more I would like to discuss with you about this, but the Chair gets the gavel back, so I will follow-up offline. Thank you, sir.

Mr. CARVAJAL. Yes, sir.

Chair DURBIN. Thank you, Senator Sasse.

Senator Ossoff I believe is by remote. Are you with us, Senator?

Senator OSSOFF. Yes, I am. Thank you, Mr. Chairman. Thank you, Mr. Carvajal, for your presence today.

Will you please provide to the Committee an accounting of the policies, practices, and procedures that are implemented by BOP to ensure the preservation and retention of closed-circuit camera footage and other evidence relevant to investigations?

Mr. CARVAJAL. Yes, Senator, we have policies and procedures to retain that. Some of the issues that we have faced in the past were not necessarily retention. They were that things did not work. It was our aging infrastructure. We have over 24,000 cameras in the Bureau of Prisons, and in the last 18 months, we have upgraded 116 of those systems. It is a resource issue. We are trying to get with the modern era, so to speak. It is a fiberoptics upgrade so that we can go to digital platforms. Some of the issues we have encountered in the past—and certainly I have knowledge of that as a warden in some of these facilities—is that sometimes the cameras were not working when they should have been because things get old and dated. We are committed to replacing those. We are working on that now.

We have always had retention of systems in place. Most of the time when we did not have it, it was because the camera was broken or there was a mechanical issue.

Senator OSSOFF. Thank you, Mr. Carvajal. I would like to just amend the request, and this is a request for the record. I would like you please to provide to the Committee an accounting of those practices and procedures, and also a list of identified incidents where such footage was lost within the last 2 years. Can you do that for us for the record, please?

Mr. CARVAJAL. We will follow-up on that. I do not have that information in front of me, Senator, but we can follow-up——

Senator OSSOFF. Forgive me. I would just like your commitment that you will provide that information to the Committee.

Mr. CARVAJAL. I will take that back to my staff and see what we can get you, Senator.

Senator OSSOFF. Okay. We can certainly compel that disclosure if it is not offered voluntarily, but I hope that we can get that on a voluntary basis.

Can you please also provide to my office and to the Committee an accounting of how many individuals in Georgia are currently serving their sentences on home confinements due to the COVID–19 pandemic?

Mr. CARVAJAL. Yes, Senator. Again, I do not have specifics for that State, but I could certainly follow-up with you on that.

Senator OSSOFF. Thank you. I would be appreciative if you could provide that information to my office and to the Committee.

I would like to touch on this question of COVID–19 vaccines for BOP personnel with a particular focus on USP Atlanta, but also taking a national perspective. What steps are you currently taking to encourage adoption of the vaccine by personnel at USP Atlanta? What do you assess to be the public health benefits and the health benefits within Federal facilities such as USP Atlanta and for the population of incarcerated persons of having greater vaccine adoption by BOP personnel working at those facilities, please?

Mr. CARVAJAL. Senator, we encourage the staff to take it, but also, because it is not mandatory, we respect their right to make a choice, and I have to do that. We believe that the way the vaccine was distributed, now that it is available, that inmates were protected under the umbrella of staff being vaccinated. That is how it was rolled out. That is why staff were chosen first to do that. Once again, we have to respect the rights of an individual to make that choice.

With that said, we encourage it. We educate staff. We try to lead by example. As I mentioned earlier, where I have been vaccinated. I have put out video messages. We collaborate with our union. They do the same to encourage staff. At the end of the day, it is an individual choice.

Senator OSSOFF. Thank you for that, Mr. Carvajal. Would you be willing to work with my team and to communicate with the leadership at USP Atlanta about how we can work collaboratively to encourage vaccine adoption by personnel at USP Atlanta in the interest of the health of employees at the facility as well as those who are incarcerated there?

Mr. CARVAJAL. Yes, Senator, I will.

Senator OSSOFF. Thank you so much. Mr. Carvajal, thank you again for your testimony.

Mr. Chairman, I yield back.

Chair DURBIN. Thank you, Senator Ossoff. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Director, thanks for being here.

A few months ago, DOJ's Office of Legal Counsel took up the question of what happens to prisoners released in home confinement. I would like to return to that, if we could. The opinion there concluded that since some inmates may have substantial time to go before becoming eligible for home confinement under ordinary conditions, the Bureau would have to recall these prisoners to correctional facilities. I think we are talking about 4,000 inmates or more.

Can you give us a sense of what specific monitoring measures are being used to ensure that inmates in home confinement during the pandemic are complying with all of the applicable guidelines?

Mr. CARVAJAL. Yes, Senator. As you stated, currently there are about 4,500 inmates on home confinement specific to the CARES Act. What that simply means is under the current statute, that is 4,500 people that normally would not be out at this point in their incarceration. They are being monitored; 96, I'm sorry, 94 percent of them are monitored by contracts, non-law enforcement. We rely on contract individuals to monitor these. Most of them are done electronically or GPS. The other 4, I'm sorry, 6 percent are monitored by United States probation, Federal location monitoring.

Senator HAWLEY. Has the Bureau been successfully able to track all 4,500? You have not lost track of any inmates during this time?

Mr. CARVAJAL. Senator, we have returned 150 to custody; 21 of that 150 were specifically for—I am sorry, 26 were for escape, for them not being where they were supposed to be. We found them. We brought them back to custody, as we would—would be expected.

Senator HAWLEY. Very good. What steps is the Bureau taking to prepare for the return of all of these inmates to their respective correctional facilities?

Mr. CARVAJAL. The attention we have gotten on that, because of the opinion you stated in November, I believe, that the Department of Justice put that out, we have always—it is part of our mission to prepare for that. The statute currently as written, as I mentioned earlier, home confinement was not intended for long-term placement. There are actually about 2,400 that have a release date over a year. There is a small number over 5 years. It is about 310. Those specifically we would have to address because we would not be in compliance with the statute. Either the statute needs to change, or we need to make exceptions.

The good thing about that right now is that we have time because the President extended the national emergency. We are still covered under the CARES Act.

Our concern, the BOP's concern over this, is simply that we are following the law, Senator. It is not an opinion of who should be out or not. We follow the criteria. We do that fairly. We put them out. We are concerned with making sure that we are actually applying the law as written.

Senator HAWLEY. What challenges, if any, do you anticipate in returning these prisoners to custody at the correctional facilities?

Mr. CARVAJAL. It is not necessarily a challenge, Senator, because we have the ample bed space. We have over 11,000 beds available at our minimum security camps where most of those would go. If they have been in the community, they certainly could function at a minimum security camp. I think more so if that if someone is out there and they are being successful and they are following the rules and they have shown that they can do that, then we certainly want to work toward—the whole point of this is that they are going back to society at some point.

We also respect the fact, though, that these sentences were imposed by the criminal justice system in a court of law, and we respect that. That is why we get so much scrutiny about how we do

this. We simply respect the criminal justice system, and we have a responsibility to make sure that, if a judge imposed a sentence, that sentence is served, but we are working within our authorities.

Senator HAWLEY. Very good. Let me shift topics. Mother Jones magazine reported in 2018 that up to 72 percent of prison technology services, which includes tablets and video visitations, are dominated by just two companies. Those companies are GTL and Securus. That is overall. That is nationwide in the whole prison system. Do you know what that breakdown is for the Federal prison system?

Mr. CARVAJAL. No, Senator, off my head I do not.

Senator HAWLEY. Can you look into that and get back to me with what it is? I am wondering how much communication costs charged by these two companies to prisons and prisoners have increased over the last decade. Do you have a sense of that?

Mr. CARVAJAL. I do not know the specific number for those companies, Senator. I will give you an example, though. The CARES Act called for free phone calls for inmates. They are free to the inmate, but they are not free to us. We spend well over $100 million providing video services and free phone calls, which was not included in the budget. It is a lot of money, but we also believe that that is the right thing to do because we have restricted visitation somewhat. We try to balance it out, but that is the only number off my head. Specific companies, I do not know.

Senator HAWLEY. Here is what I am driving at. I am concerned that there is one or two technology companies who are benefiting disproportionately from this market. In particular, there is also the practice of these same companies introducing special lockdown tablets into prisons, charging inmates by the minute, I believe, to read material that is in the public domain. All of the profit goes to the tech companies. Again, this is public domain material. That seems to me like a bit of a problem. Why should these companies, just a couple of them, be profiting from public domain material due to their monopolies in this market? I will follow-up with you about that for the record, if I could. Thank you for being here today.

Thank you, Mr. Chairman.

Chair DURBIN. Senator Hawley, I want to clarify something because there was an exchange dialogue between Senator Grassley and Mr. Carvajal earlier, and I participated in it, on the question that you raised, and it appears—there are two or three things that I would like to clarify for the record.

It is my understanding that the CARES Act gave BOP authority to place inmates in home confinement. The authority to initially place the inmate in home confinement was limited to the emergency period of the pandemic. As well as it was crafted, the CARES Act did not suggest that the placement would end when the pandemic's emergency period ended. I believe it was silent on that.

Then came an opinion that was handed down—I think you referred to it—in the closing days of the Trump administration, January 15th, Office of Legal Counsel, and they concluded that when the emergency situation ended, then home confinement authority ended. I believe this current Attorney General sees it differently—or may see it differently. Let me make that clear, may see it dif-

ferently. I am going to write him a letter and ask him to clarify where we are on this situation.

I think Mr. Carvajal said as much earlier, that he is looking for some statutory guidance or other guidance of what to do now with this dilemma, and I hope we can clarify it.

Mr. Carvajal, did I misstate the situation?

Mr. CARVAJAL. Senator, I appreciate that. The CARES Act did not change the fundamental statute for home confinement, so we have been placing CARES Act home confinement under that. Again, we stress we want to follow the law. There are no legal impediments to bringing them back, but you are absolutely correct. It did not specify what to do with them. That is simply what we are saying, that we need to be given guidance on what to do with these individuals so that we can follow the law.

Chair DURBIN. Okay. I think that is where we come into play.

Mr. CARVAJAL. Thank you.

Chair DURBIN. By requesting some opinion from the Attorney General, which would be my first effort, and if that does not clarify it to satisfaction, then we will have statutory response after that. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Senator Durbin. Welcome to the Committee, Director Carvajal.

I want to talk a little bit about Danbury. You and I have discussed it before, and I know that you are prepared to talk a little bit about it today. You well know that the way we conquer this pandemic is to put vaccines into people's arms, whether they are in prison or anywhere else and whether they work in prison or anywhere else. In your written testimony, you have stated, ″At this point, all Bureau staff have been offered one of the COVID–19 vaccines, and by April 19 all inmates will be eligible for a vaccine; by mid-May, we anticipate that all inmates will have been provided the opportunity to be vaccinated.″

We know that being offered or eligible for the vaccine is not the same as actually being vaccinated. That is the goal. Can you tell me what percentage of the Bureau of Prisons staff at FCI Danbury have been vaccinated as of today?

Mr. CARVAJAL. Yes, Senator, I do not have the numbers specific to Danbury for vaccinations because it changes daily as we offer the rounds. I know that our total staffing is about 51 percent who have been——

Senator BLUMENTHAL. Fifty-one——

Mr. CARVAJAL. Who have accepted the vaccine. I can follow-up with you on the specific numbers for Danbury, because, again, these things—numbers change daily, and I have 122 facilities, Senator, so I do not have the exact numbers for every one of them.

Senator BLUMENTHAL. I would appreciate your following up and giving me that answer. Do you think you can do it in the next couple of days?

Mr. CARVAJAL. Yes.

Senator BLUMENTHAL. Thank you.

I have the same question. What percentage of the inmates at FCI Danbury have been actually vaccinated?

Mr. CARVAJAL. Again, Senator, I do not have the exact number, or I cannot find it in my notes. The numbers, I will say, though,

are on our public website. They change daily. We update it daily at 3 p.m., and both those numbers——

Senator BLUMENTHAL. I understand they change daily, so I am not asking you to give me that number as of this minute or maybe even as of this day. My understanding is that it is less than 50 percent at this moment; in fact, more like in the low 40s.

Mr. CARVAJAL. The acceptance rate in general is about 51 percent for staff, so it probably mirrors that.

Senator BLUMENTHAL. Let me ask you—and I understand you are talking about the acceptance rate. I am interested in the vaccination rate. What are you doing to make sure that at FCI Danbury people are informed that this vaccine is safe and effective? It is safe and effective, whatever misinformation may be spreading through the prison, and we know that there is a lot of misinformation that spreads in prison. What are you doing and the Bureau of Prisons doing to inform accurately and correctly that this vaccine is safe and effective?

Mr. CARVAJAL. As I stated earlier, Senator, we educate the staff and the inmates. We talk about it. We lead by example. I myself am vaccinated. I did a video out to the staff encouraging them. I did a follow-up video just as general information, encouraging them, looking forward to hopefully the vaccine playing a role in us normalizing our operations. Every location, including Danbury, has a local CEO and union leadership that walk and talk and encourage that.

My staff just provided me the numbers, sir: 162 staff have been vaccinated to date and 323 inmates.

Senator BLUMENTHAL. What percentage is that?

Mr. CARVAJAL. I do not know the percentage off my head, sir.

Senator BLUMENTHAL. You will get back to me with what the percentages are.

Mr. CARVAJAL. Yes, we can.

Senator BLUMENTHAL. What more can be done to increase the acceptance rate?

Mr. CARVAJAL. Senator, we are doing everything that we can within our limits. We have to respect people's rights. I have asked these questions, Senator, you know: Can I make them take the vaccine? The answer is no. It is under an emergency use authorization by the FDA. We have looked at every avenue. Short of compelling someone to do, which I cannot do at this point, we encourage it; we walk and talk. Ultimately, like with everything else, Senator, we have to respect people's rights to either take it or not.

Senator BLUMENTHAL. I respect people's rights, too, and I understand——

Mr. CARVAJAL. Yes, sir.

Senator BLUMENTHAL [continuing]. that you have to respect them, and I commend you for it. If we come to you with some ideas for what more can be done, you would implement them?

Mr. CARVAJAL. Yes, sir, we are always open to improving our operations, and if you have a good idea that will work for us, we are certainly open to listen to it.

Senator BLUMENTHAL. Is the Bureau of Prisons currently offering vaccinations—currently—at FCI Danbury?

Mr. CARVAJAL. We are offering vaccinations as they come in. We do not make the determination of when we get them. That is done through the COVID Therapeutics Operation. We do have a staff member embedded in there. We work with them. As the vaccines roll out, they determine the amount; they determine where they go and how they will be distributed. We simply put them in the arms.

Senator BLUMENTHAL. My understanding is that vaccinations at FCI Danbury were stopped as of late February.

Mr. CARVAJAL. No, I would have to follow-up and find out. If they were, Senator, it was simply because the distribution assigned to that area—again, I have 122 facilities. We do not make the determination. That is done by the Therapeutics Operation. They determine—it is kind of a hub-and-spoke system. They determine the amount that goes out.

Senator BLUMENTHAL. With apologies, I am going to interrupt you because my time is limited. Do you know whether FCI Danbury is currently offering vaccinations? My information is that they ceased doing so as of late February, and my question to you is: When are they going to resume?

Mr. CARVAJAL. If they stopped offering them, Senator, it is because we have not been provided the vaccine to offer them. I assure you that when we get that vaccine through the normal distribution, it is offered. Our wastage is—our goal is zero wastage. A shot goes in an arm. If a staff member does not take it, they get the first; then it goes into an inmate. As it becomes available, we distribute it and we utilize it. It is 60 percent——

Senator BLUMENTHAL. You are saying that the vaccine has not been available at FCI Danbury?

Mr. CARVAJAL. I did not say that, sir.

Senator BLUMENTHAL. All right. Let me give you a chance then to clarify. The vaccine is currently not offered at Danbury, but it would be if you had the vaccine to provide.

Mr. CARVAJAL. As the vaccine becomes available, as designated by the Therapeutic Operation for Danbury, it is absolutely offered. When it comes out distributed to them, we offer it.

Senator BLUMENTHAL. Let me move on, and I appreciate your following up with additional information on FCI Danbury. In January, Senator Murphy, Representative Hayes, and I sent a letter to Warden Easter. She was then warden. We specifically asked her to describe FCI Danbury's current medical staffing and capacity to provide medical care and treatment to incarcerated individuals who become ill due to COVID–19 or other underlying conditions. We were told, and I am quoting, ″FCI Danbury medical staff are actively recruiting in an attempt to fill current vacant positions.″ ″To fill current vacant positions.″ That answer was unresponsive.

Can you tell me, Director, how many open positions there are at FCI Danbury and how long those positions have been open?

Mr. CARVAJAL. Yes, Senator. The good news—you should like this—is that there are at 102 percent staffing, which is extremely rare in this agency. With that said, it is because they have overhired correctional officers. There are three medical vacancies.

Senator BLUMENTHAL. Three medical vacancies.

Mr. CARVAJAL. Yes. Part of the problem there is that we have trouble competing with the local—obviously, there are probably

higher-paying jobs in the area, so that is one of our challenges. Their numbers for COVID are low. As we speak, they have gone down. They have zero positive inmates and two staff inmates. To answer your previous question, because I am not good at math and I did not attempt to do this, but my staff did, thankfully, 60 percent of the staff and 43 percent of the inmates have been vaccinated. I apologize that I could not work that in my head that quick.

Chair DURBIN. Thank you, Senator Blumenthal.

Senator BLUMENTHAL. I appreciate that. Thank you, Mr. Director.

Chair DURBIN. Senator Cotton.

Senator COTTON. Mr. Carvajal, you just revisited with Senator Durbin an exchange you had with Senator Grassley, so I want to revisit it as well about CARES Act home confinement. Under the CARES Act, the BOP received extraordinary authority to put into home confinement prisoners who would otherwise not be eligible for home confinement under prior law. Is that correct?

Mr. CARVAJAL. Yes.

Senator COTTON. Your testimony is that when the emergency period expires, the Bureau no longer has authority to keep those prisoners in home confinement. Is that correct?

Mr. CARVAJAL. What I stated, Senator, is, as written, the statute for home confinement and our policies, it is a reentry transitional program made for 10 percent of their time or 6 months in home confinement, up to 12 months community placement. There are several inmates currently on home confinement under CARES Act who will fall outside that guideline. In order for us to apply the statute appropriately, we need the guidance or it needs to be changed. That is what I was trying to explain.

Senator COTTON. You said you have about 4,500 persons under home confinement who——

Mr. CARVAJAL. Currently on CARES Act.

Senator COTTON. Who would otherwise not be there, but are there because of the CARES Act?

Mr. CARVAJAL. At this point in time in their incarceration, they would not be because of that. It does not mean they would not be eligible at some point.

Senator COTTON. Yes. I understand, too, that some of those who are lawfully under home confinement because of the CARES Act will time into eligibility for home confinement under the prior law, 10 percent of the sentence, 6 months, whichever is lesser. That is correct?

Mr. CARVAJAL. That is correct. About 2,400 of them are over a year, so half, roughly 50 percent. If you extend that out to 18 months, it drops the number to about 1,800, and the reason I say that is we could work with the plan, we are working with DOJ. Part of our recommendation would be working with something like that. Again, I stated earlier we want these people to be successful. They are coming back to our community, obviously, or we would not have put them out. To bring them back for 2 or 3 or 4 months, you know, we would take that into consideration, but, again, we work within the law. All of those things need—we are working with DOJ on recommendations on how to do that should the need arise.

Senator COTTON. Surely for that segment of that population that has years left in their confinement, it cannot be the Bureau's position or the Department's position that they can now stay on home confinement just because they had the good fortune of being released to it during the pandemic.

Mr. CARVAJAL. Well, Senator——

Senator COTTON. Or to use the statutory phrase, ″during the covered emergency period once that period ends.″

Mr. CARVAJAL. I understand, Senator. That is why I am asking the question. That is why we are trying to clarify this. There are roughly 310 with over 5 years who met the criteria. Obviously, they are low risk, or we would not have placed them out. In order to be compliant with statute, we have to address that. That is simply what we are saying.

Senator COTTON. I agree, and I think the statute is perfectly clear on that.

I want to turn to one of the most pernicious problems that I believe you face and that our State and local prisons and jails face as well, and that is the problem of contraband cellphones. The Inspector General has listed this as one of your Bureau's top challenges, something that I have heard about repeatedly from our corrections officers and sheriffs in Arkansas. The reason for that is, of course, that the contraband cellphone enables every other kind of contraband—weapons and drugs and anything else. These cellphones are sometimes used to run massive drug-trafficking rings or order murders, extort people, intimidate witnesses. I will give you just a couple of examples.

One, the family of Joseph Michael Wood, an inmate in a maximum security prison in Alabama, inmates used contraband cellphones to extort his family, demanding money to guarantee his safety. After his family had had enough and refused to answer, Mr. Wood was murdered.

Another example was the family of correctional officer Osvaldo Albarati, who was murdered in a hit directed by inmates through contraband cellphones. His offense in their eyes? He had been performing his job and confiscating contraband cellphones.

I have introduced in the last Congress and I will introduce again soon—and I hope to have bipartisan support—the Cellphone Jamming Reform Act. It would explicitly make clear that State prisons can use targeted jamming to block cellphone signals in prison housing units. I have been disappointed at the telecom companies' resistance to this legislation, but I hope they are going to come to their senses as more of these cases arise.

Could you tell us, Director Carvajal, what steps the Bureau is taking to address this issue and, in particular, pilot programs you have had and what you have learned from those pilot programs?

Mr. CARVAJAL. Yes, thank you, Senator. Pre-COVID, if you would have asked me the question what our number one problem is, we always answer drugs, drones, and cellphones. They are all connected, as you alluded to. It is a severe problem. We appreciate the support from Congress in our budget. We got appropriated approximately $12 million to conduct some pilots. We have two ongoing now. One of them is at FCI Edgefield. It is a pilot for managed access, which is one of the types, and then as you mentioned, jam-

ming, we have a pilot ongoing at USP Atlanta and in part of our Florence complex. We are also going to use some of that funding designated to jam a complex. I do not remember off my head which complex, but that is multiple institutions.

It is very much helpful. The reason we are running multiple pilots on different—again, Federal Government, certainly you are aware that we have to be fair and assess these. That is what the point of the pilot is. It depends on who you talk to, which technology is better or not. We certainly appreciate the support, and it is a severe problem.

Senator COTTON. I will be eager to hear all the results of those pilots and to share them with State officials. I know the telecom industry had advocated for so-called managed access technology.

Mr. CARVAJAL. Yes.

Senator COTTON. I would leave it in the hands of State officials to make their decisions. I want to point out a third case in which a South Carolina prison was using a managed access program, and still a contraband cellphone was used in a blackmail scheme that ultimately resulted in a needless death. To me the easiest way to solve this problem is just to jam these cellphones. I appreciate the work you are doing on this and that you will share with the Congress and share with the State counterparts.

I also want to thank you and all of your officers. I have been at the facility at Forrest City. It is an incredibly difficult job, one of the toughest jobs in some of the worst conditions we have with truly violent offenders, and I want to commend you and all the men and women that work in the Bureau for your service to our country. Thank you.

Mr. CARVAJAL. Thank you.

Chair DURBIN. Director Carvajal, I would like to ask a question about the issue of solitary confinement, and that, of course, is described in many different ways. I believe ″restrictive housing″ is the term that BOP uses. I have heard ″administrative separation.″ There are a number of different categories. It usually means that an inmate is confined to their cell for up to 22 hours a day and given opportunity to leave the cell for exercise or other reasons for maybe 1 or 2 hours. Is that a general definition that fits with BOP guidelines?

Mr. CARVAJAL. Yes, Senator.

Chair DURBIN. I would like to ask you this. First, I am starting with a premise I want to see if you agree with based on a lifetime of service in correctional institutions and your current position. The Department of Justice issued a report in 2016 that noted that the use of restrictive housing ″can cause serious, long-lasting harm″ and should be ″used only as necessary and never as a default situation.″

Do you accept or disagree with that conclusion?

Mr. CARVAJAL. Yes, Senator, it is a bit more difficult because, as you said, I have spent 29 years in the system. It is our jail within the jail. I am not—we have always looked for alternatives and other ways to do it. It should be a last resort. There are people who under circumstances because of behavior or violence, things like that, there is going to be a need for it. We can do better, and we have done that in the Bureau of Prisons. We found alternative

ways. We certainly try to do more out-of-cell programming for the reasons you stated, but let me give you a quick example of the irony here.

Much of the scrutiny we received during COVID was how we were isolating inmates. The word in and of itself, ″isolation,″ it requires us to place someone in a cell by themselves for medical reasons. There is the simple irony that we are being scrutinized for restrictive housing, yet you want us to medically isolate somebody, and then we have to balance that.

There is a difference. We have found alternatives. In fact, your facility in Thompson is serving that purpose. They are called—half of that mission, as you are well aware, Senator, is the special management unit. The other half of that, I am proud to say, is a reintegration housing unit. There are 700 inmates on that side in the reintegration housing unit that would otherwise be in special housing based on their issues, whether it is management or protective custody. So we utilize that facility. Half of that mission is to prevent and keep people as much as possible out of restrictive housing.

We are continuously looking at this. Our numbers have gone down. They were well over 10,000, as you are well aware. I know this is an issue that has been close to you and you monitor it. Prepandemic, we were already dropping them down. In my prior position as Assistant Director, I was supporting Director Hawk Sawyer's vision to lower those numbers, and that is how we came up with the reintegration housing unit.

We are looking at ways to lower that number and alternatives, but it is something serious, and we get inmates out of their cell as much as possible, and we certainly have procedures to check on them routinely and provide them the same services.

Chair DURBIN. Let me add for the record, so my position is clear, that I visited a maximum security prison, State prison, in Illinois and went into an area where there was virtual solitary confinement. They were just a few exceptions. I, eye to eye, spoke to the inmates, and I will never forget one who looked at me like a mild-mannered college professor. I said to him, ″What are you here for?″ He says, ″Originally or since I have been in prison?″ I said, ″Today.″ He said, ″Well, I told them if they put someone in the cell with me, I would kill him, and I did.″ He just said it that matter of fact. I have since explored the case. That is exactly what happened. There is no doubt that that man should be in solitary confinement until such time there is assurance he is not a person that will harm another person with him. I understand that there are people who fit into that category.

I am trying to weigh what the Department of Justice said in 2016 with the cost of solitary confinement to someone who is not in a desperate situation like the one I described.

I hear you saying, ″When we have to deal with social distancing, I am separating some people for medical reasons,″ it sounds like you are saying, ″and I do not want those counted against me in terms of efforts to reduce restrictive housing.″ Is that a fair summary of what you said?

Mr. CARVAJAL. Yes, Senator. I want to reiterate the challenges that we undergo in our environment. You know, certainly if we can

find alternative methods to house somebody, we are always going to do that. Having been a warden many years and working through this, there are always, as you describe, there are always people who are going to have to be there for everyone's safety. Most of those folks have committed some kind of misconduct or something, and we are finding alternative methods to deal with that, as appropriate, and we do that when we can. We are committed to doing that going forward.

Chair DURBIN. I want to thank you for being here, and I am sorry it took 2 years. We should be meeting on a more regular basis. The participation by members of the Committee is an indication that we all have an interest in what you are doing. It is very critically important to the security of America and to proving our humanity in the process. I thank you for being here today.

I am going to conclude the hearing by saying first I have a number of statements that I will include in the record: the testimony of the Sentencing Project; Families Against Mandatory Minimums; Council of Prison Locals; Justice Action Network; Clara LeBeau, the grandmother of Andrea High Bear; Medical Expert Home Vendors, Doctor Home Vendors; and a number of other organizations. Without objection, the statements will be included.

[The statements appear as submission in the record.]

Chair DURBIN. The record will close 1 week from today.

Director Carvajal, thanks for joining us today and for your testimony. A number of members have asked for follow-up information, and I trust you and your staff will comply. I look forward to working with Attorney General Garland, the Justice Department, Bureau of Prisons, and partners like Ranking Member Grassley to confront the many challenges the Bureau of Prisons faces, and the meeting will stand adjourned.

Mr. CARVAJAL. Thank you, Chair.

[Whereupon, at 12:20 p.m., the Committee was adjourned.]

Witness List
Hearing before the
Senate Committee on the Judiciary

"Oversight of the Federal Bureau of Prisons"

Thursday, April 15, 2021
Dirksen Senate Office Building Room 226
10:00 a.m.

Mr. Michael Carvajal
Director
Federal Bureau of Prisons
Washington, D.C.

Department of Justice

STATEMENT OF

MICHAEL D. CARVAJAL
DIRECTOR
FEDERAL BUREAU OF PRISONS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

FOR A HEARING ON

"OVERSIGHT OF THE FEDERAL BUREAU OF PRISONS"

PRESENTED
April 15, 2021

Statement of Michael D. Carvajal
Director, Federal Bureau of Prisons
Before the Committee on the Judiciary
United States Senate
April 15, 2021

Good morning Chairman Durbin, Ranking Member Grassley, and Members of the Committee. You have asked me to come before you today to discuss the Bureau of Prisons' (Bureau's) COVID-19 pandemic response, mission, and operations. It is a privilege to speak today on behalf of the Bureau's over 37,000 staff – corrections professionals who support the agency's critical law enforcement mission. I am committed to ensuring that Bureau staff are guided by our core values of respect, integrity, courage, and correctional excellence.

I was honored to be selected to lead the Bureau and to work alongside the finest corrections professionals in the world. I have spent 29 years in the Bureau following my service in the military, starting as a Correctional Officer, moving up through the ranks of Correctional Services to become a Warden, Regional Director, Assistant Director, and now Director. I was appointed to serve as the Bureau's eleventh Director on February 25, 2020, approximately four weeks before the Bureau's first inmate COVID-19 positive case.

As an agency, and throughout the ranks of its dedicated staff, the Bureau continuously works to ensure the safety of staff, inmates, and surrounding communities; improve the efficiency and effectiveness of our operations; and set new standards in the field of corrections. As we accomplish these goals, we are specifically focused on several priority areas:

- Increasing staffing at our correctional institutions nationwide;
- Implementing and maximizing the use of First Step Act (FSA) authorities to incentivize participation in programming designed to reduce recidivism;
- Strengthening, expanding, and assessing the effectiveness of inmate programs and activities; and
- Responding to and mitigating the risk of COVID-19 infection among inmates, staff, and detainees.

It was a little over a year ago when the Bureau of Prisons took swift and effective action in response to COVID-19, the newly declared global pandemic. Initial challenges presented by the novel coronavirus were addressed by our effective mitigation efforts, ongoing lessons learned, and, more recently, deployment of a vaccination strategy developed in partnership with the Federal Government's COVID Vaccine and Therapeutics Operation, we were able to flatten the curve at hotspots and in institutions nationwide. Since March of last year, we have transferred approximately 24,000 inmates to home confinement, with almost 7,000 transferred directly under the CARES Act, a 250% increase in home confinement placements since the beginning of the pandemic. While the year was marked by challenge and loss, working closely with the Centers for Disease Control and Prevention (CDC) contributed to the extraordinary steps taken to help keep staff, inmates, and our communities safe. Our aggressive vaccination strategy put the Bureau on firm footing to actively and carefully plan for normalizing operations. At this point, all Bureau staff have been offered one of the COVID-19 vaccines, and by April 19 all inmates will be eligible for a vaccine; by mid-May, we anticipate that all inmates will have been provided the opportunity to be vaccinated.

As we have throughout the pandemic, we will continue to engage all operational components to incorporate lessons learned, and despite the modifications undertaken, we continue to find innovative

ways to continue to provide inmate programming to assist them with reentry. I also want to thank each of you for your continued support in providing resources needed to help us manage the pandemic.

COVID-19 Pandemic Planning

Pandemic preparedness is an important aspect of normal operational readiness and planning in the Bureau. The Bureau's management of COVID-19 began with the activation of its existing pandemic plan based on a well-established history of managing and responding to various types of communicable disease outbreaks. We used our pandemic plan as a springboard for our COVID response planning beginning in January of 2020, when our medical leadership began consulting with relevant experts, including the CDC, the U.S. Public Health Service, the Office of Personnel Management (OPM), and the Office of the Vice President. The Bureau issued guidance on COVID-19 to all Clinical Directors and other relevant Health Services staff, six weeks ahead of the declaration of the COVID-19 pandemic and implemented modified operations to mitigate potential transmission of the virus.

The Bureau, drawing on its history of collaboration with the CDC regarding correctional medicine, engaged with the CDC to assist in developing guidance specific to the unique nature of correctional environments. The CDC then published their *Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* on March 23, 2020; the subsequent update on July 14, 2020, was also issued with Bureau input. We have continued this strong collaboration throughout the pandemic and have invited the CDC and public health officials into our facilities to evaluate our work. They have praised our planning and implementation in the wake of a vexing virus.

In an effort to be transparent about our plans, operations, and statistics, the Bureau has published one of the most detailed and thorough COVID pandemic resource areas across all of government on our public website at www.bop.gov/coronavirus. As a further commitment to transparency, the Bureau updates the statistics on this site daily.

Personal Protective Equipment and Other Protective Supplies (PPE)

The Bureau has a longstanding practice of maintaining a supply of Personal Protective Equipment (PPE) and other emergency-related equipment. With the onset of the pandemic, the Bureau had approximately 34 million pieces of PPE on hand. To maintain an adequate supply, we proactively pursued available markets and use of emergency purchasing authorities to acquire and maintain a robust stockpile of PPE. Each institution maintains a detailed inventory of PPE which is also monitored by our Emergency Operations Center in headquarters, to include N95 respirators, surgical masks, cloth face coverings, goggles/face shields, gloves, gowns, hand sanitizer, and cleaning supplies. In addition, each of our six regions maintains a regional stockpile, where items can be shipped in one day to an institution that needs additional PPE.

Initial CDC guidance indicated that face coverings were not recommended. As the science evolved as to how the disease is transmitted, the CDC changed their guidance to recommend face coverings. Within 24 hours of that change, we had provided face coverings to most of our staff and inmates. Within 72 hours, all of our inmates and staff were provided face coverings. To further augment our supplies, 15 Federal Prison Industries (FPI) factories were converted to PPE production for cloth face coverings, gowns, face shields, and hand sanitizer, allowing us to be more self-sustaining

in production areas rather than burdening the public supply chain. Throughout the pandemic, all institutions have had ample PPE, cleaning products, disinfectant, and soap available.

Institution Operations

Inmate Movement

On March 13, 2020, the Bureau implemented a decisive and comprehensive action plan to protect the health of the inmates in our custody, the staff, and the public, including significantly limiting movement in and out of our federal prisons. On average, during the peak of the pandemic, the Bureau maintained a 98% decrease in movement compared to the prior year. There was some limited inmate movement required, including for forensic studies, writs, Interstate Agreements on Detainers, necessary medical and mental health treatment, and transfer to Residential Reentry Centers (RRCs) or home confinement. Some new admissions to the Bureau from the United States Marshals Service (USMS) continued, as legally required. Individuals in the community continue to commit crimes, arrests continue to be made, federal courts continue to adjudicate and sentence offenders, and thus detainees and sentenced inmates continue to enter our system. We are obligated to take these individuals from the courts and cannot control whom the courts place into our system. Working closely with the Department of Justice (Department) and the USMS, we attempted to slow the entrance of some of these new admissions until additional testing capability was acquired.

Screening, Quarantine, and Visitation

With the March 13, 2020 guidance, we implemented enhanced screening of staff and inmates and social distancing procedures to the greatest extent appropriate within the prison environment. Prisons are not designed for social distancing. Nonetheless, we modified our operations to minimize co-mingling and group gatherings. We suspended social visiting, tours, and the admission of volunteers to decrease the flow of individuals from the community into the prison, particularly at the height of the pandemic. Understanding the importance of visitation to the inmate population, we significantly increased telephone minutes for the inmates from 300 to 500 minutes on March 13, 2020, and later, on April 8, 2020, in accordance with the CARES Act, we made telephone calls free for the inmate population. We also made video-visiting, which we have available at our female facilities, free of charge. The impact of this program is clear—telephone minute usage increased by nearly 50% the next day. This program remains in place today.

On March 26, 2020, we implemented enhanced daily monitoring and established quarantine and medical isolation procedures for inmates. Quarantine units were established for new intakes to an institution, those identified as post-exposure to COVID-19, and for all inmates prior to transfer or release from an institution. On March 31, 2020, enhanced modified operations were introduced to further limit movement within the institution such as inmates eating meals in their rooms or cells, or in small groups within housing units, and limiting programmatic offerings to individualized or small-group activities. Despite movement limitations, all critical services have continued. Chaplains and psychologists and medical staff visit inmates in their housing areas when inmates cannot leave that space. On April 7, 2020, to maintain the safety of inmates leaving our facilities and the public, we instituted requirements for all inmates due to be released from the Bureau or transferred to a Residential Reentry Center (RRC) or Home Confinement to be placed on 14-day quarantine prior to their anticipated release or transfer.

Testing

As in communities across the country, Bureau testing protocols have evolved throughout the course of the COVID-19 pandemic based on testing resource availability and guidance provided by the CDC. By June 2020, the Bureau had deployed 250 Abbott ID NOW testing systems, and adequate testing supplies for their use were procured. Protocols were developed so that institutions can test all new inmate intakes to an institution; all inmates with symptoms of COVID-19; inmates suspected of exposure to a COVID case; and any inmate prior to release or transfer from an institution.

For testing of staff, institutions worked with their community health centers and public health entities to locate community testing resources. For those staff unable to locate or utilize community resources, we contracted with a national lab service to provide staff testing. For many months, we have had abundant testing supplies and with that availability, we have been able to institute a full test-in/test-out and 14-day quarantine protocol for any necessary inmate movement. Corresponding with the increase in testing supplies, and recognizing that our Minimum and Low security facilities were more adversely affected by COVID-19 due in large part to their open dormitory style housing units, the Bureau temporarily reduced the target population levels at these types of facilities to allow for more social distancing.

Home Confinement

The Bureau also employed a critical tool in the wake of the pandemic by efficiently screening the inmate population for inmates appropriate for transfer to a Residential Reentry Center (RRC) or Home Confinement. On March 26, 2020 and April 3, 2020, Attorney General Barr issued memoranda to the Bureau directing us to maximize the use of Home Confinement for vulnerable inmates, particularly at institutions that were markedly affected by COVID-19. The CARES Act, signed into law on March 27, 2020, further expanded our ability to place inmates on Home Confinement by lifting the statutory limitations contained in Title 18 U.S.C. § 3624(c)(2) during the course of the pandemic. I am pleased to report that since March 26, 2020, the Bureau has transferred nearly 24,000 inmates to Home Confinement, with almost 7,000 transferred directly pursuant to the authority granted by the CARES Act. Review of medically vulnerable inmates for potential placement in home confinement remains ongoing and will continue for the duration of the pandemic.

While we are always dedicated to the protection of our inmates' health and safety, we must also consider public safety and the risk that an inmate would pose in the community when considering transfer to home confinement. Similarly, we cannot transfer inmates who do not have safe housing for themselves or housing with appropriate safeguards to home confinement. Thus, public safety factors must be considered, and these decisions are made using sound correctional judgement and our many years of experience overseeing such transfers.

Vaccination

As vaccines became available, in close coordination with the CDC and the Federal Government's COVID Vaccine and Therapeutics Operation (formerly known as Operation Warp Speed), the Bureau pursued an aggressive strategy to administer the vaccine in all institutions. On January 28, 2021, the Bureau was presented a certificate of achievement recognizing the agency for leading all jurisdictions and Federal entities in its rate of vaccination utilization, having the highest percentage of vaccines administered per doses allocated across all of the United States. At that time, COVID-19 vaccines had been delivered to staff and inmates at more than half of our correctional facilities across the country. To date, all Bureau staff have been offered the vaccine and by mid-May,

all inmates will have been offered the opportunity to be vaccinated.

The Bureau is committed to making the vaccine available to all staff and inmates who wish to receive it as quickly as possible; all personnel are eligible to receive a vaccination and all inmates will be eligible as of April 19. Recently, we achieved a milestone in the distribution and administration of COVID-19 vaccines, exceeding 100,000 total doses administered to staff and inmates. Increased allocations of the vaccine to the Bureau have allowed us to vaccinate staff and inmates much more quickly than initial estimates had suggested.

In addition to vaccinations within the agency, the Bureau has also assisted with administering COVID-19 vaccinations to other DOJ agency personnel. We worked with DOJ leadership in planning two vaccination clinics, one in Miami and one in New York, for vaccination of DOJ personnel. Vaccinated personnel included members of the DEA, FBI, and other law enforcement components of the DOJ. For administration of the Janssen vaccine, a small clinical team was sent for one week to each site. Through these clinics, more than 1,100 law enforcement personnel were vaccinated.

Current Status

The Bureau manages the health and treatment of approximately 140,000 inmates in Bureau facilities and RRCs. As of April 6, 2021, the Bureau had 406 positive COVID-19 inmate cases and 47,227 inmates recovered in our federal prisons, while there were 51 positive cases in our RRCs and 55 positive cases in home confinement. With respect to staff, there were 1,243 positive cases and 5,532 recovered cases. Sadly, there have been 4 staff deaths and 230 inmate deaths from COVID-19. The vast majority of our inmates who test positive are asymptomatic or only mildly ill. The number of hospitalized inmates – those who are significantly ill – is much smaller. The number of hospitalized inmates is on a significant downward trajectory, suggesting that our efforts to minimize new cases are becoming more effective.

Moving Forward

COVID-19 numbers have dropped significantly across nearly all institutions even as inmate movement has resumed, and despite communities re-opening. We are taking steps to normalize operations in stages as safety and security permit, including inmate movement, food service, and ramping up programing in all facilities. All of these efforts will have a positive impact on staff, inmates, and Bureau operations. And while it has been an extraordinary year with many challenges, we continue to look forward and advance our priorities.

Staffing

A key priority moving forward is fully staffing our institutions. We have launched a new hiring initiative with a goal to fill 100% of our authorized positions at all of our institutions nationwide. We are also assessing our staffing guidelines and updating the way we calculate bed space and institution capacity to optimize efficient and effective operations at our facilities across the agency. Our review will modernize our staffing plans to maximize use of authorized positions with flexibility based on security level, number of staff, physical layout of facilities, and care level.

In the last calendar year, we have hired over 3,800 staff and are continuing a full-court press for staffing up. In the past 8 weeks, we have hired almost 500 new staff. We are utilizing several recruitment incentives, including one for our own staff, to help bring great candidates on board. It is impressive to see our staff step up and be a part of this important effort. In addition, a 5% retention

incentive was offered to all staff eligible to retire in 2019 to encourage experienced staff to remain with the agency past their eligibility date to help maintain our staffing levels.

To attempt to address our medical staffing challenges, the Bureau recently expanded the coverage of its existing Title 38 special pay authority to include not only psychiatrists, but all employed physicians and dentists. Title 38 pay authority permits the payment of salaries that significantly exceed the Title 5 pay cap and permits us to compete with other federal agencies with medical personnel, as well as private sector salaries in certain locations.

The Bureau's hiring initiative, incentives, and innovative approaches for monitoring institution bed capacity will provide clarity and transparency and have a significant impact on Bureau planning and staffing efforts moving forward.

First Step Act

Despite the pandemic, the Bureau is on track to meet the requirements of the First Step Act (FSA). While the global pandemic certainly impacted the delivery of FSA programs in institutions, critical services such as mental health care, crisis intervention, and religious services have continued unabated throughout the pandemic. As we have learned more about virus mitigation strategies and begun the process of vaccinating staff and inmates, we have been able to resume much of our programming. As of April 1, 2021, over 49,000 inmates were enrolled in Evidence-Based Recidivism Reduction (EBRR) Programs and Productive Activities (PA). With respect to inmate eligibility for FSA Time Credit, of approximately 124,000 inmates reviewed for eligibility, approximately 50% are eligible.

The Bureau offers approximately 80 EBRR and PA programs to meet the individual needs of each inmate. The most robust of our programs are Cognitive Behavioral Therapy (CBT) interventions addressing mental health and substance use disorders, anger management, and criminal cognitions. Literacy programs range from basic adult education through high school equivalency to post-secondary college courses. There are also approximately 200 Career Technical Education programs widely available, and reentry-focused programs, such as parenting, offered at all sites. Because the agency has such a large menu of programs covering a variety of need areas, the Bureau has put forth considerable effort to ensure adequate capacity in our existing programs, and has been able to give access to more inmates by hiring staff into the positions authorized by Congress under FSA.

We have also worked toward program fidelity, standardizing service delivery so that every program comports with the evidence that supports its use. We identified gaps in services for women and were able to enhance our offerings. We now offer more than 20 programs designed specifically for women in addition to our gender-neutral offerings, and we created new institution-based positions to deliver these important programs. We also offer specialized programming for veterans or persons living with disabilities. Other innovations are underway to enhance planning and programs such as Life Skills Laboratories, to teach basic skills to inmates with the greatest needs; providing STEM career technical education for female offenders; and modernizing the inmate education platform to include the use of tablets to make more programs accessible. We are working to fund partnerships with external research organizations so that we can show the valuable effect our programs have on the lives of inmates and their communities.

Staffing is a key component to successful implementation of the FSA. We have the ability to develop and implement curriculum, but require staff to deliver it. Staff positions allotted under the FSA have already been utilized to hire credentialed human service professionals and expand capacity

in women's programs, drug treatment, and vocational training. We are committed to maximizing the use of FSA funds for position allotments to ensure all interested and eligible inmates are able to benefit from our many programs.

Strengthening Management of Staff and Resources

Finally, a key priority area that we are squarely focused on is our work with the Government Accountability Office (GAO) related to its audits of agency operations. In an effort to accelerate this work, I established a cross-agency Task Force to work towards resolving all open GAO recommendations in a timely manner. The Task Force's mission also includes assessing current business practices that have caused the Bureau to experience challenges in responding to and preparing for external audits and reviews; making suggestions to improve our process for responding to external audits; and making recommendations to leadership regarding strategic management approaches.

We are also engaging external organizations to assist us in assessing our operations across a range of areas to further these goals. The Bureau is seeking external resources to, among other tasks, assist in developing and implementing a reliable method for calculating staffing levels and assist with analyzing data to help identify and address the causes and potential impacts of staffing challenges on staff and inmates. We are also pursuing outside organizations to assist in aggregating and analyzing data to assess FSA implementation goals. We will be looking at developing a stronger data analytics effort, and we will intensify monitoring and evaluation of programs and spending.

Conclusion

Chairman Durbin, Ranking Member Grassley, and Members of the Committee, I am honored to speak on behalf of the Bureau, its staff in our 122 institutions, and our administrative offices nationwide. Our mission is extremely challenging, but critical to the safety and security of the public, our staff, and the inmates in our facilities. I thank you for the opportunity to speak with you today, and for your support as we move forward successfully in these critical priority areas.

Chairman Durbin, Ranking Member Grassley, and Members of the Committee, this concludes my formal statement.

Questions for the Record from Senator Charles E. Grassley
U.S. Senate Committee on the Judiciary
"Oversight of the Federal Bureau of Prisons"
Submitted on April 21, 2021

Director Michael Carvajal

1. The Independent Review Committee (IRC) is comprised of outside experts and assists in overseeing *First Step Act* implementation efforts. They issued a report in December of 2020, titled "Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act (FSA) of 2018 (P.L. 115-391)."[1] You noted your familiarity with the IRC and this Report in your testimony before the Judiciary Committee on April 15, 2021. In this report, the IRC outlined the following on *First Step Act* implementation:
   - Risk and Needs Assessment System, PATTERN:
     - "PATTERN itself is not a complete 'risk *and* needs assessment' tool; it primarily measures the likelihood of post-release recidivism."[2]
     - "At present, the information necessary to complete such truly careful needs assessments is inconsistently available to frontline BOP personnel, and much of that information is not recorded in or accessible through the Bureau's management information systems. Responsible BOP staff continue to rely heavily on individual inmates' pre-trial sentencing reports (which are of widely varying quality and detail), information self-reported by inmates, documentation in Bureau case-management reports, and results from facility-specific screenings to identify needs. ***And in many if not most instances, they have little means to determine the extent of an identified need, which is crucial for purposes of referral to appropriately tailored inmate programming***." [emphasis added][3]
   - Prison Programming:
     - "The IRC cannot overstate how strongly it believes that a much more robust evidentiary basis must be established for determinations about: a) which programs BOP should continue to offer, reform, replace, or add; b) which should be designated as ETC-qualifying EBRPs or PAs—and exactly why; c) which programs "work" to address inmate criminogenic needs while in custody; and d) what longer-term recidivism-reduction effects these programs have on participating inmates after they have been released to the community."[4]
     - "[E]ven a full return to pre-COVID BOP programming levels will not be sufficient to make available 'evidence-based recidivism reduction programs

[1] *See* Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act (FSA) of 2018 (P.L. 115-391), Dec. 21, 2020, Available at: https://firststepact-irc.org/wp-content/uploads/2020/12/IRC-FSA-Title-I-Section-107g-Report-12-21-20.pdf.
[2] *Id.* at 4.
[3] *Id.*
[4] *Id.* at 5.

and productive activities for all eligible prisoners,' in Bureau custody by January 2022, as . . . the text of the [First Step Act] Title I requires."[5]
- About 30.8% of earned time credit eligible prisoners and 18.8% of earned time credit ineligible prisoners participated in programming during 2020.[6]

a. Do you agree or disagree with the IRC's assessment on the above points?
b. Please explain how the Bureau of Prisons (BOP) has acted on these assessments in efforts to implement the *First Step Act*.

2. In the IRC's December 2020 Report, it noted that the BOP needs to lead *First Step Act* implementation efforts in a more comprehensive way, recommending that implementation teams be set up at each facility to lead and report on the status of implementation at the facility level.[7]
    a. What are your thoughts on this suggestion?

3. The *First Step Act* requires the BOP to provide programming for prisoners that will reduce recidivism. COVID-19 has impacted inmate participation in programs, and has also hampered volunteer access to BOP facilities to hold programs.
    a. How will BOP ensure that it gives opportunities for faith-based groups to provide programming to prisoners, even during the pandemic, since BOP has yet to resume complete volunteering access to BOP facilities?

4. Please outline BOP's exact plans for implementing the *First Step Act* as if COVID-19 no longer impacted operations in BOP facilities, including – but not limited to – increasing prison programming and ensuring inmates' earned time credits.

5. The *First Step Act* bars the shackling of female prisoners during pregnancy and childbirth.
    a. To what extent has the BOP implemented this requirement of the *First Step Act*?
    b. Have there been any challenges to its implementation?

6. There are two exceptions to the *First Step Act*'s ban on shackling pregnant prisoners: prisoners may be restrained if they present an immediate flight risk or if they pose an immediate risk of harm, or if a healthcare professional finds the use of restraints to be appropriate.
    a. In what percentage of cases has the BOP invoked either of these exceptions?
    b. Since the *First Step Act*'s passage, on how many occasions has a healthcare professional submitted a medical request, on a prisoner's behalf, that a correctional officer refrain from using restraints on a prisoner or remove restraints used on the prisoner in a BOP facility?

[5] *Id.* at 2 – 3.
[6] *Id.* at 2.
[7] *Id.* at 6.

7. Does BOP collect data and/or statistics on cost-saving metrics associated with releasing inmates from secured detention in a BOP facility? If so, please share these data and/or statistics.

8. When an individual is released on probation or supervised release, who is responsible for ensuring that the individual has access to adequate housing, mental health resources, medical care, and other needs?

9. Does BOP provide U.S. Probation and Pretrial Services with information about an individual's housing, mental health counseling, substance abuse, and other needs prior to release on probation or supervised release?

Committee on the Judiciary Hearing on
"Oversight of the Federal Bureau of Prisons"
Questions for the Record
April 22, 2021

QUESTIONS FROM SENATOR FEINSTEIN

Questions for Michael Carvajal, Director, Federal Bureau of Prisons (BOP)

1. At the hearing, you described some of the extraordinary measures that had to be taken at Federal Correctional Institution (FCI) Terminal Island, where some seventy percent of the inmate population has tested positive for COVID-19. (OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE, Pandemic Response Report No. 21-1025, *Remote Inspection of Federal Correctional Institution Terminal Island* at iii (Jan. 2021), *available at* https://oig.justice.gov/sites/default/files/reports/21-025.pdf) Among other things, you mentioned having to house inmates in tents within the facility's perimeter. As you put it, "COVID was new to everybody" last year, and you "wish[ed] [you] knew then what [you] know now about it."

    a. **What policies, procedures, practices, and protocols does the BOP have in place now that it did not prior to the COVID-19 outbreak that would allow it to protect the health of its inmates if another pandemic with similar attributes (e.g., a new, more virulent strand of COVID-19) were to arise?**

    b. **Has the BOP documented in writing the lessons learned from the COVID-19 pandemic to inform future decision-making? If so, please provide this document. If not, why not?**

2. I have received several complaints about the quality of the medical care provided at FCI Lompoc during the pandemic as well as its compliance with preventive measures designed to protect the inmate population from COVID-19. Among other things, I have heard that inmates at Lompoc with COVID-19 are denied palliative care and that social distancing is not maintained there.

    a. **Do the medical personnel at FCI Lompoc, and at BOP facilities in general, provide palliative care to inmates with COVID-19? If so, what policies, procedures, practices, or protocols govern their provision of such care? If not, why not?**

    b. **What measures does the BOP have in place to measure compliance with its current policies, procedures, practices, and protocols concerning the pandemic, and how does it hold facilities and employees accountable for any failures in this regard?**

3. You testified that approximately 24,000 inmates have been transferred to home confinement and that the BOP has "reviewed everyone who is eligible" and has a

COVID-19 risk factor. You further stated that, if you "had to make a guess," you would "say 50 to 75 percent" of eligible inmates "have been reviewed at this point." You also mentioned that many inmates were categorically disqualified from placement home confinement based on "four criteria."

a. **As of today, how many inmates eligible for home confinement has the BOP reviewed for placement in home confinement? Please provide your response both in raw numbers and as a percentage of the overall inmate population.**

b. **Of that total, how many inmates had at least one COVID-19 risk factor, and how many did not? Please provide your response both in raw numbers and as a percentage of the overall number of inmates eligible for home confinement.**

c. **Assuming less than 100 percent of inmates eligible for home confinement have not been reviewed for placement yet, when do you expect to have reviewed every eligible inmate for placement in home confinement (understanding that inmates will become newly-eligible for home confinement over time)?**

d. **What criteria did the BOP use to categorically disqualify certain inmates from home confinement? Please be specific.**

4. In your written statement and at the hearing, you stated that "[a]t this point, all Bureau staff have been offered one of the COVID-19 vaccines" and that you expect all inmates to have been provided the opportunity to be vaccinated "by mid-May," but that you could not force employees or inmates to take one of the vaccines because they have received only an emergency use authorization from the U.S. Food and Drug Administration. At the hearing, you testified that at least "a little bit over 51 percent" of the BOP workforce have taken a COVID-19 vaccine and that the BOP has "done a campaign effort" in support of vaccination involving "video messages," but that the BOP does not track "staff . . . who received the vaccine on their own through their own care provider."

a. **Do you require or encourage BOP employees to report whether they have received a COVID-19 vaccine from their own health care provider? If not, why not?**

b. **What, if any, additional protections beyond those generally offered to inmates have you provided for inmates who have not yet been offered the vaccine and are forced to interact with employees who have not been vaccinated on a regular basis?**

5. You explained in your written statement that "15 Federal Prison Industries . . . factories were converted to [personal protective equipment (PPE)] production for cloth face

coverings, gowns, face shields, and hand sanitizer," which allowed the BOP "to be more self-sustaining in production areas rather than burdening the public supply chain."

a. **How many BOP employees have been issued only cloth face coverings, and how many have been issued N95, KN95, or other types of face coverings providing equivalent protections? Please provide your response in both total numbers and as a percentage of the BOP workforce and specify the different types of face coverings received by BOP employees.**

b. **How many inmates in BOP custody have been issued only cloth face coverings, and how many have been issued N95 or KN95 face coverings? Please provide your response in both total numbers and as a percentage of the BOP inmate population and specify the different types of face coverings received by inmates.**

6. As we have learned more about the COVID-19 pandemic, it has become increasingly clear that its effects on the health of those infected with the virus can be felt for weeks and even months after the first wave of symptoms abate. These health effects are no less serious, and require no lesser an amount of medical attention, than the immediate symptoms many people suffer.

a. **How many inmates in BOP custody have developed long-term medical effects from COVID-19? Please provide your response in both total numbers and as a percentage of the BOP inmate population.**

b. **What policies, plans, practices, procedures, or protocols do you have in place to treat inmates with lasting medical effects from COVID-19? Please be specific and provide any documentation in support of these policies, plans, practices, procedures, or protocols.**

7. According to a recent Government Accountability Office report, in November of 2020, there were only 37,000 staff responsible for the 125,000 inmates in BOP custody. (GOVERNMENT ACCOUNTABILITY OFFICE, Report No. GAO-21-123, *Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs* at 1 (Feb. 2021), *available at* https://www.gao.gov/assets/gao-21-123.pdf) You said in your written statement and reiterated at the hearing that the BOP has "launched a new hiring initiative" to fill 100 percent of its "authorized positions at all [BOP] institutions nationwide."

a. **When do you expect to have filled all or nearly all of the vacant positions within BOP institutions nationwide?**

b. **In addition to offering a five percent retention incentive for employees eligible to retire in 2019 and expanding its use of its special pay authority under title 38 of the U.S. Code to include all employed physicians and**

dentists, what, if any, actions is the BOP taking in support of its hiring initiative?

c. What, if any, new authorities would be helpful to the BOP in pursuing its hiring initiative?

8. The Department of Justice's Inspector General reported in 2018 that BOP facilities were ill-equipped to address the needs of female inmates—in particular, with respect to trauma treatment, pregnancy programming, and hygiene. (OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE, *Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population*, at i (Sept. 2018), *available at* https://www.gao.gov/assets/gao-21-123.pdf)

a. Since the release of the Inspector General's report, what steps has the BOP taken to address these issues?

b. Does trauma treatment (regardless of the gender of the recipient) improve inmate behavior overall? Does it reduce recidivism? Please explain the basis for your answers.

9. Your written statement also references an effort to "develop[] and implement[] a reliable method for calculating staffing levels and . . . identify and address the causes and potential impacts of staffing challenges on staff and inmates."

a. In the absence of a "reliable method for calculating staffing levels," how does the BOP do so today?

b. What is the projected or aspirational timeline for developing a method for calculating staffing levels?

c. What is the projected or aspirational timeline for developing a method to identify and address the causes and potential impacts of staffing challenges on staff and inmates?

Senate Judiciary Committee Hearing
"Oversight of the Federal Bureau of Prisons"
Questions for the Record
for Michael Carvajal, Director, Federal Bureau of Prisons
Submitted April 22, 2021

QUESTIONS FROM SENATOR WHITEHOUSE

1. Effective prison programming can help prepare people for reentry and reduce recidivism. As you testified before the House Judiciary Committee in December 2020:

   > [Residential Drug Abuse Program] participants were 16 percent less likely to recidivate and 15 percent less likely to have a relapse in their substance use disorder within three years after release. Inmates who participate in vocational or occupational training were 33 percent less likely to recidivate, and inmates who participate in education programs were 16 percent less likely to recidivate.

   Congress recognized the power of prison programming to reduce recidivism when it passed the First Step Act, which requires the Bureau of Prisons (BOP) to make evidence-based recidivism reduction programs and productive activities available to all eligible people in custody by January 2022.

   a. The Independent Review Committee (IRC) created by the First Step Act found that "during the first nine months of [2020], COVID-mitigation efforts undertaken by the Department of Justice (DOJ) and BOP seriously interrupted or curtailed rehabilitative programming in federal prisons. . . . 20 of 29 BOP-designated Evidence-Based Recidivism Reduction Programs . . . have been 'highly impacted' by the virus, including 'some that have been shut down entirely since the outbreak began.'"[1]
      i. What, if any, steps did BOP take to mitigate the effects of COVID-19 on programming (for example, by allowing access to virtual education or treatment)?
      ii. What plans does BOP have to resume programming in the coming months?
      iii. When does BOP anticipate programming will return to pre-COVID-19 levels?
   b. The IRC found that even a full return to pre-COVID-19 BOP programming levels will not be sufficient to make evidence-based recidivism reduction programs and productive activities available to all eligible people in custody by January 2022, as the First Step Act requires. What steps is BOP taking to increase its program offerings and comply with the First Step Act?

2. The Department of Justice advised the IRC that it had discovered "technical issues" in the early administration and scoring of its risk assessment system, PATTERN, through the instrument's revalidation process.[2] The IRC encouraged DOJ to "release a detailed report on

[1] Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act (FSA) of 2018 (P.L. 115-391), at 1 (Dec. 21, 2020), *available at* https://firststepact-irc.org/wp-content/uploads/2020/12/IRC-FSA-Title-I-Section-107g-Report-12-21-20.pdf.
[2] *Id.* at 3.

this matter—including any effect it may have had on inmate risk classifications, and steps taken to address misclassifications—as quickly as possible."[3]

a. What "technical issues" did DOJ discover?
b. How many people did these "technical issues" affect? How did they affect them?
c. What steps have BOP and DOJ taken to correct these issues?
d. Will DOJ commit to releasing a detailed report on these technical issues?

3. In 2016, Rhode Island began offering all three medications approved by the FDA for opioid use disorder treatment to individuals who are incarcerated. The state subsequently saw a 61 percent reduction in overdose deaths among the targeted population. The First Step Act built on this success by requiring BOP to assess its capacity to treat opioid abuse through evidence-based programs, including medication-assisted treatment (MAT), and to develop a plan to expand access to treatment.

   In the written testimony he submitted for this hearing, Dr. Homer Venters, a correctional health expert who audited several BOP facilities, states that there is still "an almost total lack of access to methadone and suboxone in BOP facilities. . . . Despite public statements acknowledging the need to expand access to these lifesaving medications, a recent GAO report identified that almost none of the people who would qualify to have received them have."

   a. In December 2020, you testified that BOP has one opioid treatment program at MCC New York and is working to start three more at FMC Butner, North Carolina; FMC Springfield, Illinois; and FMC Carswell, Texas.
      i. Do these facilities have the capacity to serve everyone in the federal system with an opioid addiction?
      ii. Do all of those facilities offer MAT? If so, how many offer all three MAT drugs approved for opioid use disorder?
      iii. What plans does BOP have to expand the number of opioid treatment programs and the number of MAT drugs offered at those programs?
   b. As of September 2020, BOP had screened approximately 7,000 (of over 150,000) people in custody, but only 409 have enrolled in MAT.[4] How does BOP decide who to screen for MAT? Why more people were not screened?
   c. What percentage of people who are clinically eligible for receiving methadone or suboxone have been offered those drugs? How many are being treated with those drugs?
   d. What steps does BOP take to connect people in custody to a provider who can continue their MAT once they leave prison?

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[3] *Id.*
[4] The Attorney General's First Step Act Section 3634 Annual Report 10 (Dec. 2020), https://www.bop.gov/inmates/fsa/docs/20201221_fsa_section_3634_report.pdf.

Senate Judiciary Committee
"Oversight of the Federal Bureau of Prisons"
Questions for the Record
Senator Amy Klobuchar

Questions for Michael Carvajal, Director of the Bureau of Prisons, Department of Justice
As we discussed at the hearing, please provide answers to the following questions:

- Has the percentage of incarcerated people who have been tested for COVID-19 increased since August 2020?
- What percentage of those tests were administered to asymptomatic inmates?
- Can you provide the demographic data for the inmates that have been transferred to home confinement since March 2020?
- What percentage of home confinement transfers were denied because of an inmate's PATTERN (Prisoner Assessment Tool Targeting Estimated Risk and Needs) score?

Oversight of the Federal Bureau of Prisons

Hearing before the Senate Committee on the Judiciary

April 15, 2021

QUESTIONS FROM SENATOR BLUMENTHAL

Questions for Director Carvajal

1. Please identify the Warden of FCI Danbury as of the date on which responses to these Questions For the Record are submitted. In addition—

   a. Please list the date on which the Warden was hired.

   b. Please list the date on which the previous Warden of FCI Danbury, Diane Easter, vacated the position and please identify why Warden Easter vacated the position.

   c. Please identify all the individuals who served as Acting Warden between when the position of Warden of FCI Danbury became available and the current Warden was hired, including their length of service as Acting Warden.

2. For each of the following positions, please state the number of vacancies at FCI Danbury in three-month intervals starting on January 1, 2019 to the date on which responses to these Questions For the Record are submitted. For each individual vacancy listed in each three-month interval, please state how long the position has been vacant, the specific steps the Bureau of Prisons (BOP) took (or is taking) to fill it, and the expected hiring timeline.

   a. Doctors;

   b. Nurses, including Advanced Practice Registered Nurses, Nurse Practitioners, and Registered Nurses;

   c. Physician Assistants; and,

   d. Emergency Medical Technicians.

3. Please describe FCI Danbury's medical staffing and capacity (for the time periods listed below) to provide medical care or treatment to incarcerated individuals who have become ill due to COVID-19 or other underlying conditions, including how often medical staff monitors incarcerated individuals who have become ill, when medical staff intervenes to provide care or treatment to incarcerated individuals who have become ill, and what kind of care or treatment FCI Danbury medical staff is prepared to provide to incarcerated individuals who have become ill.

   a. Prior to March 2020.

b. Between March 2020 and April 2021.

c. Between April 2021 and the date on which responses to these Questions For the Record are submitted.

4. Please describe the circumstances in which a Medical Asset Support Team (MAST) would be deployed to FCI Danbury. In addition, please state whether BOP has ever assessed the need to deploy a MAST to FCI Danbury.

5. Please describe the current vaccination procedures at FCI Danbury for both incarcerated individuals and staff, including offers, prioritization, distribution, education, and what specific steps BOP is taking to encourage as close to 100% vaccine acceptance among incarcerated individuals and staff both at FCI Danbury, specifically, and across all federal correctional institutions.

6. Has the CDC's *Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* has been updated since July 2020?

a. If yes, please describe the updates that have been made. If no, please explain why no changes have been made.

b. Please explain how the CDC's guidance for correctional and detention facilities differs from CDC guidance for the general public, with specific reference to: social distancing, isolation, and quarantine procedures, testing practices, and vaccination protocols.

7. Please describe what FCI Danbury is doing to ensure that incarcerated individuals have access to specialty consultations and outside medical procedures. In addition, please state the number of incarcerated individuals at FCI Danbury who have sought a specialty consultation or outside medical procedure in three-month intervals from January 1, 2019 to the date on which responses to these Questions For the Record are submitted. For each request per three-month interval, please describe—

a. The nature of the request, including whether it was identified or otherwise classified as urgent or emergent.

b. The date on which the request was first made and any subsequent related requests.

c. The status of the request as of the date on which responses to these Questions For the Record are submitted. If a request was granted, please list the date on which it was granted.

5. Please state the number of incarcerated individuals from FCI Danbury since May 12, 2020 (and as of the date on which responses to these Questions For the Record are submitted), identified as medically vulnerable pursuant to the temporary restraining order (TRO) issued

in *Martinez-Brooks v. Easter*, No. 3:20-cv-00569 (MPS), 2020 U.S. Dist. LEXIS 83300 (D. Conn. May 12, 2020).

a. Of the number of incarcerated individuals identified as medically vulnerable pursuant to the TRO [Question 5], how many were assessed for eligibility for home confinement under the CARES Act?

b. Of the incarcerated individuals assessed for eligibility for home confinement under the CARES Act [Question 5(a)], how many were determined to be eligible for home confinement under the CARES Act? For those not determined, pleased explain why not.

c. Of the incarcerated individuals determined to be eligible for home confinement under the CARES Act [Question 5(b)], how many were approved for home confinement under the CARES Act? For those not approved, please explain why not.

d. Of the incarcerated individuals approved for home confinement under the CARES Act [Question 5(c)], how many were transferred to home confinement under the CARES Act? For those not transferred, please explain why not.

e. Of the incarcerated individuals transferred to home confinement under the CARES Act [Question 5(d)], how many are expected to be recalled to FCI Danbury at the conclusion of the pandemic emergency pursuant to the Department of Justice's Office of Legal Counsel Memorandum Opinion for the General Counsel of the BOP dated January 15, 2021?[1]

6. On January 6, 2021, I sent a letter to former FCI Danbury Warden, Diane Easter, expressing serious concerns about conditions at FCI Danbury following reported gas leaks and failures to effectively respond to the COVID-19 pandemic.

The Warden's response, dated January 26, 2021, did *not* acknowledge whether FCI Danbury had a working smoke alarm or detection system at the Camp, and stated that the facility was using a "30 minute fire watch program." The Warden *did* acknowledge that no carbon monoxide monitor existed in the Camp and stated that FCI Danbury relied on checks with a portable monitor. While the Warden also acknowledged that there is a sprinkler at the Camp, she did not indicate where those sprinklers are located—such as the dorms. The Warden also failed to provide any information about whether smoke alarms or detection systems, carbon monoxide monitors, or sprinkler systems are in place in other areas at FCI Danbury.

a. Please state whether FCI Danbury has working smoke alarms or detection systems.

i. If so, please identify the specific areas at FCI Danbury in which they are located.

[1] Memorandum Opinion for the General Counsel Federal Bureau of Prisons. Home Confinement of Federal Prisoners After the COVID-19 Emergency. Dept. of Justice. Jan. 15, 2021. https://www.justice.gov/sites/default/files/opinions/attachments/2021/01/17/2021-01-15-home-confinement.pdf

ii. If not, please explain why not and whether BOP is working to install them or fix existing ones. If BOP is not working to install smoke alarms or detection systems or fix existing ones, please explain why not.

b. Please state whether FCI Danbury has working carbon monoxide monitors.

i. If so, please identify the specific areas at FCI Danbury in which they are located.

ii. If not, please explain why not and whether BOP is working to install them or fix existing ones. If BOP is not working to install carbon monoxide monitors or fix existing ones, please explain why not.

c. Please state whether FCI Danbury has working sprinkler systems.

i. If so, please identify the specific areas at FCI Danbury in which they are located.

ii. If not, please explain why not and whether BOP is working to install them or fix existing ones. If BOP is not working to install sprinkler systems or fix existing ones, please explain why not.

The Warden's response also noted that the last date on which gas piping infrastructure and related appliances at FCI Danbury were inspected or otherwise checked was September 10, 2020.

d. Please provide the number of inspections or checks that were conducted at FCI Danbury in three-month intervals between January 1, 2019 and the date on which responses to these Questions For the Record are submitted. For each three-month interval, please list the date on which the inspection or check occurred, the nature of the inspection or check that occurred, and whether any remedial action was recommended following the inspection or check. If remedial action was recommended, please describe whether such action was taken. If it remedial action was recommended but not taken, please explain why not.

7. Please describe FCI Danbury's—

a. Current COVID-19 screening procedures, including the frequency of temperature checks and symptom monitoring.

b. Current COVID-19 testing practices, including—

i. How long after reporting symptoms an incarcerated individual receives a test;

ii. What personnel or organization conducts and analyzes COVID-19 tests for FCI Danbury; and,

iii. Whether an incarcerated individual who has been tested for COVID-19 but who has not yet received their results is placed in isolation or quarantine during the intervening days.

8. Please list each date on which FCI Danbury conducted facility-wide testing for COVID-19.

9. Please provide an assessment of FCI Danbury's current social distancing, isolation, and quarantine measures, including—

   a. Cleaning and sanitation procedures;

   b. An accounting of isolation and quarantine spaces; and,

   c. Contingency plans for handling an increase in the number of incarcerated individuals who are awaiting COVID-19 test results or who have tested positive for COVID-19.

10. You last appeared before the Committee on June 2, 2020. I submitted Questions For the Record on June 9, 2020. You did not submit responses to those Questions For the Record until February 17, 2021.

   a. Please state whether anyone—

      i. Instructed you, suggested to you, or otherwise communicated to you to delay submitting the aforementioned responses.

      ii. Prevented or obstructed you from submitting the aforementioned responses.

   b. Please explain why it took seven months to submit the aforementioned responses to the Questions For the Record first submitted to you on June 9, 2020.

1

Questions for the Record for Michael Carvajal
From Senator Mazie K. Hirono

1. **How and to what extent has the Bureau of Prisons ("BOP") used residential reentry centers ("RRCs") curing the COVID-19 pandemic?**

2. In response to a Question of the Record I submitted following the Judiciary Committee's June 2, 2020 hearing, you projected that 57 federal inmates were scheduled to reenter the community in Hawaii between December 2, 2020 and December 1, 2021.

   a. **Did these 57 individuals reenter the community in Hawaii as projected? If not, why not?**

   b. **How did Hawaii's lack of a RRC impact the reentry of these individuals into the community?**

3. It has been nearly two years since my office first reached out to BOP to find a solution to the closure of Hawaii's only RRC. Throughout that time, BOP has provided minimal information—explaining only that it has extended the current solicitation but, otherwise, cannot share any additional information in an effort to protect the integrity of the process.

   The Mahoney Hale RRC closed on September 30, 2019 after its contract with BOP expired. It was operating in Hawaii for nearly three decades. The perception BOP has created for me and others in Hawaii is that it is washing its hands of any responsibility to reopen a RRC and is leaving it to third parties to come up with a solution. I and others in the community have been patient but it is apparent that BOP has no sense of urgency in this matter and I find this wholly unacceptable.

   Will you commit to personally looking into BOP's actions as it relates to the closure of the Mahoney Hale RRC and efforts to open a new RRC in Hawaii and informing me if you are satisfied with BOP's actions? If you are not satisfied, please provide an action plan on helping to reopen a RRC in Hawaii.

Michael Carvajal
Director
Bureau of Prisons
Questions for the Record
Submitted April 22, 2021

QUESTIONS FROM SENATOR BOOKER

1. PATTERN is the risk assessment tool that was designed under the First Step Act for good time credits. It has been used for home confinement and compassionate release during the pandemic, but serious concerns exist around the design and development of the tool. Specifically, the First Step Act called for a risk and needs assessment tool to assess the risk that an incarcerated person will recidivate but PATTERN instead predicts the risk of any arrest or return to BOP custody following release. Due to racial disparities in policing, including minor offenses and violations, PATTERN overestimates the risk of people of color, people with mental health or substance abuse challenges, and unhoused people.

   During your testimony to this Committee in April 2021, you stated that "PATTERN goes under review every year, and is being assessed right now," and that "our staff are involved in [that review]." You also testified that "there were some adjustments made [to PATTERN] in January 2020, there was a perceived or actual bias against people of color, so they removed two pieces of [the PATTERN tool]."

   a. Did BOP staff recommend the removal of the two pieces of the PATTERN tool in January 2020? If not, what was their role in the assessment of the tool and decision to remove the two pieces?

   b. Are there further aspects of the PATTERN tool that you and your staff have identified as contributing factors to the ongoing racial bias in the PATTERN tool? If so, how have you expressed these contributing factors to the Department of Justice (DOJ) during its ongoing yearly review of the PATTERN tool?

   c. PATTERN was created before COVID-19. Has it ever been adjusted to take medical vulnerability to COVID or other COVID-related factors into account?

   d. The inclusion of low-level arrests and technical violations of parole terms creates racial biases that are built into PATTERN. The BOP has said in the past that it lacks access to the case disposition data necessary to exclude acquittals or arrests not resulting in charges.[1] What steps will you take to ensure PATTERN only uses data from adjudicated cases involving serious crimes?

[1] Department of Justice, The First Step Act of 2018: Risk and Needs Assessment System, July 19, 2019, 13.

2. During your testimony to this Committee in April 2021, you discussed some of the precautions that BOP has taken at FCI Fort Dix to follow CDC guidelines to reduce the number of incarcerated individuals and guards who test positive for COVID-19. I am particularly concerned about incarcerated individuals who have tested positive for COVID-19 being placed in solitary confinement to keep them isolated.

    a. What steps has the BOP taken to ensure it is following the CDC's guidance to place people in medical isolation—not solitary confinement or restrictive housing—when separation is necessary because of known or suspected COVID-19 infection?

    b. What steps has the BOP taken to ensure that proper medical care and other services are available, and that incarcerated people do not conceal possible COVID-19 symptoms because they fear being placed in solitary confinement?

3. To date, more than 60 percent of incarcerated individuals at Fort Dix have tested positive for COVID-19. Additionally, as of April 20, 2021, there are 40 active COVID-19 cases among the Fort Dix staff, indicating a hesitance among the staff to receive the vaccine.

    a. What is the timeframe and plan to offer the vaccine to all incarcerated persons?

    b. How many incarcerated persons have declined an offer of the vaccine to date?

    c. What educational materials regarding the vaccine have been distributed to incarcerated persons?

    d. What educational materials regarding the vaccine have been distributed to BOP staff?

Senator John Cornyn
Questions for the Record
Michael Carvajal, Director of Federal Bureau of Prisons

1. One key goal of the bipartisan First Step Act was to facilitate greater BOP partnerships with outside third party providers to provide evidence-based recidivism reduction programming and productive activities.

    a. Has the BOP made efforts to communicate or advertise the opportunity for third party providers to apply?

2. The BOP has published a list of approved evidence-based recidivism reduction programs ("EBRRs") and Productive Activities ("PAs") in the First Step Act's Approved Programs Guide (hereinafter "the Guide"). There is no indication that the BOP operated programs approved in the Guide have undergone the same review process and are held to the same standards as external applicants, to ensure a fair process of review for both external providers and BOP-operated programs.

    a. Does the BOP hold BOP-operated programs to the same standards as third party applicants?

    b. Does a third party reviewer – which has been referred to as MITRE – conduct the same independent review of BOP-related programs?

    c. If BOP uses a different criteria for its own programs, please provide the specific criteria and the reviewer information.

    d. Also, if BOP uses a different criteria, what is BOP's rationale for holding third parties to a different standard than BOP-operated programs?

3. The Life Connections Program ("LCP") is among the BOP's approved EBBR programs listed in the Guide. The First Step Act Independent Review Committee's 2019 report states that, "no evaluation of this federal program's impact on recidivism is publicly available." Please clarify what evidence, if any, qualifies the LCP as an EBRR.

4. How many external providers (those not run by BOP) have applied for approval as an EBBR?

    a. Of those applications, how many have been approved as an EBBR or PA?

    b. If any such applicants have been approved, which ones have been approved?

    c. Has the BOP approved any applications from external faith-based groups to be EBBRs?

5. Both the Threshold Program and the LCP are referred to as faith-based programs in the Guide. However, neither appear to be taught based on the worldview or teachings of a particular religious tradition. While many incarcerated people may welcome this Universalist approach, others may prefer to attend a faith-based program that reflects a specific religious tradition to which they follow.

    a. Please clarify whether the BOP is opposed to offering a faith-based program that is based on the worldview or teachings of a particular religious tradition. If so, please describe the BOP's rationale.

6. How is the Bureau ensuring continued access to religious worship and services for prisoners that complies with CDC safety guidelines?

7. I asked whether individuals in BOP custody had access to support services if they are victims of sexual abuse, including hotline services. You testified that "we certainly encourage them to come forward, whether it's by staff or the use of the hotline, to report things of that nature." The Prison Rape Elimination Act, 42 U.S.C. § 15601 et seq., requires prisoners both to have access to an external reporting mechanism, as you described in your answer, and access to support services.

    a. What efforts has the BOP made to ensure those in custody have access to support services?

    b. How many prisoners have access to emotional support services? Additionally, how many facilities have emotional support services in place?

    c. How many prisoners have access to hotline support services? Additionally, how many facilities have hotline support services in place?

    d. How many prisoners have access to other kinds of support services, including accompaniment to forensic exams? Additionally, how many facilities have other kinds of support services in place, including accompaniment to forensic exams?

United States Senator Mike Lee
Questions for the Record

Michael Carvajal
Director, Bureau of Prisons

1. Before the CJS Appropriations Subcommittee last month, you testified that the BOP has a good partnership with private contractors that operate facilities for the BOP. Your testimony, as I understood it, was that private contract facilities were safe; that the BOP relies on them; and that private contractors meet your agency standards. Can you elaborate on that partnership?

2. When President Biden announced the executive order on terminating the use of private contractors with the BOP, the Order stated that private contractors "consistently underperform." Is this statement accurate? Could you describe the nature of your firsthand experiences working with private contractors?

3. Do you believe BOP private contractors were responsive when managing COVID challenges in their facilities?

4. A recent OIG report states that contractors actually outperformed BOP in responding to COVID in their facilities. Do you agree with the OIG report's findings?

5. If the President's Executive Order applies to the USMS, would the BOP have the resources to take custody of an estimated 62,000 USMS detainees and provide the necessary bed space, transportation, access to the courts, and access to legal representation for these detainees?

6. In your testimony, you referred to only one private contract that has been cancelled. Are the remaining BOP private contractors currently performing to contractual standards?

7. What is the current total capacity of the BOP system?

8. Is the BOP currently operating above capacity?

9. Is the BOP currently operating with staffing shortages?

10. Does the BOP currently house criminal non-citizen detainees? If yes, how many?

11. In its explanatory statement for FY21 Commerce-Justice-Science appropriations bill, the Senate Appropriations Committee expressed the concern that the BOP's request for First Step Act (FSA) implementation "covers existing programming, including educational and counseling programming, which existed at BOP long before the FSA." Is this an accurate description of the Bureau of Prison's budget requests? How will the agency

clearly distinguish between investments and programming that preceded and followed the First Step Act so that the public and lawmakers can clearly track the Bureau's progress?

12. A February 2021 BJS report using 2019 data identified an average vacancy rate of 16.1% for "medical and health-care positions" in the BOP. Today, in April 2021, by how much has that vacancy rate improved or declined? How is the Bureau meeting medical staff shortages during the pandemic?

13. How will the BOP aim to accelerate constructive programming participation and completion given this period of prolonged disruption to programming and productive activities?

14. Under your leadership, what efforts has the BOP made to expand this programming?

15. Can you point to specific programs and initiatives that been implemented since the First Step Act's passage along these lines?

16. What is the Bureau's strategy for maintaining continuity of program access in the event of future public health emergencies and corresponding Bureau modified operations?

17. Please describe the availability of religious worship and services for prisoners during the pandemic.

18. How is the Bureau ensuring continued access to religious worship and services for prisoners during the pandemic?

19. Understanding that the pandemic has reduced some ability to expand and implement First Step-related anti-recidivism programs, will you commit to ramp up access to these programs as soon as possible?

20. Please describe what steps you intend to take to expand access to First Step programs?

21. Could you discuss any anti-recidivism programs that have been successful?

22. If a person born a biological male undergoes sex reassignment surgery while in BOP custody, would that individual ever be transferred to an all-female facility? What procedures or standards govern whether that individual is transferred?

23. During the past year, there have been reports of what some call "an epidemic within the pandemic"—referring to the alarming rate of overdose deaths from substance abuse during the COVID crisis. As I am sure you are only too aware, the Centers for Disease Control and Prevention cited provisional

figures last week citing a dramatic increase in overdose deaths during COVID. Of the inmates in your 112 prisons, how many are struggling with substance abuse problems? If possible, could you break this down by institution?

24. What are your policies for the treatment of prisoners with substance abuse problems?

25. Do substance abuse treatment policies extend to privately-run prisons as well?

26. Could you explain some of the challenges you face in identifying and treating inmates who overuse opioids or other drug substances?

27. How has the problem of substance abuse in prisons changed during the COVID pandemic?

28. Do you care to share any other observations that may be useful to the Committee in our study of substance abuse problems during the pandemic?

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Director Michael Carvajal, Federal Bureau of Prisons

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. At the hearing, I asked you whether the Bureau of Prisons and the Department of Homeland Security are deporting criminal aliens, once released from BOP custody. You assured me that BOP does indeed keep records about whether criminal aliens are, upon release, transferred to DHS for deportation, or released into the American public. Please provide:

    a. Information on the current process undertaken in preparation for the release of criminal alien inmates, including coordination with DHS.

    b. Bureau of Prison data reflecting the percentage of criminal alien inmates who, upon release, are released into the public, versus the percentage who are transferred to DHS for deportation.

2. As I mentioned at the hearing, the Biden administration's political decisions are having serious consequences. We discussed what my colleagues and I saw at the border, observing the crisis. We also discussed how these decisions will be impacting BOP and our criminal enforcement agencies. To the point: the Biden administration has issued an executive order summarily banning and prohibiting private operators and contractors from Federal facilities into the future.

    Your testimony, as I understand it, was that private contract facilities are safe, reliable, and consistently up to BOP needs and standards.

    a. Has the Biden administration provided BOP with an explanation for its summary cancellation of private contractor operations? If so, please provide that explanation.

    In particular, many are concerned about the operations of the Marshals Service, which rely on private operators to fulfill unique mission needs, including in the big, wide State of Texas.

    b. Has the Biden administration provided any instruction on how BOP is to address the looming logistical complications of the Executive Order; namely, concerns that BOP does not have the bed space, transportation infrastructure, or facilities with sufficient access to the courts and legal representation, to meet the needs of USMS' operations and mission? If so, please provide those instructions.

Senator Josh Hawley
Questions for the Record

Michael Carvajal
Director, Federal Bureau of Prisons

1. **To the extent this information is available to the Bureau, please provide a list of the firms that currently provide prison technology services—defined as phone calling, video calling, or e-reader or tablet access—used in the Federal prison system, as well as the percentage of such services within the Federal prison system provided by each company.**

2. **To the extent this information is available to the Bureau, have the costs charged to prisoners for phone or video calling services increased in proportion to the general rate of inflation?**

3. **In testimony to me, you noted that "[t]he CARES Act called for free phone calls for inmates. They are free to the inmate, but they are not free to us. We spend well over $100 million providing video services and free phone calls, which was not included in the budget." For each of fiscal years 2020 and 2021, how much has the Bureau spent, or expects to spend, on video and phone calling services for prisoners?**

4. **To the extent this information is available to the Bureau, have any of the firms that currently provide prison technology services to inmates in Federal prisons ever charged fees to inmates in Federal custody—over and above the costs associated with acquisition of an e-reader or tablet, or the installation of an e-reader app—to access reading materials otherwise freely available in the public domain, such as volumes produced by Project Gutenberg?**

Senate Judiciary Committee - Questions for the Record from Senator John Kennedy
April 15, 2021

Hearing entitled: "Oversight of the Federal Bureau of Prisons"

Questions for Michael Carvajal, Director, Federal Bureau of Prisons

1. Some of my constituents back home in Louisiana are very concerned—so am I. Per the Joint Explanatory Statement to the 2021 Omnibus, the Federal Bureau of Prisons has been told "to hire additional full-time correctional officers to reduce the overreliance on augmentation and to improve staffing beyond mission-critical levels in custody and all other departments . . . ."

   In Oakdale alone, the administration at the Federal Correction Complex had to rely on augmentation twice so far in fiscal year 2021 to fill vacant positions in custody. Sixty-six positions at Oakdale, which are not only paying jobs for local residents but also critical for the operations and safety at the facility, must be filled to staff this correctional facility at its January 2016 level per the direction of Congress in the Joint Explanatory Statement.

   When will the staffing numbers at FCC Pollack and FCC Oakdale be adjusted to reflect the staffing positions of January 2016 as directed by Congress?

2. How much overtime has been used at FCC Pollack and FCC Oakdale between October 1, 2020, and April 1, 2021?

3. What is the current BOP policy for transferring and housing male inmates identifying as women into female facilities?

4. How many male inmates identifying as women have been transferred to BOP female facilities and where?

5. How many male inmates identifying as women are currently housed in BOP women's facilities?

Senator Tillis Questions for the Record – Bureau of Prisons Oversight

Rivers Correctional Institution

1. What was the extent of negotiations with Hertford County and the US Marshals regarding keeping RCI open?

2. Without President Biden's executive order, would BOP have engaged in further negotiations to keep the facility in use?

3. Many of those at the facility were criminal aliens. Were they transferred to other private facilities or are they in direct BOP custody?

4. Will you commit to working with the community to find an appropriate use for this facility and bring back jobs to Hertford County?

FCI Butner

1. How quickly do you believe you will complete vaccination of all staff and inmates at FCI Butner?

2. How many positions currently remain vacant at FCI Butner? What is the current staff vacancy rate?

3. How much has FCI Butner been required to use augmentation to address staffing?

4. Does the Bureau have a specific plan to address any staff shortages at FCI Butner?

5. Do you support the use of direct hiring authority by BOP to ease staffing shortages at FCI Butner and nationwide?

FCI Yazoo City

1. Are you able to confirm whether the Department of Justice OIG is conducting an investigation into allegations of sexual assault, safety violations, and inmate health and treatment at FCI Yazoo City?

2. Regardless of whether the OIG conducts an investigation, are you committed to reviewing the allegations which have been raised regarding inmate treatment and conditions at FCI Yazoo City?

Senator Marsha Blackburn
Questions for the Record
Senate Judiciary Committee
"Oversight of the Federal Bureau of Prisons"
Michael Carvajal, Director, Bureau of Prisons

1. On January 26, 2021, President Biden issued *Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities*. Could there be some federal Bureau of Prisons programs or treatments that would be interrupted if and when this executive order is put into place? For instance, if inmates have to be transferred to another facility, will there be interruptions with some inmate programs and medical treatments?

2. What will happen to the inmates in those privately run facilities if the contracts are not extended? Where will they go, and are the alternatives adequate to house an inmate population of the current size?

3. How could the cancellation of private prison contracts lead to greater spread of COVID-19 transmission outside the prison population?

4. What will happen to BOP inmates in privately run facilities who are sentenced criminal aliens if those facilities are closed? Will those criminal aliens be deported after the completion of their sentence, and if not, where are they being transferred?

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Michael D. Carvajal, Director of the Bureau of Prisons, before the Senate Committee on the Judiciary on April 15, 2021, at a hearing entitled "Oversight of the Federal Bureau of Prisons." We apologize for the delay in responding and hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we can be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to the submission of this letter from the perspective of the Administration's program.

Sincerely,

Peter S. Hyun
Acting Assistant Attorney General

Enclosure

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary

United States Senate
Committee on the Judiciary
Hearing Titled
"Oversight of the Federal Bureau of Prisons"

April 15, 2021

Federal Bureau of Prisons' Responses to Questions for the Record

Ranking Member Grassley

1. The Independent Review Committee (IRC) is comprised of outside experts and assists in overseeing *First Step Act* implementation efforts. They issued a report in December of 2020, titled "Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act (FSA) of 2018 (P.L. 115-391).[2]" You noted your familiarity with the IRC and this Report in your testimony before the Judiciary Committee on April 15, 2021. In this report, the IRC outlined the following on *First Step Act* implementation.
   - Risk and Needs Assessment System, PATTERN:
     - "PATTERN itself is not a complete 'risk *and* needs assessment' tool; it primarily measures the likelihood of post-release recidivism."[3]
     - "At present, the information necessary to complete such truly careful needs assessments is inconsistently available to frontline BOP personnel, and much of that information is not recorded in or accessible through the Bureau's management information systems. Responsible BOP staff continue to rely heavily on individual inmates' pre-trial sentencing reports (which are of widely varying quality and detail), information self-reported by inmates, documentation in Bureau case-management reports, and results from facility-specific screenings to identify needs. ***And in many if not most instances, they have little means to determine the extent of an identified need, which is crucial for purposes of referral to appropriately tailored inmate programming***." [emphasis added][4]
   - Prison Programming:
     - "The IRC cannot overstate how strongly it believes that a much more robust evidentiary basis must be established for determinations about: a) which programs BOP should continue to offer, reform, replace, or add; b) which should be designated as ETC-qualifying EBRPs or PAs—and exactly why; c) which programs "work" to address inmate criminogenic needs while in custody; and d) what longer-term recidivism-reduction effects these programs have on participating inmates after they have been released to the community."[5]
     - "[E]ven a full return to pre-COVID BOP programming levels will not be sufficient to make available 'evidence-based recidivism reduction programs and productive

[2] *See* Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act (FSA) of 2018 (P.L. 115-391), Dec. 21, 2020, Available at: https://firststepact-irc.org/wp-content/uploads/2020/12/IRC-FSA-Title-I-Section-107g-Report-12-21-20.pdf.
[3] *Id.* at 4.
[4] *Id.*
[5] *Id.* at 5.

activities for all eligible prisoners,' in Bureau custody by January 2022, as . . . the text of the [First Step Act] Title I requires."[6]

- About 30.8% of earned time credit eligible prisoners and 18.8% of earned time credit ineligible prisoners participated in programming during 2020.[7]

a. Do you agree or disagree with the IRC's assessment on the above points?

Response: Regarding the 2020 report, we agree with the IRC that the December report and the areas it reviewed had a number of limitations due to the timing of when the data for the report was gathered and the significant impact of COVID. The Bureau uses PATTERN, a tool that is revalidated each year with the help of external subject matter experts, to assess the risk of recidivism. The Department's most recent revalidation report for PATTERN was published by consultants with the National Institute of Justice in December 2021. For the full report, *see* NIJ, *2021 Review and Revalidation of the First Step Act Risk Assessment Tool* (Dec. 2021), https://www.ojp.gov/pdffiles1/nij/303859.pdf. In April 2022, the Department also published additional detail regarding implementation of PATTERN at section II(A)(1) in its 2022 First Step Act Annual Report, which is available at https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf.

The Bureau uses different measurement tools and approaches to assess inmate needs, specifically thirteen need areas identified by scholars and experts. The Bureau uses the results of those assessments to refer inmates to specific programs designed to address those needs, such as GED curricula and adult literacy, vocational training, mental health, substance abuse, anger management, criminal cognitions, parenting, and faith-based programs. Some of these assessments cannot be automated. They require individual one-on-one assessments with inmates, often including review of available records, inmate interviews, and/or structured assessments like those for education/literacy. For example, assessments of need and eligibility for substance use disorder treatment occur with reviews by a drug treatment specialist, physician, advanced practice provider, social worker, or pharmacist and interview with a clinical psychologist. Although inmates receive programming recommendations and referrals to address identified needs, inmate participation in programs remains voluntary. Inmate progress toward addressing need areas through recommended programs is reassessed at least semi-annually by case management staff and recommendations for programs are adjusted as needed. Inmate recidivism risk is also assessed routinely as part of these inmate and case management staff meetings. In March 2022, BOP published a thorough report about its needs assessment system. *See* BOP, *First Step Act: Initial Review of the SPARC-13 Needs Assessment System* (March 2022), https://www.bop.gov/inmates/fsa/docs/bop_fsa_needs_validation_report_2021.pdf. Information on the implementation of the needs assessment is also included in the

[6] *Id.* at 2 – 3.
[7] *Id.* at 2.

Department's 2022 First Step Act Annual Report at section II(A)(2), which is available at https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf.

As part of the risk and need assessment process, Bureau staff rely on information in the inmate's Presentence Report (PSR) to help identify security risks and relevant need areas for each inmate. Some examples of common information found in PSRs and relevant to the needs assessment process are educational, social, substance use, criminal, and employment histories, as well as parental status. The PSR is the product of thorough investigation by U.S. Probation Officers and any dispute as to the information in these reports can be contested by the defendant and is subsequently rejected or approved by the sentencing court. Therefore, the PSR remains a valuable source of information about an inmate's history and circumstances prior to commencing their incarceration; it is that same information upon which the sentencing judge relies in order to impose a sentence. The Bureau's information systems capture relevant information about inmate need assessments. The Bureau's case management staff and staff in multiple disciplines, document key inmate information on need areas and progress toward addressing those needs in its information systems (e.g. education, mental health, criminal history). The inmate's overall needs assessments are captured, updated and tracked; as well, program recommendations are automatically mapped to identified needs to ensure appropriate programs are recommended.

The Bureau has long desired automated capture of information from the PSR to simplify and expedite the agency's risk and needs assessment process. The Bureau must, however, rely on the Administrative Office of the U.S. Courts (AOUSC) to provide a web service or application programming interface, to provide discrete data for ingestion into BOP's data systems. As well, this service would ensure data standardization across all 94 judicial districts. The Bureau has a robust partnership with AOUSC regarding information exchange.

The Bureau is working with the National Institute of Justice to engage external experts to validate the BOP's needs assessment system. The status of this engagement, and its intended scope, is described more fully in the BOP's March 2022 needs assessment report and the DOJ's April 2022 First Step Act Annual Report. In addition, pending budget issuance, the Bureau will engage an audit team to conduct a quality assurance review of the Bureau's use of the risk and needs assessment system in 2022.

Additionally, in order to develop an evidence base for the Bureau's programs, First Step Act (FSA) funds are being used to begin external evaluations of Evidence-Based Recidivism Reduction (EBRR) programs and Productive Activities (PA). The Bureau has more than 80 EBRR programs and PAs. Some of these programs have long-established research to show their effectiveness at reducing recidivism. For example, inmates who participate in educational programming are 43% less likely to recidivate. The Bureau worked with MITRE Corp. to develop an independent review process for

programs, which was published in July 2020. Programs accepted after review were placed into the Bureau's program guide. The Bureau continues working to fund partnerships with external research organizations to further evaluate the value and impact programs have on the lives of inmates and their communities.

Programming in the context of COVID-19 and the safety of inmates and staff is of primary importance. As health-safety measures indicate it is safe to do so, the Bureau will continue to expand programming. In fact, the Bureau recently issued guidance to Wardens to authorize the use of contractors and volunteers with those individuals who pose low risk (e.g. because they have been vaccinated themselves and the facility has few or no COVID-19 infections).

b. Please explain how the Bureau of Prisons (BOP) has acted on these assessments in efforts to implement the *First Step Act*.

Response: We refer you to our response to (a), which provides information on inmate assessments and prison programming discussed in the IRC assessment. We also refer you to the DOJ's April 2022 First Step Act Annual Report, which details First Step Act implementation efforts at the Department, available at https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf.

2. In the IRC's December 2020 Report, it noted that the BOP needs to lead *First Step Act* implementation efforts in a more comprehensive way, recommending that implementation teams be set up at each facility to lead and report on the status of implementation at the facility level.[8]

a. What are your thoughts on this suggestion?

Response: The Department considers full implementation of the First Step Act a priority and has made significant progress in its implementation since the IRC's December 2020 report.[9] Implementation efforts are led by Bureau experts across disciplines, who issue national guidance to all Bureau facilities as to the implementation of various aspects of the FSA. These experts interface with regional and local institution counterparts to ensure staff are properly trained to implement programs and do so consistently across the enterprise. The Bureau's Program Review Division is an entire division with responsibility for auditing, including quality assurance and compliance, at all Bureau facilities nationwide. The implementation of the FSA's requirements is part of the Bureau's daily operations and not a separate project. For example, all staff are trained to understand and required to implement the Act's prohibition against restraining pregnant offenders; this standard does not require a "special team" to lead or assure compliance. Likewise, all case managers are trained to understand the requirements of the Second

[8] *Id.* at 6.
[9] *See* The Attorney General's First Step Act Section 3634 Annual Report 10 (Apr. 2022). https://www.ojp.gov/first-step-act-annual-report-april-2022.

Chance Act's Elderly Home Confinement pilot and recommend inmates accordingly. The FSA's requirements, like other laws before it, currently are or will be captured in Bureau policy, which all staff are required to follow. Institutional progress in implementing FSA requirements are tracked at the institutional, regional, and Central Office levels, including audits by the Program Review Division and external entities such as the General Accounting Office. At the same time, the Bureau will be engaging with an outside auditor to audit and evaluate the BOP's implementation of the risk and needs assessment system in 2022, and it will work to implement any recommendations that are developed through that process.

3. The *First Step Act* requires the BOP to provide programming for prisoners that will reduce recidivism. COVID-19 has impacted inmate participation in programs, and has also hampered volunteer access to BOP facilities to hold programs.

    a. How will BOP ensure that it gives opportunities for faith-based groups to provide programming to prisoners, even during the pandemic, since BOP has yet to resume complete volunteering access to BOP facilities?

    Response: Throughout the COVID-19 pandemic, the agency has followed CDC guidance with respect to the delivery of programming, and the Bureau is working expeditiously to resume programming, including those from faith-based groups, to the fullest extent possible while complying with CDC guidance. Currently, programs are capable of being delivered with the use of masks and proper social distancing. Guidance was recently issued to allow volunteers and contractors, including those from faith-based groups, to resume entering facilities if it is deemed safe per the Bureau's medical, and CDC guidance. More information on this is available in the Department's 2022 First Step Act Annual Report at section III(E), which is available at https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf.

4. Please outline BOP's exact plans for implementing the *First Step Act* as if COVID-19 no longer impacted operations in BOP facilities, including – but not limited to – increasing prison programming and ensuring inmates' earned time credits.

    Response: The Bureau is working to resume normal operations as expeditiously as possible while continuing to protect inmates and staff. Once an end to the pandemic emergency has been declared, full programming will resume immediately. In the meantime, the Bureau has continued to offer EBRR programs and PAs to the extent possible given the restrictions necessitated by COVID-19. It is worth noting that more than 25,000 inmates completed a program in 2020 despite the pandemic and, in FY 2021 over 98,000 inmates completed EBRR programs and PAs. By February 2022, a total of 157,5567 inmates had completed EBRR programs and PAs and 78,098 inmates were enrolled in programs.

    To ensure the BOP can deliver programs and services safely in light of the pandemic, the BOP is using a tiered approach utilizing three indicators for each institution to determine a modified

operations level. These indicators, which are monitored daily by institution staff, are: medical isolation rate within the institution (active cases); facility vaccination rates (including staff and inmates); and hybrid community risks. Based on these indicators, each institution has an identified operating level and employs the required mitigation modifications: Level 1 (minimum modifications); Level 2 (moderate modifications); and Level 3 (intense modifications). A description of the operational modifications for each level is published on the Bureau's public website at https://bop-sallydvlp.bop.gov:7443/coronavirus/covid19_modified_operations_guide.jsp. The website also displays the number of facilities at each level: www.bop.gov/coronavirus. As indicators improve and mitigation measures are lifted, the BOP will continue to expand available programming delivery. The Bureau recently issued guidance to Wardens authorizing contractors and volunteers to reenter institutions and provide programming in contexts that pose a low risk of COVID-19 transmission (i.e., because the contractor or volunteer has been vaccinated themselves and the facility has few or no active COVID-19 infections).

With respect to earned time credits, beginning in January 2020, all inmates were notified of their initial risk and needs assessment findings and staff recommended programs specific to their needs. An inmate is eligible to earn FSA time credits (FTC) if the inmate is the sentenced to a term of imprisonment pursuant to a conviction for a Federal criminal offense, or is in the custody of the BOP, unless the in inmate is serving a term of imprisonment for a disqualifying offense specified in 18 U.S.C. § 3632(d)(4)(D). Any FSA program completed as a result of this process entitles eligible inmates to earn time credits, which may be applied towards pre-release custody or at the Director's discretion, early release to supervised release. The Bureau has been systematically tracking inmate participation in programming. A final rule regarding FSA Time Credits was published on January 19, 2022. In accordance with this rule, an eligible inmate begins to earn FTC as soon as they arrive at their designated BOP institution for service of their sentence, receive a PATTERN risk assessment score, and complete all needs assessments. As long as inmates are "successfully participating" in programming as defined by the regulation, they will continue to earn FTC; additionally, time credits are being applied retroactively back to December 21, 2018.

Additional information about the Bureau's implementation of the First Step Act is available on our website at www.bop.gov/inmates/fsa/index.jsp and in the Department's 2022 First Step Act Annual Report, available at https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf.

5. The *First Step Act* bars the shackling of female prisoners during pregnancy and childbirth.

   a. To what extent has the BOP implemented this requirement of the *First Step Act*?

      Response: The Bureau has fully implemented this requirement of the FSA. In fact, beginning in 2014, prior to the passage of the FSA, the Bureau ceased restraining pregnant women absent exigent circumstances. As a result of the FSA's passage, further

guidance and training were implemented for staff about specific FSA requirements (i.e. post-partum inmates and reporting requirements). Additionally, tracking assignments were created in the Bureau's information management system to ensure all staff have knowledge of an inmate's pregnant or post-partum status.

b. Have there been any challenges to its implementation?

Response: There have been no challenges to implementation of this requirement.

6. There are two exceptions to the *First Step Act*'s ban on shackling pregnant prisoners: prisoners may be restrained if they present an immediate flight risk or if they pose an immediate risk of harm, or if a healthcare professional finds the use of restraints to be appropriate.

a. In what percentage of cases has the BOP invoked either of these exceptions?

Response: While the Bureau does not typically restrain pregnant inmates—and did not do so even prior to the passage of the First Step Act— the Bureau did not previously track these incidents in a standardized manner. Since the passage of the First Step Act, there have been four cases in which pregnant or postpartum women have been restrained. In two of the cases, staff restraining women were not aware they were pregnant. In both cases, the inmates were restrained for under two minutes. In the other two cases, the inmates arrived from United States Marshals to Bureau custody restrained. Both were restrained upon receipt and transported while restrained. Staff were unaware of their postpartum status. Upon arrival at the institution, and after intake, it was determined they were in postpartum status and immediate action was taken. In all cases, as soon as it was determined by Bureau staff that they were pregnant or in post-partum status, appropriate action was taken, to include medical assessments following the use of restraints. It was determined that no adverse physical effects to the prisoner or fetus resulted. The incidents were appropriately reported.

b. Since the *First Step Act*'s passage, on how many occasions has a healthcare professional submitted a medical request, on a prisoner's behalf, that a correctional officer refrain from using restraints on a prisoner or remove restraints used on the prisoner in a BOP facility?

Response: As noted in the above response, it has not been necessary for a health care professional to submit a medical request, on a prisoner's behalf, that a correctional officer refrain from using restraints on a prisoner or remove restraints used on the prisoner.

7. Does BOP collect data and/or statistics on cost-saving metrics associated with releasing inmates from secured detention in a BOP facility? If so, please share these data and/or statistics.

Response: As noted in section VII of the annual FSA report 2022 (published on the Bureau's website here: https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf.)

> "[t]he BOP bears the costs for inmates who have moved from an institution to home confinement or [a Residential Reentry Center], but at this time there is no cost savings data or information to report associated with such movement."

As inmates continue to earn time credits and the BOP applies them towards pre-release custody, the Bureau may be able to report out as to any identified savings.

8. When an individual is released on probation or supervised release, who is responsible for ensuring that the individual has access to adequate housing, mental health resources, medical care, and other needs?

   Response: Bureau staff work with inmates while they are in custody to ensure they have secure housing, mental health resources, medical care, and other needs upon release. The Bureau provides mental health and drug treatment for inmates while they are in Residential Reentry Centers. Once an inmate completes their sentence, the BOP no longer has jurisdiction over him or her. If the inmate is required to complete a period of supervised release after their time with the Bureau, that supervision is overseen either by U.S. Probation and Pretrial Services, an entity under the U.S. Courts if the inmate is a federal inmate, or overseen by the Court Services and Offender Supervision Agency (CSOSA), an independent federal agency responsible for supervising D.C. Superior Court offenders.

9. Does BOP provide U.S. Probation and Pretrial Services with information about an individual's housing, mental health counseling, substance abuse, and other needs prior to release on probation or supervised release?

   Response: Yes, the Bureau provides the relevant U.S. Probation Office (and CSOSA for D.C. inmates as noted above) with information about the inmate's release plans prior to the inmate's referral to a Residential Reentry Center or home confinement. The Bureau provides an automated feed of data regarding inmates nearing release to the Administrative Office of the U.S. Courts (AOUSC), which is then distributed to all U.S. Probation Offices to assist them in managing the inmates, including reviewing their confinement history, institutional adjustment, and any additional programming needs. (The Bureau separately provides a similar data feed to CSOSA for inmates releasing to the District of Columbia.)

Senator Blackburn

1. On January 26, 2021, President Biden issued *Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities*. Could there be

some federal Bureau of Prisons programs or treatments that would be interrupted if and when this executive order is put into place? For instance, if inmates have to be transferred to another facility, will there be interruptions with some inmate programs and medical treatments?

Response: The Bureau has taken and will continue to take these kinds of considerations about health care and programming into account when transferring inmates from any facility, including from private facilities whose contracts are not renewed. Upon arrival at an inmate's new destination, each inmate undergoes an intake screening. During this process, staff from various departments, including health services, education, psychology and the inmate's case management team, interview the inmate to ensure that vital issues are addressed to allow for appropriate continuity of care and that inmate's programming needs are met.

2. What will happen to the inmates in those privately run facilities if the contracts are not extended? Where will they go, and are the alternatives adequate to house an inmate population of the current size?

   Response: The Bureau's overall inmate population has experienced a downward trend over the past decade, including our noncitizen population, which are Low security offenders. The Bureau has already absorbed inmates from most privately run facilities and has sufficient bed space to safely accommodate the remaining inmates currently housed in privately run facilities. As part of the deactivation of a private facility, the Bureau transfers inmates in accordance with designation policies. Inmates are appropriately screened, and movement will occur in accordance with identified protocols to mitigate the spread of COVID-19.

3. How could the cancellation of private prison contracts lead to greater spread of COVID-19 transmission outside the prison population?

   Response: See response to Q.2 above. As noted, inmates are appropriately screened, and movement of inmates once contracts expire will occur in accordance with identified protocols to mitigate the spread of COVID-19.

4. What will happen to BOP inmates in privately run facilities who are sentenced criminal aliens if those facilities are closed? Will those criminal aliens be deported after the completion of their sentence, and if not, where are they being transferred?

   Response: Noncitizens housed at privately operated facilities will be transferred to Bureau facilities with available bed space. The Bureau coordinates with Immigration and Customs Enforcement as appropriate before the release of any person subject to a removal order or a detainer.

Senator Blumenthal

1. Please identify the Warden of FCI Danbury as of the date on which responses to these Questions for the Record are submitted. In addition—

   a. Please list the date on which the Warden was hired.

b. Please list the date on which the previous Warden of FCI Danbury, Diane Easter, vacated the position and please identify why Warden Easter vacated the position.

c. Please identify all the individuals who served as Acting Warden between when the position of Warden of FCI Danbury became available and the current Warden was hired, including their length of service as Acting Warden.

Response: Sheila D. Easter assumed duties as the Warden of FCI Danbury February 2, 2020. She was assigned to the Northeast Regional Office (NERO) on Temporary Duty Orders (TDY) February 1, 2021, where she worked until her retirement on July 31, 2021. The Regional Director, who has oversight over FCI Danbury, made the decision to detail Warden Easter to the Regional Office for work on a range of special projects. Specifics regarding individual personnel matters are not disclosed.

Upon Warden Easter's assignment to the NERO, Dr. Jessica Sage began acting in the capacity of Warden at FCI Danbury and remained in that capacity, with the exception of days she was on annual or sick leave, until October 28, 2021. In her absence, Dr. Steve Eckert was the Acting Warden the week of March 29, 2021, and Jamal Jamison was the Acting Warden the week of April 5, 2021. Associate Warden William Hess acted in the capacity of Warden from October 28, 2021 until the new Warden arrived on November 28, 2021.

A permanent selection for Warden at FCI Danbury was made November 21, 2021; namely, Timethea Pullen, who is currently occupying that position. Timethea Pullen arrived at FCI Danbury on November 28, 2021. Associate Warden Hess acted in the capacity of Warden at FCI Danbury from December 20, 2021, to January 2, 2022, while Warden Pullen was on annual leave.

2. For each of the following positions, please state the number of vacancies at FCI Danbury in three-month intervals starting on January 1, 2019 to the date on which responses to these Questions for the Record are submitted. For each individual vacancy listed in each three-month interval, please state how long the position has been vacant, the specific steps the Bureau of Prisons (BOP) took (or is taking) to fill it, and the expected hiring timeline.

   a. Doctors;

   b. Nurses, including Advanced Practice Registered Nurses, Nurse Practitioners, and Registered Nurses;

   c. Physician Assistants; and,

   d. Emergency Medical Technicians.

   Response: See included chart.

3. Please describe FCI Danbury's medical staffing and capacity (for the time periods listed below) to provide medical care or treatment to incarcerated individuals who have become ill due to COVID-19

or other underlying conditions, including how often medical staff monitors incarcerated individuals who have become ill, when medical staff intervenes to provide care or treatment to incarcerated individuals who have become ill, and what kind of care or treatment FCI Danbury medical staff is prepared to provide to incarcerated individuals who have become ill.

a. Prior to March 2020.

b. Between March 2020 and April 2021.

c. Between April 2021 and the date on which responses to these Questions for the Record are submitted.

Response: See chart below

Timeframe	Vacancies at End of Quarter	Length of Vacancies	Steps Taken To Fill Positions
January 2019 – March 2019	Doctors – 1 Clinical Director Nurses – 2 Mid-Level Provider (PA/APRN) 1 PA/1 APRN Paramedic - 0	Clinical Director – Vacant as of 02/02/2019 Nurse – 1 vacant as of 10/07/2018; 1 new position as of 11/11/2018 Mid-Level Providers – New positions as of 12/9/2018	• Quinnipiac University Career Fair – 2/27/2019 • Southern Connecticut State University Job Fair – 3/20/2019 • Pace University Career Fair – 3/27/2019 • Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport
April 2019 – June 2019	Doctors – 1 Medical Officer Nurses – 2 + 3 P01A Mid-Level Provider (PA/APRN) – 1 PA/ 1 APRN Paramedic – 0	Medical Officer – Vacant as of 5/26/2019 – Projected In 09/29/2019 Nurses – 1 P01A Nurse filled 5/12/2019; 1 new position as of 11/11/2018; 3 new P01A Nurse positions as of 4/14/2019 Mid-Level Providers – New positions as of 12/9/2018	• University of New Haven Job Fair – 4/8/2019 • Housatonic Community College Job Fair – 4/10/2019 • Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport
July 2019 – September 2019	Doctors – 0 Nurses – 1 + 3 P01A Mid-Level Provider (PA/APRN) – 1 PA/ 1 APRN Paramedic – 1	Nurses – 1 new position as of 11/11/2018; 3 new P01A Nurse positions as of 4/14/2019 Mid-Level Providers – New positions as of 12/9/2018 Paramedic – Abolish/Established from 1 Nurse Position (Vacant as of 10/07/2018) – Projected In 10/27/2019	• Camp Nett Niantic Military Career Fair – 8/25/2019 • Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport

October 2019 – December 2019	Doctors – 0 Nurses – 1 + 3 P01A Mid-Level Provider (PA/APRN) – 1 PA/ 1 APRN Paramedic – 0	Nurses – 1 new position as of 11/11/2018; 3 new P01A Nurse positions as of 4/14/2019 Mid-Level Providers – New positions as of 12/9/2018	• Southern Connecticut State University Career Fair – 10/16/2019 • Sacred Heart University Career Fair – 10/23/2019 • Hostos Community College Job Fair – 10/24/2019 • Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport
January 2020 – March 2020	Doctors – 1 Nurses – 3 P01A Mid-Level Provider (PA/APRN) – 1 APRN Paramedic – 1	Medical Officer – New position as of 1/19/2020 Nurses –3 new P01A Nurse positions as of 4/14/2019 Mid-Level Providers – New positions as of 12/9/2018 Paramedic – Vacant as of 02/02/2020	• University of New Haven Job Fair – 2/6/2020 • Quinnipiac University Health Professions Career Fair – 2/26/2020 • Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport
April 2020 – June 2020	Doctors – 1 Nurses – 2 P01A Mid-Level Provider (PA/APRN) – 1 APRN Paramedic – 0	Medical Officer – New position as of 1/19/2020 Nurses –2 new P01A Nurse positions as of 4/14/2019 Mid-Level Provider – New position as of 12/9/2018	• Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport
July 2020 – September 2020	Doctors – 1 Nurses – 1 P01A Mid-Level Provider (PA/APRN) – 1 APRN Paramedic – 2 P01A	Medical Officer – New position as of 1/19/2020 Nurses – 1 New P01A Nurse position as of 4/14/2019 Mid-Level Provider – New position as of 12/9/2018 Paramedic – Abolish/Establish 2 P01A Nurse to Paramedic P01A 8/30/2020 – 1 Projected in 11/09/2020	• Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport
October 2020 – December 2020	Doctors – 1 Nurses – 1 P01A Mid-Level Provider (PA/APRN) – 1 APRN Paramedic – 2 P01A	Medical Officer – New position as of 1/19/2020 Nurses – 1 New P01A Nurse position as of 4/14/2019 – Projected in 01/03/2021 Mid-Level Provider – New position as of 12/9/2018 Paramedic – 1 vacant P01A as of 8/30/2020; 1 vacant P01A as of 12/20/2020	• Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport
January 2021 – March 2021	Doctors – 1	Medical Officer – New position as of 1/19/2020	• Quinnipiac University Health

	Nurses – 1 Mid-Level Provider (PA/APRN) - 0 Paramedic – 1	Nurses – 1 New P01A Nurse position as of 4/14/2019 – Projected in 05/23/2021 Paramedic – Vacant as of 12/20/2020 – Projected in 04/11/2021	Professions Career Fair – 3/18/2021 • Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport • Mass mailing of flyers and brochures to local colleges/universities
April 2021 – June 2021	Doctors – 0 Nurses – 0 Mid-Level Provider (PA/APRN) - 0 Paramedic – 0	No clinical Health Services positions vacant ending June 2021.	• Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport • Mass mailing of flyers and brochures to local colleges/universities
July 2021 – September 2021	Doctors – 0 Nurses – 0 Mid-Level Provider (PA/APRN) - 0 Paramedic – 1	Paramedic – Vacant as of 08/22/2021	• Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport
October 2021 – December 2021	Doctors – 0 Nurses – 0 Mid-Level Provider (PA/APRN) - 0 Paramedic – 1	Paramedic – Vacant as of 08/22/2021	• Johnson and Wales University Career Fair – 11/4/2021 • Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport
January 2022 – March 2022	Doctors – 0 Nurses – 1 + 1 P01A Mid-Level Provider (PA/APRN) - 0 Paramedic – 1	Nurses – 1 vacant as of 03/19/2022; 1 vacant P01A as of 03/11/2022 Paramedic – Vacant as of 08/22/2021	• Quinnipiac University Health Professions Career Fair 2/22/2022 • Sacred Heart University Career Panel – 2/24/2022 • Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport

April 2022 - Present	Doctors – 0 Nurses – 1 + 1 P01A Mid-Level Provider (PA/APRN) - 0 Paramedic – 1	Nurses – 1 vacant as of 03/19/2022; 1 vacant P01A as of 03/11/2022 Paramedic – Vacant as of 08/22/2021	• Mass emailing to Public Health Service • Advertising positions actively recruiting to BOP staff on Sallyport • We are actively working to fill vacant Health Services positions. We are currently working a Nurse certificate.

d: Health Services staff at FCI Danbury provide care to the inmate population consistent with ambulatory healthcare settings, in general. FCI Danbury follows Bureau and CDC guidance to include temperature screening, quarantine units, and isolation for those with active COVID-19 symptoms. Although there has been one identified instance of this guidance not being followed, it was corrected the following day and an investigation for possible staff misconduct was initiated as a result. Health Services staff intervene when clinically appropriate and refer patients (inmates) to community hospitals if an inmate's needs exceed the available level of care at FCI Danbury.

Number of Consults for outside trips completed for FCI Danbury				
Sent Date (Year)	**Start Date of Quarter**	**# of Routine Consults**	**# of Urgent Consults**	**# of Emergent Consults**
2019	1/1/10	102	32	14
2019	4/1/19	139	76	11
2019	7/1/19	126	53	17
2019	10/1/19	130	56	15
2020	1/1/20	112	51	21
2020	4/1/20	2	4	13
2020	7/1/20	78	38	7
2020	10/1/20	40	28	4
2021	1/1/21	94	38	5
2021	4/1/21	19	11	1
2021	7/1/21	30	33	4
2021	10/1/21	51	17	2
2022	1/1/22 (thru 5/4/22)	117	24	51

4. Please describe the circumstances in which a Medical Asset Support Team (MAST) would be deployed to FCI Danbury. In addition, please state whether BOP has ever assessed the need to deploy a MAST to FCI Danbury.

Response: MAST is designed to assist institutions with clinical, administrative, and technical support within Health Services. The Warden may request MAST deployments when situational needs at the institution create a need for any of these types of assistance.

MAST Support Deployments for FCI Danbury			
Staff	**Service**	**Date**	**Days of deployment**
NER - Regional Chief Pharmacist	Training	3/18/2019	5
NER - Regional Nurse Consultant	Training	1/21/2020	5
NER - Regional Physician	Training	1/21/2020	4
NER - Regional Physician	COVID-19	4/8/2020	4
NER - Regional Quality Improvement/ Infection Prevention Control	Training	1/21/2020	5

5. Please describe the current vaccination procedures at FCI Danbury for both incarcerated individuals and staff, including offers, prioritization, distribution, education, and what specific steps BOP is taking to encourage as close to 100% vaccine acceptance among incarcerated individuals and staff both at FCI Danbury, specifically, and across all federal correctional institutions.

   Response: The Bureau has an aggressive vaccination plan that includes FCI Danbury. FCI Danbury will continue to receive vaccines as they are delivered to the Bureau and distributed to our institutions. FCI Danbury, like all Bureau institutions, was given the Bureau's COVID-19 Vaccine Clinical Guidance for COVID-19 vaccines which is published on www.bop.gov. This guidance includes specifics for offering and prioritizing vaccines, as well as information regarding the distribution.

   The Bureau provided several flyers and a "Frequently Asked Questions" document to all institutions to be displayed on inmate bulletin boards. In addition, the flyers and FAQ document were also distributed to inmates via e-mail so that it can be reviewed at any time. Institutions have also been providing information in a variety of settings to inmates, including a video with Director Carvajal and advocacy via a Public Health Service officer encouraging inmates to receive the vaccine. The Bureau Director also issued several videos to all staff encouraging vaccination. One of these videos, titled "Get Vaccinated", featured information about the safety and efficacy of the vaccines and included Director Carvajal, a Public Health Service staff member, and Bureau staff from across the country discussing why they were vaccinated against COVID-19, the importance of doing so, and dispelling myths regarding the vaccines. The Bureau has vaccines available to all staff and inmates, with more than 322,746 doses administered. With regard to FCI Danbury, as of June 29, 2022, 232 (88%) staff and 701 (69%) inmates have been fully vaccinated. All staff and inmates who previously refused the vaccine may still request and receive the vaccine.

6. Has the CDC's *Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* has been updated since July 2020?

   a. If yes, please describe the updates that have been made. If no, please explain why no changes have been made.

      - **Response**: Yes, the CDC's *Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* was last updated on May 3, 2022. The CDC regularly updates this guidance. A list of updates can be found here:

https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

b. Please explain how the CDC's guidance for correctional and detention facilities differs from CDC guidance for the general public, with specific reference to: social distancing, isolation, and quarantine procedures, testing practices, and vaccination protocols.

Response: The Bureau respectfully defers to the CDC with respect to differences between the guidance the agency has developed for correctional and detention facilities and the guidance developed for the general public. The CDC's *Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* was last updated on May 3, 2022. The CDC regularly updates this guidance. A list of updates can be found here: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

7. Please describe what FCI Danbury is doing to ensure that incarcerated individuals have access to specialty consultations and outside medical procedures. In addition, please state the number of incarcerated individuals at FCI Danbury who have sought a specialty consultation or outside medical procedure in three-month intervals from January 1, 2019 to the date on which responses to these Questions for the Record are submitted. For each request per three-month interval, please describe—

a. The nature of the request, including whether it was identified or otherwise classified as urgent or emergent.

b. The date on which the request was first made and any subsequent related requests.

c. The status of the request as of the date on which responses to these Questions for the Record are submitted. If a request was granted, please list the date on which it was granted.

Response: Specialty consultations at all institutions to include FCI Danbury go through a rigorous Utilization Review (UR) process. Health Services clinicians at FCI Danbury evaluate the patient to determine the need for specialty services. If clinically appropriate, a consultation request is generated containing all pertinent information to the respective patient and is sent to the UR meeting for review and potential approval. Once approved, the patient is scheduled with the specialty provider and escorted to the specialist for further evaluation and treatment. The Clinical Director at FCI Danbury provides oversight of the process to include any recommended treatments prescribed by the specialist.

Number of Consults (including those with specialists) for Outside Trips Completed for FCI Danbury				
Sent Date (Year)	**Start Date of Quarter**	**# of Routine Consults**	**# of Urgent Consults**	**# of Emergent Consults**
2019	1/1/10	102	32	14
2019	4/1/19	139	76	11
2019	7/1/19	126	53	17

2019	10/1/19	130	56	15
2020	1/1/20	112	51	21
2020	4/1/20	2	4	13
2020	7/1/20	78	38	7
2020	10/1/20	40	28	4
2021	1/1/21	94	38	5
2021	4/1/21	19	11	1
2021	7/1/21	30	33	4
2021	10/1/21	51	17	2
2022	1/1/22 (thru 5/4/22)	117	24	51

8. Please state the number of incarcerated individuals from FCI Danbury since May 12, 2020 (and as of the date on which responses to these Questions for the Record are submitted), identified as medically vulnerable pursuant to the temporary restraining order (TRO) issued in *Martinez-Brooks v. Easter*, No. 3:20-cv-00569 (MPS), 2020 U.S. Dist. LEXIS 83300 (D. Conn. May 12, 2020).

   a. Of the number of incarcerated individuals identified as medically vulnerable pursuant to the TRO [Question 5], how many were assessed for eligibility for home confinement under the CARES Act?

      Response: With regard to the TRO, the Home Confinement Committee separately reviewed 1,992 cases. Between March 2020 and April 2022, the Home Confinement Committee, and/or local home confinement committee, has reviewed more than 1,900 individual cases to determine vulnerability and eligibility at FCI Danbury.

   b. Of the incarcerated individuals assessed for eligibility for home confinement under the CARES Act [Question 5(a)], how many were determined to be eligible for home confinement under the CARES Act? For those not determined, pleased explain why not.

      Response: Of the TRO cases reviewed by the Home Confinement Review Committee, 1,992 medically vulnerable inmates were determined to have a medical risk factor to date (May 4, 2022). Since March 2020, FCI Danbury has released over 271 inmates to HC.

      Inmates are also reviewed for home confinement placement under the CARES Act on a case-by case basis and by balancing public safety against inmate safety with substantial weight assigned to COVID-19 risk factors. Each case is reviewed based on the totality of circumstances, including but not limited to the PATTERN recidivism risk level, current offense, history of violence, history of escapes, recent discipline history, and history of supervision violations. Inmates who do not meet all the criteria under the CARES Act can still be elevated to the Central Office Home Confinement Committee for secondary review, and, by balancing public safety against inmate safety with substantial weight assigned to COVID-19 risk factors, may still be approved for home confinement or RRC. For more information on CARES Act home confinement, please see section III(F)(4) in the 2022 annual FSA report available at https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf.

c. Of the incarcerated individuals determined to be eligible for home confinement under the CARES Act [Question 5(b)], how many were approved for home confinement under the CARES Act? For those not approved, please explain why not.

Response: Over 271 of the 1,992 cases reviewed have been approved for placement on Home Confinement.

As noted in the response to Question 8.b above, inmates are approved for home confinement based on an individualized assessment of a variety of factors. Based on review of these factors, inmates who are identified as having COVID-19 risk factors but also present a heightened risk to the community are not be approved for home confinement to ensure safety of the public. Additionally, inmates may generally not be approved for home confinement if they do not have a viable release plan (e.g. the caregiver declines to or disagrees with placement, the community contractor expected to monitor the placement does not have capacity, etc.). See also Question 5.d for specific reasons inmates were not transferred.

d. Of the incarcerated individuals approved for home confinement under the CARES Act [Question 5(c)], how many were transferred to home confinement under the CARES Act? For those not transferred, please explain why not.

Response: All 271 inmates indicated above have been transferred to Home Confinement. Between March 2020 and April 2022, FCI Danbury transferred more than 271 inmates to home confinement.

For inmates not released to home confinement the reasons are as follows:

- Releases via Compassionate Release prior to being placed on home confinement;
- Completion of sentence prior to receiving home confinement date;
- Approved and pending home confinement date; and
- Placement denied further along the process (i.e. the Residential Reentry Manager determined placement may not be appropriate for the community).

e. Of the incarcerated individuals transferred to home confinement under the CARES Act [Question 5(d)], how many are expected to be recalled to FCI Danbury at the conclusion of the pandemic emergency pursuant to the Department of Justice's Office of Legal Counsel Memorandum Opinion for the General Counsel of the BOP dated January 15, 2021?[10]

Response: There are no immediate plans to bring inmates back to FCI Danbury. The CARES Act temporarily expanded the Bureau's authority to place eligible inmates on home confinement in response to the COVID-19 pandemic. As is widely reported, the Department's Office of Legal Counsel recently issued an opinion indicating that the Bureau may use its preexisting authorities and discretion to permit prisoners granted CARES Act Home Confinement to

[10] Memorandum Opinion for the General Counsel Federal Bureau of Prisons. Home Confinement of Federal Prisoners After the COVID-19 Emergency. Dept. of Justice. Jan. 15, 2021.
https://www.justice.gov/sites/default/files/opinions/attachments/2021/01/17/2021-01-15-home-confine.pdf

continue such placements after declaration of the end of the COVID-19 Emergency. The Department of Justice is preparing regulations to implement this decision.

9. On January 6, 2021, I sent a letter to former FCI Danbury Warden, Diane Easter, expressing serious concerns about conditions at FCI Danbury following reported gas leaks and failures to effectively respond to the COVID-19 pandemic.

   The Warden's response, dated January 26, 2021, did not acknowledge whether FCI Danbury had a working smoke alarm or detection system at the Camp, and stated that the facility was using a "30-minute fire watch program." The Warden did acknowledge that no carbon monoxide monitor existed in the Camp and stated that FCI Danbury relied on checks with a portable monitor. While the Warden also acknowledged that there is a sprinkler at the Camp, she did not indicate where those sprinklers are located—such as the dorms. The Warden also failed to provide any information about whether smoke alarms or detection systems, carbon monoxide monitors, or sprinkler systems are in place in other areas at FCI Danbury.

   a. Please state whether FCI Danbury has working smoke alarms or detection systems.

      i. If so, please identify the specific areas at FCI Danbury in which they are located.

      ii. If not, please explain why not and whether BOP is working to install them or fix existing ones. If BOP is not working to install smoke alarms or detection systems or fix existing ones, please explain why not.

   Response: FCI Danbury currently has working smoke alarms at the FCI, FSL, and SCP. Working alarms are located throughout the institution and in every housing unit that inmates occupy. The SCP has installed a new fire panel (smoke alarm system), which was completed on June 3, 2021.

   Please state whether FCI Danbury has working carbon monoxide monitors.

      i. If so, please identify the specific areas at FCI Danbury in which they are located.

      ii. If not, please explain why not and whether BOP is working to install them or fix existing ones. If BOP is not working to install carbon monoxide monitors or fix existing ones, please explain why not.

   Response: Carbon monoxide detectors are not required by building standards and are therefore not installed at FCI Danbury. However, in the event carbon monoxide measurement is necessary for a given area, the Facilities Department can utilize a portable instrument that provides carbon monoxide and gas levels.

   b. Please state whether FCI Danbury has working sprinkler systems.

      i. If so, please identify the specific areas at FCI Danbury in which they are located.

ii. If not, please explain why not and whether BOP is working to install them or fix existing ones. If BOP is not working to install sprinkler systems or fix existing ones, please explain why not.

Response: The sprinkler system is active and in working order at all three facilities: the FCI, FSL, and FPC.

c. Please provide the number of inspections or checks that were conducted at FCI Danbury in three-month intervals between January 1, 2019 and the date on which responses to these Questions for the Record are submitted. For each three-month interval, please list the date on which the inspection or check occurred, the nature of the inspection or check that occurred, and whether any remedial action was recommended following the inspection or check. If remedial action was recommended, please describe whether such action was taken. If remedial action was recommended but not taken, please explain why not.

Response: FCI Danbury has a gas line inspection completed by a third-party contractor annually as required per Bureau policy. Annual inspections were completed on August 29, 2019, September 10, 2020, and August 10, 2021. No deficiencies or leaks were detected at the facility. All pipes were in good condition. Additionally, institution Facilities staff perform routine maintenance checks and conduct repairs, as needed. These inspections would identify issues related to gas line concerns.

10. Please describe FCI Danbury's—

a. Current COVID-19 screening procedures, including the frequency of temperature checks and symptom monitoring.

Response: Current screening procedures at FCI Danbury are consistent with the BOP COVID-19 Pandemic Plan, which the Bureau developed in consultation with the CDC. All staff are screened for symptoms upon arrival to the institution prior to entering the facility as indicated by the operational level in the matrix. All inmates are screened for temperature and symptoms at intake. All inmates in medical isolation and in exposure quarantine are screened daily for symptoms and are temperature checked. Inmates that are in pre-release and pre-transfer observation are screened for symptoms and temperatures upon entrance and exit of their observation period, they are also tested for COVID-19 when they enter observation and prior to their departure. FCI Danbury screened the general inmate population daily in conjunction with the settlement agreement until April 29, 2021, when the Bureau achieved its goal of offering COVID-19 vaccines to the entire inmate population and administering the vaccine to all interested inmates. Thermometers remain available in each housing unit and inmates can request to have their temperature taken at any time. Thermometers are also available in food service. Inmates can also request to have their temperature taken during mealtimes. This is in addition to normal sick call procedures available at FCI Danbury.

FCI Danbury also has rapid testing capabilities on-site. Inmates with symptoms suspected of COVID-19 can be tested as part of their medical assessment. Rapid tests are analyzed in-house.

FCI Danbury also utilizes the Bureau National Lab Contract with Quest diagnostics to analyze all commercial PCR tests.

Any symptomatic inmate would be placed in medical isolation, regardless of a positive or negative rapid test result. In these cases, a confirmatory PCR commercial lab test would be performed.

b. Current COVID-19 testing practices, including—

i. How long after reporting symptoms an incarcerated individual receives a test;

Response: FCI Danbury has rapid testing capabilities on site. Inmates with symptoms suspected of COVID-19 can be tested as part of their medical assessment. Under BOP guidance, any inmate reporting symptoms of COVID-19 is immediately transferred to medical isolation.

ii. What personnel or organization conducts and analyzes COVID-19 tests for FCI Danbury; and,

Response: Inmate tests are collected by FCI Danbury staff. Rapid tests are analyzed in-house by trained medical staff. FCI Danbury also utilizes the BOP National Lab Contract with Quest diagnostics to analyze all commercial PCR tests.

iii. Whether an incarcerated individual who has been tested for COVID-19 but who has not yet received their results is placed in isolation or quarantine during the intervening days.

Response: In accordance with CDC guidance, as soon as an inmate develops symptoms of COVID-19, they are placed under medical isolation in a separate environment from other individuals and medically evaluated. Inmates with symptoms are placed in medical isolation regardless of a positive or negative rapid test result and a confirmatory PCR commercial lab test is performed. If negative, the inmate will be evaluated for other etiologies for symptoms and the healthcare provider will use their clinical judgment to determine if the inmate patient may be released from medical isolation.

11. Please list each date on which FCI Danbury conducted facility-wide testing for COVID-19.

Response: In order to mitigate the spread of COVID-19, mass testing was completed on all inmates at the facility on between May 26 and May 28, 2020 and again on December 2, 2020. Since that time, the facility continues to test all inmates as they arrive and utilizes numerous other mitigation efforts and strategies (i.e. testing, social distancing, face covering, and vaccination) to control the spread of the virus. Additionally, during another outbreak in December 2021, mass testing was performed at FPC Danbury on 12/21/2021. Individual testing for symptomatic inmates was also completed on 12/24/2021 and 12/26/2021. Mass testing was again completed at the FPC on 12/27/2021.

12. Please provide an assessment of FCI Danbury's current social distancing, isolation, and quarantine measures, including—

    a. Cleaning and sanitation procedures;

    b. An accounting of isolation and quarantine spaces; and,

    c. Contingency plans for handling an increase in the number of incarcerated individuals who are awaiting COVID-19 test results or who have tested positive for COVID-19.

    Response: FCI Danbury follows the BOP COVID-19 Pandemic Plan, which is aligned with the latest CDC guidance as it relates to social distancing, all medical isolation and quarantine measures, including cleaning and sanitation procedures. Specifically, Module 4 (Inmate Isolation and Quarantine) of the BOP COVID-19 Pandemic Plan addresses medical isolation and quarantine procedures, Module 1 (Infection Prevention and Control Measures) addresses environmental cleaning and disinfection procedures and social distancing measures. When necessary, housing units and quarantine/isolation space is adjusted accordingly to accommodate the number of medically isolated and/or quarantined inmates.

13. You last appeared before the Committee on June 2, 2020. I submitted Questions for the Record on June 9, 2020. You did not submit responses to those Questions for the Record until February 17, 2021.

    Response: We apologize for the delay. We are committed to timely responses and will continue to work with your office to answer all inquiries as expeditiously as possible.

Senator Booker

1. PATTERN is the risk assessment tool that was designed under the First Step Act for good time credits. It has been used for home confinement and compassionate release during the pandemic, but serious concerns exist around the design and development of the tool. Specifically, the First Step Act called for a risk and needs assessment tool to assess the risk that an incarcerated person will recidivate, but PATTERN instead predicts the risk of any arrest or return to BOP custody following release. Due to racial disparities in policing, including minor offenses and violations, PATTERN overestimates the risk of people of color, people with mental health or substance abuse challenges, and unhoused people.

   During your testimony to this Committee in April 2021, you stated that "PATTERN goes under review every year, and is being assessed right now," and that "our staff are involved in [that review]." You also testified that "there were some adjustments made [to PATTERN] in January 2020, there was a perceived or actual bias against people of color, so they removed two pieces of [the PATTERN tool]."

   a. Did BOP staff recommend the removal of the two pieces of the PATTERN tool in January 2020? If not, what was their role in the assessment of the tool and decision to remove the two pieces?

Response: As reported in *The First Step Act of 2018: Risk and Needs Assessment System – Update January 2020,* found on bop.gov at: https://www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf, and following input from the IRC and stakeholders in 2019 about the version of the PATTERN tool proposed in July 2019, the Department removed two variables in furtherance of its commitment to ensuring that PATTERN is fair and accurate:

- Age of first arrest/conviction, and
- Voluntary surrender.

These changes reduced PATTERN's predictive accuracy by approximately one percent. Bureau staff worked collaboratively with National Institute of Justice (NIJ) staff, as well as their expert contractors to support development of the original PATTERN instrument and assisted the research staff in analyzing the recommendation to remove those two criteria, which was ultimately presented to the Department for final approval. The revised PATTERN tool was then finalized and published in January 2020, and the BOP assessed all inmates using the revised tool, known as "PATTERN 1.2."

Over the following months in 2020, as part of the annual PATTERN revalidation effort, the NIJ's research experts began conducting several analyses of the PATTERN 1.2 tool. The BOP's Office of Research and Evaluation (ORE) worked with the NIJ consultants and the BOP's Correctional Programs Division to develop a PATTERN simulation tool to enable ORE to assist NIJ consultants in validating PATTERN and comparing test results. By January 2021, the NIJ consultants had identified several coding, specification, and scoring discrepancies in PATTERN 1.2 and recommended immediate corrections to the BOP. The BOP adopted these recommendations, updating its field guidance and scoring sheets with the corrections made to the item and scoring typos, thereby refining the tool into version "PATTERN 1.2-Revised" (1.2-R). The BOP then began to reassess the risk scores for all inmates who were affected by the prior scoring errors. By June 2021, PATTERN 1.2-R was in full implementation.

In March 2021, the team of expert consultants contracting with NIJ throughout 2020 began their annual 2021 review and revalidation study for PATTERN 1.2-R. Upon review of that tool, they proposed a refined version of the tool, PATTERN 1.3, because although version 1.2-R had been revised to correct item and scoring errors that the NIJ consultants identified in 2020, version 1.2-R maintained the scoring scheme developed for version 1.2. The consultants' full revalidation report is accessible at NIJ, *2021 Review and Revalidation of the First Step Act Risk Assessment Tool* (Dec. 2021), https://www.ojp.gov/pdffiles1/nij/303859.pdf.

PATTERN 1.3 has been recently implemented and the Attorney General has directed the continued study of the tool to improve the equitability, efficiency, and predictive validity of the risk assessment system. For more information, please see section II of the 2022 annual

FSA report available at https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf.

b. Are there further aspects of the PATTERN tool that you and your staff have identified as contributing factors to the ongoing racial bias in the PATTERN tool? If so, how have you expressed these contributing factors to the Department of Justice (DOJ) during its ongoing yearly review of the PATTERN tool?

Response: See the answer above, and the Department's 2022 annual FSA report for a thorough discussion of this issue.

c. PATTERN was created before COVID-19. Has it ever been adjusted to take medical vulnerability to COVID or other COVID-related factors into account?

Response: There have been no adjustments made to PATTERN to take medical vulnerability to COVID-19 or other COVID-19-related factors into account when determining risk of recidivism.

d. The inclusion of low-level arrests and technical violations of parole terms creates racial biases that are built into PATTERN. The BOP has said in the past that it lacks access to the case disposition data necessary to exclude acquittals or arrests not resulting in charges. What steps will you take to ensure PATTERN only uses data from adjudicated cases involving serious crimes?

Response: The Department is committed to making all necessary revisions and updates to the risk assessment system to ensure that it continues to show accuracy and predictive validity, while also ensuring that any racial disparities associated with the instrument are reduced to the greatest extent possible, as required by the FSA. 18 U.S.C. § 3631(b)(5). As part of future revalidation analyses, the Department will engage with the NIJ consultants, the Department's subject matter experts, BOP staff, and external stakeholders and experts, to consider further refinements to the tools' inputs and scoring scheme, as well as an evaluation of the definition of recidivism used by the instrument itself. For more information on this issue, please see the Department's 2022 annual FSA report.

2. During your testimony to this Committee in April 2021, you discussed some of the precautions that BOP has taken at FCI Fort Dix to follow CDC guidelines to reduce the number of incarcerated individuals and guards who test positive for COVID-19. I am particularly concerned about incarcerated individuals who have tested positive for COVID-19 being placed in solitary confinement to keep them isolated.

a. What steps has the BOP taken to ensure it is following the CDC's guidance to place people in medical isolation—not solitary confinement or restrictive housing—when separation is necessary because of known or suspected COVID-19 infection?

Response: In accordance with CDC guidance, as soon as an inmate develops symptoms of COVID-19 or tests positive for SARS-CoV-2, they are placed under medical isolation in a separate environment from other individuals and medically evaluated. Medical isolation is distinct in both terminology and operational practice from restrictive housing.

Patients in medical isolation may be housed individually or as cohorted pairs or groups. If medical isolation in single cells is necessary, Psychology Services staff are consulted to ensure inmates proposed for single-celling are not particularly vulnerable individuals.

b. What steps has the BOP taken to ensure that proper medical care and other services are available, and that incarcerated people do not conceal possible COVID-19 symptoms because they fear being placed in solitary confinement?

Response: Medical isolation is operationally distinct from restrictive housing, with different conditions of confinement, even if the same cells are used for both. Medical isolation is a health-safety measure, whereas restrictive housing has increased and differing security procedures and modified access to personal property items, radios, commissary, etc., which is determined locally. The Bureau COVID-19 Pandemic Plan instructs institutions to:

- Ensure individuals under medical isolation, quarantine, and/or restrictive housing receive daily visits from medical staff.
- Ensure individuals under medical isolation, quarantine, and/or restrictive housing have access to both routine and urgent mental health services.
- Provide individuals in medical isolation or quarantine similar access to radio, TV, reading materials, personal property, and commissary as would be available in the individuals' regular housing units, to the extent possible.
- Allow increased telephone privileges, to the extent possible, without a cost barrier to maintain mental health and connection with others while isolated.

3. To date, more than 60 percent of incarcerated individuals at Fort Dix have tested positive for COVID-19. Additionally, as of April 20, 2021, there are 40 active COVID-19 cases among the Fort Dix staff, indicating a hesitance among the staff to receive the vaccine.

   a. What is the timeframe and plan to offer the vaccine to all incarcerated persons?

   Response: The Bureau has made the COVID-19 vaccine available to all incarcerated persons in BOP managed institutions. The BOP has completed a mass vaccination campaign and has transitioned to a micro-vaccination campaign to continue offering the vaccine to the inmates and those who have not accepted the vaccine, as well as new inmate intakes and new staff hires. Throughout the Bureau, more than 28,400 staff and more than 94,400 inmates have been fully vaccinated. As of June 30, 2022, 443 staff and 2469 inmates at FCI Fort Dix are fully vaccinated.

   b. How many incarcerated persons have declined an offer of the vaccine to date?

Response: As of June 29, 2022, there are 37,058 incarcerated persons in the Bureau who have refused vaccination, including 551 at FCI Fort Dix who have signed a refusal of vaccination. The Bureau continues to encourage vaccination of all staff and inmates through a variety of methods. The BOP has also partnered with the CDC, resulting in the CDC presenting strategies to institution staff to overcome vaccine hesitancy within the Bureau. All staff and inmates who previously refused the vaccine may still request and receive the vaccine.

c. What educational materials regarding the vaccine have been distributed to incarcerated persons?

Response: The Bureau provided several flyers as well as a frequently asked questions document to institutions to be hung on inmate bulletin boards. Additionally, the same flyers and documents were posted to electronic message boards accessible to inmates. Institutions have also been providing information in a variety of in-person settings to inmates, including a video with Director Carvajal and a Public Health Service officer encouraging inmates to receive the vaccine.

d. What educational materials regarding the vaccine have been distributed to BOP staff?

Response: A variety of educational materials including frequently asked questions regarding the vaccines, which is accessible on the internal web site, have been provided to staff. The Bureau Director has addressed the issue in meetings with leadership and institution staff and issued several videos to all staff encouraging vaccination. One of these videos, titled "Get Vaccinated" featured information about the safety and efficacy of the vaccines and included Bureau Director Carvajal, a Public Health Service staff member and Bureau staff from across the country discussing why they were vaccinated against COVID-19, the importance of doing so, and dispelled myths regarding the vaccines.

Senator Cruz

1. At the hearing, I asked you whether the Bureau of Prisons and the Department of Homeland Security are deporting criminal aliens, once released from BOP custody. You assured me that BOP does indeed keep records about whether criminal aliens are, upon release, transferred to DHS for deportation, or released into the American public. Please provide:

   a. Information on the current process undertaken in preparation for the release of criminal alien inmates, including coordination with DHS.

   Response: The Bureau of Prisons receives information from Immigration and Customs Enforcement (ICE) to assist the Bureau in determining eligibility for inmates in the Institutional Hearing Program (IHP). Unit staff provide notification to the ICE designated Point of Contact (POC) regarding inmates arriving at a Bureau facility that requires an ICE

interview within 30 days (from the date of notification) and request a final disposition regarding IHP eligibility be provided. Inmates serving sentences of 60 months or less will be designated to an IHP site for a hearing before an Immigration Judge to determine deportation status. Inmates serving 18 months or less at an IHP site will normally remain at the hearing site for release processing. Sixty to ninety days prior to an inmate's release from federal custody, Bureau staff will contact ICE to verify ICE detainers and coordinate the transfer of inmates to ICE upon release from Bureau custody.

b. Bureau of Prison data reflecting the percentage of criminal alien inmates who, upon release, are released into the public, versus the percentage who are transferred to DHS for deportation.

Response: Noncitizen inmates with a deportation order are released to ICE upon completion of their sentences. The Bureau does not maintain data on inmates released into the public by ICE.

2. As I mentioned at the hearing, the Biden administration's political decisions are having serious consequences. We discussed what my colleagues and I saw at the border, observing the crisis. We also discussed how these decisions will be impacting BOP and our criminal enforcement agencies. To the point: the Biden administration has issued an executive order summarily banning and prohibiting private operators and contractors from Federal facilities into the future.

Your testimony, as I understand it, was that private contract facilities are safe, reliable, and consistently up to BOP needs and standards.

a. Has the Biden administration provided BOP with an explanation for its summary cancellation of private contractor operations? If so, please provide that explanation.

Response: Executive Order (E.O.) 14006 broadly directs that the Department of Justice not renew contracts with privately-operated criminal detention facilities, as consistent with applicable law. Consistent with this order, the Bureau will allow existing contracts with private detention facilities to expire in accordance with the terms of each contract. The Bureau's population has experienced a downward trend over the last decade and adequate bed space currently exists within Bureau's own inventory to accommodate private facility inmate populations.

In particular, many are concerned about the operations of the Marshals Service, which rely on private operators to fulfill unique mission needs, including in the big, wide State of Texas.

b. Has the Biden administration provided any instruction on how BOP is to address the looming logistical complications of the Executive Order; namely, concerns that BOP does not have the bed space, transportation infrastructure, or facilities with sufficient access to the courts and legal representation, to meet the needs of USMS' operations and mission? If so, please provide those instructions.

Response: The Bureau of Prisons has a current rated capacity of 135,704 beds. As of June 29, 2022, we have 140,332 inmates housed in Bureau managed facilities. The rated capacity does not include some beds in the design capacity of institutions, such as 14,871 secure Special Housing Units (SHU) beds, nor does it include community-based capacity (halfway house or home confinement).

The USMS have requested ongoing assistance from the BOP with absorbing prisoners housed at USMS contract jails in preparation for the expiration of many of those contracts. The BOP has also allocated beds at USP Lewisburg (350), USP Leavenworth (800), FCI Butner (200), and USP Victorville (512) to provide additional options for the USMS to house their pre-trial prisoners. These beds are in addition to the 1,200 beds allocated at 18 other facilities. The BOP, USMS, and JPATS have always worked closely together in coordinating inmate transportation between the BOP and the USMS. As a result of the Executive Order, increased efforts have been made to move more inmates from contract jails to BOP facilities. The BOP encourages the USMS to maximize the use of all beds that have been allocated to them.

Senator Feinstein

1. At the hearing, you described some of the extraordinary measures that had to be taken at Federal Correctional Institution (FCI) Terminal Island, where some seventy percent of the inmate population has tested positive for COVID-19. (OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE, Pandemic Response Report No. 21-1025, *Remote Inspection of Federal Correctional Institution Terminal Island* at iii (Jan. 2021), *available at* https://oig.justice.gov/sites/default/files/reports/21-025.pdf) Among other things, you mentioned having to house inmates in tents within the facility's perimeter. As you put it, "COVID was new to everybody" last year, and you "wish[ed] [you] knew then what [you] know now about it."

    a. What policies, procedures, practices, and protocols does the BOP have in place now that it did not prior to the COVID-19 outbreak that would allow it to protect the health of its inmates if another pandemic with similar attributes (e.g., a new, more virulent strand of COVID-19) were to arise?

    Response: Although the Bureau had a pandemic emergency plan prior to the COVID-19 pandemic, it has been greatly expanded through development of the Bureau's COVID-19 Pandemic Plan and ongoing consultation with the CDC. The pandemic plan is a broad-sweeping plan that can be utilized in whole or part to provide guidance for facilities on procedures and practice for mitigating and containing widespread transmission of SARS-CoV-2 and non-COVID infectious disease threats. The pandemic plan is scalable and adaptable to a variety of disease/virus characteristics and will continue to be modified and developed as a general response plan for current and future threats and as updated CDC guidance becomes available.

b. Has the BOP documented in writing the lessons learned from the COVID-19 pandemic to inform future decision-making? If so, please provide this document. If not, why not?

Response: The Bureau continues to review its COVID-19 Pandemic Plan and has made updates based on CDC guidance. As the pandemic is not over and the Bureau is updating its response to include vaccine distribution, the BOP has not yet completed a post-response review, but has continuously adapted its operations in accordance with the latest CDC guidance and public health recommendations. The Bureau is also documenting best practices for institutions and conducting reviews to ensure facilities are adopting those measures and following required protocols.

2. I have received several complaints about the quality of the medical care provided at FCI Lompoc during the pandemic as well as its compliance with preventive measures designed to protect the inmate population from COVID-19. Among other things, I have heard that inmates at Lompoc with COVID-19 are denied palliative care and that social distancing is not maintained there.

a. Do the medical personnel at FCI Lompoc, and at BOP facilities in general, provide palliative care to inmates with COVID-19? If so, what policies, procedures, practices, or protocols govern their provision of such care? If not, why not?

Response: If an inmate meets the criteria for palliative care, regardless of COVID-19 status, they will be offered that care per the current Bureau procedures.

b. What measures does the BOP have in place to measure compliance with its current policies, procedures, practices, and protocols concerning the pandemic, and how does it hold facilities and employees accountable for any failures in this regard?

Response: The Bureau began using COVID-19 Compliance Review Teams (CCRT) to assess compliance, monitor response, and develop additional mitigation strategies to the COVID-19 pandemic to keep staff and inmates safe. Eighty-seven (87) initial site reviews were completed by October 2, 2020, and more than 30 follow-up reviews have also been completed. Recommendations and best practices for preventing and reducing transmission of COVID-19 were gathered and disseminated to all BOP facilities. All staff are required to follow Bureau policies and procedures. Staff not appropriately following policies or procedures would be corrected and could be subject to disciplinary action for continued noncompliance.

3. You testified that approximately 24,000 inmates have been transferred to home confinement and that the BOP has "reviewed everyone who is eligible" and has a COVID-19 risk factor. You further stated that, if you "had to make a guess," you would "say 50 to 75 percent" of eligible inmates "have been reviewed at this point." You also mentioned that many inmates were categorically disqualified from placement home confinement based on "four criteria."

a. As of today, how many inmates eligible for home confinement has the BOP reviewed for placement in home confinement? Please provide your response both in raw numbers and as a percentage of the overall inmate population.

Response: All inmates eligible for home confinement placement under the CARES Act were reviewed according to criteria outlined by the Attorney General to include COVID-19 risk factors. Further, as COVID-19 risk factors changed or as inmates' individual circumstances changed, inmates were re-reviewed, referred, and placed as appropriate. With regard to the current population in Bureau custody within an institution, as of July 1, 2022, 116,173 (91%) of 127,524 inmates eligible for review have completed reviews, where a determination regarding eligibility has been made.

b. Of that total, how many inmates had at least one COVID-19 risk factor, and how many did not? Please provide your response both in raw numbers and as a percentage of the overall number of inmates eligible for home confinement.

Response: The Bureau does not track aggregate data for how many inmates have at least one verified COVID-19 risk factor, as inmate reviews for CARES Act home confinement are an individualized process and COVID-19 risk factors include sensitive medical information. Additionally, some inmates may be excluded from placement eligibility prior to a medical assessment due to exclusionary factors including but not limited to pending charges, law enforcement or immigration detainers, no viable release plan, recent institution misconduct, violent/terrorism/sexual offenses, and/or the totality of the current offense to include victims, sentencing enhancements, and other community safety concerns.

c. Assuming less than 100 percent of inmates eligible for home confinement have not been reviewed for placement yet, when do you expect to have reviewed every eligible inmate for placement in home confinement (understanding that inmates will become newly-eligible for home confinement over time)?

Response: All inmates identified as meeting criteria under the Attorney General's March 26, 2020 memorandum have been reviewed. The Bureau has since expanded review of inmates for eligibility for placement on home confinement under the CARES Act into an ongoing and dynamic process by staff at each institution, as inmates who do not currently meet the factors for automatic consideration may become eligible for such consideration in the future. Bureau staff continuously review the inmate population for those who may be newly eligible for review based on a COVID-19 risk factor, a change in PATTERN score, or other changes affecting eligibility. All inmates receive an initial review within 28 days of arrival at their designated facility and are subsequently reviewed a minimum of every 180 days thereafter. During these reviews, eligibility for home confinement is among the criteria reviewed by the assigned case manager.

d. What criteria did the BOP use to categorically disqualify certain inmates from home confinement? Please be specific.

Response: The following discretionary factors are to be assessed to ensure inmates are suitable for home confinement.

- Reviewing the inmate's institutional discipline history for the last twelve months (inmates who have received a 300 or 400 series incident report in the past 12 months may be referred for placement on home confinement, if in the Warden's judgement such placement does not create an undue risk to the community);
- Ensuring the inmate has a verifiable release plan;
- Verifying the inmate's current or a prior offense is not violent, a sex offense, or terrorism-related,
- Confirm the inmate does not have a current detainer;
- Ensuring the inmate is Low or Minimum security;
- Ensuring the inmate has a Low or Minimum PATTERN risk score;
- Ensuring the inmate has not engaged in violent or gang-related activity while incarcerated;
- Reviewing the COVID-19 vulnerability of the inmate, in accordance with CDC guidelines; and
- Confirming the inmate has served 50% or more of their sentence; or has 18 months or less remaining on their sentence and have served 25% or more of their sentence.
- If an inmate does not meet one or more of the above and the Warden determines if there is a need to refer an inmate for placement in the community due to COVID-19 risk factors, they may forward the referral to the Correctional Programs Division for further review.

4. In your written statement and at the hearing, you stated that "[a]t this point, all Bureau staff have been offered one of the COVID-19 vaccines" and that you expect all inmates to have been provided the opportunity to be vaccinated "by mid-May," but that you could not force employees or inmates to take one of the vaccines because they have received only an emergency use authorization from the U.S. Food and Drug Administration. At the hearing, you testified that at least "a little bit over 51 percent" of the BOP workforce have taken a COVID-19 vaccine and that the BOP has "done a campaign effort" in support of vaccination involving "video messages," but that the BOP does not track "staff . . . who received the vaccine on their own through their own care provider."

a. Do you require or encourage BOP employees to report whether they have received a COVID-19 vaccine from their own health care provider? If not, why not?

Response: Since my prior written statement and hearing testimony, President Biden signed Executive Orders mandating vaccinations for all DOJ employees and DOJ. In accordance with that Executive Order, all BOP employees are required to provide

proof of COVID-19 vaccination. BOP established a Staff COVID-19 Vaccine Verification Portal, whereby all staff that were not vaccinated through the BOP were required to attest to and submit proof of their vaccination status. By late March, BOP's workforce was at 80% vaccinated. In January 2022, a district court preliminarily enjoined Executive Order 14043 on *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*. While a panel of the U.S. Court of Appeals for the Fifth Circuit issued an opinion reinstating Executive Order 14043 in early April, on June 27, 2022, the Fifth Circuit granted rehearing en banc and vacated the panel decision. Therefore, BOP has halted enforcement but continues all efforts to encourage vaccination.

b. What, if any, additional protections beyond those generally offered to inmates have you provided for inmates who have not yet been offered the vaccine and are forced to interact with employees who have not been vaccinated on a regular basis?

Response: Consistent with CDC guidance for correctional and detention facilities, and without consideration of vaccination status, the Bureau continues to require masks and PPE where and when appropriate for all staff and inmates. In addition, the Bureau continues to employ other CDC measures to include cleaning and disinfecting, social distancing, and screening for symptoms and temperature checks including requiring every staff member and contractor to complete a temperature check and screening prior to entering any Bureau facility.

5. You explained in your written statement that "15 Federal Prison Industries . . . factories were converted to [personal protective equipment (PPE)] production for cloth face coverings, gowns, face shields, and hand sanitizer," which allowed the BOP "to be more self-sustaining in production areas rather than burdening the public supply chain."

a. How many BOP employees have been issued only cloth face coverings, and how many have been issued N95, KN95, or other types of face coverings providing equivalent protections? Please provide your response in both total numbers and as a percentage of the BOP workforce and specify the different types of face coverings received by BOP employees.

Response: Since April 2020, all Bureau managed institutions have been following CDC guidance requiring the wearing of face coverings. More recently, in light of updated CDC guidance, in addition to the double layered cloth face covering, KN-95 and/or surgical masks have been made available to all staff and inmates upon request. N-95 respirators are reserved to be utilized as part of the Personal Protective Equipment (PPE) based on exposure risk while maintaining the safety and security of the institution.

b. How many inmates in BOP custody have been issued only cloth face coverings, and how many have been issued N95 or KN95 face coverings? Please provide your response in both total numbers and as a percentage of the BOP inmate population and

specify the different types of face coverings received by inmates.

Response: The Bureau has continued to follow CDC guidance with respect to the wearing of face coverings, and KN-95 and/or surgical masks have been made available to all staff and inmates upon request. N-95 respirators are reserved to be utilized as part of the Personal Protective Equipment (PPE) based on exposure risk while maintaining the safety and security of the institution. The Bureau conducted hazard assessments to determine the type of masking appropriate for different environments and staff and inmates are provided N95 masks as well as other PPE as indicated by the assessment and associated guidance. The Bureau does not track the number of masks issued to inmates and staff.

6. As we have learned more about the COVID-19 pandemic, it has become increasingly clear that its effects on the health of those infected with the virus can be felt for weeks and even months after the first wave of symptoms abate. These health effects are no less serious, and require no lesser an amount of medical attention, than the immediate symptoms many people suffer.

   a. How many inmates in BOP custody have developed long-term medical effects from COVID-19? Please provide your response in both total numbers and as a percentage of the BOP inmate population.

      Response: It is challenging to quantify how many inmates in BOP custody have developed long-term medical effects from COVID-19, because most, if not all, of these medical effects are in fact the progression or worsening of other disease states. In August of 2021, the BOP's Medical Director issued a memo to the field introducing and urging medical providers to start using ICD-10 code U09.9 Post-Acute Sequelae of COVID-19 to identify patients suffering from post-COVID conditions. We currently have 290 patients who been diagnosed with a post-COVID condition (0.21% of BOP inmate population). The CDC has continued to recognize the evolving science of post-COVID conditions, which is an umbrella term for a wide range of health consequences. Inmates with post-COVID conditions are seen by a medical provider every 6-12 months (or more often as clinically indicated) and treatment is individualized to their unique disease states.

   b. What policies, plans, practices, procedures, or protocols do you have in place to treat inmates with lasting medical effects from COVID-19? Please be specific and provide any documentation in support of these policies, plans, practices, procedures, or protocols.

      Response: The clinical presentation for post-acute COVID-19 sequalae will vary from respiratory, neurologic, cardiovascular, renal, or gastrointestinal symptoms. Some individuals who suffered severe COVID-19 illness may develop complications such as

blood clotting, myocardial injury, liver injury, renal injury requiring long-term dialysis, and neurological injuries such as strokes, confusion, and anxiety.

The BOP's COVID-19 Pandemic Plan, developed in consultation with the CDC, addresses long-term consequences of COVID-19 in the Response Plan Overview. Patients will be treated according to their clinical presentation of post-acute COVID-19 complications-based community standards.

7. According to a recent Government Accountability Office report, in November of 2020, there were only 37,000 staff responsible for the 125,000 inmates in BOP custody. (GOVERNMENT ACCOUNTABILITY OFFICE, Report No. GAO-21-123, *Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs* at 1 (Feb. 2021), *available at* https://www.gao.gov/assets/gao-21-123.pdf). You said in your written statement and reiterated at the hearing that the BOP has "launched a new hiring initiative" to fill 100 percent of its "authorized positions at all [BOP] institutions nationwide."

   a. When do you expect to have filled all or nearly all of the vacant positions within BOP institutions nationwide?

      Response:
      The Department has made BOP hiring a priority. In 2020, BOP hired more than 3,800 new staff. For calendar year 2021, BOP hired just under 3,000 new staff members. During FY21 and while operating under the FY2022 Continuing Resolution, BOP worked to maintain staffing levels since its funding did not support increases in staffing. Now that BOP has an FY2022 appropriation, it can fund more staff and is developing a spend plan that includes an emphasis on increased hiring.

      As of March 29, 2022, BOP has 36,712 funded positions and has 36,090 onboarded staff. BOP estimates that the additional FY22 funding that it received will enable it to fill 93% of all authorized (38,884) positions. This is an increase from its FY2021 funding allowing it to fill 90% of authorized positions.

   b. In addition to offering a five percent retention incentive for employees eligible to retire in 2019 and expanding its use of its special pay authority under title 38 of the U.S. Code to include all employed physicians and dentists, what, if any, actions is the BOP taking in support of its hiring initiative?

      Response: BOP is conducting extensive outreach and targeted hiring campaigns. It hired a consultant to conduct innovative and targeted marketing and recruitment campaigns to attract new staff in all positions. The recruitment campaigns involve extensive use of social media, job fairs, and industry associations, and were a key to BOP's success in hiring in 2020 and 2021. In

addition, BOP has a 21-person national recruitment office that works exclusively on BOP recruitment.

c. What, if any, new authorities would be helpful to the BOP in pursuing its hiring initiative?

Response: One area that would be beneficial to assist with the Bureau's difficulty in filling mission critical positions would be waiving the payment limitation on the recruitment incentives of 25 percent of an employee's annual rate of basic pay multiplied by the number of years in the service period. With OPM approval, this cap may be increased to 50 percent based on a critical agency need, as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period. OPM may also waive the payment limit for retention incentives to allow payments of up to 50 percent. OPM recently approved a request to waive the normal payment limitation on retention incentives for six facilities that have been chronically difficult to staff. The Bureau is also exploring the possibility of requesting that OPM approve special rates of pay for mission critical occupations that are difficult to fill. The majority of our hard to fill prisons are geographically situated in remote locations. These prisons are faced with recruitment barriers such as high cost of living; competitive salaries; the public/private sector offering negotiable incentives and/or benefit packages. On the other end of the spectrum, some prisons are situated in communities offering less than desirable living conditions, poorly rated school systems, or lack of childcare, resulting in employees seeking residence in communities with suitable living opportunities.

8. The Department of Justice's Inspector General reported in 2018 that BOP facilities were ill-equipped to address the needs of female inmates—in particular, with respect to trauma treatment, pregnancy programming, and hygiene. (OFFICE OF THE INSPECTOR GENERAL,
U.S. DEPARTMENT OF JUSTICE, *Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population*, at i (Sept. 2018), *available at* https://www.gao.gov/assets/gao-21-123.pdf)

a. Since the release of the Inspector General's report, what steps has the BOP taken to address these issues?

Response: The Bureau has made considerable progress in implementing both the First Step Act as it applies to female offenders and the recommendations of the OIG report on this population.

The Bureau has an entire office, the Women and Special Populations Branch, devoted to these issues. The office is fully staffed, and the Bureau has also created positions

located at institutions specifically to deliver gender-responsive services to female inmates. Pursuant the passage of FSA, 13 field positions have been established.

The Bureau requires facilities housing female offenders to deliver the Resolve Program, a gender-responsive, cognitive-behavioral intervention program for those who have experienced trauma. The Resolve Program is offered at all institutions housing designated female inmates.

The Bureau also hosts the Female Integrated Treatment (FIT) Program at FSL Danbury and SFF Hazelton, where women receive holistic trauma, vocational, drug, and mental health services.

Regarding pregnancy programming, in February 2019, the Director of the Bureau of Prisons issued a memorandum ordering the prohibition of the use of restraints on pregnant and post-partum female offenders unless under exigent circumstances. Also, within 48-hours after confirmation of an inmate's pregnancy, an inmate must be notified of restrictions on restraints. In 2019, the Bureau began entering medical identifiers into the SENTRY database to alert all staff once a female inmate was determined to be pregnant or post-partum and track information on pregnant inmates. The Bureau has also developed a National Parenting Program with modules designed specifically for mothers and expectant mothers and developed resource information for pregnant inmates regarding available services and programming. Staff training has been delivered focusing on addressing the unique needs of pregnant women, maximizing programming participation and increasing referrals to the MINT (Mothers and Infants Together) and RPP (Residential Parenting Program).

The provision of feminine hygiene products in the Bureau was initially addressed in annual Operations Memoranda entitled "Provision of Feminine Hygiene Products" which provided guidance on specific feminine hygiene products to be provided to female inmates. This requirement was then incorporated into the revised Program Statement 5200.02, Female Offender Manual which was issued May 12, 2021. This guidance applies to all facilities housing female inmates and makes clear that Wardens will ensure inmates are provided the following products (easily, readily, and at no cost to the inmates): tampons, regular and super-size; Maxi pads with wings, regular and super-size; and panty liners, regular.

b. Does trauma treatment (regardless of the gender of the recipient) improve inmate behavior overall? Does it reduce recidivism? Please explain the basis for your answers.

Response: The Bureau is currently in the initial stages of conducting a study to address the impact of trauma treatment on inmate behavior and recidivism.

The Bureau recognizes an individual's day-to-day ability to function, their mental and physical health as well as their interpersonal relationships, can be significantly impacted by their exposure to past, and present, violence and trauma. As a result, the individual's ability to develop functional and prosocial strategies for coping can be undermined. Often negative coping strategies such as substance use and aggression, have led to criminal justice involvement and a may result in the diagnosis of Posttraumatic Stress Disorder (PTSD), an anxiety disorder, which can raise the risk of recidivism among those who have been incarcerated.[1]

Seeking Safety, a component of the Bureau's Resolve Program, is considered an evidence-based program by the SAMHSA's National Registry of Evidence-based Programs and Practices. The California Evidence-Based Clearinghouse classifies the program as "supported by research evidence." A meta-analysis, or a statistical analysis of findings from 12 quantitative studies found that the Seeking Safety treatment model was more effective in decreasing PTSD symptoms than no treatment or alternative treatments.[2] Decreased drug use also is associated with participation in the Seeking Safety model.[3] A study of incarcerated women found that those who participated in Seeking Safety showed a significant decrease in PTSD symptoms from pre- to post-treatment and nine of 17 participants no longer met the diagnostic criteria for PTSD at the end of treatment.[4] Additional research can contribute to a stronger understanding of how effective trauma treatments being used within prisons might be adapted to meet the needs of those who are incarcerated. In addition to helping incarcerated individuals cope with and heal from trauma, research suggests that trauma-informed PTSD programs may reduce incarceration rates by helping to alleviate symptoms that can lead to criminality and recidivism.

9. Your written statement also references an effort to "develop[] and implement[] a reliable method for calculating staffing levels and . . . identify and address the causes and potential impacts of staffing challenges on staff and inmates."

    a. In the absence of a "reliable method for calculating staffing levels," how does the BOP do so today?

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[1] Ardino, V. (2012). Offending behaviour: The role of trauma and PTSD. European Journal of Psychotraumatology. 3.; Widom, C.S., & Maxfield. M.G. (2001). An update on the "cycle of violence". Washington, DC: U.S. Department of Justice, National Institute of Justice.

[2] Lenz, S., Henesy, R., & Callendar, K. (2016). Effectiveness of Seeking Safety for Co-Occurring posttraumatic Stress Disorder and Substance Use. Journal of Counseling & Development, 94(01), 51-61.

[3] Lenz, S., Henesy, R., & Callendar, K. (2016). Effectiveness of Seeking Safety for Co-Occurring posttraumatic Stress Disorder and Substance Use. Journal of Counseling & Development, 94(01), 51-61.

[4] Zlotnick, C., Najavits, L. M., Rohsenow, D. J., & Johnson, D. M. (2003). A cognitive-behavioral treatment for incarcerated women with substance abuse disorder and posttraumatic stress disorder: Findings from a pilot study. Journal of Substance Abuse Treatment, 25, 99-105

Response: Staffing levels are determined by department subject matter experts and take into consideration several factors, which include institution security level, institution mission, required inmate programming, structural layout, custody posts, medical/psychological care levels, and inmate capacity. Specific staffing level calculations vary by department. We believe our current method is reliable but could be improved. The Bureau has hired a contractor to assess systemwide staffing levels and the methods by which they are determined. The Bureau is working closely with the vendor and expects that it will be able to start testing a new tool for making staffing projections this summer.

b. What is the projected or aspirational timeline for developing a method for calculating staffing levels?

Response: The Bureau is working closely with the contractor it hired to study staffing levels and the Bureau expects it will be able to begin testing a new tool for making staffing projections this summer.

c. What is the projected or aspirational timeline for developing a method to identify and address the causes and potential impacts of staffing challenges on staff and inmates?

Response: The contractor the Bureau hired to study staffing levels is assessing the quantifiable risks associated with Bureau's current staffing levels, including overtime use and staff schedule augmentation. The expected timeline for completion is two years.

Senator Hirono

1. How and to what extent has the Bureau of Prisons ("BOP") used residential reentry centers ("RRCs") curing the COVID-19 pandemic?

Response: The CARES Act temporarily expanded the Bureau's authority to place eligible inmates on home confinement in response to the COVID-19 pandemic, but did not provide the Bureau any additional authority to place inmates into RRCs.

The Bureau of Prisons has increased the home confinement population to approximately 220% of pre-COVID-19 levels – from a population of 2,800 prior to COVID-19 to population of 6,230 as of January 27, 2022.

During the pandemic, RRCs faced the same challenges associated with communal living environments as federal prisons. Due to the enhanced risks associated with COVID-19 in communal living environments, individuals residing in RRCs were placed on home confinement as appropriate in an effort to reduce the RRC population.

2. In response to a Question of the Record I submitted following the Judiciary Committee's June 2, 2020 hearing, you projected that 57 federal inmates were scheduled to reenter the community in Hawaii between December 2, 2020 and December 1, 2021.

   a. Did these 57 individuals reenter the community in Hawaii as projected? If not, why not?

      Response: The Bureau's public webpage provides the data on inmates releasing geographically https://www.bop.gov/about/statistics/statistics_inmate_releases.jsp. The numbers of releases to Hawaii by month or year can be found on this page. For example, this information includes the number of releases each month from January 2021 to December 2021 (166 total).

   b. How did Hawaii's lack of a RRC impact the reentry of these individuals into the community?

      Response: Individuals returning to Hawaii without an approved release plan were provided Residential Reentry Services through other contract facilities in other states. Inmates with approved release plans were placed on Federal Location Monitoring through the United States Probation Office (USPO).

3. It has been nearly two years since my office first reached out to BOP to find a solution to the closure of Hawaii's only RRC. Throughout that time, BOP has provided minimal information—explaining only that it has extended the current solicitation but, otherwise, cannot share any additional information in an effort to protect the integrity of the process.

   The Mahoney Hale RRC closed on September 30, 2019 after its contract with the Bureau expired. It was operating in Hawaii for nearly three decades. The perception BOP has created for me and others in Hawaii is that it is washing its hands of any responsibility to reopen a RRC and is leaving it to third parties to come up with a solution. I and others in the community have been patient but it is apparent that BOP has no sense of urgency in this matter and I find this wholly unacceptable.

   Will you commit to personally looking into BOP's actions as it relates to the closure of the Mahoney Hale RRC and efforts to open a new RRC in Hawaii and informing me if you are satisfied with BOP's actions? If you are not satisfied, please provide an action plan on helping to reopen a RRC in Hawaii.

   Response: The Bureau has made repeated efforts to contract a Residential Reentry Center (RRC) in Hawaii. The previous contractor that operated the Mahoney Hale RRC notified the Bureau that it could no longer provide services to the Bureau due to a sale of the property that hosted the RRC. Three separate solicitations were posted and subsequently canceled after receiving no offers. The initial solicitation was posted on November 19, 2019, for services located within the boundaries of the Island of Oahu. The Bureau has extended the solicitation expiration date 11 times, with the most recent solicitation closed on July 31, 2021, with no offerors. Extensions of the solicitation period were issued per requests from potential vendors seeking additional time to find site locations or by the Bureau to encourage competition. The final solicitation allowed for the offeror to propose an RRC and home confinement services or a day reporting center. This solicitation for the day reporting center is expected to be awarded in summer 2022. The Bureau explored a Work Release Program utilizing FDC Honolulu as the site location utilizing contracted staff, but this was

determined to not be feasible. Bureau staff have facilitated community outreach and listening sessions with stakeholders, including the judiciary, as to our project plans and next steps. The Bureau is again attempting to obtain contract services for Hawaii in the boundaries of the Island of Oahu to include both in-house and home confinement beds. It is anticipated this solicitation will be announced during the summer of 2022.

Senator Kennedy

1. Some of my constituents back home in Louisiana are very concerned—so am I. Per the Joint Explanatory Statement to the 2021 Omnibus, the Federal Bureau of Prisons has been told "to hire additional full-time correctional officers to reduce the overreliance on augmentation and to improve staffing beyond mission-critical levels in custody and all other departments . . . ."

   In Oakdale alone, the administration at the Federal Correction Complex had to rely on augmentation twice so far in fiscal year 2021 to fill vacant positions in custody. Sixty-six positions at Oakdale, which are not only paying jobs for local residents but also critical for the operations and safety at the facility, must be filled to staff this correctional facility at its January 2016 level per the direction of Congress in the Joint Explanatory Statement.

   When will the staffing numbers at FCC Pollack and FCC Oakdale be adjusted to reflect the staffing positions of January 2016 as directed by Congress?

   Response: Through recent hiring initiatives to focus on hiring external applicants into the agency at entry level positions, the Bureau has hired or given conditional offers of employment to more than 2,000 individuals. While Congress did not direct specific staffing levels for individual institutions, the goal is to fill 100% of the Bureau's funded positions. We are also assessing our staffing guidelines and bed space to optimize efficient and effective operations at our facilities across the agency. Our review will modernize our staffing plans to maximize use of authorized positions with flexibility based on security level, number of staff, physical layout of facilities, and care level. We are maximizing the use of incentives, as appropriate, to recruit and more importantly, retain our staff. The Bureau remains in need of resources for additional FTEs beyond the current level. Funding for an additional 3,723 FTEs, to bridge the gap and match the number of authorized positions, would equate to approximately $500 million.

2. How much overtime has been used at FCC Pollack and FCC Oakdale between October 1, 2020, and April 1, 2021?

   Response: FCC Pollock - $2,769,082.59; FCC Oakdale - $1,340,114.01.

3. What is the current BOP policy for transferring and housing male inmates identifying as women into female facilities?

   Response: Bureau of Prisons Program Statement 5100.08 CN-1, *Inmate Security Designation and Custody Classification* outlines procedures for the transfer of all inmates. Additionally,

Program Statement 5200.08, *Transgender Offender Manual* addresses programming and housing issues specific to transgender inmates.

4. How many male inmates identifying as women have been transferred to BOP female facilities and where?

   Response: The Bureau of Prisons began tracking this information in February 2017. Since that time, 17 transgender inmates have been transferred from male to female facilities including FMC Carswell, FSL Danbury, FCI Dublin, FCI Aliceville, SPC Victorville, FCC Hazelton, and FCI Waseca.

5. How many male inmates identifying as women are currently housed in BOP women's facilities?

   Response: There are currently six inmates who identify as female who were assigned male sex at birth housed at female facilities.

Senator Klobuchar

1. Has the percentage of incarcerated people who have been tested for COVID-19 increased since August 2020?

   Response: As of August 31, 2020, 37.4% of inmates in BOP managed facilities had been tested. As of May 3, 2022, 95.7% of inmates currently in BOP managed facilities had been tested. When COVID-19 testing is warranted for an inmate who refuses testing (i.e. new arrivals or potential exposure), additional quarantine measures may be conducted as a health safety measure.

2. What percentage of those tests were administered to asymptomatic inmates?

   Response: 86%.

   Can you provide the demographic data for the inmates that have been transferred to home confinement since March 2020?

   Response: Number of Releases to RRC/HC March 26, 2020 - January 29, 2022:

Transfers by SEX			
	SEX		
Transfers	Female	Male	Total
Community Referral- CARES Act	2945	7408	10353
Elder HC	65	344	409
Other	4433	40329	44762
Total	7443	48081	55524

Transfers by RACE					
	RACE				
Transfers	A	B	I	W	Total
Community Referral- CARES Ac	309	3091	99	6854	10353
Elder HC	6	84	6	313	409
Other	568	19186	1307	23701	44762
Total	883	22361	1412	30868	55524

Transfer by AGE							
	AGE						
Transfers	<=24	25 - 34	35 - 44	45 - 54	55 - 64	65+	Total
Community Referral- CARES Act	82	1029	2401	3264	2422	1155	10353
Elder HC	0	0	0	2	165	242	409
Other	1454	12751	16361	9298	3952	946	44762
Total	1536	13780	18762	12564	6539	2343	55524

3. What percentage of home confinement transfers were denied because of an inmate's PATTERN (Prisoner Assessment Tool Targeting Estimated Risk and Needs) score?

Response: Inmates are reviewed for home confinement placement under the CARES Act on a case-by-case basis balancing public safety with inmate safety. Under BOP policy, inmates are screened to confirm that their PATTERN risk score is Minimum or Low. If an inmate does not meet that criteria, and the warden determines that there is a need to refer an inmate for placement in the community due to COVID-19 risk factors, the warden may forward the referral to the Correctional Programs Division for further review based on a consideration of the totality of circumstances, to include but not limited to the PATTERN recidivism risk level, history of violence, history of escapes, recent discipline history, history of supervision violations, placement plans.

Senator Cornyn

1. One key goal of the bipartisan First Step Act was to facilitate greater BOP partnerships with outside third-party providers to provide evidence-based recidivism reduction programming and productive activities.

    a. Has the BOP made efforts to communicate or advertise the opportunity for third party providers to apply?

    Response: The Bureau has made a great deal of information available on its public website at https://www.bop.gov/inmates/fsa/programs.jsp. Under the section entitled "Have an idea for a program?" the Bureau has provided the criteria for submission, the criteria for reviewing submitted programs, and Frequently Asked Questions. The BOP also publicized this information via a press release and headline article when the submission process opened.

2. The BOP has published a list of approved evidence-based recidivism reduction programs ("EBRRs") and Productive Activities ("PAs") in the First Step Act's Approved Programs Guide (hereinafter "the Guide"). There is no indication that the BOP operated programs approved in the Guide have undergone the same review process and are held to the same standards as external applicants, to ensure a fair process of review for both external providers and BOP-operated programs.

    a. Does the BOP hold BOP-operated programs to the same standards as third party applicants?

    Response: The BOP has implemented protocols for internal and external review of the EBRR program and PA submissions using a third-party contractor. EBRR programs and PAs are reviewed for evidence of their effectiveness in achieving recidivism reduction and for their suitability in the federal correctional setting. The BOP engaged the MITRE Corporation, an external, not-for-profit organization without conflicts of interest, to support the development and execution of the review process. External programs are reviewed for evidence demonstrating effectiveness in reducing recidivism as well as

additional BOP-established criteria. The BOP decides which programs are included on the approved list using the information from the independent reviews. All approved Bureau and third-party programs must meet rigorous standards for approval as evidence-based programming.

b. Does a third-party reviewer – which has been referred to as MITRE – conduct the same independent review of BOP-related programs?

Response: The Bureau worked with MITRE Corp. to develop the independent review process by which programs are evaluated, which was published in July 2020. Programs accepted after review were placed into the Bureau's program guide. Information about the review process, including what information is considered, is available on the public website at https://www.bop.gov/inmates/fsa/programs.jsp.

c. If BOP uses different criteria for its own programs, please provide the specific criteria and the reviewer information.

Response: The Bureau has funded partnerships with external research organizations to conduct individual studies and further evaluate the value and impact its programs have on the lives of inmates and their communities. Many Bureau programs are cognitive-behavioral therapy interventions delivered by doctoral level psychologists, and this approach is well-supported in the scientific literature. The Bureau uses scientifically vetted protocols in accordance with professional standards.

d. Also, if BOP uses different criteria, what is BOP's rationale for holding third parties to a different standard than BOP-operated programs?

Response: The evaluation of programs, whether by the Bureau or an external party, will follow accepted research design protocols.

3. The Life Connections Program ("LCP") is among the BOP's approved EBBR programs listed in the Guide. The First Step Act Independent Review Committee's 2019 report states that, "no evaluation of this federal program's impact on recidivism is publicly available." Please clarify what evidence, if any, qualifies the LCP as an EBRR.

Response: The Life Connections Program (LCP) is an intensive residential, multi-faith-based reentry program and a strong example of a BOP partnership. LCP is open to inmates of all religious traditions as well as those with no faith affiliation. Partnerships with the community are an integral part of the program. Contract partners provide religious services while community volunteers serve as mentors, assisting inmate participants in addressing topics ranging from reestablishing family relationships to reconnecting with community resources and support. Determinations of EBRR programs or PAs are made after review of the literature, and in consultation with experts across the Department of Justice, including the National Institute of Justice.

4. How many external providers (those not run by BOP) have applied for approval as an EBBR?

   Response: Eleven externally proposed programs have been submitted.

   a. Of those applications, how many have been approved as an EBBR or PA?

      Response: Four externally proposed programs have been approved as an EBRR or PA. .

   b. If any such applicants have been approved, which ones have been approved?

      Response: The externally proposed programs which have been approved are: 7 Habits on the Inside, Resilience Support, Money Smart for Adults, and Aleph Institute.

   c. Has the BOP approved any applications from external faith-based groups to be EBBRs?

      Response: The Bureau continues our efforts to partner with outside providers for programming. With regard to faith-based programming, we received and approved an application from Aleph Institute.

5. Both the Threshold Program and the LCP are referred to as faith-based programs in the Guide. However, neither appear to be taught based on the worldview or teachings of a particular religious tradition. While many incarcerated people may welcome this Universalist approach, others may prefer to attend a faith-based program that reflects a specific religious tradition to which they follow.

   a. Please clarify whether the BOP is opposed to offering a faith-based program that is based on the worldview or teachings of a particular religious tradition. If so, please describe the BOP's rationale.

      Response: The agency fully supports faith-based programming that honors individual faith-specific practice. LCP and Threshold inmate participants bring their own belief systems, whether religious or secular, to their individual LCP and Threshold experience. LCP and Threshold programs foster personal and spiritual growth as well as social responsibility through the use of a standard curriculum, instruction from trained leadership, and the utilization of community mentors to assist inmates upon release.

6. How is the Bureau ensuring continued access to religious worship and services for prisoners that complies with CDC safety guidelines?

   Response: While religious accommodations were modified within agency and CDC COVID-19 guidelines, the Bureau has and will continue to respect and accommodate the religious rights and needs of federal offenders. Agency chaplains made rounds in the housing units with PPE equipment to offer pastoral care and deliver religious materials so the inmates could continue to observe their faith. When the inmates could not gather in

larger groups in centralized chapel areas for congregant worship and religious studies across faith lines, the chaplains went to them to further meet their spiritual needs. The agency also offered religious services in the housing units, outside, and in smaller chapel gatherings to adhere to the CDC guidelines. As COVID-19 numbers decreased and the vaccine distribution numbers increased, inmates have had more access to institutional chapels, worship within the chapels, and community chapel volunteers and religious contractors.

7. I asked whether individuals in BOP custody had access to support services if they are victims of sexual abuse, including hotline services. You testified that "we certainly encourage them to come forward, whether it's by staff or the use of the hotline, to report things of that nature." The Prison Rape Elimination Act, 42 U.S.C. § 15601 et seq., requires prisoners both to have access to an external reporting mechanism, as you described in your answer, and access to support services.

    a. What efforts has the BOP made to ensure those in custody have access to support services?

    b. How many prisoners have access to emotional support services? Additionally, how many facilities have emotional support services in place?

    c. How many prisoners have access to hotline support services? Additionally, how many facilities have hotline support services in place?

    d. How many prisoners have access to other kinds of support services, including accompaniment to forensic exams? Additionally, how many facilities have other kinds of support services in place, including accompaniment to forensic exams?

    Response: Bureau of Prisons staff are committed to complying with all PREA standards. The Bureau aims to eliminate all sexually abusive behaviors in our facilities, and when these behaviors do occur, we ensure that victims receive the appropriate care and treatment.

    All inmates have access to emotional support services. Every institution has qualified psychologists on staff who are available to provide support throughout the PREA process and beyond. Additionally, the vast majority of our facilities have agreements in place with local rape crisis centers, and these staff are available to support the victims through the forensic medical examination process and during the investigatory process and/or provide counseling following the allegation. The local hospitals which conduct the examinations also typically provide support staff throughout the evidence collection process. Approximately ten percent of our facilities do not have an agreement in place with a rape crisis center. The reasons for a lack of agreement typically are that the prison is located in a rural area with limited services nearby or the rape crisis center lacks sufficient staff or resources to enter into an agreement with the facility. In these rare instances in which an agreement is not in place, the qualified psychologists at the prison provide the necessary support and follow-up counseling with the victims.

Regarding the availability of hotline support services, there is currently no national PREA hotline in place. The Office on Violence Against Women (OVW) and the Bureau of Justice Assistance (BJA) are currently working to issue a solicitation for a planning grant to develop a national service hotline. In the meantime, inmates in facilities that have an agreement with a local rape crisis center are able to receive telephonic and/or in person support services via the local rape crisis center. In facilities where no local rape crisis center is available or an agreement is not in place, inmates are supported in contacting the national sexual assault hotline operated by the Rape, Abuse & Incest National Network (RAINN). Inmates do so with the assistance of the local Psychology Services and/or Chaplaincy staff. In addition, all BOP facilities have psychologists available to provide crisis counseling.

The Bureau is sensitive to the trauma victims of sexually abusive behavior experience, and it is BOP policy to ensure that these victims speak with a psychologist for crisis intervention within 24 hours of an allegation. The victims are treated with sensitivity and care by our psychologists, and they are offered support by rape crisis center staff, where those agreements are in place. Support services for all alleged victims of sexual abuse begin at the time of the allegation and continue until they are no longer needed. All support staff, whether they are Bureau or rape crisis center staff, take their role of providing emotional support seriously.

Senator Lee

1. Before the CJS Appropriations Subcommittee last month, you testified that the BOP has a good partnership with private contractors that operate facilities for the BOP. Your testimony, as I understood it, was that private contract facilities were safe; that the BOP relies on them; and those private contractors meet your agency standards. Can you elaborate on that partnership?

   Response: The Bureau's overall inmate population has experienced a downward trend over the past decade. The Bureau has sufficient bed space to safely accommodate these inmates currently housed in privately run facilities, and the Bureau does not plan to renew or resolicit expiring contracts with private detention facilities. In the meantime, Bureau contractors must comply with all applicable federal, state, and local laws and regulations. They are also required to achieve and maintain American Correctional Association (ACA) accreditation, Prison Rape Elimination Act (PREA) certification, and accreditation by an independent, not-for profit health care organization.

2. When President Biden announced the executive order on terminating the use of private contractors with the BOP, the Order stated that private contractors "consistently underperform." Is this statement accurate? Could you describe the nature of your firsthand experiences working with private contractors?

   Response: Private facilities typically do not provide the same degree of programming as Bureau facilities, especially given the population that typically have been housed within (deportable non-US citizens). In addition, a 2016 OIG report found that contract prisons had

more safety and security-related incidents per capita than Bureau institutions for most analyzed indicators.[11] Because the Bureau's overall inmate population has experienced a downward trend over the past decade, it has sufficient bed space to safely accommodate these inmates currently housed in privately run facilities. The Bureau does not plan to renew or resolicit expiring contracts with private detention facilities.

3. Do you believe BOP private contractors were responsive when managing COVID challenges in their facilities?

Response: Bureau private contractors were, and continue to be, responsive in managing the various COVID-19 challenges in their facilities. The Bureau's private contractors are required to follow CDC guidelines. Bureau staff located at each facility provide oversight to help ensure adherence to contract requirements. Other external entities, to include OIG, have recently found that the Bureau's private contractors were responsive in managing COVID-19.

4. A recent OIG report states that contractors actually outperformed BOP in responding to COVID in their facilities. Do you agree with the OIG report's findings?

Response: Oversight of the Bureau's private contracts, to include external audits, has identified a high level of effectiveness in contractor response to COVID mitigating efforts, including a report from one survey of a contract facility early on in the pandemic, which is referenced in the question. The Bureau sets standards for contract facilities in its contract Statements of Work and has staff on-site at all contract facilities to ensure requirements are met and to provide oversight, audits, and ensure adaptation to new guidance. Bureau of Prisons facilities and our contract facilities are held to very similar standards as it relates to COVID-19 mitigation strategies. The Bureau is in regular communication with the CDC on these issues, and developed a COVID-19 Pandemic Plan in consultation with the CDC. The Pandemic Plan is a broad-sweeping plan that can be utilized in whole or part to provide guidance for facilities on procedures and practice for mitigating and containing widespread transmission of SARS-CoV-2 and non-COVID infectious disease threats. We note that one distinction between BOP facilities and contract facilities is that contract facilities have the ability to limit the number of contracted persons housed in such sites whereas the BOP cannot prevent admissions to our facilities.

5. If the President's Executive Order applies to the USMS, would the BOP have the resources to take custody of an estimated 62,000 USMS detainees and provide the necessary bed space, transportation, access to the courts, and access to legal representation for these detainees?

Response: In early 2021, the USMS contacted the Bureau to explore the possibility of absorbing approximately 4,300 USMS detainees prior to the end of the calendar year as USMS contracts expire. The Bureau did absorb all requested inmates, with additional beds

[11] https://oig.justice.gov/reports/2016/e1606.pdf

remaining as part of the agreement, and will continue to work with the USMS to ensure our missions are accomplished which includes ensuring transportation, access to the courts, and access to legal representation is provided to all USMS prisoners.

6. In your testimony, you referred to only one private contract that has been cancelled. Are the remaining BOP private contractors currently performing to contractual standards?

Response: In accordance with the President's Executive Order on privately-operated detention facilities, the Bureau is allowing private facility contracts, performing to contract standards, to expire according to the terms of each contract. The Bureau has not canceled any private facility contract that has been performing to contractual standards but has only four sites remaining two of which will expire by the close of June 2022. At this time, the remaining Bureau private contractors are performing to contractual standards.

7. What is the current total capacity of the BOP system?

Response: On May 3, 2022, the total rated capacity of all Bureau facilities was 135,162. Per BOP Program Statement 1060, Rated Capacities for Bureau Facilities, rated capacity is the baseline for the statistical measurement of prison crowding and is essential in managing the Bureau's inmate population to distribute the inmate population throughout the system reasonably and equitably. There are many factors taken into consideration in designating inmates to a specific facility. There is no maximum capacity limit in place, as the Bureau is required to accept pre-trial offenders, sentenced inmates, and USMS inmates. This requirement is addressed in the Bail Reform Act, 18 U.S.C (pre-trial) and § 3141 and 18 U.S.C. § 4042 (sentenced inmates). Per agreements between the BOP and USMS, the BOP allocates a set number of beds at certain BOP facilities for use by the USMS for district pretrial and JPATS in-transit inmates.

8. Is the BOP currently operating above capacity?

Response: On May 3, 2022, the total population in all Bureau facilities was 137,923. Using the above stated rated capacity, Bureau facilities overall were 2 percent overcrowded on that date. On June 19, 2020, the BOP Assistant Director for the Correctional Programs Division (CPD) sent a memo to all BOP Chief Executive Officers (Wardens and Regional Directors) announcing a new set of population levels in low and minimum-security institutions to mitigate COVID-19 exposure risk. These new levels, called COVID-19 Target Populations, are a temporary measure implemented for the safety of inmates and staff. These targets did not include any medical, mental health or special housing beds or specialized designation facilities (nationally recognized programs, e.g., Residential Drug Abuse Program). CPD also reviewed requests from individual institutions to establish short term population caps or moratoriums restricting movement in and out of a specific facility to assist in COVID-19 mitigation.

9. Is the BOP currently operating with staffing shortages?

Response: Yes, however, in those locations with a critical staffing need, the Bureau has temporarily deployed staff from other locations to ensure all shifts are covered at all institutions nationwide. Additionally, we have instituted a robust hiring initiative focused on hiring external applicants into the agency at entry level positions. This initiative resulted in the Bureau hiring or issuing conditional offers of employment to more than 2,000 individuals. The Bureau remains in need of budgetary resources for additional FTEs beyond current funding levels. Funding for an additional 3,723 FTEs, to bridge the gap and match the number of authorized positions, would equate to approximately $500 million. We are also assessing our staffing guidelines and bed space to optimize efficient and effective operations at our facilities across the agency. Our review will modernize our staffing plans to maximize use of authorized positions with flexibility based on security level, number of staff, physical layout of facilities, and care level. We are maximizing the use of incentives, as appropriate, to recruit and more importantly, retain our staff.

10. Does the BOP currently house criminal non-citizen detainees? If yes, how many?

Response: The Bureau houses non-citizen detainees. As of May 3, 2022, the Bureau houses a total of 4,540 non-US citizens in private contract facilities. Overall, as of May 5, 2022, the bureau houses approximately 22,296 non-US citizens confined in service of federal sentences in both Bureau facilities and private facilities under contract by the Bureau. Additionally, there are 19 ICE detainees in Bureau facilities.

11. In its explanatory statement for FY21 Commerce-Justice-Science appropriations bill, the Senate Appropriations Committee expressed the concern that the BOP's request for First Step Act (FSA) implementation "covers existing programming, including educational and counseling programming, which existed at BOP long before the FSA." Is this an accurate description of the Bureau of Prison's budget requests? How will the agency clearly distinguish between investments and programming that preceded and followed the First Step Act so that the public and lawmakers can clearly track the Bureau's progress?

Response: The Bureau offers a range of successful inmate programming which existed prior to the enactment of FSA. However, with the implementation of FSA, the Bureau has expanded on those programs as well as added new initiatives, such as programming for inmate veterans, programs for persons living with disabilities, GED and adult literacy, mental health programs, anger management, substance abuse treatment, parenting programs, and many more. All programs that are funded with FSA resources are identified on a detailed spend plan and are reviewed by the Bureau, the Department, and the Office of Management and Budget (OMB). For more information on programs or information please see the Bureau's public webpage (https://www.bop.gov/inmates/fsa/).

12. A February 2021 BJS report using 2019 data identified an average vacancy rate of 16.1% for "medical and health-care positions" in the BOP. Today, in April 2021, by how much has that vacancy rate improved or declined? How is the Bureau meeting medical staff shortages during the pandemic?

Response: The Bureau's vacancy percentage for medical and health-care positions for April 3, 2022, is 15.91%. This reflects a .19% vacancy rate reduction.

The Bureau met medical staff shortages through a combination of avenues throughout the pandemic to include but not limited to the following: Health Services staff from administrative sites or institutions with little or no COVID-19 impact at that time providing temporary duty assistance to institutions with significant impacts, *locum tenems* (temporary contractor utilized on an as needed basis) contracts from FSS (Federal Supply Schedule, which is a list of federally approved vendors for contracting purposes) awarded at the local level, Public Health Service (PHS) deployments from other federal agencies, and expanding the number of contract providers through comprehensive medical contracts. The Bureau has also obtained some additional staffing resources to oversee quarantine and isolation units through assistance from the Ohio National Guard (FCI Elkton) for a limited time.

13. How will the BOP aim to accelerate constructive programming participation and completion given this period of prolonged disruption to programming and productive activities?

Response: In the early stages of the pandemic, programming in groups was suspended; however critical services associated with programming continued unabated. For example, mental health treatment and crisis intervention continued, as did religious services.

As information about virus mitigation strategies became available, the Bureau followed CDC guidance in resuming programming. Programs were held with decreased capacity to allow for social distancing and participants and staff wore masks. Additionally, some programs were held in unique spaces such as on housing units or outdoors.

The Bureau is working expeditiously to resume programming to fullest extent possible while complying with CDC guidance. Staff and inmates have been strongly encouraged to receive vaccinations to assist with the resumption of normal operations.

14. Under your leadership, what efforts has the BOP made to expand this programming?

Response: The initial guide issued in January 2020 was comprised of 70 Evidence-Based Recidivism Reduction (EBRR) programs and Productive Activities (PAs) focused on areas such as education, adult literacy, vocational training, mental health, substance abuse, anger management, criminal cognitions, parenting, and faith-based programs. Since January 2021, external stakeholders have submitted eleven proposed programs, of which the BOP approved four new programs: "7 Habits on the Inside"; "Resilience Support"; "Money Smart for Adults;" and "Aleph Institute." The Bureau has also added an internally proposed program, "Disabilities Education Program", as well as more Productive Activities. Altogether, the BOP now has more than 83 EBRR programs and PAs in the FSA Program Guide. The latest programs guide was published in January 2022 and is available on the BOP's website,

https://www.bop.gov/inmates/fsa/docs/fsa_program_guide_2201.pdf. All approved programs are designed to build upon individual successes and to address one or more of the BOP's thirteen defined needs. The passage of the Time Credits rule in January 2022 expanded the services which qualify as PAs. Only structured EBRR programs and PAs with a facilitator-led curriculum are listed in the FSA Programs Guide. Other activities (e.g., inmate work assignments) may also be recommended by staff to address individual inmate needs as well as qualify for time credits for eligible offenders.

Because there is such a wide range of programs addressing all thirteen identified criminogenic needs areas, the BOP has focused on building capacity in existing programs. The agency has achieved expansion in significant part through the addition of full-time program delivery staff (see *2022 First Step Act Annual Report* for more information on this staffing effort). Efforts to continue increasing programming opportunities for inmates in accordance with the FSA, even during the COVID-19 pandemic, remain a priority for the BOP.

While building capacity in existing programs, the BOP is also developing a number of new programs. To further complement those efforts, the BOP has initiated a new contract action to engage outside expertise to review and evaluate state correctional programs to determine their applicability to BOP. As of March 3, 2022, three contracts have been awarded for the study of specific EBRRs, specifically the BRAVE program, the Anger Management Program, and BOP's Drug Abuse Programs. These reviews are also detailed in the *2022 First Step Act Annual Report*, at pp. 35-36.

15. Can you point to specific programs and initiatives that beenimplemented since the First Step Act's passage along these lines?

Response: The Bureau has made a great deal of progress in implementing provisions of the First Step Act. As mentioned previously, the Bureau has undertaken an effort to increase program delivery staff and new programs, thereby increasing its program capacity. The Bureau has increased the number of programs offered from 70 EBRR and PA programs in January 2020 to 83 EBRR and PA programs as of January 2022. In addition to the expansion of the approved list of FSA programming, the Bureau has built technology infrastructure to track programming and results of risk assessments, recalculated inmate sentences to account for the new Good Conduct Time and Earned Time Credit regulations, automated the PATTERN risk instrument, developed an enhanced and automated needs assessment process, , developed updated training regarding pregnant and post-partum offenders, added pilot animal training and youth programs, implemented dyslexia evaluation and intervention, developed a new volunteer information and recruitment portal, and engaged external partners and consultants to conduct program evaluations. Comprehensive information on the Bureau's FSA

implementation activities can be found in the *2022 First Step Act Annual Report* published in April.

16. What is the Bureau's strategy for maintaining continuity of program access in the event of future public health emergencies and corresponding Bureau modified operations?

Response: To assist with the pandemic and any future public health emergencies, institutions follow the COVID-19 Modified Operations Plan and Matrix. This matrix determines the operational level and mitigating procedures institutions need to follow to prevent the risk and spread of illness. To ensure the delivery of programs in a safe manner during these types of situations, the Bureau has learned to modify class size to support social distancing as well as utilizing other program delivery methods such as classes being held outdoors. Additionally, the Bureau solicited for a correctional tablet solution to enable inmates to supplement classroom-based learning with program and education curricula available on a tablet device. In this way, inmates will be able to continue program and treatment instruction even if institution operations are disrupted. As well, the BOP frequently uses residential unit based programs, which allows inmates to continue program treatment as they are co-horted together, living and programming in a residential housing unit. This allows programming to continue even in the event that a unit may need to be isolated.

17. Please describe the availability of religious worship and services for prisoners during the pandemic.

Response: While religious accommodations were modified within agency and CDC COVID-19 guidelines, the Bureau has and will continue to respect and accommodate the religious rights and needs of federal offenders. While group programming was suspended during the early stages of the pandemic, aspects of religious services were deemed critical and continued unabated.

18. How is the Bureau ensuring continued access to religious worship and services for prisoners during the pandemic?

Response: Agency chaplains made rounds in the housing units with PPE equipment to offer pastoral care and deliver religious materials so the inmates could continue to observe their faith. When the inmates could not gather in larger groups in centralized chapel areas for congregant worship and religious studies across faith lines, the chaplains went to them to further meet their spiritual needs. The agency also offered religious services in the housing units, outside, and in smaller chapel gatherings to adhere to the CDC guidelines. As COVID-19 cases decreased and the vaccine distribution numbers increased, the inmates have had more access to the institutional chapels, worship within the chapels, and community chapel volunteers and religious contractors.

19. Understanding that the pandemic has reduced some ability to expand and implement First

Step-related anti-recidivism programs, will you commit to ramp up access to these programs as soon as possible?

Response: Yes. The Bureau is resuming normal operations as it safe to do so, based on medical, CDC, and Bureau guidance. It is worth noting that more than 25,000 inmates completed a program in 2020 despite the pandemic and in FY 2021, there were over 98,000 completions, and as of April 30, 2022, over 85,000 inmates were enrolled in Evidence-Based Recidivism Reduction (EBRR) Programs and Productive Activities (PA). As for programming in the context of the pandemic, the safety of inmates and staff is of primary importance. To determine the appropriate level of infection prevention measures and programming and service modifications required at a given point in time, the Bureau has developed a matrix by which institutions can assess the risk and spread of COVID-19 within a particular facility. Institutions determine their operational level (Level 1, Level 2, or Level 3) based on the facilities' COVID-19 medical isolation rate, combined percentage of staff and inmate completed vaccinations series, and their respective community transmission rates. At each level, an infection prevention procedure or modification to operations (such as inmate programming and services) may be made to mitigate the risk and spread of COVID-19 in accordance with BOP pandemic guidance. You can find more information about the COVID-19 Modified Operations Plan and Matrix, as well as the current number of institutions at each level, at https://www.bop.gov/coronavirus/covid19_modified_operations_guide.jsp.

20. Please describe what steps you intend to take to expand access to First Step programs?

Response: The BOP's greatest resource in delivering programs is its staff and adding staff has been the primary factor in increasing program capacity. BOP is one of the largest civilian employers of doctoral level psychologists in the United States and also employs chaplains and teachers among its complement of service-delivery professionals. These positions have long provided treatment, training, and self-improvement services across BOP facilities. Since January 2021, the BOP allotted 109 new positions in program delivery disciplines to expand the capacity of its more than 80 EBRR programs and PAs. In addition to the aforementioned professions, the newly-added positions include the Special Populations Coordinator, who delivers gender-responsive programs, and a new vocational counselor position, which is currently pending position classification. Every new position adds capacity to the BOP's FSA programs.

Ordinarily, each BOP institution monitors the needs assessed within the local institution population to determine which programs to offer. Some large, residential programs, such as the Residential Drug Abuse Program, target a subset of the population for intensive services. For programs such as these, the Reentry Services Division monitors program completions and determines when and where more staffing is needed. For most programs, however the institutions have the ability to add cohorts and increase participant capacity as needed. Thus, if a facility is offering Anger Management but has a large group of inmates with needs remediated by this program that location could add an additional section of the

program to meet the population needs. Under COVID-19 pandemic mitigation strategies, the BOP has had to limit capacity in programs to promote social distancing.

21. Could you discuss any anti-recidivism programs that have been successful?

Response: The BOP has undertaken several major actions to study its programs to ensure their quality and validate their impact. Past studies have demonstrated the efficacy of Bureau programs such as the Residential Drug Abuse Program (RDAP) and Federal Prison Industries (UNICOR). More recently, the Bureau has procured independent evaluation services to explore outcomes of some of its largest and most robust reentry programs. Recidivism studies are lengthy endeavors; inmates must first complete programs, and then be released from prison for a period of time for analyses to be conducted. Additionally, while programs are designed to promote successful reentry, many of these programs have other priorities, such as symptom reduction or behavioral modification. Thus, the BOP has awarded funds to credentialed researchers capable of studying a variety of both short- and long-term measures of program efficacy. The Bureau has awarded contracts for multi-year studies of its Residential and Non-Residential Drug Treatment Programs, Medication Assisted Treatment programs, anger management programs, and its Bureau Rehabilitation and Values Enhancement (BRAVE) program. More information about the Bureau's efforts to evaluate the efficacy of its recidivism reduction programs can be found in the April 2022 *First Step Act Annual Report*, see pp. 35-36.

22. If a person born a biological male undergoes sex reassignment surgery while in BOP custody, would that individual ever be transferred to an all-female facility? What procedures or standards govern whether that individual is transferred?

Response: Bureau of Prisons Program Statement 5100.08 CN-1, *Inmate Security Designation and Custody Classification* outlines procedures for the transfer of all inmates. Additionally, Program Statement 5200.08, *Transgender Offender Manual* addresses programming and housing issues specific to transgender inmates. The Transgender Offender Manual is the Bureau's Program Statement that governs designation decisions for individuals who identify as transgender. All decisions are made by a multidisciplinary committee of senior agency staff. Policy allows for an individual to be placed at a facility that affirms his or her identified gender, regardless of surgery.

23. During the past year, there have been reports of what some call "an epidemic within the pandemic"—referring to the alarming rate of overdose deaths from substance abuse during the COVID crisis. As I am sure you are only too aware, the Centers for Disease Control and Prevention cited provisional figures last week citing a dramatic increase in overdose deaths during COVID. Of the inmates in your 112 prisons, how many are struggling with substance abuse problems? If possible, could you break this down by institution?

Response: It is estimated that 45% of inmates meet the diagnostic criteria for a substance use disorder at the time they enter Bureau custody.

24. What are your policies for the treatment of prisoners with substance abuse problems?

Response: The Bureau has a comprehensive policy that guides identification and treatment of inmates with substance use disorders. Inmates who enter Bureau custody with a history of substance misuse are required to complete Drug Education, which is designed to help inmates consider the impact drug use has had on their lives and motivate them to participate in treatment. Treatment options include:

a. the Non-Residential Drug Abuse Program (NRDAP) - a 16-week group treatment program in which participants meet in small groups to learn and practice skills designed to address criminality and substance use;
b. the Residential Drug Abuse Program (RDAP) - an intensive 9-month treatment program in which participants live on the same unit and engage in daily treatment;
c. the Medication-Assisted Treatment (MAT) Program - inmates who are prescribed medications for opioid use disorder are engaged in psychosocial treatment interventions guided by an individualized treatment plan;
d. the Challenge Program - an intensive residential treatment program for high security inmates with substance use and mental health problems; and
e. the Female Integrated Treatment (FIT) Program - an intensive residential treatment program that provides integrated substance use, mental health, and trauma treatment to female inmates.

25. Do substance abuse treatment policies extend to privately-run prisons as well?

Response: Privately-run prisons provide drug education and non-residential drug abuse programs. Inmates who are in need of residential drug treatment or Medication-Assisted Treatment (MAT) may be transferred to a Bureau facility.

26. Could you explain some of the challenges you face in identifying and treating inmates who overuse opioids or other drug substances?

Response: People with substance abuse problems often minimize the impact their substance abuse has had on their lives and are ambivalent about seeking treatment. Cravings and physical dependency can make the process of withdrawing from substances very painful, leading people to continue using substances in order to avoid withdrawal. Inmates who are actively using drugs while incarcerated are subject to the disciplinary process, and fear of negative consequences may prevent them from seeking treatment.

27. How has the problem of substance abuse in prisons changed during the COVID pandemic?

Response: Prior to the COVID-19 pandemic, jails and prisons have always faced problems with offender drug use and contraband drugs. The Bureau has developed interdiction (e.g., a pilot program involving scanning inmate mail) strategies to eliminate inmates' access to drugs as well as programs targeted to inmates who are

known to be actively using drugs (e.g., an awareness program about the harmful effects of synthetic cannabinoids). The Bureau has expanded the MAT Program to provide treatment options for inmates who are actively using opioids or who are at risk of relapse into opioid use.

28. Do you care to share any other observations that may be useful to the Committee in our study of substance abuse problems during the pandemic?

Response: The Bureau continues to expand substance use treatment programs and implement strategies to identify inmates who are in active use and encourage them to participate in treatment.

Senator Whitehouse

1. Effective prison programming can help prepare people for reentry and reduce recidivism. As you testified before the House Judiciary Committee in December 2020:

> [Residential Drug Abuse Program] participants were 16 percent less likely to recidivate and 15 percent less likely to have a relapse in their substance use disorder within three years after release. Inmates who participate in vocational or occupational training were 33 percent less likely to recidivate, and inmates who participate in education programs were 16 percent less likely to recidivate.

Congress recognized the power of prison programming to reduce recidivism when it passed the First Step Act, which requires the Bureau of Prisons (BOP) to make evidence-based recidivism reduction programs and productive activities available to all eligible people in custody by January 2022.

a. The Independent Review Committee (IRC) created by the First Step Act found that "during the first nine months of [2020], COVID-mitigation efforts undertaken by the Department of Justice (DOJ) and BOP seriously interrupted or curtailed rehabilitative programming in federal prisons. . . 20 of 29 BOP-designated Evidence-Based Recidivism Reduction Programs . . . have been 'highly impacted' by the virus, including 'some that have been shut down entirely since the outbreak began.'"[12]

   i. What, if any, steps did BOP take to mitigate the effects of COVID-19 on programming (for example, by allowing access to virtual education or treatment)?

   Response: In the early stages of the pandemic, programming in groups was suspended; however critical services associated with programming continued unabated. For example, mental health treatment and crisis intervention continued, as did religious observances.

   As information about virus mitigation strategies became available, the Bureau adhered to CDC guidance in resuming programming. Programs were held with decreased capacity to

[12] Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act (FSA) of 2018 (P.L. 115-391), at 1 (Dec. 21, 2020), *available at* https://firststepact-irc.org/wp-content/uploads/2020/12/IRC-FSA-Title-I-Section-107g-Report-12-21-20.pdf.

allow for social distancing and participants and staff wore masks. Additionally, some programs were held in unique spaces such as on housing units or outdoors. It is worth noting that more than 25,000 inmates completed a program last year (2020) despite the pandemic, in FY 2021 over 98,000 inmates completed structured Evidence-Based Recidivism Reduction (EBRR) Programs and Productive Activities (PA) and as of April 30, 2022, 85,000 inmates were enrolled in EBRR programs and PAs.

As for programming in the context of the pandemic, clearly the safety of inmates and staff is of primary importance. However, as vaccination rates continue to increase, the Bureau will continue to expand programming. The Bureau recently issued guidance to Wardens authorizing the use of contractors and volunteers in those contexts and with those individuals who pose low risk (e.g. because they have been vaccinated themselves and the facility has few or no COVID-19 infections). As well, the BOP has developed residential unit-based programs which allows inmates to continue program treatment as they are co-horted together living and programming in a residential unit. This allows programming to continue even in the event that a unit may need to be isolated. The Bureau is also developing a correctional tablet solution that will enable inmates to supplement classroom-based training with programs and treatment materials accessible on a mobile device.

ii. What plans does BOP have to resume programming in the coming months?

Response: The Bureau is working expeditiously to resume programming to fullest extent possible while complying with CDC guidance. All staff and inmates are educated and encouraged to receive the vaccination for COVID-19. To date, all Bureau staff have been offered the vaccine and by June 1, 2021, all inmates had been offered the opportunity to be vaccinated. The Bureau continues to offer and encourage vaccines to new and existing inmates.

As health-safety measures indicate it is safe to do so, the Bureau will continue to expand programming. The Bureau has developed a system by which institutions can determine their operational level (Level 1, Level 2, or Level 3) based on each facility's COVID-19 medical isolation rate, combined percentage of staff and inmate completed vaccinations series, and their respective community transmission rates. At each level, an infection prevention procedure or modification to operations (such as inmate programming and services) may be made to mitigate the risk and spread of COVID-19 in accordance with Bureau pandemic guidance. More information about the Bureau's Operational Level Matrix and the number of institutions at each level can be found on our public website at https://www.bop.gov/coronavirus/covid19_modified_operations_guide.jsp.

iii. When does BOP anticipate programming will return to pre-COVID-19 levels?

Response: As for programming in the context of the pandemic, clearly the safety of inmates and staff is of primary importance. However, as vaccinations continue to increase, the

Bureau will continue to expand programming. The Bureau recently issued guidance to Wardens authorizing the use of contractors and volunteers in those contexts and with those individuals who pose low risk (e.g., because the contractors or volunteers have been vaccinated themselves and the facility has few or no COVID-19 infections). Although it is difficult to predict exactly when the restrictions imposed by COVID-19 will no longer be necessary, the Bureau regularly consults with the CDC on these issues and is committed to safely expanding access to programming. Institutions determine their operational level (Level 1, Level 2, or Level 3) based on the facilities' COVID-19 medical isolation rate, combined percentage of staff and inmate completed vaccinations series, and their respective hybrid community risk. At each level, an infection prevention procedure or modification to operations (such as inmate programming and services) may be made to mitigate the risk and spread of COVID-19 in accordance with Bureau pandemic guidance. More information about the Bureau's Operational Level Matrix can be found on our public website at https://www.bop.gov/coronavirus/covid19_modified_operations_guide.jsp.

b. The IRC found that even a full return to pre-COVID-19 BOP programming levels will not be sufficient to make evidence-based recidivism reduction programs and productive activities available to all eligible people in custody by January 2022, as the First Step Act requires. What steps is BOP taking to increase its program offerings and comply with the First Step Act?

Response: The Bureau has made programs available to all inmates. The agency offers over 80 FSA programs and more than 200 career technical education programs. The BOP's greatest resource in delivering programs is its staff and adding staff has been the primary factor in increasing program capacity. BOP is one of the largest civilian employers of doctoral level psychologists in the United States and also employs chaplains and teachers among its complement of service-delivery professionals. These positions have long provided treatment, training, and self-improvement services across BOP facilities. Since January 2021, the BOP allotted 109 new positions in program delivery disciplines to expand the capacity of its Evidence-Based Recidivism Reduction (EBRR) programs and Productive Activities (PAs). In addition to the aforementioned professions, the newly-added positions include the Special Populations Coordinator, who delivers gender-responsive programs, and a new vocational counselor position, which is currently pending position classification. Every new position adds capacity to the BOP's FSA programs.

Ordinarily, each BOP institution monitors the needs assessed within the local institution population to determine which programs to offer. Some large, residential programs, such as the Residential Drug Abuse Program, target a subset of the population for intensive services. For programs such as these, the Reentry Services Division monitors program completions and determines when and where more staffing is needed. For most programs, however the institutions have the ability to add cohorts and increase participant capacity as needed. Thus, if a facility is offering Anger Management but has a large group of inmates with needs remediated by this program that location could add an additional section of the program to meet the population needs.

2. The Department of Justice advised the IRC that it had discovered "technical issues" in the early administration and scoring of its risk assessment system, PATTERN, through the instrument's revalidation process.[13] The IRC encouraged DOJ to "release a detailed report on this matter—including any effect it may have had on inmate risk classifications, and steps taken to address misclassifications—as quickly as possible."[14]

   a. What "technical issues" did DOJ discover?

      Response: The PATTERN tool was finalized and published in January 2020, and the BOP assessed all inmates using the latest tool at that point, known as "PATTERN 1.2." In addition, the BOP's Office of Information Technology (OIT) began work to develop an automated PATTERN tool for integration into the BOP's inmate management systems. PATTERN contained four risk models: (1) male general recidivism, (2) male violent recidivism, (3) female general recidivism, and (4) female violent recidivism.

      Over the following months in 2020, as part of the annual PATTERN revalidation effort, the NIJ's research experts began conducting several analyses of the PATTERN 1.2 tool. The BOP's Office of Research and Evaluation (ORE) worked with the NIJ consultants and the BOP's Correctional Programs Division to develop a PATTERN simulation tool to enable ORE to assist NIJ consultants in validating PATTERN and comparing test results. By January 2021, the NIJ consultants had identified several coding, specification, and scoring discrepancies in PATTERN 1.2 and recommended immediate corrections to the BOP. The BOP adopted these recommendations, updating its field guidance and scoring sheets with the corrections made to the item and scoring errors, thereby refining the tool into version "PATTERN 1.2-Revised" (1.2-R). The BOP then began to reassess the risk scores for all inmates who were affected by the prior scoring errors.9 By June 2021, PATTERN 1.2-R was in full implementation. Currently, all inmates are assessed for their PATTERN risk score and level using the automated PATTERN 1.2-R tool. Once PATTERN is further refined, OIT will adjust PATTERN automation to update the calculation of BOP inmate risk scoring and levels.

      In March 2021, the team of expert consultants contracting with NIJ throughout 2020 began their annual 2021 review and revalidation study for PATTERN 1.2-R. Upon review of that tool, they proposed a refined version of the tool, PATTERN 1.3, because although version 1.2-R had been revised to correct item and scoring errors that the NIJ consultants identified in 2020, version 1.2-R maintained the scoring scheme developed for version 1.2. More information about the evaluation and adoption of PATTERN 1.3 and continued study and evaluation of the recidivism tool is available in the April 2022 *First Step Act Annual Report.*

   b. How many people did these "technical issues" affect? How did they affect them?

[13] *Id.* at 3.
[14] *Id.*

Response: The Bureau reassessed 1,745 inmates who were classified differently between the PATTERN 1.2 tool and the January 2020 corrected version of the PATTERN tool (PATTERN 1.2-R). As of early 2022, all inmates had been assessed for their PATTERN risk score and level using the automated PATTERN 1.2-R tool. BOP is now in the process of implementing the PATTERN 1.3 tool.

c. What steps have BOP and DOJ taken to correct these issues?

Response: BOP Information Technology (IT) staff and research staff worked to confirm concurrence between the research model and the software used to automate PATTERN scoring. The updated PATTERN 1.2-R instrument was fully automated and integrated with the BOP's case management application. In March 2021, the team of expert consultants contracting with NIJ throughout 2020 began their annual 2021 review and revalidation study for PATTERN 1.2-R. Upon review of that tool, they proposed a refined version of the tool, PATTERN 1.3, because although version 1.2-R had been revised to correct item and scoring errors that the NIJ consultants identified in 2020, version 1.2-R maintained the scoring scheme developed for version 1.2. PATTERN 1.3 has proven effective at distinguishing between recidivists and non-recidivists. Accordingly, and at the direction of the Attorney General, the Department will implement PATTERN 1.3 as it continues to consider all legally permissible options for reducing the differential prediction based on race and ethnicity to the greatest extent possible. More information on the evaluation and the adoption of the PATTERN 1.3 tool is available in the April 2022 *First Step Act Annual Report*.

d. Will DOJ commit to releasing a detailed report on these technical issues?

Response: A detailed accounting of the study, evaluation, and implementation of the PATTERN tool is available in the April 2022 *First Step Act Annual Report.*

3. In 2016, Rhode Island began offering all three medications approved by the FDA for opioid use disorder treatment to individuals who are incarcerated. The state subsequently saw a 61 percent reduction in overdose deaths among the targeted population. The First Step Act built on this success by requiring BOP to assess its capacity to treat opioid abuse through evidence-based programs, including medication-assisted treatment (MAT), and to develop a plan to expand access to treatment.

   In the written testimony he submitted for this hearing, Dr. Homer Venters, a correctional health expert who audited several BOP facilities, states that there is still "an almost total lack of access to methadone and suboxone in BOP facilities…[d]espite public statements acknowledging the need to expand access to these lifesaving medications, a recent GAO report identified that almost none of the people who would qualify to have received them have."

   a. In December 2020, you testified that BOP has one opioid treatment program at MCC Brooklyn and is working to start three more at FMC Butner, North Carolina; FMC Springfield, Illinois; and FMC Carswell, Texas.

i. Do these facilities have the capacity to serve everyone in the federal system with an opioid addiction?

Response: All Bureau facilities have the ability to serve those with opioid addiction. In the Bureau's plan to roll out opioid treatment programs, FMC Butner, USMCFP Springfield, and FMC Carswell were selected as the first three institutions to apply for Opioid Treatment Program (OTP) certification As of June 30, 2022 FMC Lexington, FMC Forth Worth, FMC Devens, and FMC Rochester have also received OTP certification.

ii. Do all of those facilities offer MAT? If so, how many offer all three MAT drugs approved for opioid use disorder?

Response: All Bureau facilities offer all three FDA-approved medications for opioid use disorder, either through internal or community resources. While the Bureau continues to expand its internal capacity to offer the medications, if an inmate requires a medication not offered internally at their facility, community resources are utilized.

iii. What plans does BOP have to expand the number of opioid treatment programs and the number of MAT drugs offered at those programs?

Response: The Bureau requested and received approval as part of the FY2021 and FY2022 FSA Spend Plan by Congress to fill additional positions to support MAT Program expansion. The Bureau is also working on implementing a hub and spoke system that will allow all institutions to be certified as narcotic treatment programs working under the 7 certified opioid treatment programs. As of June 30, 2022 every BOP institution has been inspected by the DEA and has initiated the process to receive certification through Substance Abuse and Mental Health Services Administration (SAMHSA). Once certified, all facilities will be able to offer all FDA-approved medications for opioid use disorder within the confines of the institution.

b. As of September 2020, BOP had screened approximately 7,000 (of over 150,000) people in custody, but only 409 have enrolled in MAT.[15] How does BOP decide who to screen for MAT? Why more people were not screened?

Response: The Bureau initially was screening those inmates releasing from Bureau custody for MAT services and those who were newly arriving for MAT services. The Bureau now screens all inmates for MAT services by utilizing several screening points to include self-referral for MAT services.

c. What percentage of people who are clinically eligible for receiving methadone or suboxone have been offered those drugs? How many are being treated with those drugs?

[15] The Attorney General's First Step Act Section 3634 Annual Report 10 (Dec. 2020), https://www.bop.gov/inmates/fsa/docs/20201221_fsa_section_3634_report.pdf.

Response: The Bureau does not currently assess the percentage of inmates who are clinically eligible for MAT services. At present, the Bureau has 43 patients receiving methadone and 305 receiving buprenorphine.

d. What steps does BOP take to connect people in custody to a provider who can continue their MAT once they leave prison?

Response: Inmates who transfer from prison to community placement (i.e., Residential Reentry Center or home confinement) are connected with providers in the community to continue counseling and medication services. Their clinical care is supervised by the Bureau's Community Treatment Services section.

TESTIMONY OF JANOS MARTON

NATIONAL DIRECTOR OF DREAM CORPS JUSTICE

SENATE COMMITTEE ON THE JUDICIARY

APRIL 15, 2021

"Oversight of the Federal Bureau of Prisons"

Chair Durbin, Ranking Member Grassley, and members of the Committee,

Thank you for the opportunity to submit written testimony to the Senate Committee on the Judiciary regarding the oversight of the Federal Bureau of Prisons. My name is Janos Marton, and I am the National Director of Dream Corps JUSTICE, an organization founded by Van Jones that seeks to advance bi-partisan policies which will close prison doors and open doors of opportunity.

COVID-19 has impacted the lives of every American for the last year, but the impact has been especially hard on individuals incarcerated in our federal prisons and their families. While 9 in 100 Americans have contacted COVID-19, in prisons, the infection rate jumped to 34 out of 100, and at the federal level, 39% of incarcerated people tested positive.[1] The Bureau of Prisons has to date released more than 7,000 individuals to home confinement and granted compassionate release to a much smaller number (only 2% of applicants[2]) to spare people in prison from COVID; however, much more is needed to combat the pandemic for both people who remain incarcerated and people who have come home. This includes improving prison conditions, increasing reentry support, and expanding the FIRST STEP Act's programming.

A large part of Dream Corp JUSTICE's work is centering the voices of those impacted by the system and elevating their ideas to those in power. We do this through our Empathy Network, which is made up of 300+ grassroots organizations and leaders in 46

[1] https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html
[2] https://www.theregreview.org/2021/02/22/downey-compassionate-release-during-covid-19/

states who are committed to sharing their stories and working directly with lawmakers on policy solutions. Our Network ensures that those who are most impacted by the justice system have a seat at the table and can lend their expertise to help develop the policy solutions that will impact their lives, families, and communities.

We reached out to our Empathy Network in advance of this hearing, speaking with people who have either spent time in the federal system over the past year or have a loved one who is currently incarcerated in a federal prison to learn more about the impact of COVID on their lives.

Some of the most frequent comments we received from our members were:
*Prison staff did not strictly follow best practices regarding prevention of spreading the disease
* Prison staff did not always wear or provide personal protective equipment and
*Incarcerated individuals did not have reliable access to COVID tests if they felt they had contacted the virus.

When asked if BOP staff followed best practices, one of our members, Roy B. (Minnesota), said, "No. The authority figures felt that [catching the virus] was inevitable. [...] They only wanted it to look like safety guidelines were being followed, but they were not strictly followed".

Another member, Ashley J. (North Carolina), reported that while her father had a mask, access to hand sanitizer was scarce, and he only got minimal medical care such as hand soap.

Tied to the issue of PPE and health safety during COVID-19 is the belief that federal prisons are not well kept or clean enough to house so many people. Sondra of Arkansas relayed to us that FCI Beaumont specifically has numerous maintenance issues. Her loved one reported that "the kitchen area has been condemned because of mold. The food is made somewhere else and is brought over to the facility. Another part of the facility has also been condemned. Inside vents, you can see so much black mold you can scrape it off with your hand".

Vicky B. (Missouri) reported, "the water is unsanitary, and there is barely central heating within these facilities." These conditions are not acceptable at any time but especially not during the middle of a global pandemic, in facilities where it is hard enough to social distance and maintain good hygiene. Adding mold and other contaminants only adds to the serious health violations in our facilities.

Our members were also greatly concerned with the BOP's ability to prepare people for reentry. When asked what the BOP has done to promote reentry, Ashley J. (North Carolina) responded, "there are not a lot of readily available programs that are reentry based. The available programs are basically word of mouth, and a lot of people are left out. Also, there needs to be a liaison to connect people to their home city reentry organizations." An excellent place to start would be to continue funding reentry programs as mandated in the FIRST STEP Act, including mental health, life skills, special needs, and educational/vocational programs. That sentiment was echoed by Dianara S. (Virginia), who told us, "addressing physical and mental wellbeing is crucial—giving women and men strategies to be able to overcome the stigma coming back such as housing laws, negative self-thoughts, job placement. This is essentially a ball and chain for most people because with the odds stacked against them, thus making going back to jail the seemingly easier route." We need to set up individuals for success as they prepare to return home - it is the key to improving both recidivism and public safety.

Closely tied to reentry preparation is the need to restart federal programming and job training as soon as safely possible. Programming across the federal system was suspended due to COIVD-19 and has not resumed as of March 2021. Debbie H. (Texas) mentioned that her loved one was taking HVAC and other education courses intending to become a mechanic, but all classes have been delayed due to the pandemic.

Lastly, we asked our members, "what is the important thing Congress should know about the BOP?" Several, including Dianara S.(Virginia), suggested funding needs to be redistributed - "there is way too much money going to the BOP, but the money isn't distributed effectively. There were a lot of social activities, such as square dancing, yet a lack of therapists. The money needs to be reallocated for reentry to combat

recidivism". Debbie H. (Texas) highlighted the need for a culture shift amongst leadership and staff - "they should know that some do not treat those visiting with compassion along with those incarcerated." The message was clear: our system simply isn't working the way it should if our goal is to rehabilitate people and set them up for successful reentry. Our current system punishes individuals and their families and spends little time ensuring we are assisting with their rehabilitation.

I appreciate the committee's continued bipartisan commitment to improving our federal prison system and the lives of the individuals under their care. After decades of over-incarceration, it is necessary to make bold changes to our system to correct past mistakes and focus on how we can reform a system that has more often than not done more harm than good. Thank you for taking the time to read my testimony and the testimonies of our Empathy Network members; it is crucial that the voices of those impacted by our justice system be heard and taken seriously in this process. I would be happy to answer any questions the committee has and look forward to our continued collaboration on this effort.

Sincerely,
Janos Marton
National Director
Dream Corps JUSTICE

Written Testimony of Clara LeBeau

U.S. Senate Committee on the Judiciary

April 15, 2021

I am very grateful for the opportunity to submit my statement, and I want to thank this Committee for holding a hearing on the federal Bureau of Prisons (BOP). It is more important now than ever to examine the practices of an agency with control over fundamental rights and the health of those in its custody.

My granddaughter died in the custody of the BOP. She was eight months pregnant and sick, and they thought it was a good idea to put her on a plane from South Dakota to a Texas prison in the middle of a global pandemic. She got pneumonia, went on a ventilator, had the baby prematurely, and died of COVID-19. And the BOP has never apologized.

Her name was Andrea High Bear. The last time she spoke to me, she asked me to tell her children that she loved them and said she was afraid. The last time I saw her, it was on a video call, and she was on a ventilator. I asked the nurses to hold the phone to her ear and I told her to wake up.

Her baby was born April 1, 2020. Her name is Elyciah Elizabeth Ann High Bear. Andrea never held or even knew she had the baby because she was on the ventilator. The baby was discharged on April 19. We drove all the way down there to pick up Elyciah and bring her home. The BOP wouldn't let us see Andrea, even though we'd come all that way and she was dying. She died April 28.

There are so many things the BOP never told us: why Andrea was transferred to Texas, when she got COVID, that the baby was going to be delivered by C-section, that she was dying. The only time I heard from the BOP was after she died. The warden at the Carswell prison where she was sent me a letter saying they were taking care of her body until they could get it sent to South Dakota, where we live. He said he was sending me his condolences, too.

In prisons and jails right now are granddaughters, daughters, mothers. And some of them are pregnant, and they're not getting the care they need, and some of them will die, like Andrea. And their families are in the dark. Families like ours are trying our best. We're calling wardens, prisons, and jails, every day. No one calls back.

If the BOP is doing things right, and they don't have anything to hide, then why avoid us? I've been told that Congress is upset about this. They should be. The BOP is broken. What functioning system would wait months to take a pregnant woman and put her on a long airplane flight in the middle of a pandemic?

When she called me from Texas, Andrea told me how the BOP made her stand on the airport tarmac with no coat on, waiting to board the plane. Feeling sick, big pregnant belly, and they

made her stand out there and wait with no coat on. In the South Dakota cold in the middle of a pandemic. She told me I shouldn't worry. I can't get that out of my mind.

The federal government can help by making sure no other family has to go through what we have. I'm asking Congress to keep a better eye on what's going on. I'm asking for more regular, ongoing oversight into the practices of the BOP. There should be more inspections and less secrecy. I'm asking that families be informed about what's going on with their loved ones, every step of the way, but especially when they are sick. No one should suffer like we did.

Andrea was given 26 months for a low-level drug crime. The judge recommended that she do drug treatment in prison, so all told she would probably be looking at a year in prison. But instead, the BOP gave her a death sentence and now six kids don't have a mom anymore.

The baby is doing fine, we're taking good care of her. If the BOP had been responsible in its care, Andrea would be here with her baby. This all could have been avoided and I hope what happened to us doesn't happen to anyone else.

United States Senate
Committee on the Judiciary
Hearing on Oversight of the Federal Bureau of Prisons

Written Testimony Submitted By:

Anita Aboagye-Agyeman, *Assistant Federal Defender, District of New Jersey*
Alison K. Guernsey, *Clinical Associate Professor, University of Iowa College of Law*

April 15, 2021

We, Anita Aboagye-Agyeman, an Assistant Federal Public Defender in the District of New Jersey, and Alison K. Guernsey, the Director of the University of Iowa College of Law's Federal Criminal Defense Clinic, appreciate the opportunity to present our views with respect to the federal Bureau of Prisons' ("BOP") continued mishandling of the COVID-19 pandemic.

We write in our personal capacities, as experienced federal criminal defense lawyers who have spent the past 13 months representing indigent individuals seeking compassionate release under 18 U.S.C. § 3582(c) in various federal district courts across the nation. Not only have we spent incalculable amounts of time listening to the difficult stories our clients and our colleagues' clients have told about the conditions of confinement in the BOP, but we have also spent substantial time tracking the BOP's ever-changing infection and death data to ensure that what is happening is not easily erased.

With this background, our comments will have a tripartite focus. First, we want to highlight the very human toll of the BOP's continued failure to protect those it houses behind its walls. We want to say the names of the known mothers, fathers, siblings, friends, and neighbors who have lost their lives. Second, we want to emphasize the disturbing fact that the real scope of that human toll remains unclear. This is because there is an utter lack of transparency about both the COVID-19 infection rate and the number and circumstances of the deaths in all institutions where the federal Government imprisons people with a federal hold: federally managed prisons, federally managed halfway houses, and privately managed facilities with federal contracts (collectively, "federal facilities"). And third, we will offer modest suggestions for next steps that we believe will be critical to understanding the true impact of COVID-19 in the BOP.

First, the human toll. According to the current, official data from the BOP, as of April 12, 2021, there have been 240 people who have died from COVID-19 while

in federal facilities.[1] That number includes 230 people who died in prisons and halfway houses, and ten people who died in privately run contract facilities.[2] This number is inaccurate. As outlined below, there have been at least 248 deaths in federal facilities since the start of the pandemic in March 2020. In other words, the BOP's data is wrong. A full list of those who have died—and whose names we know—is attached to this testimony.[3] But to understand, with just a glance, the scope of that loss, here are just fourteen people who have died:

- Eric Spiwak, 73, a Vietnam veteran who received a Purple Heart and Bronze Star Medal for Valor;
- Sandra Kincaid, 69, a mother and grandmother who was known to go out of her way to help others;
- Daniel Lee Vadnais, 56, a skilled marine mechanic and father;
- Richard Nesby, 55, a father to 15 children who described him as funny, family-oriented, and a versatile handyman;
- Daniel Kimbrough, 53, a Bemidji State University graduate who was a wonderful singer and avid gardener;
- Carlos Caldero Mendoza, 60, a loving husband and father with no prior involvement in the criminal legal system;
- Saferia Johnson, 36, the mother of two children and who had worked with the juvenile justice department;
- Matthew Shubart, 41, a chef and beloved son;
- Armando Velasquez, 70, a father to 6 daughters, a farmworker, and a truckdriver;

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[1] Fed. Bureau of Prisons, *COVID-19 Cases*, https://www.bop.gov/coronavirus/

[2] *Id.*

[3] *See also* University of Iowa College of Law, Federal Criminal Defense Clinic, *Compassionate Release: People Who Have Died in Federal Custody*, https://law.uiowa.edu/compassionate-release-work (last visited Apr. 12, 2021)

- Dewayne ("G-Wayne") Antonio Mitchell, 43, a devoted father to five children known to have a "heart of gold";

- Andrea High Bear, 30, a member of the Cheyenne River Sioux Tribe and loving mother of six children who left behind "a legacy of love, grit, and determination";

- Brandon Lavon Patton, 29, a loving father, brother, and friend who died at Nevada Southern Detention Center, a federally contracted private prison, while awaiting sentencing;

- Patrick Estell Jones, 49, the first person with a federal hold to die from Covid-19, was "a wiz in the kitchen" and a member of St. James Methodist Church in Temple, TX; and

- Waylon Young Bird, 52, member of the Cheyenne River Sioux Tribe, a son, father, and grandfather with "a generous spirit"

Of the more than two hundred people the BOP currently counts as having died from COVID-19 in federal facilities, approximately 55 had asked for compassionate release from the BOP and—upon being denied—sought relief from the federal district courts.[4] In these 55 motions, those seeking release highlight the inability to engage in self-protective measures in the BOP; discuss their fear of dying in prison; and highlight their medical conditions as "extraordinary and compelling reasons"[5] to return home.

Seventeen of those 55 people who eventually filed their motions for compassionate release with a district court died while those motions were pending; around 36 had their motions denied by the district court; and at least 2 had their motions granted but died before they could be released.[6]

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[4] *See* University of Iowa College of Law, Federal Criminal Defense Clinic, *Compassionate Release: People Who Have Died in Federal Custody*, https://tinyurl.com/an7rpxss (last visited Apr. 12, 2021). Several more people died without having done so.
[5] 18 U.S.C. § 3582(c)(1)(A)(i)
[6] *See* University of Iowa College of Law, Federal Criminal Defense Clinic, *Compassionate Release: People Who Have Died in Federal Custody*, https://tinyurl.com/an7rpxss (last visited Apr. 12, 2021).

To say that only 55 of the people who died had filed for compassionate release, however, is certainly an undercount. The 55 number accounts for only those people who eventually filed their request with the federal district court upon getting nowhere with the BOP. The number of people who asked for compassionate release from the BOP before dying and who never filed with the federal district courts is unknown—that data does not appear publicly—but it is likely much higher.

But even assuming only 55 of those who died requested compassionate release from the BOP, in not even one of those cases did the BOP move for release on the person's behalf. This is even though in almost every single press release it issued announcing a new death, the BOP touted the person's pre-existing medical conditions as a purported explanation for their death.[7]

A good example is the case of James Lee Wheeler, from North Carolina, who was known to his friends as "Frank." Mr. Wheeler suffered from 4 conditions that placed him at risk: heart issues, diabetes, hypertension, and COPD.[8] Not to mention he was 77-years old.[9] In response to his motion for a reduced sentence, prosecutors argued that the Court should not be concerned because the BOP had "taken significant measures in an effort to protect the health of the inmates in its charge."[10] Despite the prosecution's claim, however, Mr. Wheeler was not safe. He was diagnosed with COVID on November 17, 2020.[11] He remained isolated for 8 days and was then taken to the hospital.[12] Mr. Wheeler died on December 7, 2021.[13] The next day, the BOP issued a press release announcing Mr. Wheeler's death, noting that he "had long-term, pre-existing medical conditions which the CDC lists as risk factors for developing more severe COVID-19 disease."[14]

Or John Rodrigues. Mr. Rodrigues, a 65-year-old man from Hawaii, died on

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[7] Fed. Bureau of Prisons, Press Releases, https://www.bop.gov/resources/press_releases.jsp (last visited Apr. 12, 2021)
[8] *United States v. Wheeler*, 3:03-cr-00739-JGC, Doc. 2281 at 9-10 (N.D. Ohio May 5, 2020) (Supplement to Motion for a Reduced Sentence).
[9] *Id.* at 9.
[10] *United States v. Wheeler*, 3:03-cr-00739-JGC, Doc. 2282 at 5 (N.D. Ohio May 15, 2020) (Government Response to Supplement to Motion for a Reduced Sentence).
[11] Fed. Bureau of Prisons, Press Release, Inmate Death at Terra Haute (Dec. 8, 2020), https://tinyurl.com/jt4kcx9w
[12] *Id.*
[13] *Id.*
[14] *Id.*

December 15, 2020.[15] Mr. Rodrigues suffered from obesity, diabetes, and kidney disease[16]—conditions the CDC recognizes to be serious risk factors for COVID-19.[17] Despite these conditions, DOJ prosecutors argued against his release on the grounds the BOP had his care under control and the COVID-19 infection rates at his prison were too low to warrant release.[18] Even when Mr. Rodrigues was hospitalized and struggling to breathe, DOJ prosecutors continued to argue for him to remain in prison because it was safer.[19] In its press release announcing Mr. Rodrigues's death, the BOP finally acknowledged what Mr. Rodrigues had been arguing all along: he "had long-term, preexisting medical conditions which the CDC lists as risk factors for developing more severe COVID-19 disease."[20]

More recently, Jaime Benavides, a 49-year-old man from Texas, died from COVID-19 while being housed at MCFP Springfield.[21] Mr. Benavides was serving a 30-month sentence for a marijuana-trafficking offense,[22] and at the time of his death, he had served 20 of those months.[23] As though his death were not tragic enough, the last months of Mr. Benavides's life in the BOP must have been horrible. He was first diagnosed with COVID-19 on December 18, 2020.[24] The BOP considered him "recovered" on December 28, 2020, but he was hospitalized on March 25, 2021 as his "condition worsened."[25] Just days later, on April 4, he died.[26] In the press release, the

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[15] Fed. Bureau of Prisons, Press Release, Inmate Death at USP Tucson (Dec. 16, 2020), https://tinyurl.com/jt6rjh98
[16] *United States v. Rodrigues*, 1:08-cr-00668-JAO, Doc. 177 at 1-2 (D. Hawaii Oct. 8, 2020) (Motion for a Reduced Sentence).
[17] Ctrs. for Disease Control and Prevention, *People with Certain Medical Conditions* (Mar. 29, 2021), https://tinyurl.com/5zvudb3e
[18] *United States v. Rodrigues*, 1:08-cr-00668-JAO, Doc. 183 at 12-14 (D. Hawaii Oct. 26, 2020) (Government Response in Opposition to Motion for a Reduced Sentence).
[19] *United States v. Rodrigues*, 1:08-cr-00668-JAO, Doc. 197 at 4 (D. Hawaii Dec. 11, 2020) (Government Supplemental Response in Opposition to a Reduced Sentence).
[20] Fed. Bureau of Prisons, Press Release, Inmate Death at USP Tucson (Dec. 16, 2020), https://tinyurl.com/jt6rjh98
[21] Fed. Bureau of Prisons, Press Release, Inmate Death at MCFP Springfield (Apr. 7, 2021), https://tinyurl.com/bxx3p9u3
[22] *United States v. Benavides*, 5:19-cr-01324, Doc. 36 at 2 (S.D. Tex. Mar. 4, 2020) (Judgment).
[23] *United States v. Benavides*, 5:19-cr-01324, Doc. 4 (S.D. Tex. Aug. 13, 2019) (noting that Mr. Rodrigues was kept in custody at his initial appearance where he remained).
[24] Fed. Bureau of Prisons, Press Release, Inmate Death at MCFP Springfield (Apr. 7, 2021), https://tinyurl.com/bxx3p9u3
[25] *Id.*
[26] *Id.*

BOP notes he "had long-term, preexisting medical conditions which the CDC lists as risk factors for developing more severe COVID-19 disease."[27]

Not only is Mr. Benavides the latest individual to die while in BOP custody from COVID-19 despite the BOP's recognition that he was medically at risk, but he is also the twelfth person the BOP has listed as "recovered" from COVID-19 only to have the person then die. Those twelve people are:

- Jaime Benavides (April 4, 2021)[28]
- Leonard Williams (April 3, 2021)[29]
- Fernando Marulanda Trujillo (Mar. 25, 2021)[30]
- Shauntae Hill (Jan. 21, 2021)[31]
- Harry Cunningham (Jan. 15, 2021)[32]
- Kevin Gayles (Jan. 12, 2021)[33]
- Carmelo Estrada (Dec. 29, 2020)[34]

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[27] *Id.*
[28] *Id.*
[29] Fed. Bureau of Prisons, Press Release, Inmate Death at MCFP Springfield (Apr. 7, 2021), https://tinyurl.com/5eur96mp ("[I]n accordance with Centers for Disease Control and Prevention (CDC) guidelines, Mr. Williams was converted to a status of recovered following the completion of medical isolation and presenting with no symptoms.").
[30] Fed. Bureau of Prisons, Press Release, Inmate Death at FCI Ft. Dix (Mar. 29, 2021), https://tinyurl.com/dd9czf ("[I]n accordance with" CDC guidelines, "Mr. Marulanda Trujillo was converted to a status of recovered following the completion of medical isolation and presenting with no symptoms.").
[31] Fed. Bureau of Prisons, Press Release, Inmate Death at FCI Terre Haute (Jan. 21, 2021), https://tinyurl.com/3tkm5z2x ("[I]n accordance with" CDC guidelines, "Mr. Hill was converted to a status of recovered following the completion of medical isolation and presenting with no symptoms.").
[32] Fed. Bureau of Prisons, Press Release, Inmate Death at FCI Memphis (Jan. 15, 2021), https://tinyurl.com/42z66p4x ("[I]n accordance with" CDC guidelines, "Mr. Cunningham was converted to a status of recovered following the completion of medical isolation and presenting with no symptoms.").
[33] Fed. Bureau of Prisons, Press Release, Inmate Death at FCI Jesup (Jan. 12, 2021), https://tinyurl.com/y9a7czun ("[I]n accordance with" CDC guidelines, "Mr. Gayles was converted to a status of recovered following the completion of medical isolation and presenting with no symptoms.").
[34] Fed. Bureau of Prisons, Press Release, Inmate Death at MCFP Springfield (Dec. 29, 2020), https://tinyurl.com/3vsmx87j ("[H]e was found to be stable and asymptomatic for COVID-19 related symptoms, and assigned to a unit with 24-hour nursing staff.")

- Christopher Carey (Dec. 18, 2020)[35]
- Barry Johnson (Sep. 26, 2020)[36]
- Ricky Lynn Miller (Sep. 17, 2020)[37]
- Marie Neba (Aug. 25, 2020)[38]
- Adrian Solarzano (May 27, 2020)[39]

With the passage of the First Step Act of 2018, Congress made clear that it intended the BOP to more broadly use its compassionate-release authority.[40] And the BOP had a chance to do so in each of the more than 200 instances in which people in its custody died. The BOP even publicly recognized post-mortem that the people who had died were at risk for more severe illness and death. But these individuals' stories—and the stories of many others like them—show that the BOP has failed to realize Congress's intent. Instead, the agency, and the broader Department of Justice that oversees it, has circumvented congressional goals, ensuring only the loss of lives in the process.

Second, as disturbing as the human toll of the pandemic is, we are equally concerned that we do not actually know the real human toll. Two weeks ago, the BOP finally admitted that it has been fudging its cumulative COVID-19 infection numbers.

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[35] Fed. Bureau of Prisons, Press Release, Inmate Death at FCI Lompoc (Dec. 18, 2020), https://tinyurl.com/n42j6xxj ("[I]n accordance with" CDC guidelines "Mr. Carey was considered recovered after completing isolation and presenting no symptoms.")
[36] Fed. Bureau of Prisons, Press Release, Inmate Death at FCI Edgefield (Sept. 25, 2020), https://tinyurl.com/9xzu56f4 (He was "asymptomatic and was released from isolation.")
[37] Fed. Bureau of Prisons, Press Release, Inmate Death at FCI Butner (Low) (Sept. 17, 2020), https://tinyurl.com/npner4y5 ("[He] tested positive for COVID-19. On Monday, July 6, 2020, Mr. Miller tested negative for COVID-19.").
[38] Fed. Bureau of Prisons, Press Release, Inmate Death at FMC Carswell (Aug. 26, 2020), https://tinyurl.com/6xfu3sea ("On Tuesday, August 4, 2020, Ms. Neba was considered recovered by medical staff as determined by CDC guidelines.").
[39] Fed. Bureau of Prisons, Press Release, Inmate Death at FCI Terminal Island (May 27, 2020), https://tinyurl.com/knrhhwyt ("[I]n accordance with Centers for Disease Control and Prevention (CDC) guidelines, Mr. Solarzano was converted to a status of recovered following the completion of isolation and presenting with no symptoms.").
[40] *See* 164 Cong. Rec. S7314-02, 2018 WL 6350790 (Dec. 5, 2018) (statement of Senator Cardin, co-sponsor of First Step Act) ("[T]he bill expands compassionate release . . . and expedites compassionate release applications."); *see also United States v. Brown*, 457 F. Supp. 3d 691, 700 (S.D. Iowa 2020) (noting the First Step Act listed its changes under the title of "Increasing the Use and Transparency of Compassionate Release" (citing First Step Act of 2018, § 603(b), 132 Stat. at 5239)).

A BOP spokesperson confirmed to The Marshall Project that COVID-19 infection data at BOP facilities has been inaccurate because the BOP removes from its count cases of anyone who was released from custody.[41]

We've known the BOP's numbers have been inaccurate for a while because we could see it in the daily reporting. The University of Iowa College of Law's Federal Criminal Defense Clinic has been tracking the cumulative infection rate daily for each facility since August 2020.[42] As part of that process, the Clinic took the BOP's own data for each facility and created a spreadsheet divided by institution.[43] Given the BOP's data purportedly includes both positive and recovered people,[44] the total number of people infected should never drop and either remain constant or increase as there are more infections. But that was not what the BOP was reporting.

The daily reports were (and continue to be) overwhelmed by prisons reporting a certain number of infected and recovered people, only to have that number decrease one day and then increase or remain at the lower number the next.[45] We did not know the reason for these fluctuations until the BOP's recent admission. But the impact of the failure to keep accurate data is quite clear when looking at less than one month of reporting for just a handful of federal facilities. All the red boxes are red flags. They signal dates when the infection rate dropped. Dates when we can't trust the data:[46]

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[41] The Marshall Project, *A State-by-State Look at Coronavirus in Prisons*, https://tinyurl.com/2vbhh2mf (last visited Apr. 12, 2021); *see also* Joshua Manson & Liz DeWolf, *The Federal Bureau of Prisons Is Even Less Transparent than We'd Thought* (Apr. 2, 2021), https://uclacovidbehindbars.org/blog/bopdata

[42] University of Iowa College of Law, Federal Criminal Defense Clinic, *Compassionate Release: Graphing COVID Cases in the Bureau of Prisons*, https://law.uiowa.edu/compassionate-release-work (last visited Apr. 12, 2021).

[43] *Id.*

[44] Fed. Bureau of Prisons, *COVID-19 Cases*, https://www.bop.gov/coronavirus/ (last visited Apr. 12, 2021) (noting data includes "confirmed positive test numbers" and "recoveries").

[45] University of Iowa College of Law, Federal Criminal Defense Clinic, *Compassionate Release: Graphing COVID Cases in the Bureau of Prisons*, https://law.uiowa.edu/compassionate-release-work (last visited Apr. 12, 2021).

[46] The full spreadsheet can be found at: University of Iowa College of Law, Federal Criminal Defense Clinic, *Compassionate Release: Graphing COVID Cases in the Bureau of Prisons*, https://law.uiowa.edu/compassionate-release-work (last visited Apr. 12, 2021).

	17-Mar	18-Mar	19-Mar	12-Mar	23-Mar	24-Mar	25-Mar	26-Mar	29-Mar	30-Mar	31-Mar	1-Apr	2-Apr	5-Apr	6-Apr	7-Apr	8-Apr	9-Apr
ACS Corrections (MRC)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Fort Dix FCI	1922	1917	1913	1918	1919	1913	1919	1909	1910	1913	1923	1921	1918	1917	1913	1910	1908	1908
Yeagerville FCI	1269	1268	1267	1268	1268	1268	1267	1267	1268	1268	1268	1264	1262	1259	1258	1258	1254	1254
Beaumont Low FCI	1162	1160	1160	1160	1161	1163	1145	1144	1142	1148	1145	1145	1144	1143	1142	1141	1141	1140
Tucson USP	1022	1021	1020	1019	1019	1020	1020	1020	1019	1019	1019	1018	1016	1016	1017	1016	1016	1016
Elkton FCI	948	948	948	948	947	942	935	928	937	937	934	936	934	935	933	932	933	902
Leavenworth USP	898	896	896	894	895	895	893	894	892	890	888	887	884	885	882	882	880	879
Pekin FCI	959	955	955	955	956	951	950	950	951	951	950	949	949	949	949	949	950	950
Marion USP	841	843	845	845	845	845	845	845	845	845	844	844	840	840	840	837	900	856
Florence FCI	835	834	833	834	836	834	833	833	832	832	831	837	825	825	824	822	820	877
Lexington FMC	827	828	827	827	827	826	826	826	823	823	823	821	820	819	817	819	819	824
Fort Worth FMC	814	813	813	810	810	809	805	805	803	803	802	802	803	803	802	802	800	798
Greenville FCI	811	811	810	810	809	807	807	807	806	805	805	803	800	798	797	794	794	793
Big Spring FCI	786	786	784	784	785	785	784	783	783	783	783	782	783	783	782	782	782	782
Forrest City Low FCI	781	778	774	775	773	772	770	771	771	772	772	773	771	771	771	767	767	764
Oxford FCI	781	781	781	781	780	780	780	759	759	781	780	758	758	763	763	782	782	782
Caswell FMC	773	772	767	764	764	766	763	767	782	785	759	759	759	758	758	757	754	754
Loretto FCI	757	757	758	757	755	754	754	755	753	752	752	752	753	751	750	750	750	750
Manchester FCI	761	760	758	758	757	758	758	756	754	754	755	756	756	754	752	752	750	750
Terre Haute USP	750	749	749	748	748	748	748	748	746	746	748	744	744	744	744	744	744	744
Sandstone FCI	744	744	744	745	745	745	743	741	742	740	740	740	740	740	740	739	739	738
Victorville Medium I FCI	751	718	728	728	721	720	718	718	718	714	717	716	713	713	711	711	711	711
Englewood FCI	716	716	717	718	717	715	715	714	713	713	710	711	711	711	711	711	711	709
Beaumont Medium FCI	705	704	703	703	700	702	699	697	699	695	693	692	692	691	690	688	687	687
Lee USP	694	692	690	690	690	689	688	687	687	688	688	694	686	686	685	685	685	683
Texarkana FCI	695	694	693	693	691	691	691	691	691	689	687	688	685	684	682	681	681	681
El Reno FCI	641	642	640	638	639	640	641	652	656	657	658	655	654	658	665	664	665	655
Lompoc FCI	954	947	934	905	892	855	853	853	850	847	840	849	850	849	844	848	849	847
Thomson USP	847	848	848	848	848	847	847	847	847	845	845	848	848	845	845	845	845	845
Springfield MCFF	648	650	650	649	648	649	649	648	647	647	647	647	647	645	645	646	645	644
Schuylkill FCI	663	655	652	661	650	648	646	645	644	644	644	647	644	644	644	643	643	643
Butner Low FCI	638	638	636	634	634	635	635	635	634	634	634	634	634	632	632	631	631	630

Given the problems with this data, it is no surprise that the UCLA Law School's COVID-19 Behind Bars Data Project has given the BOP's data-reporting an "F."[47]

Concerns over the BOP's data does not stop with infection rates, however. It also includes its accounting of deaths. As mentioned above, as of April 12, 2021, the BOP is reporting 230 deaths in its facilities and ten deaths in privately managed facilities.[48] But just the week before, the BOP reported 15 deaths in privately managed facilities. According to our record keeping, as of April 7, 2021, the BOP chose to remove from the website any reference to the 4 deaths at CI Moshannon Valley and 1 death at CI Rivers. And this is not the first time the BOP has reduced the number of deaths. In January 2021, the BOP reported 3 deaths at D. Ray James Correctional Facility. Those 3 deaths disappeared from the site in February 2021. That's 8 people that the BOP originally listed as dead, yet has since removed from its total.

When this concerning discrepancy was brought to the BOP's attention, Scott Taylor, from the BOP's Office of Public Affairs explained that the deaths had been removed from the site because people with federal holds no longer reside at the facilities.[49] To begin with, despite this claim, the BOP still lists CI Moshannon Valley,

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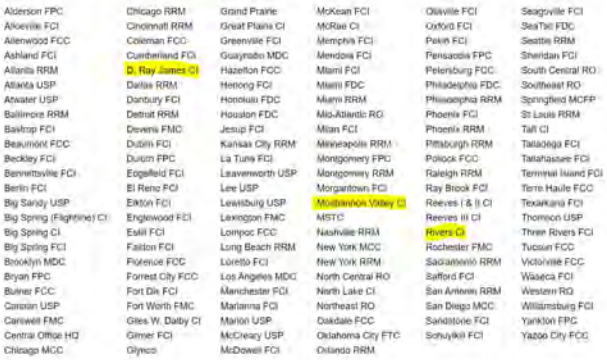
[47] Joshua Manson & Liz DeWolf, *The Federal Bureau of Prisons Is Even Less Transparent than We'd Thought* (Apr. 2, 2021), https://uclacovidbehindbars.org/blog/bopdata

[48] Fed. Bureau of Prisons, *COVID-19 Cases*, https://www.bop.gov/coronavirus/

[49] Email from Scott Taylor, BOP Office of Public Affairs, to Keri Blakinger, The Marshall Project (Apr. 8, 2021), https://tinyurl.com/2sdurwst

CI Rivers, and D. Ray James Correctional Facility on its website:[50]



Alderson FPC	Chicago RRM	Grand Prairie	McKean FCI	Oakville FCI	Seagoville FCI
Allenwood FCI	Cincinnati RRM	Great Plains CI	McRae CI	Oxford FCI	SeaTac FDC
Allenwood FCC	Coleman FCC	Greenville FCI	Memphis FCI	Pekin FCI	Seattle RRM
Ashland FCI	Cumberland FCI	Guaynabo MDC	Mendota FCI	Pensacola FPC	Sheridan FCI
Atlanta RRM	D. Ray James CI	Hazelton FCC	Miami FCI	Petersburg FCC	South Central RO
Atlanta USP	Dallas RRM	Herlong FCI	Miami FDC	Philadelphia FDC	Southeast RO
Atwater USP	Danbury FCI	Honolulu FDC	Miami RRM	Philadelphia RRM	Springfield MCFP
Baltimore RRM	Detroit RRM	Houston FDC	Mid-Atlantic RO	Phoenix FCI	St Louis RRM
Bastrop FCI	Devens FMC	Jesup FCI	Milan FCI	Phoenix RRM	Taft CI
Beaumont FCC	Dublin FCI	Kansas City RRM	Minneapolis RRM	Pittsburgh RRM	Talladega FCI
Beckley FCI	Duluth FPC	La Tuna FCI	Montgomery FPC	Pollock FCC	Tallahassee FCI
Bennettsville FCI	Edgefield FCI	Leavenworth USP	Montgomery RRM	Raleigh RRM	Terminal Island FCI
Berlin FCI	El Reno FCI	Lee USP	Morgantown FCI	Ray Brook FCI	Terre Haute FCC
Big Sandy USP	Elkton FCI	Lewisburg USP	Mountaintop Valley CI	Reeves I & II CI	Texarkana FCI
Big Spring (Flightline) CI	Englewood FCI	Lexington FMC	MSTC	Reeves III CI	Thomson USP
Big Spring CI	Estill FCI	Lompoc FCC	Nashville RRM	Rivers CI	Three Rivers FCI
Big Spring FCI	Fairton FCI	Long Beach RRM	New York MCC	Rochester FMC	Tucson FCC
Brooklyn MDC	Florence FCC	Loretto FCI	New York RRM	Sacramento RRM	Victorville FCC
Bryan FPC	Forrest City FCC	Los Angeles MDC	North Central RO	Safford FCI	Waseca FCI
Butner FCC	Fort Dix FCI	Manchester FCI	North Lake CI	San Antonio RRM	Western RO
Canaan USP	Fort Worth FMC	Marianna FCI	Northeast RO	San Diego MCC	Williamsburg FCI
Carswell FMC	Giles W. Dalby CI	Marion USP	Oakdale FCC	Sandstone FCI	Yankton FPC
Central Office HQ	Gilmer FCI	McCreary USP	Oklahoma City FTC	Schuylkill FCI	Yazoo City FCC
Chicago MCC	Glynco	McDowell FCI	Orlando RRM		

Additionally, and much more important, the simple fact the privately managed facilities no longer incarcerate people with federal holds does not resurrect those who died there when the facilities did. And by removing historical data, the BOP is failing to provide accurate information about the impact of the pandemic on those over whom the Department of Justice is supposed to have control.

The BOP's lack of transparency and reliance on its inaccurate data has both an effect on the administration of justice and raises public health concerns. In 2009, the DOJ called on all its agencies—including the BOP—"to reaffirm the government's commitment to accountability and transparency."[51] But BOP's response to the pandemic in prisons suggests that this call to action was a mere formality. Even before the pandemic, we lacked basic information about incarcerated people's deaths.[52]

Transparency about deaths and infections is critical because DOJ prosecutors and the courts frequently rely on this data in deciding compassionate release motions and evaluating the dangers someone may face in prison. As outlined in just a few examples above, over the course of this pandemic, prosecutors have claimed in their opposition to motions for compassionate release that the DOJ is taking aggressive

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[50] Fed. Bureau of Prisons, *Our Locations*, https://www.bop.gov/locations/list.jsp (last visited Apr. 13, 2021).
[51] U.S. Dept of Justice, Office of Information Policy, Government Transparency, https://www.justice.gov/oip/government-transparency (last visited Apr. 13, 2021).
[52] Jamie Nawaday & Jack Donson, *A Better Way to Run the Federal Bureau of Prisons*, THE HILL (Aug. 22, 2019), https://tinyurl.com/26hyrrtd

action to prevent the spread of COVID-19 in federal prisons and that the BOP infection numbers and data about prisoner bear this out.

But, as we now know, the figures on which prosecutors and courts have been relying are inaccurate. This erroneous data allows prosecutors to mislead the federal courts and the public about the true impact of COVID in prisons, which plays a role in courts' decisions to deny motions for compassionate release. As the federal government's lawyer-in-chief, one of the DOJ's roles is to maintain public confidence. But when the lawyer-in-chief and a federal agency it is charged with overseeing mislead the courts—who deny compassionate release motions because they believe, inaccurately, that the BOP and contract facilities have things under control—it neither promotes justice nor protects the public.

Accurate record keeping is also a public-health necessity. Earlier this year, Senators Elizabeth Warren and Cory Booker, along with Congresswomen Ayanna Pressley and Sylvia Garcia urged Congressional leaders to include in the COVID-19 relief package portions of the COVID-19 in Corrections Data Transparency Act, a bill that would require, in part, the BOP, and U.S. Marshals service to collect and publicly report detailed data about COVID-19 cases, hospitalizations, deaths, and vaccinations in federal, state, and local correctional facilities. Public health professionals like Dr. Brie Williams, Professor of Medicine at the University of San Francisco and Director of AMEND, endorsed the bill. Dr. Williams noted that "without accurate, timely and comprehensive data about the impact of COVID-19 in prisons, we are at an extraordinary disadvantage in the fight to keep people who live or work in prisons and their surrounding communities safe from the pandemic" and a failure to access and analyze this data today leaves us less prepared to address future infectious disease outbreaks.[53]

The question that remains is this: what do we do now? We believe that Congress can take modest steps to remedy these issues.

First, Congress can and should direct the DOJ and BOP to release information about everyone who has died while in federally run facilities, private prisons with federal contracts, and federally controlled halfway houses. Even if the agency cannot include the names of those individuals in the press releases, it should issue "John

[53] Press Release from Sen. Elizabeth Warren, Warren, Murray, Booker, Pressley, Garcia, Colleagues Will Reintroduce COVID-19 in Corrections Data Transparency Act, https://www.warren.senate.gov/newsroom/press-releases/warren-murray-booker-pressley-garcia-colleagues-will-reintroduce-covid-19-in-corrections-data-transparency-act (last visited Apr. 13, 2021).

Doe" press releases that include the gender, age, race, and information about whether the person suffered from an underlying condition that made them more susceptible to COVID-19. It would also help to know if the person sought compassionate release with the federal Bureau of Prisons before their death. The BOP should also disclose how they track deaths in each facility, thereby explaining otherwise suspect fluctuations.

Second, the BOP should disclose the number of individuals it categorized as recovered who were later reinfected with the virus. It should detail how many of those individuals who it considered recovered later died from the virus. Crucially, the agency should tell us how it determines that individuals have recovered. It is currently unclear whether the determination that an individual has recovered is made by medical staff or by correctional officers who lack any medical training.

Third, as more people get vaccinated, Congress should ensure that the DOJ and BOP are transparent about the process. Although the BOP currently provides the number of staff and incarcerated people that have been vaccinated at different facilities, it does not include the total number of staff at those facilities. Without this information, it is impossible to know the actual rates of vaccination. The vaccination rate at a facility with 100 staff members, all of whom have been vaccinated, is much different from that with 1000 staff members, only a 100 of whom have been vaccinated. This information is important because Courts are increasingly relying on vaccination rates in deciding compassionate release motions. Inaccurate information does not serve the ends of justice.

Finally, the DOJ and BOP should release accurate information about the number of incarcerated people and staff who have been offered and refused vaccinations and why. News reports reveal that prison staff are refusing the vaccine because of the fear of side effects; because of conspiracy theories; and because they have been discouraged by prisons' handling of the virus.[54] The refusal of staff and incarcerated people to be vaccinated threatens efforts to control the pandemic both inside and outside of prisons. But unless we know the specific reasons why staff and incarcerated people at BOP facilities, federally contracted private prisons and halfway houses are refusing to be vaccinated, we cannot address their specific concerns.

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[54] Nicole Lewis & Michael Sisak, *"Hell No": Correctional Officers Are Declining The Coronavirus Vaccine En Masse*, THE MARSHALL PROJECT, Mar. 15, 2021, https://tinyurl.com/d3et49vk; Testimony of BOP Dir. Carvajal, House Committee on Appropriations, *COVID Outbreaks and Management Challenges: Evaluating the Federal Bureau of Prisons' Pandemic Response and the Way Forward* (Mar. 18, 2021), https://tinyurl.com/9bt8m5d7 (noting 49% of staff have refused the virus).

We recognize that many more reforms are required to ensure complete transparency and accountability in the BOP as we continue to grapple with its handling of the pandemic. But as defenders, we have watched our clients and our colleagues' clients become gravely ill and even die when they were eligible for compassionate release. And their deaths are based, in part, on the failure of the BOP to be transparent about what is happening in its facilities. We believe that increased transparency in reporting and institutional consistency are modest and good places to start in dealing with the pandemic.

Finally, we submit this testimony in memory of all those people the BOP failed to protect, including:

Guadalupe Ramos

Bobby Lee Medford

Cipriano Chavez-Alvarez

Ivan Gonzalez-Ramirez

Eric Spiwak

Brandon Lavon Patton

Victor Cruz

Marie Neba

Patrick Estell Jones

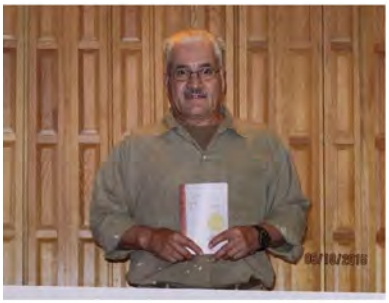
Richard Nesby

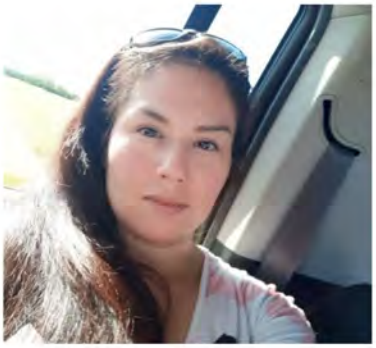
Waylon Young Bird

Alonzo Garza-Salazar

Saferia Johnson

Fabian Tinsley





Margariti Garcia-Fragoso

Andrea Circle Bear

Scott Cutting, Sr.

Dwayne Antoine Mitchell

248 DEATHS IN BOP CUSTODY[i], AN INCALCULABLE LOSS

They Were Us.

Patrick Jones, 49, FCI Oakdale I • **Nicholas Rodriguez**, 43, FCI Oakdale I • **Frank McCoy**, 76, FCI Elkton, a veteran of the armed services and a long time managerial-level engineer • **Wallace Holley**, Jr., 56, FCI Oakdale I • **Margarito Garcia-Fragoso**, 65. FCI Elkton • **David Townsend**, 66, FCI Oakdale I, took a plea deal to avoid life • **Woodrow Taylor**, 53, FCI Elkton, Father of 3 and no prior federal criminal history • **George Jeffus**, 76, FCI Oakdale I • **Charles Richard Rootes**, 81, FCI Butner I • **Andre Williams**, 78, FCI Butner I, Father of two and underwent cardiovascular surgery during pendency of his trial in 2005 • **Gary Edward Nixon**, 57, FCI Butner I • **Bradley James Ghilarducci**, 73, FCI Terminal Island, Air Force Veteran • **Alvin Turner**, 43, FCI Elkton, AUSA at sentencing stated "he's a young man and maybe he will come out and benefit his family as well as society" • **John Doe,** FMC Devens • **John Doe**, 46, FCI Butner I • **David Ehle**, 71, FCI Elkton • **Michael Lilley**, 55, FCI Oakdale I • **Fabian Tinsley**, 67, FCI Butner I •**William Hutsell**, 62, FCI Elkton • **Oliver M. Boling**, 66, USP Lompoc • **Anthony David Gentile**, 59, FCI Danbuy, father and Business Systems Analysts • **Michael Fleming**, 59, FCI Terminal Island • **Arnoldo Almeida**, 61, FMC Ft. Worth • **Oscar Ortiz**, 78, FMC Ft. Worth, Father to a reconnected daughter due to adoption • **John Ng**, 43, FCI Milan • **Donnie Grabener**, 65, FMC Ft. Worth • **Richard Nesby**, 55, FCI Elkton, father to 15 children who knew him to be funny and family-oriented and a versatile handyman • **Daniel Kimbrough**, 53, FCI Milan, attended Bemidji State University and was known to be a wonderful singer and avid gardener • **Walker Minto**, 73, FCI Butner I, husband • **Andrea Bear**, 30, FMC Carswell, was in her 3rd trimester of pregnancy at the time of her death • **Stephen Cino**, 54, FCI Terminal Island, wheelchair bound • **Rex Damon Begay, Sr.**, 80, FCI Terminal Island, member of the Navajo Nation • **Willie Peterson**, 51, FCI Milan, father of four • **Leonard Auerbach**, 73, FCI Terminal Island, University of Wisconsin Madison graduate, UC Berkley PhD, former professor at St. Mary's College, father of two sons • **Randy Bise**, 57, USP Yazoo City, truck driver • **Kevin Ivy**, 59, FMC Ft. Worth • **Douglas Reid**, 56, FTC Oklahoma City, no prior criminal history and was gainfully employed his whole life • **Eduardo Robles-Holguin**, 58, FCI Terminal Island, an immigrant • **Darrel Underhill**, 76, FMC Devens • **William E. Miller**, 58, FCI Butner I • **Jimmie Lee Houston**, 75, USP Lompoc, single father and was in the early stages of kidney failure at the time of sentencing • **James Druggan**, 70, FCI Elkton, former United States Marine, Vietnam Veteran and father of two • **George Lewis Escamilla** Sr., 67, FCI Oakdale II Satellite Camp, classified as a T3 paraplegic due to Black Heel Ilness • **Michael Brookwalter**, 56, FCI Elkton • **Scott Douglas Cutting, Sr.**, 70, FCI Terminal Island • Guadalupe Ramos, 56, FMC Ft. Worth • **Vernon Adderley**, 56, FMC Ft. Worth • **Juan Mata**, 59, FMC Lexington • **Thomas Jackson Rogers**, 79, FMC Ft. Worth • **James Xavier Lino**, 65, Terminal Island, was six months away from release and on May 6, 2020, his request for transfer to home confinement was denied • **Carlos Caldero Mendoza**, 60, FMC Lexington, was extremely close with wife and children and this was his only involvement in the criminal legal system • **Richard Saettel**, 66, FMC Lexington • **Jerry Lynn Dempsey**, 59, FCI Butner I • **Charles Lyn Hanberry**, 74, FMC Ft. Worth, while in the military he received the Air Force Commendation Medal for Meritorious Service on two different occasions and the Armed Forces Radio & Television Service Director's Award in recognition of outstanding personal efforts contributing to the professional excellence of military broadcasting • **Bich Ngoc Tran**, 50, FMC Ft. Worth • **Joseph Michael Young**, 63, FMC Ft. Worth • **Fidel Torres**, 62, FMC Lexington • **Gregory Phinton Glenn**, 56, USP Terre Haute • **Eric Spiwak**, 73, FCI Butner I, while serving in Vietnam, received a Purple Heart and Bronze Star Medal for Valor • **Isaac Lamar Byers**, 52, FCI Butner I • **Bernardo Luis Olarta-Loaiza**, 63, FCI Butner I • **Dongfan Greg Chung**, 84, FCI Butner I • **Mohamed Yusef**, 37, FCI Lompoc • **Steve Arthur Robinette**, 79, FCI Butner • **David Grant**, 63, FCI Butner, known to have a real Godly heart and was an inspiration to the whole family • **Daniel Lee Vadnais**, 56, FCI Lompoc, skilled marine mechanic and father of two • **Juan Ledoux-Moreno**, 74, FCI Butner • **Robert Herndon**, 62, FMC Devens, died while committed by court order for mental health issues • **Bobby Lee Medford**, 74, FCI Butner, former Buncombe County sheriff • **Andrew Charles Markovci** , 56, FCI Butner • **Stephen Cook**, 48, FMC Lexington • **Emanuel Brewster Jr.**, 50, FCI Yazoo City • **John A. Brust**, 77, FCI Butner • **Charles Woolsey**, 69, FMC Lexington, Air Force Veteran and father • **Dewayne Antonio Mitchell**, 43, FCI Yazoo City, Devoted father to five children, nicknamed "G-Wayne" and known to have a "heart of gold" • **Robert Hoffman**, 75, FMC Fort Worth • **Mark E. Hebert**, 61, FCI Butner, Was diagnosed with bipolar disorder and suffered from five heart attacks before sentencing •

John Marrone, 85, FCI Butner • **Wayne Delvin Littlecrow**, 55, FCI Butner • **Michael McDonald**, 80, FCI Terminal Island • **Joe Tapia**, 55, FCI Butner, Husband and father of two • **Norman F. Grimm Jr.**, 66, FCI Butner • **Jack Edward Talledo**, 61, FCI Butner • **Robert Hague-Rogers**, 83, FMC Fort Worth, Sole owner of a company • **Daniel Morris**, 70, FMC Lexington, Voluntarily Surrendered into custody • **Ivan Gonzalez Ramirez**, 68, FDC Miami, Was awaiting trial • **John A. Dailey**, 62, FCI Butner, Had filed a Compassionate Release Motion less than two months prior to his death • **Malcolm L. Scarbrough**, 85, FCI Coleman • **James Giannetta**, 65, FCI s • **Sandra Kincaid**, 69, FMC Carswell, A mother and grandmother and known to go out of her way to help others • **Teresa Ely**, 51, FMC Carswell, Mother and grandmother • **Romie Roland**, 61, FCI Jesup's Satellite Camp, Was a physician • **Jacky Pace**, 78, FCI Seagoville • **Mark Stamps**, 59, FCI Seagoville • **Gerald Porter**, 73, FMC Lexington • **Earl James**, 65, USP Marion • **Veronica Martinez Carrera-Perez**, 44, FMC Carswell, Was denied a sentence reduction 4 months before her death • **Saferia Johnson**, 36, FCI Coleman's Satellite Camp, Mother of two children and worked with the juvenile justice department • **Jose Barragan**, 69, FCI Miami • **Taiwan Davis**, 39, USP Marion, Had been in custody for less than a year at the time of his death • **Eugene Griffin**, 80, USP Atlanta • **Jose Mario Gallego Zapata**, 66, FDC Miami • **Wendy Campbell**, 56, FMC Carswell, Has been at FMC Carsell since March, 2020 • **Luis A. Velez**, 58, FCI Coleman • **Norman Duncan**, 50, FCI I Victorville, Father • **Marie Neba**, 56, FMC Carswell, Mother to three sons and suffered from terminal breast cancer • **Wendell Eaves**, 63, FCI Seagoville • **Byron Dale Bird**, 65, USP Terre Haute • **Ricky Lynn Miller**, 62, FCI Butner • **Tim Hocutt**, 53, FCI Terre Haute, Father to a son who died at the age of 14 • **Victor Cruz**, 47, MCC San Diego, Loved father and grandfather • **Thomas Krebs**, 72, FMC Lexington • **Barry Johnson**, 48, FCI Edgefield • **Tommy Sisk**, 62, FCI Petersburg • **Robert Pierce**, 52, FCI Big Spring • **Ricky Eagle Elk**, 52, USP Coleman II • **Darin Taylor**, 60, FCI Big Spring, Known as a pillar of intent and integrity among his community and daughters • **Joe McDuffie**, 58, FCI El Reno • **Glenn Coleman Jr.**, 48, FCI Big Spring, Designated as a disabled adult • **Colin Bobsy**, 52, MCFP Springfield, Suffered 54 cardiac arrests in less than three years • **Gary Tubby,** 60, MCFP Springfield • **Samuel Prieto,** 58, MCFP Springfield, Filed for Compassionate Release in April 2020 • **Waylon Young Bird,** 52, MCFP Springfield, Wrote a letter begging to be released one week before his death • **Rice Stanley,** 60, USP Tucson, Married • **David Cross,** 45, MCFP Springfield • **Jimmie Largo**, 48, MCFP Springfield • **Torrick Lyle**, 43, MCFP Springfield, Filed for Compassionate Release and sent 3 letters to his sentencing judge begging for release • **Edwin Trout**, 69, FCI Talladega • **Ralph Thomas**, 87, MCFP Springfield, had already served longer in prison than any sentence that would have been imposed under the law as it exists today • **Charles Fankhauser**, 64, FCI Bastrop • **Louis Allen Rector**, 62, FMC Butner • **Matthew Shubart**, 41, FCI La Tuna, a chef and beloved son, his motion for release was denied less than two months before his death • **Robert Dobyns**, 48, USP Tucson • **Stanley Carr,** 66, USP Tucson • **Avery Poynter**, FCI Ashland, Loved son, His motion for Compassionate Release was denied less than two months before his death • **Derrick Howard**, 51, USP Tucson, His motion for compassionate release was pending when he died. • **Félix Repilado Martínez**, 67, North Lake Correctional Institution, had a passion for folkloric dance, Father • **Austin Robinson**, 46, MCFP Springfield, Father • **Ronald Hovey**, 67, FCI Texarkana, Founded the Grace for All Ministries, which serviced those without homes and who struggled with addiction • **James Lee Wheeler**, 78, FCI Terre Haute, Loving brother and friend, His motion for compassionate release was pending when he died • **Andrew Goldberg**, 38, FCI Coleman • **John Lewis**, 70, USP Allenwood • **James Jones**, 79, FCI Ashland, Loving husband and father • **Robert Taylor**, 46, FCI Ashland • **Horace Nelson**, 64, FCI Victorville • **Ross Tewangoitewa**, 74, FCI La Tuna, member of the Hopi Nation and a Village of Songoopavi elder • **Timothy Bower**, 56, FCI Ashland, a brother and Michigander, compassionate release motion was denied the day after his death • **Rafael Guerrero**, 70, MCFP Springfield • **Michael Gerard Smith**, 59, FCI Florence, Loving uncle who wanted to show his nieces and nephews people can change, died just 5 months from his release date • **Armando Velasquez**, 70, FTC Oklahoma City, Father to 6 daughters, farmworker, and truckdriver • **Murry Malone Bailey**, 71, USP Tucson • **Anthony Casso**, 78, USP Tucson, Father • **Terry Drake**, 73, USP Tucson • **John Rodrigues**, 65, USP Tucson, Died two days before a hearing on his compassionate-release motion • **John Doe,** Butner Low • **Manuel Dikran Sassounian**, 78, MDC Los Angles, Born in Scotland • **Christopher Carey**, 72, FCI Lompoc, A motion for compassionate release had been pending since 8/24/2020 • **Larry Lanell Bennett**, 49, FCI Memphis, He worked as a cook and wanted to get home to his daughter • **Carl Merlo**, 59, FCI Beaumont, Navy veteran who served on the USS Wainwright, loving father and grandfather, phlebotomist • **Gary Wayne Kilgore**, 72, FCI Ashland, Brother and friend • **Jimmy Allen Monk**, 60, FCI Talladega • **David Rowe**, 73, FMC Devens, His motion for compassionate release was pending for 4 months; he filed an emergency motion the day before his death • **Robert Levine,** 79, FCI Phoenix, Attended NYU, heavily involved in charities and foundations, taught GED courses while serving his sentence • **James Velez,** 61,

FCI Ashland • **John Charles Buffalo,** 51, USP McCreary • **Richard James,** 61, MCFP Springfield, Kind-hearted, generous person and a good father • **John Doe,** MCFP Springfield • **Charles Winters**, 84, FMC Devens, a Californian • **Carmelo Estrada**, 58, MCFP Springfield, a Texan • **Michael Martinez,** 75, FMC Fort Worth, Veteran and Brother • **Joe Gary Rivas, Jr.,** 75, FMC Fort Worth, Loving Uncle and former restaurant owner • **James Graves,** 65, FMC Devens • **Stuart Manley**, 78, FMC Devens • **Nelson Del Rio Rodriguez,** 65, FCI Williamsburg, Cubano, Father, brother, and grandfather • **Fred Keys,** 57, FCI Fairton, Father and one of 6 children • **Michael Ryle,** 77, MCFP Springfield • **Sean McQuiddy,** 54, FCI Forrest City, His fiancé and grandmother always held out hope that he would come home • **Willie Smith,** 73, FMC Devens • **Michael Hollingsworth,** 60, MCFP Springfield, • **Kevin Gayles,** 38, FCI Jesup, Loving brother and father, in the process of obtaining his GED • **Antwonne D. White,** 55, FCI Butner II, Father • **Harry Edward Cunningham,** 54, FCI Memphis, Trucker and Father of two • **Richard Lee Red Fox,** 59, FCI Sandstone, Blackfeet Nation member • **George Maurice Steele,** 37, FCI Talladega • **Andre Vasquez,** 76, MCFP Springfield, Welding Instructor • **Ruben Gil,** 54, FMC Devens • **Thomas Eugene Church,** 63, USP Leavenworth, Father and Grandfather • **Steven Brayfield,** 63, USP Leavenworth, Loving Brother and Son • **Shauntae Hill,** 44, FCI Terre Haute, Known as an excellent Father and the backbone of the family • **Spencer Lee Sarver,** 65, USP Atlanta, Georgian • **William Dahl,** 60, FCI Williamsburg • **Charles McRae,** 69, FMC Devens • **George Adams,** 68, FCI Hazelton • **Myron Crosby,** 58, FCI Fort Dix, Father and Grandfather • **Pedro Lopez-Vargas**, 59, MCFP Springfield • **John Doe,** Lompoc • **Victor Bigman,** 58, FCI Victorville II, Born and raised in Oakland, California, Member of the Kaibito Community, Welder, Husband, and Father to three sons • **Robert Ivan Horton,** 52, FCI Edgefield • **Joe Lee Adams,** 64, FCI Williamsburg • **Charles Purly Romero,** 64, USP Tucson, Member of the Taos Pueblo Nation • **Omar Adonis Guzman-Martinez,** 48, MCFP Springfield, Citizen of the Dominican Republic, Father of three children • **Toribio Ornelas Vasquez,** 79, FCI Florence, Husband and Father • **Mark Anthony Sealy,** 56, MCFP Springfield • **Theodore Kootswatewa**, 70, Member of the Hopi Nation • **William Ray Wooten,** 70, FCI Butner II • **Otis Morris,** 69, FCI Gilmer, Honorably discharged Veteran and Father • **Edwin Segarra,** 46, MDC Brooklyn, Loving Father of four, Brother, Participant in classes at Columbia University • **John Doe,** FCI Butner Low • **Joseph Lee Fultz,** 52, FCI Terre Haute, Maintained a career in computer networking and technical support • **Abdul-Aziz Rashid Muhammad,** 64, FCI Butner II, Father • **Chester Ray Stitts, Jr.,** 55, FCI Forest City • **Girard Lafortune,** 63, FMC Devens • **Wayne Spinks,** 75, FCI Edgefield • **Johnathan Delargy, 60**, FCI Seagoville, Sole Provider for his family • **Marcelo Ramos-Ortiz,** 59, FCI Oakdale II • **John Doe,** USP Florence • **Icee Omar Ali,** 61, USP Florence, Proud Uncle • **Jesse O. Carter**, 54, FCI Talladega • **Curtis Horne,** 59, USP Florence • **Fernando Marulanda Trujillo,** 69, FCI Fort Dix, Columbian National • **Jaime Benavides,** 49, MCFP Springfield • **Leonard Williams,** 53, MCFP Springfield •

[1] This number includes the 230 federal deaths in BOP-managed facilities and community-based facilities, https://www.bop.gov/coronavirus/; the 10 deaths in the Government-contracted, privately-managed prisons, *id*; and the 8 individuals who died while inprisoned at D. Ray James Correctional Institute, https://www.bop.gov/locations/ci/drj/, Moshannon Valley Correctional Institute, https://www.bop.gov/locations/ci/mvc/, and Rivers Correctional Institute, https://www.bop.gov/locations/ci/riv/, who are no longer listed on the BOP's coronavirus death tracker.

Council of Prison Locals 33

STATEMENT OF
SHANE FAUSEY
NATIONAL PRESIDENT
COUNCIL OF PRISON LOCALS

BEFORE THE

COMMITTEE ON JUDICIARY
UNITED STATES SENATE

"Oversight of the Federal Bureau of Prisons"

PRESENTED:
April 15, 2021

Statement of
Shane Fausey
National President
Council of Prison Locals
Committee on Judiciary
United States Senate

Good morning, Chairman Durbin, Ranking Member Grassley, and Members of the Committee. I am pleased to offer the following statement related to the Council of Prison Locals, the Federal Bureau of Prisons, and the staffing crisis we currently face within our agency.

I am honored to represent and speak on behalf of the nearly 30,000 bargaining unit Bureau of Prisons (BOP) employees – professionals who go to work in America's penitentiaries and prisons every day. In the face of adversity and some of the most violent 'cities' in the country, they keep us all safe from some of the world's most dangerous human beings. Throughout this pandemic, the dedicated Federal Law Enforcement personnel have continued to work to provide institutions that are safe for the inmates, staff, and most importantly the communities surrounding these Federal Prisons.

STAFFING ISSUES EXACERBATED BY COVID-19

It was our concern, at the beginning of this pandemic, that the Bureau of Prisons would not be prepared and most importantly be proactive when dealing with what could happen to the inmates, the staff, and communities associated with Federal Facilities.

The Federal Bureau of Prisons has been in the midst of a staffing crisis that did not just begin with the hiring freeze of January 2017. It began with the 'mission critical' cuts in 2005, which eliminated more than 10% of all Correctional Officer posts. For almost two decades we have warned of the ominous results of underfunding and staffing reductions. The initial mission critical cuts eliminated the second officer in most housing units across the agency. This elimination directly resulted in the isolation of both Officers Jose Rivera (2008 USP Atwater, Ca) and Eric Williams (2013 USP Canaan, Pa) in some of America's most dangerous penitentiaries. This isolation and 'budget' cuts resulted in the murder of both Jose and Eric. The hiring freeze of January 2017 saw the elimination of more than 6,100 additional positions agency wide, plummeting most Correctional Services compliments below 80% of the authorized positions at the time. In January 2016, authorized positions were 43,369. These archaic cuts eliminated whichever positions were vacant at the time. There was no thought analysis or prioritization of which positions were to be eliminated. In just three short months, the 80% became the new 100%. In essence, the new 100% is approximately 75% of the 'mission critical' levels the agency testified to be the minimum level of Officers to keep the Bureau of Prisons safe. As of March 25, 2021, there are 37,219 positions filled. All of the parties were well aware of the unpreparedness of the Bureau of Prisons even absent any 'major' occurrences.

The staffing crisis exacerbated this pandemic and limited the agency's possible responses. The pre-pandemic hiring efforts by the agency were outpaced by our attrition rate and then stifled by the pandemic's restrictions. The limited employees available, coupled with the critical shortage of Correctional Officers nationwide, has led to the misery of COVID-19. The dependence of augmentation just to function has evolved into TDY (Temporary Duty Assignments) in which a 'National Augmentation' became necessary in institutions wracked by COVID-19. Understaffed facilities sent TDY employees to rapidly deteriorating facilities to put fingers in the cracking

dam. In the February 2021 GAO Report titled *Bureau of Prisons Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs*, it was stated that, "In addition, we found that BOP's use of augmentation across all BOP institutions has increased 47 percent from fiscal years 2015 through 2019." "BOP has not assessed risks associated with its Growing Use of Overtime and Augmentation. Bureau of Prisons BOP's six regions had an increase in augmentation usage during this same period and two of the six regions had an increase exceeding 100 percent." This GAO report ended in 2019. If the data would be examined for 2020 during this Pandemic, the numbers would have increased at an alarming level.

Also, another alarming trend over the past several years, but even more specifically during the COVID-19 Pandemic is the dramatic increase of Overtime use with in the BOP. Specifically, the abusive and punitive amount of mandatory overtime used. Mandatory overtime is where correctional officers are forced to work double shifts to cover for shortages of correctional officers. In some of our Federal Prisons, officers arrive to work their scheduled eight (8) hour shift, but are told at some point within their shift that they will be working sixteen (16) hours or more. It is routine and not uncommon for officers to work double shifts 2 to 5 times per week. Correctional officers are working up to 80 hours or more in a week instead of the 40 they are scheduled. The abuse of over time creates a dangerous situation on several levels. Correctional officers are suffering from exhaustion, which can cause safety issues when dealing with the inmate population and for the communities around the federal facilities. Also, for officers that have any commuting distance, lack of rest can lead to dangerous commutes. . In the February 2021 GAO Report titled *Bureau of Prisons Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs*, it was stated that, "BOP has practices for addressing staffing challenges, such as using overtime, but has not assessed associated risks to staff and inmate safety, such as officer fatigue and decreased observation skills. Overtime expenditures, without adjusting for inflation, have increased 102 percent from 2015 through 2019." "Despite the year-over-year increase in its use of each practice, (Augmentation and Overtime) BOP has not conducted a risk assessment to determine the impacts on staff and inmates, especially with regard to the safety of its institutions. For example, BOP has not analyzed whether there is correlation between incidents of violence or other misconduct in the prison, including whether staff working those shifts may have been working longer than normal hours, or may have been augmented from the roles in which they most typically serve. Relatedly, BOP has also not established accepted risk tolerance levels, even though officials stated that augmentation and overtime are necessary but not ideal." "A researcher we spoke with, who has studied the mental health effects of working in corrections, told us that working overtime often causes officer sleep deprivation, making the officer more irritable and aloof, and may even cause physical health problems as well."

CONCLUSION

Chairman Durbin, Ranking Member Grassley, and Members of the Committee, this concludes my formal statement. I appreciate the opportunity to provide the Committee with our concerns.

As I have indicated, the staffing crisis in the Bureau of Prisons not only creates a clear and present danger to every employee, inmate, and the community at large, but it has made the response to the COVID-19 pandemic nearly impossible. The Bureau of Prisons' continual refusal to restore staffing numbers to the 2016 level, their reactive response, coupled with the ineffective oversight of OSHA and the inconsistent and ambiguous guidance of the CDC, has led to an infection rate of our employees and incarcerated individuals only second to the pandemic's ravaged effects on our nursing homes and elder care facilities. The dedicated and loyal employees of the Federal Bureau of Prisons have long prided themselves at accomplishing the missions given to them. Throughout this pandemic, they have been pushed beyond the breaking point and deserve much needed relief. They will continue to protect the American people as they always have done honorably. The BOP must be given the continued staffing resources, the budgetary support, and proper policies in place to safely protect the American public from the incarcerated individuals within the Federal Bureau of Prisons. I implore you to quickly intervene by ensuring that the Federal Bureau of Prisons comply with these directives and they immediately elevate the staffing levels across the Bureau of Prisons to the January 2016 level.

April 12, 2021

We are the Drug Policy Alliance.

Senator Dick Durbin
Senate Judiciary Committee, Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Chuck Grassley
Senate Judiciary Committee, Ranking Member
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin, Ranking Member Grassley, and Honorable Members of the Senate Judiciary Committee,

Thank you for the opportunity to provide input into the review of Bureau of Prisons Director Michael Carvajal. The Drug Policy Alliance is the nation's leading organization working to end the war on drugs and working to build a policy response to drugs grounded in science, compassion, health and human rights. As such, we are focused on issues related to the criminalization of substance use disorder and its treatment, including in jails and prisons.

Background

People in jails and prisons are 10 to 12 times more likely to have a substance use disorder than those in the community.[i] Medication Assisted Treatment (MAT) – the collective term for the FDA-approved medications buprenorphine, methadone and naltrexone – has been proven to reduce opioid use[ii], overdose and other premature mortality associated with opioid use[iii]. Treatment with these medications also reduces HIV injection drug and sexual risk behavior[iv] and reduces HCV risk.[v] In the context of jail and prisons, MAT engagement has been demonstrated cost effective[vi] and associated with a reduction in future engagement with law enforcement.[vii]

MAT and Incarceration

Incarceration exacerbates opioid-related disease and death because it restricts people already at high risk for opioid use disorder (OUD) to an environment where they usually lack access to treatment.[viii] Without access to MAT, individuals experience withdrawal,[ix] reduced tolerance to opioids and therefore have an elevated risk of overdose upon release.[x] Unsurprisingly, drug overdose is a leading cause of death among formerly incarcerated individuals[xi] and people with OUD are at high risk of overdose immediately after release from incarceration, with rates up to 129 times that of the general population.[xii]

The Bureau of Prisons' MAT Program

Despite undisputed evidence that MAT effectively treats OUD, few jails or prisons, including those overseen by the Bureau of Prisons, offer it.[xiii] A recent report from the General Accounting Office criticized the Bureau of Prisons for its handling of its nascent MAT program, which began in 2019 and for which it sought $76.2 million across fiscal years 2020 and 2021.[xiv] The report notes that in 2019, 41 people were engaged in the MAT program, a paltry number

compared to the estimated number of people with substance use disorders in federal prison: about 20 percent of the population, or 35,000.

To make MAT cost-effective, choice of medication is important. The General Accounting Office report indicates that the Bureau of Prison used only naltrexone in its MAT program. Naltrexone is less cost-effective than the other MAT medications, taking into a various costs to adminster the medication and the cost of the medications themselves, which is significantly higher for naltrexone.[xv] Buprenorphine and methadone are available in generic forms; naltrexone remains under patent until 2028.[xvi]

Federal Prisons: A Missed Opportunity for MAT Engagement

Expanding MAT in federal prisons represent an opportunity to improve access to MAT. Nationally, in the community, it is estimated that only 20% of people with OUD receive treatment each year.[xvii] Increasing access to MAT in the Bureau of Prisons could fill some of the gap and increase overall OUD treatment rates. Reaching a population of high OUD risk individuals at a time where treatment may present an option, as opposed to forced withdrawal, may encourage individuals to seek treatment, and have an impact on the opioid overdose epidemic in the community as well. A program in Rhode Island provides MAT access in the state's unified jail and prison system and has been credited with dramatically reducing overdose deaths after release.[xviii]

Recommendations

To address OUD, the Bureau of Prisons should:

1. treat opioid withdrawal or continue MAT upon entry;
2. provide low barrier access to generic buprenorphine and methadone; and
3. train Bureau of Prisons custody staff on MAT's uses and benefits.

Conclusion

Jails and prisons should be a regular point of MAT engagement but are instead a treatment wasteland, and are exacerbating the U.S. opioid overdose epidemic. The Bureau of Prisons has an opportunity to create the nationwide standard for MAT programs in incarcerated settings, engaging people at significant risk of OUD-related harm and death in treatment, while impacting the opioid overdose epidemic in the U.S. at large. The Bureau of Prisons should follow established models to instead lead a nationwide effort to provide broadscale access to MAT – specifically generic buprenorphine and methadone – to people who are incarcerated.

To discuss anything here in further detail, please reach out to Mary Sylla, Senior Staff Attorney at the Drug Policy Alliance, at msylla@drugpolicy.org or Maritza Perez, Director of the Office of National Affairs at the Drug Policy Alliance, at mperez@druppolicy.org.

Sincerely,

Drug Policy Alliance

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April 14, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Hearing on "Oversight of the Federal Bureau of Prisons"

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of FAMM (formerly Families Against Mandatory Minimums) and of the many families with loved ones in the federal Bureau of Prisons (BOP) whose stories are included here, we commend you for holding this important hearing and ask that you include our written statement in the hearing record.

If you have any questions or would like additional information, please do not hesitate to contact us.

Sincerely,

Kevin A. Ring
President

Testimony of Kevin A. Ring, FAMM President
Senate Judiciary Committee Hearing on "Oversight of the Bureau of Prisons"
April 15, 2021

FAMM is an organization comprising currently and formerly incarcerated people and their loved ones. We work to amplify their voices in the public policy debate over sentencing and prison reform. We hear routinely from many of the nearly 40,000 people who are incarcerated in federal prisons and their loved ones who are FAMM members.

FAMM was established 30 years ago. During the past few decades, we have learned a great deal about the hardship people in federal prison endure. Prison is never easy, even under the best of circumstances. However, the past year has been by far the most difficult year for people in prison and their loved ones that we have ever witnessed. We appreciate that everyone in the country was affected by the spread of COVID-19 and resulting lockdowns and disruptions, and we acknowledge the unprecedented challenges the leadership of the Bureau of Prisons (BOP) had to face. Our firm conclusion is that the BOP failed in several ways and that these failures were compounded by an inexplicable and infurating lack of transparency.

I fear we cannot adequately convey to you the desperation, fear, separation, and hardship that we have felt from the families we work with every day. We asked some of them to share their firsthand experiences with us, so that we could paint a clearer picture of what transpired and how they felt. Their observations are included in our comments below and in the addendum to this testimony. The BOP ignored their voices throughout the past year and denied them basic information about the health and safety of their loved ones.

This statement includes a small portion of the concerns articulated by families. In particular, we have highlighted their concerns regarding healthcare and the management of COVID-19 spread; the appalling conditions resulting from altered operations of the past year; the BOP's lack of transparency with families and the public; underutilization of release mechanisms intended to protect prisoners; and lacking implementation of the First Step Act. We share these families' voices with you in the hope that will finally be heard and that they will inform your oversight.

Concerns about how the BOP Has Failed to Contain the Spread of COVID-19

Despite the BOP's pandemic protocols, over 57,000 people in BOP custody have contracted COVID-19 and at least 248 have died, including staff. Over 37 percent of people currently in BOP and contract facilities has tested positive for COVID-19 at one point, a rate four times higher than the general public. A series of audits by the Department of Justice (DOJ) Inspector

General reveal that actions and omissions by the BOP have exacerbated the virus' rapid spread through federal prisons. Simply put, the BOP protocols, while well intended, did not work.

Lapses in health care: Families have been traumatized by the knowledge that their loved ones receive inadequate healthcare. One wrote that her boyfriend contracted COVID-19 while suffering from asthma and high blood pressure, but he "received no medical attention, they just let him lay there and suffer. Praise God he recovered but after it was over he admitted to me that his breathing was so difficult and his chest hurt so badly that he prayed for death." A prison sentence is tough in the best of times but it should not, and need not, become a death sentence. Another member wrote about her son: "He contracted COVID in December 2020 and was quarantined for 10 days. At the end of 10 days, no test, no nothing, he's cured per the BOP. My son has health issues, hyper-inflated lungs, latent TB and reoccurring problems now from COVID. Four months later he still is not right."

CDC-recommended measures: Countless families learned that their loved ones have not received the most basic tools recommended by the Centers for Disease Control and Prevention to avoid contracting COVID-19. Many families reported with dismay that their loved ones receive only a single mask. As described by one family member: "When that mask got dirty, they had to take it off and wash it in their sink, without soap, and let it dry." Another member describes the same failure: "My loved one was given only one mask and told to wash it as needed, but wasn't provided a second mask to wear while the one mask dried. There was no hand sanitizer or additional soap to aid in following CDC guidelines."

Failure to separate positive individuals from contact with people who have not tested positive: Structural protections have broken down. Numerous reports, including from the Justice Department's Inspector General, describe that prisoners who tested positive for COVID-19 were not removed from direct contact with those who had not yet been exposed to the virus. One woman described how her loved one had significant risk factors, including diabetes and obesity, and was still "put in a cell with another inmate that had already tested positive."

We received many accounts that BOP staff moved among units, without regard for the PPEs or whether they were travelling between units with positive cases and those without. One member wrote about this very practice: "Most of the COs did not wear a mask and would go between the units that were positive and in quarantine and those that were not."

Transfers between facilities have harmed prisoners. For example, earlier this year, we learned that some low-security prisons and camps were transferring dozens of people to the U.S. penitentiary at Yazoo City, a facility that has much stricter rules on prisoner movement and activities, without explanation. Families have understandably been incredibly anxious about transfers during the pandemic, because it creates new opportunities for their loved ones to face

COVID-19 exposure. In multiple cases, largescale transfers between prisons coincided with massive outbreaks, including some of the most severe in the BOP. Horrific outbreaks in Elkton and Fort Dix began shortly after groups of prisoners were transferred to those facilities over the protests of families.

The Impact of COVID-19 on Prison Conditions

Appalling conditions: Families are beside themselves upon learning about the conditions their loved ones must endure while quarantining or in broader lockdown. The most basic sanitation protocols, important now more than ever, have been abandoned. One family member wrote that her loved one's unit wasn't provided sufficient toilet paper during a COVID-19 outbreak: "His unit was forced to use scraps of sheets or clothing which blocked plumbing forcing his unit to walk in raw sewage for 3 days." Another wrote that their loved one's unit didn't provide heat and eventually lost water for three days: "Inmates were told to urinate and defecate in garbage bags, which is very unsanitary." This is a very small example of the comments that FAMM has received daily throughout the COVID-19 pandemic regarding depreciated conditions.

Families are also outraged about the breakdown in food handling and lapses in food safety measures since the start of the pandemic. Too many report their loved ones have been supplied with food that is inadequate or unsafe or contaminated. One was served "greens with visible maggots," while another received "moldy food and sandwiches with dead cockroaches." One member noted that the size of her loved one's meals were dangerously small: "For inmates who are diabetic, the food they were given wasn't even enough to accommodate their insulin shots. Most meals consisted of 2 slices of bread, a piece of meat they couldn't identify, and if they were lucky a piece of fruit." These accounts are appalling. The BOP's failure to provide safe and healthy food to those in its custody is simply unacceptable.

Impact on mental health: Unfortunately, for many this challenge has extended beyond lack of personal protective equipment and sanitation. Recently, threats to physical health have been coupled with serious threats to the mental health of people in federal prison. Many have not seen their loved ones in over a year and the lockdowns has made contact via Corrlinks and phone calls sporadic at best. As one member lamented: "No visitation and limited contact made this situation even worse. You didn't know from day to day whether your loved one was sick or not!"

In many facilities, BOP confines people to their cells for 23½ hours a day. They do not have enough time to shower and call their families. Staff shortages, in part due to COVID-19, have contributed to significant declines in mental health. One member described the impact: "There was a terrible lack of COs. In some cases, the counselors would work the floors because there were no COs around… It is no wonder that a lot of these men have had mental breakdowns due to the lack of care by the BOP." Another woman's son "was placed in solitary and ate with his

hands for over two weeks. He never had a clean pair of underwear for those weeks or a mask. He was allowed out 30 minutes a day."

Many saw their loved ones locked into units without sufficient staff on duty, which can leave prisoners without guidance in the event of emergency. One member wrote: "His quarantine unit was locked from the outside each night with no staff on duty with them. When a CO was asked what to do in case of emergency, he said 'Wait til morning to have an emergency.'"

Another of our members told us: "[t]he term quarantine is synonymous with solitary confinement in prison. And solitary has been extremely harsh and cruel. Physically and mentally." The absence of bare necessities – nutrition, sunlight, family contact, and exercise – leave thousands of people in BOP custody isolated and hopeless, and their families on the outside increasingly worried about their loved ones' mental health.

Lack of Communication and Transparency

The BOP's lack of transparency has made the situation worse for people who live and work in prison and their families. Some family members were not notified by the BOP that their loved ones were ill until after they died or been placed on a ventilator at the hospital. One family learned of their loved one's placement in a community hospital and certain terminal condition when BOP staff phoned to advise them to sign a "Do Not Resuscitate" order, but refused to tell them anything else. On multiple occasions, the BOP did not inform immediate family members of their loved one's death, leaving them to learn through a news release. We urge you to consider the story of Clara LeBeau, whose granddaughter died after giving birth on a ventilator. The first time she heard anything from the BOP about her granddaughter's condition was after her death.

Inadequate communication and confusing messaging has affected nearly every aspect of family support. Last April, we received reports from dozens of people around the country that prisoners had been placed in quarantine preparatory to their transfer to home confinement, only to learn they were instead returned to general population and told that the rules had changed and that they were no longer going home. At some facilities, family members had already arrived to pick up their loved ones whose quarantine period was ending. These families were turned away. Many more families received phone calls from crying loved ones informing them that their release date had been revoked because of the abrupt change in rules. One member who saw her father's status change multiple times testified at a House Judiciary Roundtable last year: "The impact that it has on us, I wish there was a stronger word than devastating. We can't sleep… We hear good news from the warden and we get our hopes up, then we get a denial. Then we get good news, then a denial. It is crushing us… We are at a loss. We don't know who to trust. We don't know if we can trust our own government."

Underutilization of Release Mechanisms

Experts across the spectrum have called for immediate measures to improve social distancing and population management in detention facilities. Decarceration has been a clear and consistent recommendation for prisons. BOP has a number of tools at its disposal, particularly compassionate release and CARES Act home confinement transfer. Unfortunately, both of these tools have been underutilized by the BOP in the past year.

Resistance to compassionate release: Compassionate release is a tested tool that has saved lives during the pandemic, despite BOP inaction and frequent government opposition. In a typical year prior to passage of the First Step Act, the BOP filed only two dozen or so compassionate release motions. In the first year of First Step, courts granted 145 motions, two-thirds of which were filed by defendants. Since February of last year, federal courts have ordered the release of over 3,100 people, the vast majority because of their risk of serious illness or death should they contract COVID-19.

Nearly every one of those successful motions was filed not by the BOP but by individuals and many were opposed by the government in court. The federal courts recognize that those individuals present the extraordinary and compelling circumstances that make them eligible for compassionate release. The DOJ has recognized this as well, in a memo to U.S. Attorneys' Offices (USAO) last May, and in an updated memo in July. Moreover, the BOP continues to erect hurdles for those seeking to apply for compassionate release. Many families have noted that institutional messaging has discouraged prisoners from pursuing compassionate release motions.

Congress can and should take swift action to broaden the impact of compassionate release during the COVID-19 pandemic. Bills like the COVID-19 Safer Detention Act (S.312), introduced by Chairman Durbin and Ranking Member Grassley, would help mitigate the problems described here by allowing prisoners greater by expanding statutory eligibity and streamlining the process.

Home confinement failure: Using CARES Act home confinement authority could be the most efficient way for the BOP to thin facility populations quickly. But, as one family member put it, "the way they handled home confinement was disappointing." Directives governing home confinement currently include significant and unnecessary barriers to its use. These include barring anyone with even minor disciplinary infractions in the prior twelve months from consideration and using PATTERN outcomes to screen out others.

While many home confinement restrictions originated from the DOJ, the Department's Inspector General and several federal district courts have identified considerable problems with the BOP's implementation of home confinement for eligible prisoners. For example, in an inspection of the Lompoc facility last year, the Inspector General found that very limited use of home confinement

contributed to a large outbreak of COVID-19. Families were distraught last summer to see that the BOP had made internal adjustments to the PATTERN tool without informing the public, further limiting those who qualified for home confinement transfer.

Most significantly, the BOP has simply under-utilized its home confinement authority throughout the most perilous periods of the pandemic.

Implementation of the First Step Act

A major goal of the First Step Act was the improvement of conditions in federal prisons. Many of the most significant prison condition changes in First Step call on the BOP to proactively increase transparency, develop infrastructure regarding "earned time credits," and expand programming opportunities for those in its custody. The BOP has fallen short in key areas of the law's implementation.

Broad access to programming in federal prison has long been a challenge. The First Step Act moved to correct that by directing the BOP to make "evidence-based recidivism reduction programs and productive activities" available for all people in prison within a few years of its enactment. Over two years later, the BOP has done little to communicate its plans to increase programming and activities. Concerns about implementation worsened by a recent report from the First Step Act's Independent Review Committee, which further casts doubt on the BOP's existing programming.

The true extent of the BOP's programming shortfall is unknown, because the BOP doesn't provide sufficient information regarding program availability restrictions or capacity beyond a list of institutions where a subset or prisoners have access to particular programs. As one example, the BOP's dashboard regarding COVID-19 modified operations states: "Inmate programming is an essential function in our facilities, and delivery of First Step Act approved Evidence-Based Recidivism Reduction (EBRR) Programs and Productive Activities (PAs) is required by law. Institutions are offering programming to the extent practicable." This explanation is vague, inadequate, and inaccurate. In practice, programming has been virtually nonexistent for the vast majority of people in federal prisons.

This lack of transparency also extends to more specific requirements. For example, the First Step Act requires the Director of the BOP to provide an annual report to Congress describing requests and releases made under the compassionate release authority. The most recent report was due to Congress on December 21, 2020, but has not submitted nearly four months later. Given that compassionate release is one of the most effective ways to thin populations and remove people at serious medical risk in the pandemic, it is essential that Congress have the information it needs to evaluate whether and how the authority is being used.

Unfortunately, we have also seen recent efforts from the BOP to reduce the impact of the First Step Act. One key reform intended to incentivize prisoners to engage in recidivism-reducing activity was the creation of "earned time credits," which some "low-risk" prisoners could apply to receive an early transfer to prerelease custody or supervised release. The BOP proposed a rule in December 2020 that would define a "day" of participation in qualifying programs or activities as an eight-hour period of participation, rather than track the language and intent of the First Step Act by providing a day of credit for every day of successful participation.[1]

The BOP's interpretation would eviscerate the effect of the First Step Act, as most programs are conducted for only a few hours each day. Moreover, the proposed rule would limit distribution of time credits and increase situations where they could be revoked beyond those authorized in the First Step Act. Rather than faithfully implementing the First Step Act, with this rule proposal the BOP has attempted to chip away at its potential.

Conclusion

The concerns articulated in this statement convey only a few examples of the anxiety and confusion we hear every day from people in federal prisons and their family members. In the hopes of providing a voice to families who have suffered this past year, this statement includes an addendum with additional comments from members of FAMM who have shared their fears.

I hope that this hearing produces positive change for families with loved ones in federal prisons. I see the coming months as an opportunity for the BOP to address these concerns, keep those in their custody safe, and return more vulnerable prisoners to their homes.

Finally, I urge this committee to act now to establish an independent body to provide regular oversight of the BOP. Independent oversight is essential to preventing problems before they occur, but also can be useful to provide accountability when things go wrong. Congress should not wait for another global pandemic or high-profile disaster to put in place an independent ombuds that can conduct inspections on demand, speak confidentially to prisoners and staff, and respond to inquiries from families with incarcerated loved ones. An independent oversight body would supplement and enhance Congress's important oversight responsibilities.

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[1] *See e.g.* NACDL, FAMM and JAN Comment on Proposed Federal Bureau of Prisons FSA Earned Time Credits Rule, https://www.nacdl.org/getattachment/a39b698a-0b7d-4a15-b382-b0e9267058f2/nacdl-famm-jan-comments-to-bop-on-proposed-first-step-act-earned-time-credits-rule-january-2021.pdf

Addendum to Written Testimony of FAMM President Kevin Ring

Below are a small sample of the comments we received from FAMM members who have loved ones in federal prison.

"My son has been incarcerated since July 2017. He has been at a camp in a dorm with many, many people. Sleeps within 3 ft of other inmates, shares showers, toilets, computers, phones, etc. It is ridiculous to believe this is safe or humane. This pandemic has been frightening for all of us, most especially those forced to live like this. Lack of medical care, lack of social distancing, lack of concern for another human being, uncaring guards, case managers and admin staff. He contracted COVID in December 2020 and was quarantined for 10 days. At the end of 10 days, no test, no nothing, he's cured per the BOP. My son has health issues, hyper-inflated lungs, latent TB and reoccurring problems now from COVID. Four months later he still is not right. He was not sentenced to death. As his mother I care. I can get absolutely no information if I call there, I haven't seen him now in 18 months and not one person you talk to cares. Lack of concern, lack of compassion, lack of caring, lack of medical care, lack of decent food the list goes on and on." – D.D.

"Our son was home while waiting for the whole ordeal. That's how dangerous he is to society! COVID was raging everywhere and we had to drop him off to begin a 10 year sentence. We left him with masks that were taken away. He was placed in solitary and ate with his hands for over two weeks. He never had a clean pair of underwear for those weeks or a mask. He was allowed out 30 minutes a day. He was treated like an animal. Why do they not receive real help? Counseling, programs, community service. When they are done then they are done! This system is disgusting and I used to be a person who thought prison was for bad people. It is for people that need help! Many men in his unit were very sick and nothing was done for them. Then there was the horrible rash that came. Three months of that and finally treatment. He had chest pains for months until something was finally done which was a new warden." – M.H.

"My son is incarcerated at FMC Ft Worth. During the pandemic he tested negative for COVID so he was housed in a tent outside in the Texas heat. The generators ran the air conditioning sometimes but other days it was 100 + degrees out there. Food was scarce. The CO confiscated his Gatorade and said he couldn't have it. I called the prison and fought with the Lt. about it and they finally replaced it weeks later. I just don't understand how putting them in a tent side by side on cots in a big tent helped control the virus. It didn't! Two or three inmates tested positive for COVID daily and the officers would just move them around. We lost 12 lives at the peak of the pandemic and had some of the highest number of infections at this facility. Compassionate release and home confinement were denied and the inmates were told they weren't going anywhere. I received numerous emails begging for help! These men were scared and knew if

they got the virus that there would be no medical help, which is ironic because this is a "medical facility." No visitation and limited contact made this situation even worse. You didn't know from day to day whether your loved one was sick or not! Very limited releases from this facility made it even worse! The guards very seldom wore masks but insisted the inmates wear them. The lack of medical care if you got the virus was the worse feeling. It is no wonder that a lot of these men have had mental breakdowns due to the lack of care by the BOP. Showers were few and far between. Living in a tent during a pandemic is not an easy task! In my opinion the BOP did not handle the pandemic at all they just shuffled and swept things under the rug so no one could see the mess they had really made." – D.M

"My son has been at Forrest City low and medium prisons since 2018. This prison never answers their phone, I mean never answers their phone. And this is before COVID even started. Those inmates get treated like animals. Forrest City doesn't post or confirm anything to the public. I remember before COVID came we drove 5 hours there just to be told we couldn't visit our love one because they were on lock down. This federal prison is sad and now with COVID going on we haven't seen our loved one or family members in two years now. It's just sad and for COVID to get up in any of these prisons it's got to come from the staff workers. They all should take a COVID shot." – M.E.

"The best way to find out how things are going on or done in the facilities are to show up unannounced and to talk with the inmates out of the earshot of guards or administrators. Those men and women are never free to speak truth when the fear of retaliation and punishment are lurking nearby. The BOP's response to the pandemic was poorly executed! My loved one was given only one mask and told to wash it as needed, but wasn't provided a second mask to wear while the one mask dried. There was no hand sanitizer or additional soap to aid in following CDC guidelines. Their meals were reduced to two brown bag lunches daily, with the lunch time meal combined with the evening meal. Nutrition and safe food were their least concern! All rec time and contact with family members were suspended, which created anxiety for both inmates and family members, not knowing whether they were sick, alive, or dead. Since medical care in all BOP facilities has been lackluster for years, the fear of COVID in a BOP facility was considered a death sentence to all! There was absolutely no medical treatment until an inmate had to be removed by stretcher! Fear and frustration continues to build in a facility that lacks the responsibility of medical care and basic human needs." – A.D.

"To start with, my son had a motorcycle accident that broke up a lot of his body, including a brain injury, and he got shot five times, and watched his dad take his last breath from cancer all before the age of 20. His spleen was removed due to the accident, which means his body can't fight off any infection like normal people that contracted COVID. If any of y'all have children then maybe you can imagine what I went through all the sleepless nights. I couldn't think of anything but whether my son was going to be alive the next day or not. He was being locked

down for weeks at a time, getting out three hours a week – and I mean one hour three times a week. They didn't have proper hygiene stuff to brush teeth so their bodies declining from lack of nutrients and their teeth rotting from not being able to brush them. Moving them to four or five different holding facilities, getting swabbed for a test beforehand, and then whether it's negative or not still having to quarantine for two weeks. They could have made it so that they could do video visits so people could at least see family. No matter what, these are people and have someone that love them just like you love your family." – A.S.

"My boyfriend spent 2 months at Cimarron before being transferred to Coleman. When he arrived at Cimarron he showed up on the BOP website with his BOP number. He contracted COVID while he was there. Before he got COVID he called me every night. When he got sick I only heard from him every other night because he was too weak to talk. I could hear the weakness and the pain in his voice. He has asthma and high blood pressure and he received no medical attention, they just let him lay there and suffer. Praise God he recovered but after it was over he admitted to me that his breathing was so difficult and his chest hurt so badly that he prayed for death. That is totally unlike him. What kind of care will they receive for post COVID medical conditions?" – C.H.

"The way they handled home confinement was disappointing. Also once our loved ones contracted COVID, we were not able to hear from them to make sure they were alive. Very scary when you see that 85% of the prison was positive for COVID. They were treated as if they did something wrong and were being punished on top of being ill, and scared not knowing if they were going to die. Also, the food they had was old and not healthy for people with the virus." – K.L.

"The BOP does not handle anything properly. There is a lack of knowledge and preparation when they have to face something new no matter how small it is, and this pandemic has been something very big. In terms of doing the paper work, most of the employees have little ability to do it correctly, at least in the Coleman women's camp in FL where my wife was for seven years. The arrival of COVID-19, (when the place was facing serious problems due to contamination with Legionella), was a catastrophe and precautions were never taken to protect the prisoners and two women died. The management of the place turned into chaos, affecting everything from the food to the most important thing that is medical attention. The government should be more careful about the people they employ because at the end of the day inmates are not just a number. They also have a face and they have mourners outside." – O.F.

"My loved one is at Ashland and he's told me about inadequate food they've gotten. He even got a sandwich one day with mold growing on the bread." – K.B.C.

"My loved one was served greens with visible maggots. No toilet paper during COVID outbreak. His unit was forced to use scraps of sheets or clothing which blocked plumbing forcing his unit to walk in raw sewage for 3 days. His quarantine unit was locked from the outside each night with no staff on duty with them. When a CO was asked what to do in case of emergency, he said 'Wait til morning to have an emergency.' He has been on lock down in a low facility for 13 months now." – S.C.M.

"My loved one was stuck in MDC for over a year when they should have been in camp. No masks, no soap, no paper towels. Moldy food and sandwiches with dead cockroaches. An underlying progressive illness, in fact three illnesses, all documented. Limited phones, incoming and outgoing mail discarded by staff. I am ashamed of my countries handling, specifically the Federal BOP." – J.I.

"Loved ones are placed much further than the 500 mile max. When requesting a transfer they are put in solitary for weeks to quarantine! Families that live a major distance can't go visit because it just doesn't pay to drive 8 hours for a 1 hour visit, with masks, 6 feet away! They weren't allowed outside for months and months, which is detrimental to their physical and mental health! Wouldn't fresh air make more sense for social distancing and overall health?" – P.M.

"From the very beginning of the pandemic, I have been advocating for my love one. I have sent numerous emails to the BOP, I sent researched information on my loved ones underlying health issues. I have written to our Senator. The BOP was taking camp inmates that had not been subjected to COVID and placing them in the kitchen at Big Sandy USP to work because they were short staffed. The BOP lied on their website about the number of cases that each prison had, who recovered. They were still transferring prisoners the WHOLE time the pandemic was going on. My loved one was transferred and when getting to USP Atlanta he wasn't able to even shower for 2 weeks because the water lines were messed up. How do you figure that they are following CDC guidelines when inmates didn't even wash their hands? They weren't even allowed out of their cages for months, and they were eating bologna sandwiches." – C.K.

"My loved one is in Ashland FCI and through the entire pandemic, they were given cold sandwiches to eat. For inmates who are diabetic, the food they were given wasn't even enough to accommodate their insulin shots. Most meals consisted of 2 slices of bread, a piece of meat they couldn't identify, and if they were lucky a piece of fruit. They did not give them but one hot meal and that was once every couple of weeks. They were given no personal protection equipment except one mask. When that mask got dirty, they had to take it off and wash it in their sink, without soap, and let it dry. They would quarantine a unit and then put new inmates in the quarantined units. It was unknown to the guys in that unit whether the new guy was positive or negative. The guards would go from the camp (which they were saying was COVID-negative) to the units without any change of clothing, masks, or anything else. Most of the COs did not wear

a mask and would go between the units that were positive and in quarantine and those that were not. There was a terrible lack of COs. In some cases, the counselors would work the floors because there were no COs around." – R.N.D.H.

"Why is BOP using solitary confinement as medical isolation? Inmates with COVID negative results still have to quarantine, also in solitary confinement. No phone calls, no commissary! Why are our loved ones are being punished for being exposed to or contracting the virus? Why can't families get any info on their loved ones when calling the prison after we have not heard from them in over a month?" – M.P.

"Knowing inmates had limited phone use and in lockdown/quarantine and that they are not lawyers, the compassionate release was a joke, some are still waiting after 8-10 months. Through all they have been through in the last 14 months with no mental health treatment, no mail, books, letters, or photos and they have yet to snap, but people on the outside are struggling because they cannot eat in restaurants and bars." – J.M.W.

"Prison is difficult during the best of times. During COVID, the inmates suffered gravely, inhumanely, and for some, death. The inmates who have managed, have done so with little to no protection, medication, or PPE. They have barely had any nutrition with their meals, and commissary was practically null. Although they were given "free" minutes for phone calls, they were unable to use the phones to call family for fear of spread. The term quarantine is synonymous with solitary confinement in prison. And solitary has been extremely harsh and cruel. Physically and mentally. Although prison is a form of punishment, there should be a balance of compassion, especially during a pandemic." – M.B.

"Guards did not have masks on at our visit last October. There was only one other family in the room. We all had masks on and had to stay 6 ft apart. Vital programs and counseling have not been held for over a year." – C.R.

"In January, my loved one was sent to Milan in Michigan and was put in quarantine. He was put in a cell with another inmate that had already tested positive and he had all the risk factors (diabetes, obese, high blood pressure etc.). Not to mention he has an intellectual disability. Then he was fed sandwiches only, and when they did get a real meal, it was ice cold. No heat in the unit, and then in February they had no water for three days. Inmates were told to urinate and defecate in garbage bags, which is very unsanitary." – B.B.

JOINT STATEMENT OF

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SENATE JUDICIARY COMMITTEE

OVERSIGHT HEARING TO EXAMINE THE FEDERAL BUREAU OF PRISONS

APRIL 15, 2021

Mr. Chairman, Mr. Ranking Member, and Members of the Committee, thank you for inviting us to provide testimony about the spread of COVID-19 in federal prisons, as well as about the failures of the Federal Bureau of Prisons to adequately respond and to properly report critical health data about those in its custody.

Introduction

We lead or co-lead the three major academic research centers focused on the COVID-19 pandemic's impact on prisons and jails.

Aaron Littman, J.D., M.Phil., is a Binder clinical teaching fellow at University of California, Los Angeles (UCLA) School of Law and the deputy director of the UCLA Law COVID-19 Behind Bars Data Project.[1] Since March 2020, the Project's team of legal experts, public health researchers, data scientists, lawyers, and policy analysts has been documenting the spread of COVID-19 in prisons, jails, immigration detention facilities, and other carceral settings, as well as responses by political officials, courts, and other actors in the criminal legal system. The

[1] *See About,* UCLA LAW COVID-19 BEHIND BARS DATA PROJECT, https://uclacovidbehindbars.org/about (last visited Apr. 12, 2021) (project description); *Github Dataset*, UCLA LAW COVID-19 BEHIND BARS DATA PROJECT, https://github.com/uclalawcovid19behindbars/data (last visited Apr. 12, 2021) (complete dataset).

Project collects data from agencies' public dashboards on prison systems in all fifty states, the District of Columbia's Department of Corrections, facilities operated by the Bureau of Prisons (BOP), facilities detaining those in the custody of U.S. Immigration and Customs Enforcement, some county jail systems, and other carceral settings. The data collected include, where reported, the numbers of cumulative and active infections, recoveries, deaths, tests, and vaccines administered, among both incarcerated people and staff.

Lauren Brinkley-Rubinstein, Ph.D., is an assistant professor of social medicine at the Center for Health Equity Research at the University of North Carolina at Chapel Hill, and the co-founder of the COVID Prison Project.[2] The COVID Prison Project was created in March 2020 by a group of interdisciplinary public health scientists. The Project collects, tracks, and analyzes publicly available data related to COVID-19 incidence and vaccination from carceral facilities across the country. Its main objective is to use data to illuminate the possible harms of incarceration and harness its findings to create change.

Michele Deitch, J.D., M.Sc., is a distinguished senior lecturer in criminal justice policy at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin, with a joint appointment in the School of Law. She co-founded and directs the COVID, Corrections, and Oversight Project to provide guidance to policy makers and corrections officials on ways to manage the COVID-19 crisis in prisons and jails that take into account the rights and needs of people in custody and that promote transparency and oversight. The Project team has produced several reports that draw heavily on the available data regarding COVID-19 in correctional environments. The team's first report created a profile of COVID-19 deaths in custody in Texas.[3] Most recently, the Project released a report called "Hidden Figures: Rating the COVID Data Transparency of Prisons, Jails, and Juvenile Agencies," which identified the essential metrics and features for correctional COVID-19 data dashboards and assessed those dashboards in all 50 states as well as the Federal Bureau of Prisons.[4]

The Pandemic Behind Bars

The pandemic has had a disproportionate and devastating impact on the millions of people who are incarcerated in this country. The data we have collected show that as of April 11, 2021, at least 405,000 incarcerated people are reported to have been infected with COVID-19 and at least 2,671 have died of the virus. Among correctional staff, at least 108,000 cases and 190 deaths have been reported.

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[2] *See About Us*, THE COVID PRISON PROJECT, https://covidprisonproject.com/about-us (last visited Apr. 12, 2021).

[3] Michele Deitch, Alycia Welch, William Bucknall & Destiny Moreno, *COVID and Corrections: A Profile of COVID Deaths in Custody in Texas* (LBJ Sch. of Pub. Affs. Rsch. Nov. 2020), https://repositories.lib.utexas.edu/handle/2152/83635.

[4] Michele Deitch & William Bucknall, *Hidden Figures: Rating the COVID Data Transparency of Prisons, Jails, and Juvenile Agencies* (LBJ Sch. of Pub. Affs. Rsch. Mar. 2021), https://repositories.lib.utexas.edu/handle/2152/85094.

Our analyses have shown that in the early months of the pandemic, incarcerated people experienced a case rate 5.5 times that of the overall population and died of COVID-19 at a rate three times that of their same-age, non-incarcerated peers.[5] We have also shown that prison staff have been infected with COVID-19 at 3.2 times the rate of the U.S. population as a whole.[6]

There is reason to believe, however, that the true toll of COVID-19 behind bars is much greater than these officially reported numbers reveal. Limited testing, of both incarcerated populations and correctional staff, has likely contributed to the under-detection of cases, and poor data reporting practices have likely led to concealed cases and deaths.

In federal prisons, according to data reported by the BOP, 244 incarcerated people have died of COVID-19. Countless more have been infected, but because of the agency's misleading data reporting practices, which are addressed below, we do not know exactly how many people have tested positive for COVID-19 in BOP custody. However, it is in excess of 47,000, likely substantially so.

BOP facilities have seen staggeringly high COVID-19 numbers. As shown in Figure 1, the BOP has seen significantly higher infection rates than the country's overall population. In January of 2021, the active infection rate in federal prisons was more than five times that of the country's overall population.

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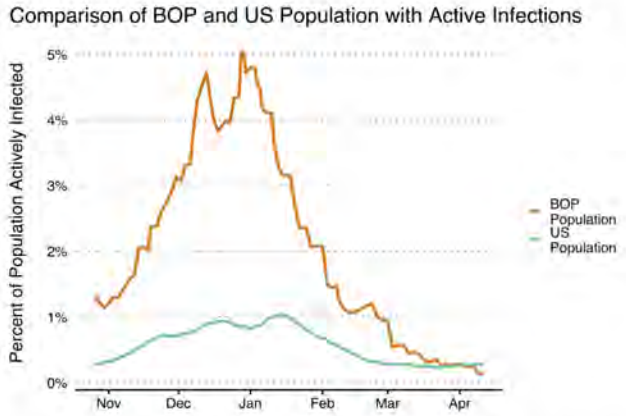
[5] Brendan Saloner, Kalind Parish, Julie A. Ward, Grace DiLaura & Sharon Dolovich, *COVID-19 Cases and Deaths in Federal and State Prisons*, 324 JAMA 602 (2020), https://jamanetwork.com/journals/jama/fullarticle/2768249.

[6] Julie A. Ward, Kalind Parish, Grace DiLaura, Sharon Dolovich & Brendan Saloner, *COVID-19 Cases Among Employees of U.S. Federal and State Prisons*, AM. J. PREV. MED. (2021), https://www.ajpmonline.org/article/S0749-3797(21)00118-5/fulltext.

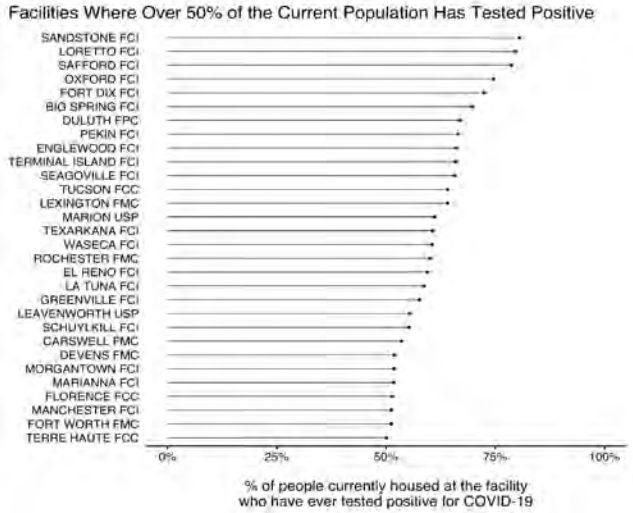
Figure 1: *Comparison of percentages of BOP incarcerated and total U.S. populations with active COVID-19 infections. BOP incarcerated population percentages are calculated by dividing the sum of all active cases reported among incarcerated people across facilities by the total reported incarcerated population. Total U.S. population percentages are calculated by dividing active infections—estimated using the total new cumulative cases in the past 14 days as reported in the New York Times database—by the most recent Census Bureau estimate of the total U.S. population.*[7] *Data are up to date as of April 12, 2021.*



High infection rates have not been limited to a few isolated outbreaks or facilities. Rather, as shown in Figure 2, BOP data reflect that in 30 federal prisons across the country, over 50% of people currently incarcerated have been infected. In 55 federal prisons, more than 33% of people currently incarcerated have been infected.

[7] *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html (last visited Apr. 12, 2021).

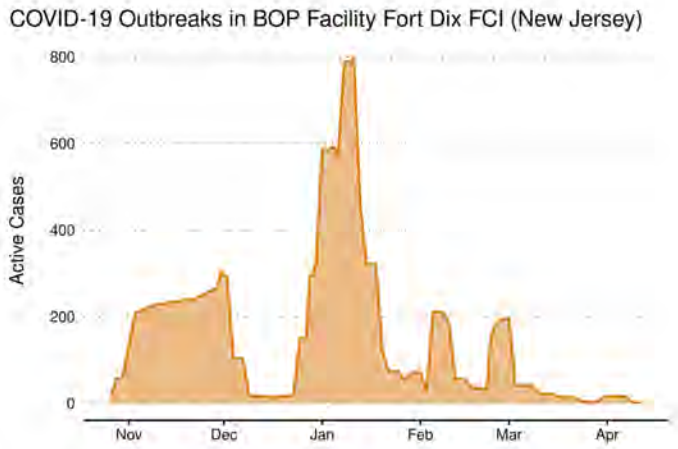
Figure 2: *BOP facilities where more than 50% of the current population has tested positive for COVID-19. Facility percentages are calculated by dividing the number of people incarcerated at a facility who have ever had a positive test (reported as "positive tests" by the BOP) by the facility population reported by the BOP.*[8] *Data are up to date as of April 12, 2021.*



Further, a number of BOP facilities have seen repeated outbreaks over the course of the pandemic. For example, as shown in Figure 3, Fort Dix FCI in Burlington County, New Jersey saw a devastating outbreak in late November and early December 2020, with just over 300 reported infections. Just a few weeks later, after the BOP reported that most cases had been resolved, the facility reported another outbreak, of nearly 800 cases.

[8] *COVID-19 Inmate Test Information*, FED. BUREAU OF PRISONS, https://www.bop.gov/coronavirus (last visited Apr 12, 2021); *Population Statistics*, FED. BUREAU OF PRISONS, https://www.bop.gov/mobile/about/population_statistics.jsp (last visited Apr. 12, 2021).

Figure 3: Active COVID-19 cases at Fort Dix FCI between November 2020 and April 2021. The number of "active cases" refers to the number of newly detected cases among prisoners who have not yet recovered and/or remain in quarantine.



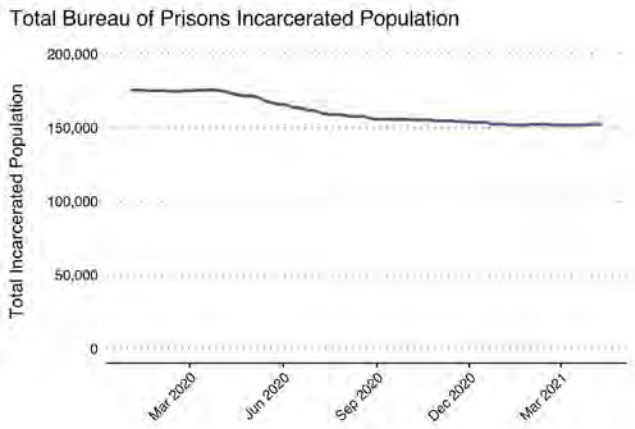
Failure to Act

Despite the tremendous toll that COVID-19 has wrought on those in its custody and on its employees, the BOP has continually failed to reduce population density inside its facilities, ignoring the warnings and pleas of public health and legal experts.[9]

Despite those calls, the BOP population has remained high. As shown in Figure 4, the total incarcerated population fell from slightly over 175,000 in January 2020 to around 155,500 by September 2020, a drop of just 11%. Since September 2020, the population has remained relatively constant, and in fact it has begun increasing since reaching its lowest point at the end of January 2021.

[9] Alexandria Macmadu, Justin Berk, Eliana Kaplowitz, Marquisele Mercedes, Josiah D. Rich & Lauren Brinkley-Rubinstein, *COVID-19 and Mass Incarceration: A Call for Urgent Action*, 5 LANCET PUB. HEALTH 571 (2020), https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30231-0/fulltext; *see also* Benjamin A. Barsky, Eric Reinhart, Paul Farmer & Salmaan Keshavjee, *Vaccination Plus Decarceration—Stopping COVID-19 in Jails and Prisons*, NEW ENG. J. MED. (2021), https://www.nejm.org/doi/full/10.1056/NEJMp2100609.

Figure 4: *Total incarcerated population as reported by the BOP between January 2020 and April 2021.*[10] *Data are up to date as of April 12, 2021.*



The number of people held in federal prisons has remained relatively stable largely because the BOP has failed to utilize existing legal mechanisms to reduce its incarcerated population. According to data obtained by The Marshall Project, from March 2020 to May 2020, the BOP approved only 156 of the 10,940 applications submitted for compassionate release, a grant rate of under 1.5%.[11] Reporting by VICE News has revealed that at least 54 people have died in BOP custody after their applications for compassionate release were denied or left pending.[12]

Now, as COVID-19 vaccines are becoming more widely available to the general public, the agency has again been flouting the advice of public health experts and further endangering the health of those in its custody, as well as those in the communities surrounding its facilities. Rather than providing vaccine access to the incarcerated population at the same time as and with equal priority to its staff, the agency elected to prioritize access for its staff and withhold access to those who are confined.[13] The agency apparently did not begin vaccinating high-risk

[10] *Population Statistics*, *supra* note 8.

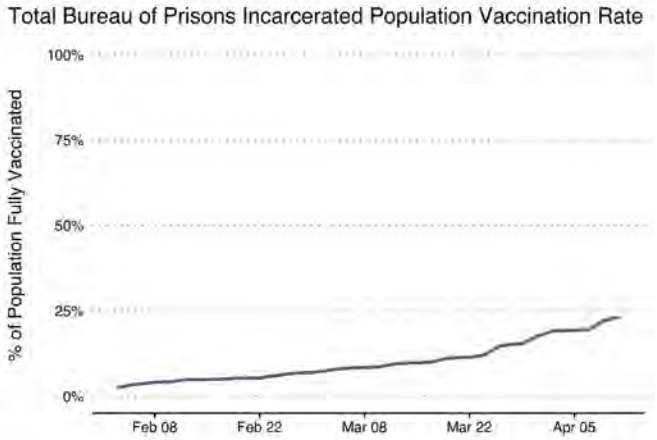
[11] Keri Blakinger & Joseph Neff, *Thousands of Sick Federal Prisoners Sought Compassionate Release. 98 Percent Were Denied*, MARSHALL PROJECT (Oct. 7, 2020), https://www.themarshallproject.org/2020/10/07/thousands-of-sick-federal-prisoners-sought-compassionate-release-98-percent-were-denied.

[12] Keegan Hamilton, Samir Ferdowsi & Rob Arthur, *Prisoners Keep Dying of COVID While 'Compassionate Releases' Stall in Court*, VICE NEWS (Mar. 18, 2021), https://www.vice.com/en/article/jgq7ny/prisoners-keep-dying-of-covid-while-compassionate-releases-stall-in-court.

[13] *See* Michael Balsamo & Michael R. Sisak, *Federal Prisons to Prioritize Staff to Receive Virus Vaccine*, ASSOCIATED PRESS (Nov. 23, 2020), https://apnews.com/article/coronavirus-pandemic-prisons-85361fcf7cda33c7b6afb5ad8d2df8a2.

individuals in its custody until late December 2020.[14] Despite widespread availability of the vaccine to young, healthy individuals who are able to avoid all risk of exposure, the BOP has still not vaccinated most people in its custody, as reflected in Figure 5. As of April 11, 2021, just 23% of the BOP's current incarcerated population has been fully vaccinated.

Figure 5: *Percentage of BOP incarcerated population that has been fully vaccinated. Percentages are calculated by dividing the number of "full inmate inoculations completed" as reported by the BOP by the total reported incarcerated population.*[15] *Data are up to date as of April 12, 2021.*



A Crisis of Transparency

Our work to collect, analyze, and make publicly available critical health data relating to COVID-19 in federal prisons has been significantly hindered by a troubling lack of transparency on the part of the BOP. Despite the public health value of this data and its importance for policymakers, and despite counting more COVID-19 cases in its custody population than any other prison system, the BOP continues to withhold and obscure critical health information.

[14] *See* Michael Balsamo, *Reversing Course, Feds Say Some US Inmates Get Virus Vaccine*, ASSOCIATED PRESS (Dec. 22, 2020), https://apnews.com/article/coronavirus-pandemic-prisons-d2c1a3013351ed42cf75a194e4661cf3.
[15] *COVID-19 Vaccine Implementation*, FED. BUREAU OF PRISONS, https://www.bop.gov/coronavirus (last visited Apr. 12, 2021); *Population Statistics*, *supra* note 8.

Data Gaps

The BOP fails to report certain crucial variables necessary for the public to understand the prevalence of COVID-19 inside its facilities, as well as the impact of the virus on conditions in the facility. These include: the number of COVID-19 tests administered to both the incarcerated and staff populations inside each facility, the number of staff who have tested positive for COVID-19 at each facility, and the number of people who have received only the first in a series of vaccine doses.[16] Each of these variables is significant.

The total number of COVID-19 tests administered allows evaluation of the frequency of testing inside facilities. When only the number of individuals who have completed testing is reported, a facility that has tested each individual once and a facility that is testing each individual every week appear identically in the data. This makes it impossible to know whether a low positivity rate reflects actually low COVID-19 prevalence, confirmed by mass testing, or just the tip of a much larger and undetected outbreak, concealed by insufficient testing. We also do not know the average diagnostic time for these tests.

Without the cumulative number of staff who have tested positive, it is not possible to reliably calculate the rate of infection among BOP staff.[17]

While the BOP has been reporting the number of completed inoculations completed at each facility, as well as the total number of doses administered systemwide, reporting the number of people who have initiated their vaccination schedule (i.e., received the first of two doses) and the number of vaccine doses the agency has received would allow the public to better understand the rate and status of vaccine administration within BOP facilities. To the extent that BOP begins to administer single-dose vaccine regimens, more detailed reporting will become even more

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[16] There are additional gaps in the BOP's reporting of data. The COVID, Corrections, and Oversight Project at the University of Texas at Austin has noted that the Bureau of Prisons also does not report, for example, the number of people who have died in its custody with COVID-19 as a suspected cause of death, the number of people hospitalized for COVID-19, or the number of people in its custody held in medically restricted housing or in lockdown situations. Moreover, the BOP does not provide data about COVID-19 cases, deaths, and vaccines that is disaggregated by race, ethnicity, age, and sex, which is necessary to show whether COVID-19 is having a disproportionate impact on certain demographic populations and whether the response has been equitable. Deitch & Bucknall, *supra* note 4; *see also* Kathryn M. Nowotny, Zinzi Bailey & Lauren Brinkley-Rubinstein, *The Contribution of Prisons and Jails to US Racial Disparities During COVID-19*, 111 AM. J. PUB. HEALTH 197 (2021), https://ajph.aphapublications.org/doi/10.2105/AJPH.2020.306040 (discussing importance of disaggregating data by demographic categories).

[17] The BOP reports, for each facility, the number of staff who are currently positive for COVID-19 (i.e., active infections), the number of staff who have died from COVID-19, and the number of staff who have recovered from COVID-19. However, we have reason to be concerned that the sum of these numbers may not represent the number of cumulative cases among staff at a given facility. As discussed below, when we sum the three corresponding figures for the BOP's incarcerated population, they do not equal the reported number of incarcerated people with positive tests.

important. The BOP should also be reporting the number of vaccine refusals by incarcerated people and staff.

It is further critical that the BOP publishes this data in historical time-series, to reveal trends and the scope of individual outbreaks.

Misleading Reporting Practices

Equally troubling is the agency's dishonest practices regarding information it does report. Despite purporting to publish the "[n]umber of inmates that have ever had a positive test," the agency in actuality reports only the number of people *currently incarcerated* who have had a positive test.[18] Unlike a true cumulative case count, which can only remain constant or increase, this variable reported by the BOP has at times decreased. A BOP spokesperson recently confirmed to us that the agency has been removing from its cumulative case count the many individuals who have been infected with COVID-19 while in its custody but who have since been released.[19]

A true cumulative case count, often referred to as cumulative incidence, would measure how many people have tested positive for COVID-19 while incarcerated in BOP custody. This is a critical data point for assessing the agency's handling of the pandemic in its facilities. Without a cumulative case count, it is impossible to calculate or estimate with confidence the "incidence rate"—the rate of new cases over time. This measure is used to quantify the risk of infection faced by the incarcerated population since the start of the pandemic. With the BOP's data as reported, we can only calculate "point prevalence"—the proportion of people currently incarcerated who have ever had a COVID-19 infection.[20]

Removing individuals who are released from case counts also sends a very concerning message. The BOP, like any other carceral institution, is responsible for every person that enters its system and lives, falls sick, or dies in its custody. Dropping individuals who contract COVID-19 but are then released from case counts serves to obscure this responsibility.

We and other observers have also noted that the number of individuals reported to have died of COVID-19 in BOP custody has similarly dropped in recent weeks. When we inquired as to the drop in total deaths, an agency spokesperson replied that it removed data, including deaths, for

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[18] *COVID-19 Inmate Test Information*, *supra* note 8.

[19] *See also A State-by-State Look at Coronavirus in Prisons*, MARSHALL PROJECT, https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons (last visited Apr. 12, 2021).

[20] *See generally* CTRS. FOR DISEASE CONTROL & PREVENTION, *Morbidity Frequency Measures, in* PRINCIPLES OF EPIDEMIOLOGY IN PUBLIC HEALTH PRACTICE (3d ed. 2011), https://www.cdc.gov/csels/dsepd/ss1978/lesson3/section2.html.

privately contracted facilities that "no longer house BOP inmates." We are still awaiting a response to a follow-up question regarding whether the COVID-19 data associated with those people who were previously incarcerated there are being reported elsewhere.

Finally, we have identified additional flaws in the BOP's reporting that make it exceedingly challenging to interpret its data.

First, the BOP uses terminology that conflates the number of positive tests with the number of people who have received positive tests (i.e., who have been infected), two substantively different variables. On its dashboard, the agency reports a number it captions "positive tests" but defines as "the number of *inmates* who have ever had a positive test." Relying on the agency's definition of this variable—rather than its name—we, and other organizations tracking BOP COVID-19 data, treat this number as the BOP's reported *case* count, measuring the number of discrete COVID-19 cases, not positive test results.

However, elsewhere on its dashboard the BOP includes the sentence, "The number of positive tests at a facility is not equal to the number of cases, as one person may be tested more than once."[21] It is not clear what this statement is referring to, as nowhere on its dashboard does the agency report a variable it defines as the number of positive tests. Although a BOP spokesperson has confirmed to us that the dashboard is reporting people tested, not tests, this misleading statement remains. However, we do continue to urge the BOP to publish broader testing data, including the total number of tests administered and the number of those tests with positive results. The BOP should also include a more complete data dictionary so that each metric it reports is clearly defined and can be legitimately compared with similar data from other corrections agencies around the country.

Second, the BOP states that testing positive follows an individual upon transfer between facilities—that is, "the number of tests recorded per site reflects the number of persons at the specific facility who have been tested, whether at that site or at a prior facility."[22] There are reasons to believe that its practices in this respect are inconsistent; certainly, they are inadequately explained. If the agency did treat all variables similarly in this regard, the total number of people at each facility who have tested positive would roughly match the combined totals of those currently infected, those who have recovered, and those who have died from the virus. However, for some facilities, the total number of people who have tested positive is much lower than the combined total of active infections, recoveries, and deaths.

For example, the BOP reports 1,112 "inmates recovered" at Beaumont Low FCI in Jefferson County, Texas, and a single "inmate death[]," but at the same time reports that only 669 people

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[21] *COVID-19 Inmate Test Information*, *supra* note 8.
[22] *Id.*

at that facility have had positive tests, whether performed at Beaumont Low FCI or elsewhere. It is illogical that the number of people who have recovered from COVID-19 at a particular facility is greater than the number of people who have had the virus in the first place.

In response to a query about this inconsistency which highlighted the example of Beaumont Low FCI, an agency spokesperson stated that "this facility is unique in that it is the only Bureau location that contracts all medical services," such that "testing information for the Complex is compiled differently." However, the same disparities occur at numerous other facilities. For example, at Elkton FCI in Columbiana County, Ohio, the BOP reports 836 inmates recovered, as well as 9 deaths and 1 active infection, but that only 591 people at that facility have had positive tests. At Butner Low FCI, in Granville County, North Carolina, the BOP reports 567 inmates recovered, as well as 17 deaths and 3 active infections, but only 337 people with positive tests. And at Oklahoma City FTC, the BOP reports 490 inmates recovered, as well as 2 deaths and 4 active infections, but only 251 people with positive tests.

Recommendations and Conclusion

It is imperative that the Federal Bureau of Prisons, the standard-bearer of the American criminal justice system, operates with transparency and integrity, especially during a time of such acute crisis.

We call on the agency to take meaningful measures to mitigate the spread of COVID-19 in its facilities and to protect the health and safety of the many thousands of people in its custody and whom it employs. We call on the agency to reduce population levels to the maximum extent possible, provide those in custody with proper personal protective equipment, provide access to treatment consistent with the standard of care for symptomatic COVID-19 infection,[23] and offer all incarcerated people and staff immediate and ongoing access to COVID-19 vaccines along with educational materials to encourage uptake.[24]

We further call on the agency to dramatically improve its data reporting processes. This must begin with publishing the true cumulative count of the number of people who have tested positive for COVID-19 while incarcerated in BOP facilities, *regardless of current incarceration status*. We also urge the BOP to continue or begin publishing data on all of the essential metrics

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[23] *See* Justin Berk, Lauren Brinkley-Rubinstein, Matthew Murphy, Phil Chan & Josiah Rich, *MAb for Symptomatic COVID-19 in Correctional Facilities: An Important Opportunity*, 397 LANCET 877 (2021), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00354-8/fulltext.

[24] *See* Alexandra Macmadu & Lauren Brinkley-Rubinstein, *Essential Strategies to Curb COVID-19 Transmission in Prisons and Jails*, 111 AM. J. PUB. HEALTH 776 (2021), https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2021.306206 (discussing importance of mass testing, prioritized vaccination, and decarceration).

identified in the University of Texas's *Hidden Figures* report.[25] To this end, we urge Congress to pass the COVID-19 in Corrections Data Transparency Act, which would mandate reporting of detailed, comparable data by the BOP as well as state and local systems.[26]

Thank you very much for providing us with the opportunity to offer testimony on this critically important matter.

Aaron Littman, J.D., M.Phil.
Deputy Director of the UCLA Law COVID-19 Behind Bars Data Project
Binder Clinical Teaching Fellow
UCLA School of Law

Lauren Brinkley-Rubinstein, Ph.D.
Co-Founder of the COVID Prison Project
Assistant Professor of Social Medicine
Center for Health Equity Research
University of North Carolina at Chapel Hill

Michele Deitch, J.D., M.Sc.
Director of the COVID, Corrections, and Oversight Project
Distinguished Senior Lecturer
Lyndon B. Johnson School of Public Affairs
The University of Texas at Austin

[25] Deitch & Bucknall, *supra* note 4, at 48.

[26] *See* Press Release, *Warren, Murray, Booker, Pressley, Garcia, Colleagues Will Reintroduce COVID-19 in Corrections Data Transparency Act* (Feb. 10, 2021), https://www.warren.senate.gov/newsroom/press-releases/warren-murray-booker-pressley-garcia-colleagues-will-reintroduce-covid-19-in-corrections-data-transparency-act.

April 14, 2021

Hon. Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Hon. Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Hearing on Oversight of the Federal Bureau of Prisons

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the Justice Action Network, the country's largest bipartisan organization dedicated to advancing criminal justice reform at the state and federal levels, we write to thank you for holding this important hearing and to express our concerns regarding the management of our federal prison system. We write specifically to convey our concerns about efforts to mitigate the spread of COVID-19 in federal prisons and the status of implementation of the First Step Act of 2018.

Mitigation of COVID-19 in Federal Prisons

The Justice Action Network, dozens of other organizations, and over two dozen Members of Congress have urged the Biden administration to take immediate action to reverse the pernicious effects of the Department of Justice Office of Legal Counsel's opinion entitled, "Home Confinement of Federal Prisoners After the COVID-19 Emergency" issued on January 15, 2021 in President Trump's final days in office (the "OLC Memo").[1] As explained in a recent news article in Reuters, the OLC Memo directs the Bureau to send back to prison all individuals who are on home confinement due to the pandemic once the emergency is declared over, regardless of whether they have successfully remained law abiding and reintegrated into their communities.[2]

The Justice Action Network has worked to address some of the most pervasive and unjust disparities within our criminal justice system, including working to enact the First Step Act in 2018 and its previous iteration, the Sentencing Reform and Corrections Act. One of the major tenets of the First Step Act was the creation of back-end reforms to allow relief to individuals who have shown tremendous progress yet face overly long or unjust prison sentences. With the advent of the COVID-19 pandemic, efforts to release prisoners early through compassionate release and home confinement have become even more critical, as prisons and jails proved to be some of the most dangerous hotspots for outbreaks of the virus throughout the nation.

To face this challenge and equip the Bureau of Prisons with the necessary tools to mitigate the spread of the virus, Congress rightly included expanded authority under the CARES Act that would allow the Bureau to depart from existing statute to place more individuals on home confinement to allow for greater social distancing within federal correctional facilities.[3]

According to the Bureau of Prisons, over 24,000 individuals have been placed on home confinement since March 26, 2020, with 7,336 individuals currently serving time on home confinement.[4] While this is a tremendous development that has no doubt saved lives, we now find ourselves at an inflection point where many of these individuals, who have successfully transitioned to their homes and communities, may be required to go back to prison. These individuals face a tenuous situation and much uncertainty. It is difficult if not impossible for someone to apply for a job, go back to school, start forming relationships with children and grandchildren, if they believe that at any moment, they could be sent back to prison under the OLC Memo. Leaving individuals in limbo is unnecessary and inhumane. Further, the end effect of leaving this memorandum on the books will be thousands of individuals sent back to federal prison, causing a dramatic increase in the current federal prison population. This would reverse years of progress under previous administrations to decrease this population.[5]

This raises a myriad of questions that must be answered before people are required to return to prison. To be clear, Justice Action Network vehemently opposes the OLC Memo and finds the legal reasoning flawed and its impact devasting to families and to public safety. The Justice Action Network was proud to sign a letter to Attorney General Merrick Garland and President Biden along with over two dozen organizations across the political spectrum urging the rescission of this cruel and unjust memo.[6] Additionally, 28 members of the House of Representatives sent a letter last week to the President Biden urging him to revoke the memo.[7]

The Bureau's presence at this oversight hearing can help address outstanding questions, including:

- The Bureau has not delineated between the individuals who are currently serving time on home confinement under previous statutes versus those serving time on home confinement under the CARES Act emergency authority. How many individuals would the OLC Memo impact, and how many of those individuals have remained infraction-free during their time on home confinement?
- How does the Bureau intend to return thousands of individuals back to prison in a safe an orderly manner? Does the Bureau have the resources to implement such cumbersome process and what are the expected costs?
- Can the Bureau provide an assurance that they have the requisite staffing capability to take on this increase in population?
- Has the Bureau discussed with the Administration or Justice Department ways to avoid sending these individuals back to federal prison unnecessarily, including through executive action, Departmental action, or outright rescission of the OLC Memo? If so, what are the options under consideration?

Additionally, the Bureau has the authority to grant those who have remained infraction-free during their service on home confinement sentence reductions through compassionate release. However, in previous testimony, Director Carvajal did not provide much clarification on the Bureau's internal process and decision making when granting compassionate release motions, which often leads to court involvement. We ask the Director commit to providing clear guidelines for how these decisions will be made going forward and whether they will consider granting motions to individuals who are forced to return to prison.

First Step Act Implementation

The Justice Action Network's concerns and questions extend beyond the OLC Memo as we remain apprehensive about implementation of the First Step Act. It has been more than two years since Congress passed and the President signed into law the First Step Act, a groundbreaking prison and sentencing reform law to help those behind bars prepare for successful reentry and ease federal sentencing laws. The Trump Administration was slow to fully implement this Act, and its Justice Department actively impeded full implementation.[8] We believe this oversight hearing is an important opportunity to ask the Bureau about the exact status of First Step Act implementation, and its plans to implement this critical law fully and swiftly.

Additionally, on November 25, 2020, the Bureau of Prisons issued a rule regarding the procedures for earning, awarding, losing, and restoring earned time credits as required by the First Step Act's risk and needs assessment provision.[9] The rule has many shortcomings that are inconsistent with the Act and the legislative intent of Congress. For instance, one shortcoming is the determination that 8 hours in evidence-based recidivism reduction programming will equal one day of earned time. This would strictly limit the amount of earned time individuals can accrue as most programs do not run on full 8-hour days for one day of programming. Earlier this year, the Justice Action Network along with FAMM and the National Association of Criminal Defense Lawyers submitted comments on the proposed rule highlighting additional shortcomings and harmful effects of the rule.[10] We also ask that the Bureau provide information as to whether it plans to revisit this rule.

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We hope that these issues and many others plaguing our federal prison systems, such as understaffing and staffing retention, conditions for incarcerated pregnant women, COVID-19 vaccination distribution, and more, will receive ample attention from Director Carvajal during the hearing and in written responses to questions.

Thank you for your leadership on these issues and for holding this oversight hearing on the Federal Bureau of Prisons. Bipartisan criminal justice reform continues to unite Congress and the country, and we hope that this shared success will continue to change laws and change lives.

Sincerely,

Inimai Chettiar, Federal Director
Cortland Broyles, Federal Affairs Coordinator

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[1] Jennifer Mascott, Memorandum Opinion for General Counsel, Federal Bureau of Prisons, Home Confinement of Federal Prisoners After the COVID-19 Emergency (Jan. 15, 2021).
[2] Sarah N. Lynch, *Thousands of low-level U.S. inmates released in pandemic could be headed back to prison*, Reuters, (Apr. 11, 2021), https://www.reuters.com/article/us-health-coronavirus-usa-justice/thousands-of-low-level-u-s-inmates-released-in-pandemic-could-be-headed-back-to-prison-idUSKBN2BY0AU.

[3] Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281, § 12003, (2020).
[4] FED. BUREAU OF PRISONS, COVID-19 Home Confinement Information, Coronavirus (Apr. 2021), https://www.bop.gov/coronavirus/.
[5] FED. BUREAU OF PRISONS, Population Statistics, Past Inmate Population Statistics (Apr. 2021), https://www.bop.gov/mobile/about/population_statistics.jsp#old_pops.
[6] Letter from FAMM and Justice Action Network et al to Merrick Garland, Att'y Gen., U.S. Dep't. of Just. (Apr. 1, 2021). https://famm.org/wp-content/uploads/Letter-to-Attorney-General-Garland-re-OLC-Memo.pdf.
[7] Letter from Hon. Bonnie Watson Coleman, Rep., U.S. House of Reps., et al to Hon. Joseph R. Biden, President, United States (April 8, 2021). https://watsoncoleman.house.gov/uploadedfiles/letter_to_president_biden_-_regarding_home_confinement_guidelines.pdf.
[8] Neena Satija, Wesley Lowery, and Josh Dawsey, *Trump boasts that his landmark law is freeing these inmates. His Justice Department wants them to stay in prison*, Washington Post, (Nov. 7, 2019), https://www.washingtonpost.com/investigations/trump-brags-that-his-landmark-law-freed-these-inmates-his-justice-department-wants-them-to-stay-in-prison/2019/11/07/5f075456-f5db-11e9-a285-882a8e386a96_story.html.
[9] FSA Time Credits, 85 Fed. Reg. 75268 (proposed Nov. 25, 2020).
[10] FAMM, Justice Action Network, and Nat'l. Assn. of Criminal Defense Lawyers, Comment Letter on Proposed Federal Bureau of Prisons FSA Earned Time Credits Rule (Jan. 25, 2021), https://www.nacdl.org/getattachment/a39b698a-0b7d-4a15-b382-b0e9267058f2/nacdl-famm-jan-comments-to-bop-on-proposed-first-step-act-earned-time-credits-rule-january-2021.pdf.

The Honorable Richard Durbin
United States Senate
Committee on the Judiciary
Washington, DC 20510

The Honorable Charles Grassley
United States Senate
Committee on the Judiciary
Washington, DC 20510

April 15, 2021

Re: Oversight Hearing for the Federal Bureau of Prisons

Dear Chairman Durbin and Ranking Member Grassley:

As the Bureau of Prisons (BOP) struggles to confront a deadly pandemic and to implement requirements of the First Step Act of 2018, today's oversight hearing is of critical importance. The Sentencing Project is deeply concerned that despite warnings from public health experts regarding the heightened risk that incarcerated people face from COVID-19 due to overcrowded and unsanitary conditions of confinement, officials have not done enough to protect the lives of incarcerated people and correctional workers. Moreover, halts to programming opportunities during the pandemic and failures with BOP's risk assessment tool mean the promises of the bipartisan reform legislation you both championed have been sidelined.

COVID-19

According to *The New York Times*, over 660,000 people in prisons and jails nationwide have tested positive for COVID-19 as of April 9, 2021. The federal prison system has experienced the highest number of cases among the country's correctional systems, exceeding 46,000 since March 2020. At least 230 people in BOP custody and four staff members have died due to the virus. However, according to a news outlet, the *Marshall Project*, data from the BOP is no longer reliable because of recent manipulations from the agency to its reported deaths and infections because of shifting accounting protocols. Questions about BOP's transparency and data accuracy must be addressed. The Sentencing Project urges this committee to ensure BOP exceeds its obligations for data collection, reports information publicly in a timely manner, and includes demographic information, particularly the race and ethnicity of individuals with infections, those who have died, and for people released from custody.

Recent investigations also raise alarms that public health guidelines are not adequately followed by federal officials. A report from the Office of the Inspector General for the Department of Justice in November found the Bureau failed to appropriately isolate individuals who tested positive for COVID-19 from the general population and corrections staff were not always equipped with protective gear or informed about the health status of sick individuals they were charged with overseeing. In August, a *Marshall Project* expose quoted frightened correctional workers who alleged that the U.S. Marshals Service transfer protocols were endangering the health of incarcerated people and BOP employees as well. Unfortunately, despite this fear,

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Director Michael Carvajal has reported that over half of correctional staff have refused vaccinations for the coronavirus while vaccines for incarcerated people lag. This unwillingness and clear lack of education among staff will certainly jeopardize the safety and health of people in custody.

The Sentencing Project joins with experts in public health and correctional medicine in calling for a significant reduction in incarceration levels to limit the spread of infections in BOP facilities and to save lives. The Bureau of Prisons has been operating overcrowded prisons for decades and staffing shortages persist. Congress granted the Department of Justice authority under the CARES Act to help reduce the population in federal prisons by expediting transfers to home confinement. The effectiveness of this new authority was severely limited, however, because the BOP created a long list of eligibility criteria for transfers; including that individuals must have a Prisoner Assessment Tool Targeting Estimated Risk and Need (PATTERN) risk score of minimum, have completed at least 50 percent of their sentence, and reside in a low- or minimum-security facility. Now, a January report from the National Institute for Justice reveals that BOP's risk assessment tool is significantly flawed and has resulted in misclassifications over the last year. Given BOP's reliance on PATTERN to determine eligibility for home confinement, we can predict that hundreds of otherwise eligible beneficiaries were denied transfers because of the inadequacy of this tool. PATTERN scores should be eliminated as a criteria for release, and instead prioritization for transfers and releases during the pandemic should be given to elderly and other vulnerable people.

Currently, only about 5% of the total federal prison population is serving their sentence on home confinement despite criminological evidence that if released many incarcerated people would not pose an unreasonable public safety risk. The Sentencing Project urges this Committee to use its oversight authority to ensure that the CARES Act's expansion of home confinement is implemented as Congress intended.

First Step Act Implementation

Over two years after enactment of the First Step Act of 2018 the Bureau of Prisons is still not calculating and applying the earned time credit provisions established in the law. Indeed, the Federal Register on November 25, 2020 published the BOP's first proposed rule for eligibility, accrual and loss of earned time credits.

The delay in implementation of the earned time credits program is troubling. Accrual of these credits will allow eligible individuals who participate in rehabilitative programming or productive work to transfer early out of BOP facilities to community corrections, including home confinement and/or community supervision. During this pandemic these transfers could literally save lives. The U.S. District Court in New Jersey in the case of *Goodman v. Ortiz* (No, 20-7582) found that the failure to calculate and apply time credits was contrary to the law and unfair.

Moreover, PATTERN, the risk assessment tool created in response to the First Step Act has been publicly criticized for its over reliance on static factors in determining risk scores, the difficulty prisoners have in improving their risk score and the significant racial disparity in its risk assessments. The Department of Justice's own data shows that only 7% of Black men score as minimum risk, compared with 30% of white men. These factors, along with the recently discovered misclassifications, must be immediately addressed, and earned time credit awards

should not be denied because of inadequacies in the law's implementation. The Sentencing Project believes earned time credits must still be awarded given that the programming lapses are not the fault of prisoners who have endured worsening conditions, lock downs and extended separations from their families without significant incident on their part despite these challenges.

It is this Committee's obligation to ensure that the Department of Justice and the Bureau of Prisons do everything in their power to protect the lives of people in federal custody, which includes expediting releases and transfers of elderly and vulnerable people who do not present a credible threat to public safety during this health crisis and ensuring the First Step Act's intended opportunities for early transfers are implemented.

Thank you for considering the concerns of The Sentencing Project. We look forward to working with this Committee to protect people during this crisis. Please contact Kara Gotsch, Deputy Director at The Sentencing Project, at kgotsch@sentencingproject.org if you need additional information.

Sincerely,

Amy Fettig
Executive Director

TZEDEK
ASSOCIATION
Save A Life, Save A World

Statement of
Rabbi Moshe Margaretten
President of the Tzedek Association

before the
SENATE COMMITTEE ON THE JUDICIARY

April 15, 2021

Chairman Durbin, Ranking Member Grassley and members of the Senate Committee on the Judiciary, thank you for this opportunity to address this honorable committee for this important hearing titled "Oversight of the Federal Bureau of Prisons".

With this statement, I hope to address two important matters:

1) Issues related to COVID-19 in the Federal Bureau of Prison (BOP) institutions.

2) Recommendations and requests that the Department of Justice (DOJ) under this new administration review, revise, and expand policies and rules put in place by the DOJ under the previous administration as it pertains to implementation of the First Step Act (FSA).

I. COVID-19 IN BOP FACILITIES

As this committee is well aware, the CARES Act added a provision that expanded home confinement for incarcerated individuals who are vulnerable to COVID-19. While generally this has been a very successful program, there have been several concerns as it pertains to its implementation which I would like to address here.

Internally, DOJ under Attorney General Barr established with the BOP restrictive criteria that greatly limited which individuals can benefit from this critical program. For example, that they need to have served 50% of their sentence, or they must be assessed as "Minimum Risk" to recidivate under BOP's PATTERN scoring, or even if they have only a minor infraction they are

automatically excluded. On March 12, 2021, 32 prominent organizations signed a letter to Attorney General Garland—led by Tzedek Association and NACDL—asking that he rescind or relax these criteria because this is a life-and-death issue.[1] There is a surge in many parts of the country, and I know from firsthand information from those inside that there is a surge in many federal prisons. More than 50% of staff have refused to be vaccinated[2] and so BOP facilities will never reach herd immunity. These staff are going in and out of the prison system to the outside and that makes an extremely dangerous situation in a closed environment. Only about a third of incarcerated individuals have been vaccinated and it will take many months to vaccinate the rest during which many can die, G-d forbid.

As the DOJ has already done, with other issues, it is completely up to the discretion of the DOJ under this new administration to rescind previous memos and take on new positions, positions more in line with humanitarian concerns. And so, this DOJ should rescind these restrictive criteria as well.

The other critical issue is that the Office of Legislative Counsel (OLC) of the DOJ put out an erroneous memo only five days before the end of the last administration saying that everyone out on home confinement must go back to prison after the pandemic.[3] No one I have spoken to agrees with this OLC memo. This DOJ should rescind this memo as well. This is not a binding memo. Instead of moving forward, putting people out on home confinement back into prison would be going backwards. It simply does not make sense. These are elderly individuals, and people with serious health issues. They have re-established themselves in their communities, going to college, have jobs and have been reunited with their families. They are safe. They are low risk to recidivate[4] and so society is safe. It would be devastating to them and their families to reincarcerate them into prison. Imagine how their children would feel? Keep in mind that home confinement is a true restriction, with strong supervision and accountability.

Please see enclosed the 25-organization signed letter decrying this issue as well.[5]

Many believe the OLC memo is wrong as a matter of law. I know the OLC is supposed to be nonpartisan, and these are career attorneys (probably chosen by AG Barr), but I find it suspicious that the memo was put out just 5 days before the inauguration, and the author left the OLC/DOJ shortly after January 20th.

We have much harder issues we are excited for the DOJ to accomplish when it comes to criminal justice reform, and if they are hesitating to do something as simple as this what's that to say

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[1] https://img1.wsimg.com/blobby/go/e92afdcc-9a38-4bb1-a4e7-44c54975c6b9/downloads/CARES%20Act%20Organization%20Sign%20On%20Letter.pdf?ver=1616014451973

[2] https://appropriations.house.gov/events/hearings/management-performance-challenges-and-covid-response-at-the-department-of-justice

[3] https://www.reuters.com/article/us-health-coronavirus-usa-justice-idUSKBN2BY0AU

[4] Id.

[5] https://famm.org/wp-content/uploads/Letter-to-Attorney-General-Garland-re-OLC-Memo.pdf

about the bigger issues that we hope the DOJ will accomplish as it pertains to criminal justice reform? The White House sent out an incredible proclamation for Second Chance Month. However, respectfully, we need this administration to not just talk to talk but walk the walk.

RESOURCES

I believe this committee will find these recent studies and articles helpful:

1) Four new academic studies highlight how easily the coronavirus has spread in prisons.

https://www.cidrap.umn.edu/news-perspective/2021/04/studies-detail-large-covid-outbreaks-us-prisons-jails

2) BOP Data:

49,393 out of 126,061 federally incarcerated individuals in BOP-managed institutions have so far been vaccinated. That is only 39% of the inmate population. Not sure if this includes just the first dose or both doses.

17,206 BOP staff out of about 36,000 have so far been vaccinated. (I think the rest have refused to be vaccinated.) That is less than half of the staff population, about 47.8%.

https://www.bop.gov/coronavirus/

3) Fewer than 20% of federal and state prisoners have received a COVID-19 shot, tally by Marshall Project reveals:

https://www.themarshallproject.org/2021/04/06/as-states-expand-vaccine-eligibility-many-people-in-prison-still-wait-for-shots?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20210406-2408

4) Case Rates for U.S. Prisoners Have Been Triple Those of Other Americans:

https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html?referringSource=articleShare

CONCLUSION

In conclusion, I cannot begin to express how sad this issue is when we all know that every day people are suffering in prison from COVID-19. The advocacy community, as well as thousands of families of federally incarcerated individuals, remain extremely concerned about this. Fixing this would assuage our concerns and truly lift our spirits. Most importantly, it would save lives.

II. FIRST STEP ACT IMPLEMENTATION

With much fanfare, the FSA was signed into law on December 20, 2018.[6] Backers correctly hailed this historic legislation as a milestone that marked a "meaningful break from decades of failed policies that led to mass incarceration."[7] This position was adopted by the DOJ along with a press release on its website announcing, "Beginning today, inmates will have even greater incentive to participate in evidence-based programs that prepare them for productive lives after incarceration. This is what Congress intended with this bipartisan bill. The First Step Act is an important reform to our criminal justice system, and the Department of Justice is committed to implementing the Act fully and fairly."[8]

The main goal of the FSA is straightforward: reduce recidivism by providing incarcerated individuals the tools they need to successfully reenter society. One of the major incentives introduced are the "earned time credits," whereby one can earn early transfer to Prerelease Custody through successful participation in Evidence Based Recidivism Reduction Programming (EBRRP) and Productive Activities. And while time credits can be applied to an early transfer to supervised release, the FSA caps early access to supervised release at 12 months.

One of the most reliable guarantors of success after incarceration is education. Indeed, the Independent Review Committee (IRC), which was created by the FSA, noted in a recent report that correctional education for incarcerated adults reduces the risk of post-release re-incarceration by 13%. The IRC added: "These conclusions are consistent with the Pew Charitable Trusts' 2011 national estimate: 43.3 percent of releasees who did not receive correctional education are re-incarcerated within three years, compared to 30.4 percent of those who did receive correctional education in prison."[9] In addition, a recent meta-analysis found that other in-prison programming correlated with an 11% reduction in recidivism.[10]

The DOJ and BOP are tasked by law to implement the FSA. Accordingly, DOJ interpretations of the FSA and the policies DOJ adopts in implementing the law dictate how robustly and faithfully the goals will be achieved. This memo highlights several examples of how the DOJ, under the previous administration, took a very narrow—and often erroneous—approach in interpreting many of the FSA's provisions. These interpretations threaten to undermine the spirit of this bill if not redressed. We ask and strongly recommend that the current DOJ review the issues identified

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[6] See P.L. 115-391 (Dec. 2018).

[7] See Marie Gottschalk, Did You Really Think Trump was Going to Help End the Carceral State?, Jacobin Mag., Mar. 12. 2019, quoting Sen. Cory Booker.

[8] U.S. Dep't of Justice, Department of Justice Announces Enhancements to the Risk Assessment System and Updates on First Step Act Implementation, Jan. 15, 2020, available online, https://www.justice.gov/opa/pr/department-justice-announces-enhancements-risk-assessment-system-and-updates-first-step-act

[9] See James M. Byrne, The Effectiveness of Prison Programming: A Review of the Research Literature, published December 2019 by the First Step Act Independent Review Committee, at 14, available online, https://firststepact-irc.org/wp-content/uploads/2019/12/IRC-Effectiveness-of-Prison-Programming.pdf

[10] Id.

here and adopt a more expansive and broader interpretation of the FSA that allows for full and *proper* implementation. We need to set up incarcerated individuals for success, not the opposite.

Furthermore, the timing of the pandemic could not have been worse, hampering many programming efforts and incentives that were well underway throughout the BOP, and causing delays in further adoption of new programming. In light of the delays, several incarcerated individuals instead turned to the courts, yielding several milestone-wins that offer glimmers of hope to those who have genuinely applied themselves toward self-betterment and personal growth. This process, however, which entails filing a *habeas* case, is extremely daunting. In fact, most incarcerated individuals do not have the resources, education, and tools necessary to win (let alone even file) such a judgment. They also often fear retaliation. For these reasons, it is important that the DOJ send an updated memo to the BOP and establish strong policies enforcing proper and broad implementation of the FSA in all BOP facilities throughout the country.

Specifically, we recommend that the DOJ make the following policy changes:

ISSUE ONE: PROGRAMMING ELIGIBILITY

A BOP Memorandum dated November 25, 2020 ("BOP Memo")[11] lists the extensive range of qualifying EBRRP and Productive Activities set forth in the law.

§ 3535 (3) states: "**The term Evidence based Recidivism Reduction Programming** means either a group or individual activity that—

Has been shown by empirical evidence to reduce recidivism or is based on research indicating that its likely to be effective in reducing recidivism;
Is designed to help prisoners succeed in their communities upon release from prison; and
may include:
(iv) academic classes
(vii) substance abuse treatment
(viii) vocational training
(ix) faith-based classes or services
(xi) a prison job, including through a prison work program."

Unfortunately, many programs that fall directly under and are clearly referenced by the above subsection are absent from the November 25, 2020 memorandum which embodies the BOP's proposed implementation rules and standards, based on defining guidance provided by the DOJ under the previous administration.

Take for instance faith-based classes or services. The BOP Memo makes no mention of faith-based classes or services being eligible for earned time credits, yet the First Step Act clearly lists "§3535(3)(ix) faith-based classes or services" as being a conforming programming category. In addition, on the publicly available BOP website, https://www.bop.gov/inmates/fsa/faq.jsp#fsa_time_credits, the FAQ section asks: "Can religious

[11] https://www.federalregister.gov/documents/2020/11/25/2020-25597/fsa-time-credits

programs be considered as evidence-based recidivism reduction programs and taken to earn time credits?" and the answer posted is clear: "Yes, under the FSA, 'faith-based classes or services' that otherwise meet the criteria for evidence-based recidivism reduction programming will qualify for time credits as approved by BOP in the same manner as other approved non-faith based programming."

In addition, § 3535 (a)(5)(B) provides explicitly for "the ability for faith-based organizations to function as a provider of educational evidence-based programs ***outside*** of the religious classes and services provided through the chaplaincy." Hence, the statement in the memorandum that all eligible programs must be BOP approved is inaccurate and directly contradicts this subsection. Here, an individual may participate in programming provided by outside faith-based organizations regardless of affiliation with the BOP and its chaplaincy program.

Productive Activities under the FSA differ from EBRRP in that they need not be 'assigned' to an incarcerated individual. EBRRP, outlined in §3532(a)(3), requires BOP to "determine the type and amount of evidence-based recidivism reduction programming that is appropriate for each prisoner and assign each prisoner to such programming accordingly, and based on the prisoner's specific criminogenic needs." Productive Activities simply requires "a group or individual activity that is designed to allow prisoners determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating, and may include the delivery of the programs described in paragraph (1) to other prisoners."

Accordingly, regarding Productive Activities, there is no assignment or recommendation required and any programming described in paragraph (1) (see above) will constitute eligible programming for earned time credits. The reason for this is simple: once an individual is a minimum and even a low, for many, this will be the lowest risk assessment score they can achieve. At this point, Productive Activities plays its role to "maintain a minimum or low risk of recidivating" versus *lowering* the risk of recidivism should one be scored as medium or high risk of recidivating.

Currently, as it pertains to Productive Activities, the FSA is not being implemented properly. This is because the BOP has chosen to only grant certain programs approval as Productive Activities. Furthermore, prisoners are very limited in their choice of programming and as to what constitutes a Productive Activity. For example, the DOJ under the previous administration refused to include religious services and work assignments as Productive Activities, even though these are clearly activities that are productive in nature.

Reference is made to two recent *habeas* decisions in *Goodman v. Ortiz*[12] and *Hare v. Ortiz*,[13] both decided in the District of New Jersey, which took an expansive but accurate view of the programming for which First Step Act credit should be received. In *Goodman*, the petitioner sought credit for a variety of salutary activities in which he participated while in prison, including not only BOP-sponsored education and prison jobs but also religious study and prayer. The court noted that "[a]gencies exercise discretion only in the interstices created by statutory

[12] 2020 WL 5015613 (D.N.J. Aug. 25, 2020)

[13] 2021 WL 391280 (D.N.J. Feb. 4, 2021)

silence or ambiguity; they must always 'give effect to the unambiguously expressed intent of Congress," and that the Congressional intent of the First Step Act includes the opportunity for "every prisoner… to participate in and complete *the type and amount* of evidence-based recidivism reduction programs or productive activities *they need*" (emphasis added) – i.e., that the scope of available programs should center on the prisoner's needs, not the BOP's. Needs may be physical, educational, moral or spiritual, and the spectrum of human needs militates against restricting credit-earning activities to a narrow list.

Indeed, we note that in *Goodman*, the BOP did not even dispute that Goodman should earn credit for his religious activities, arguing only that such activities should not accrue credit until the end of a three-year phase-in period. The BOP's 180-degree turn on this subject is truly inexplicable, all the more so in light of the *Goodman* court's emphasis on the BOP's broad remedial scope and Congress' intent that credit-accruing programs and activities should suit inmates' individual needs.

In *Hare*, likewise, the petitioner sought credit for his work as a cook and his participation in 26 programs and activities. The court observed, as in *Goodman*, that "the FSA requires the BOP to determine the type and amount of EBRR programming that is appropriate for each prisoner based on their specific criminogenic needs," and to reassess and reassign each individual periodically. Again, the mandate for need-tailored programming is not best achieved by restricting the qualifying activities to a narrow list or even restricting them to activities administered by the BOP, which has limited resources and cannot meet all prisoners' needs on its own (and which, indeed, should best leave such things as spiritual development and care to the religious professionals who know them best and can provide them while maintaining separation of church and state).

We are aware of the need for the BOP to retain some control and discretion over what constitutes EBRRP and Productive Activities. Incarcerated individuals have a strong motivation to leave prison, and we are aware that other programs with similar incentives, such as RDAP, have been vulnerable to fraud. But the solution to this is not to exclude genuine, and genuinely effective, programming from eligibility for First Step Act credits, which would be contrary to both the letter and spirit of this important law. Instead, the BOP should establish a central office to vet programs and activities for which participants wish to obtain credit, and to approve for credit all programs and activities that are bona fide and administered according to professional standards.

Recommendations 1-3:

1. *All* bona fide programming covered under § 3535 (3) that an individual participated in should be counted towards his or her "earned time credits" accrual, regardless of whether the programming is administered by the BOP. The BOP should maintain a central office to which incarcerated individuals may submit for review any program in which they are participating, and only those programs which are not bona fide and/or which are not administered according to professional standards should be disapproved for credit. All requests for review submitted to the central office should be approved or disapproved within a reasonable time not to exceed 60 days.

2. For individuals at minimum or low risk of recidivism, any Productive Activities should be counted without requiring prior assignment, as the law clearly states. Simply by participating, individuals will earn time credits.

3. Productive Activities should include religious services and BOP work assignments assigned to incarcerated individuals.

ISSUE TWO: LENGTH REQUIREMENTS FOR SUCCESSFUL PARTICIPATION

§3632(d)(4) makes it abundantly clear that those incarcerated individuals who successfully participate in evidence-based recidivism reduction programming or productive activities are entitled to earn time credits as follows:

"(i) A prisoner shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.

(ii) A prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over two consecutive assessments, has not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities."

The law does not specifically define the term "day." But the BOP defined the requirement in its BOP Memo as requiring 240 hours of programming, which is equivalent to eight hours every day for an entire month, or *30 full workdays* of programming. That is not a reasonable way to interpret the term "30 days of successful participation." Rather, to define successful participation, one need not look further than the many federal and state courts nationwide that have mandated participation in many programs including drug and alcohol treatment, job training, anger management, victim impact panels, sexual offender therapy, and other similar endeavors. In these programs, **a "day" is not eight hours – it is a single day's session, however long that session may be.**

§3632 makes no mention of hours of participation, nor does it require that a program take up an entire working day in order to count toward FSA credits; rather, the legislators chose "30 days of successful participation" as the metric of compliance that yields time credits, indicating that successful participation in a session of programming on any given day should count. The following are examples of jurisdictions that have defined the terms "successful participation" in various programs.

Maryland:

"What does the program consist of: A minimum of a year of ***participation***, including regular and frequent testing, treatment, frequent court attendance, Recovery Support meeting attendance, obtaining employment and appropriate housing, and continued abstinence, leading to graduation from the program."[14]

[14] https://www.stmarysmd.com/sao/substance-abuse-recovery/

New York:

"Commencement: Successful ***participants*** will complete Drug Court after finishing Phase III, remaining drug and alcohol free for 12 continuous months, and finishing treatment (including satisfying outstanding financial obligations). In addition, he/she must have obtained meaningful employment or be engaged in a course of study or training to achieve that goal. Prior to commencement, all potential graduates will be required to fill out a graduation application and attend a graduation review panel. Participants must also resolve all pending cases and pay all outstanding fines, surcharges, and restitution prior to commencement. The presiding judge will have final say regarding satisfaction of program requirements and participants' readiness to graduate. The Drug Court Program consists of three phases, each lasting a minimum of 12-24 weeks..."[15]

Santa Clara County, California:

Drug Court: "In this program, new participants attend intensive orientation sessions to familiarize themselves with program requirements during their first thirty days of ***participation*** in the program. These "jump starts" may be very helpful in orienting the new participant to program regulations."

Participation is defined as: "participate in individual and group counseling, participate in drug education, participate in educational or vocational counseling where appropriate, subscribe to drug testing, and successfully complete any additional requirements that the court believes will be helpful to the offender. [S]eek and/or maintain employment, attend school, dress appropriately for court, submit to drug testing, meet regularly with a probation officer, and satisfy any other requirements that the court believes would be beneficial."

Residential Drug Abuse Treatment Program (RDAP):

RDAP provides intensive drug abuse treatment to incarcerated individuals who have been diagnosed with a substance abuse disorder. This program has proven to be a great success. Individuals in the residential program are housed together in a treatment unit that is set apart from the general population. However, the total time in the program depends on the individual's progress in treatment. Importantly, there is *no minimum of hours* needed to be considered as successful participation.

Bureau of Prisons – Federal Correctional Complex, Petersburg, Virginia:

"The Residential Drug Abuse Program (RDAP) is an evidenced-based residential treatment program...RDAP participants are expected...to **fully participate** in all treatment activities in the unit...**To successfully complete the RDAP, inmates are required to participate** in the

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[15] http://ww2.nycourts.gov/courts/6jd/broome/binghamton/drug/reqs.shtml

Community Transition Drug Abuse Treatment component of the program…Treatment is provided for a minimum of nine months."

It is clear from the above that participation does **not** mean 24 hours a day or even 8 hours a day, nor does any court measure terms of participation by how many hours of each day are programmed. Rather, so long as the individual is participating in accordance with the schedule and within the requirements of that particular program, the participation counts. Therefore, 30 days of successful participation means an individual's participation over a given 30-day time period, including attending all scheduled meetings and participating in a meaningful way that demonstrates positive growth.

In addition, requiring that an individual program for 8 hours per day for 30 days, totaling 240 hours per month, is not practical, is not reasonable, and even more to the point, is generally unavailable. Even when an individual works in Unicor Prison Industries (a BOP program that consumes the most hours per day), the maximum they can participate (aside from occasional overtime) is 6.25 hours per day, and even that is only on weekdays (as most Unicor jobs are closed on weekends and holidays) and providing that there are no scheduling conflicts or off-nominal prison operations (lockdowns etc). This equates to only 125 hours per month, significantly less than the memorandum's 240-hour requirement.

The FSA goes a step further and Sec 103(3) mandates that an audit be conducted to ensure "whether the Bureau of Prisons is offering the type, amount, and intensity of recidivism reduction programs and productive activities for prisoners to **earn the maximum amount of time credits** for which they are eligible." The FSA makes it clear that every individual must be afforded a meaningful opportunity to maximize the time credits accrual for which they are eligible. The interpretation set forth in the BOP Memo, on the contrary, makes it impossible to ever maximize time credits for individuals by placing hourly thresholds that are totally out of reach.

Recommendation 4:

Revise the guidance to clarify that in order to earn credit for successful participation in a specified program, an individual must maintain acceptable attendance and meaningful participation in full compliance with required meetings and activities, and that one day of participation in a program consists of successful participation in one day's session however long that may be. The policy that a day is defined as 8 hours of participation should be rescinded.

ISSUE THREE: COMPLETION vs. SUCCESSFUL PARTICIPATION

The key word used by the FSA is not "completion," rather than "successful participation," which clearly illustrates the legislative intent. As set forth in full above, §3632(d)(4) makes it very clear that **participation** and *not* completion was the benchmark of choice to earn time credits.

A core reason behind choosing "participation" as opposed to "completion" is that there are many instances in which completion is not possible. For example, how would the BOP go about

gauging an individual who successfully completed a religious prayer as a program? Religion is a lifelong journey, and an individual's ongoing and regular successful participation, healthy practice, and pursuit are strongly encouraged and celebrated by chaplains and religious leaders alike. *Participation* makes sense here in this instance. In addition, what if an individual has earned enough time credits to be transferred to prerelease custody, but is still in the middle of a program? In this instance, the individual would be transferred to prerelease custody to complete the programming outside of the confines of the prison walls, which the FSA strongly supports.

In *Goodman v. Ortiz*, discussed above, Mr. Goodman's affidavit stating that he prayed and studied daily went unchallenged by the BOP, and the *habeas* petition was granted in its entirety by Judge Bumb of the U.S. District Court of the District of New Jersey. There was no mention of program completion; rather, successful participation. And the *Hare* court went still further and found that the statute *required* credit for programs completed after the effective date of the First Step Act – i.e., December 21, 2018 – even if those programs were assigned before that date or if the individual began participating before that date. We submit that the *Hare* court's holding is consistent with both the letter and spirit of the statute, in that it provides maximal recognition to incarcerated individuals' efforts to rehabilitate and improve themselves according to their individual needs.

Recommendation 5:

Earned time credits should be accrued upon successful participation, as the FSA states, and participation should not be interpreted to require program completion. Whether an individual's participation in any given program or activity is "successful" shall be determined based on evaluations by the director and/or supervisor of the program, and may be evaluated periodically, for instance once a week or once a month.

ISSUE FOUR: DATE WHEN INDIVIDUALS MAY START EARNING TIME CREDITS

With regard to when an individual can start earning time credits, the FSA makes a clear distinction between EBRRP and Productive Activities.

Evidence-Based Recidivism Reduction Programming:

The FSA states in §3632(d)(4)(B) "A prisoner may not earn time credits under this paragraph for an **evidence-based recidivism reduction program** that the prisoner successfully completed- (i) prior to the date of enactment of this subchapter." The "date of enactment of this subchapter" has been confirmed in case law as **December 21, 2018**.

Productive Activities:

Please note that §3632(d)(4)(B) only excludes time credits earned prior to the enactment of this Subchapter for evidence-based recidivism reduction programming. There is no similar provision with regard to participation in Productive Activities. This deliberate and unambiguous distinction means all inmate participation in Productive Activities from the inception of incarceration is

eligible. In clear terms, this places no restrictions on the look-back period an individual can apply all Productive Activities in which they successfully participated from the beginning of incarceration.

Recommendations 6-7:

6. All **Evidence Based Recidivism Reduction Programming** in which an individual participated from December 21, 2018 forward should count towards earned time credits. Individuals are being told that the BOP has not yet started to phase in the FSA.

7. All **Prodnctive Activities** in which an individual participated from inception of incarceration, regardless of the date (even prior to December 21, 2018), should count towards earned time credits. This is because the FSA makes no mention of a retroactive look-back limitation regarding Productive Activities. At the very least, Productive Activity participation should count from December 21, 2018.

ISSUE FIVE: PHONE CREDITS

As it currently stands, every incarcerated individual under BOP is provided a limit of 300 minutes a month of phone time.[16] During certain times, such as before holidays, or during this COVID-19 pandemic,[17] the limit of phone time may be increased. FSA gives "up to 510 minutes per month" as an incentive for successful participation in the recidivism reduction programs. Specifically, the law states:

"EVIDENCE-BASED RECIDIVISM REDUCTION PROGRAM INCENTIVES AND PRODUCTIVE ACTIVITIES REWARDS.—The System shall provide incentives and rewards for prisoners to participate in and complete evidence-based recidivism reduction programs as follows:

(1) PHONE AND VISITATION PRIVILEGES.—A prisoner who is successfully participating in an evidence-based recidivism reduction program shall receive—

(A) phone privileges, or, if available, video conferencing privileges, for up to 30 minutes per day, and up to 510 minutes per month".

It is clear from the law that the "up to 510 minutes per month" reward should be *in addition* to the regular minutes individuals already receive, whether the regular minutes are 300 minutes,

[16] https://oig.justice.gov/sites/default/files/archive/special/9908/callsp4.htm -- see footnote 22 -- this rule of 300 minutes has been in place since 1997.

[17] "During modified operations in response to COVID-19, the BOP suspended social visitation, however, inmates were afforded 500 (vs. 300) telephone minutes per month at no charge to help compensate for the suspension of social visits." https://www.bop.gov/coronavirus/covid19_status.jsp

500 minutes, or any other amount of time.[18] Otherwise it would not be much of an incentive. Indeed, therefore it is called a "reward". In fact, the law clearly terms this addition of 510 minutes as "incentives and rewards" so as to encourage "prisoners to participate" in programming.

Moreover, additional telephone time is a valuable aid to rehabilitation in of itself, given that it enables the individual to have more contact with supportive friends and family members and to exercise parenting responsibilities, (especially since in-person visitation is still restricted due to pandemic conditions). This goal toward rehabilitation was surely the underlining intent of Congress in adding this provision in the FSA as an incentive for participation in recidivism reduction programming.

Recommendation 8:

This DOJ should create a policy in implementing the FSA that the (up to 510) extra minutes earned by individuals who successfully participate in EBRRP or Productive Activities should be *in addition to* the regular phone time provided to all incarcerated individuals each month, in line with the letter and spirit of the FSA.

RECOMMENDATION SIX: RELATION TO OTHER INCENTIVE PROGRAMS

The FSA states under "(6) RELATION TO OTHER INCENTIVE PROGRAMS":

"The incentives described in this subsection shall be *in addition to* any other rewards or incentives for which a prisoner may be eligible." (emphasis added)

Additionally, in Section 602 of the FSA, it states:

"The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph."

With Section 602, a "shall" rule, the intent of Congress is clear: to mandate BOP to give the full amount of home confinement available to lower-risk individuals, i.e., 6 months or 10% of the sentence. Prior to the FSA, BOP would periodically give incarcerated individuals *less than* the maximum home confinement for which they qualified by law. In Section 602, Congress sought to end this practice. The full amount of home confinement is now a mandated reward and incentive for which lower-risk prisoners are eligible.

[18] Also, given that it is 2021, isn't it about time incarcerated individuals be provided cell phones to speak to close family and friends? Technology now permits cell phone usage to be fully monitored and enables calls to be restricted to an approved list of contacts, just as would be the case on the facility phones, and permitting cell phones would reduce the incidence of conflicts over facility phone time. See Hannah Riley, *Just Let People Have Cellphones in Prison*, Slate, February 15, 2021, https://slate.com/news-and-politics/2021/02/cellphones-in-prisons.html.

Recommendation 9:

Credits an individual earns through participation in recidivism reduction programs and productive activities should be *in addition to* the home confinement that they earn in accordance with Section 602 of the FSA. This should be implemented in policy by the DOJ. Indeed, this would align with the spirit of the FSA, which is to maximize as much as possible the reentry prospects of federally incarcerated individuals. Since participation in recidivism reduction programs have been shown to improve recidivism, it stands to reason providing greater incentives to participate will improve reentry and reduce recidivism.

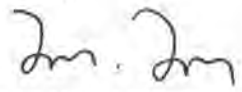
CONCLUSION

It is our sincere hope that the DOJ and BOP will adopt the above recommendations into a revised memorandum with revised policy. This will set the stage for the FSA to truly have the full impact this bipartisan legislation has the potential to have, in accordance with the intent of Congress in passing this monumental law. In addition, it will place the very incentives the FSA was meant to have well within the reach of the target individuals, thereby triggering a culture of hope and fostering a safer society.

The goal of the FSA is to profoundly reduce recidivism and alleviate overcrowded prisons, improving outcomes for individuals and society and saving millions in taxpayer dollars. The FSA has the capability to change lives for the better and dramatically improve our justice system, but only if fully and properly implemented. Hence, the bolder it is, and the more individuals can participate, the greater the results.

We would welcome the opportunity to meet and discuss these matters further. Please feel free to reach out to rabbimoshe@tzedekassociation.org.

Sincerely,



Rabbi Moshe Margaretten
President
Tzedek Association

Statement of Dr. Homer Venters

Clinical Associate Professor, NYU College of Global Public Health

United States Senate Judiciary Committee

April 14, 2021

"Health Priorities for the Federal Bureau of Prisons"

Venters-BOP

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"Health Priorities for the Federal Bureau of Prisons"

Mr. Chairman and Members of the Committee, thank you for the opportunity to submit this statement. My name is Homer Venters. I'm a physician and epidemiologist who has spent the past year performing inspections of jails, prisons and immigration detention facilities across the county to assess the adequacy of COVID-19 responses. I also serve as a member of the Biden-Harris COVID-19 Health Equity Task Force and have spent my entire career providing and improving health care in places of detention. I have previously served as the Medical Director and Chief Medical Officer of the NYC Correctional Health Services, one of the few jail or prison health services in the United States that is an independent health authority and not part of the correctional department. During my career, I have led teams that created alternatives to solitary confinement for people with serious mental illness, innovations that increased safety and health for detained patients and staff alike.[1] I have also devoted significant portions of my career to creating mechanisms and tools to monitor and improve correctional health quality. At the core of this work is the basic assumption that incarcerated people have a right to ethical, evidence-based care and that a correctional health services must be subject to oversight and transparency, just as with community health systems. My recent COVID-19 related work has included conducting court-ordered inspections of the health services provided to people held by the Federal Bureau of Prisons (BOP) in New York, Maryland, Pennsylvania and California. Facilities that I have physically inspected in the past year for their COVID-19 response include;

- MDC Brooklyn (BOP), NY
- MCC Manhattan (BOP), NY
- FCI Danbury (BOP), CT
- Cook County Jail, IL
- Broome County Jail, NY
- Sullivan County Jail, NY
- Shelby County Jail, TN
- Farmville Detention Center (ICE), VA
- Lompoc Prison (BOP), CA
- Southern Mississippi Correctional Facility, MS
- Central Mississippi Correctional Facility, MS
- FDC Philadelphia (BOP), PA
- Osborn Correctional Institution, CT
- Robinson Correctional Institution, CT

[1] From Punishment to Treatment: The "Clinical Alternative to Punitive Segregation" (CAPS) Program in New York City Jails. https://pubmed.ncbi.nlm.nih.gov/26848667/

- Hartford Correctional Center, CT
- Dallas County Jail, TX
- Cheshire Correctional Institution, CT
- Calhoun County Jail, MI
- York Correctional Institution, CT
- Pender Correctional Institution, NC
- Craven Correctional Institution, NC
- Central Prison, NC
- North Carolina Correctional Institution for Women, NC
- Chesapeake Detention Facility, MD

The BOP is at a crucial juncture regarding health care for detained people, and I fear that many critical lessons from the COVID-19 pandemic may be ignored or left unaddressed by the BOP. My greatest area of concern is that pre-existing deficiencies in the health services provided to people in BOP custody, which contributed to the spread and lethality of COVID-19, remain unaddressed. Core areas of health services, including sick call, chronic care and behavioral health services remain substandard across many of the BOP settings. Without a fundamental shift in how BOP approaches these health services, people in BOP custody will continue to suffer from preventable illness and death, including the inevitable and subsequent infectious disease outbreaks. Each of these three areas of care, sick call, chronic care and behavioral health can be substantially improved by the BOP, but this will require not only resources and leadership but creating more formal and lasting partnerships with the Centers for Disease Control and other federal partners.

My investigations into COVID-19 response in BOP facilities has revealed a disturbing lack of access to care when a new medical problem is encountered. This process, called 'sick call' in most carceral settings, relies on the ability of incarcerated people to submit a written or electronic concern and then be seen in a face-to-face encounter with a day or two. In the first BOP facility I inspected, the Metropolitan detention Center in Brooklyn NY, it quickly became apparent that not only were many people reporting that their sick call requests (including COVID-19 symptoms) were being ignored, but that the facility was actually destroying their original requests, which violates basic correctional standards.[2] As a result of such a system, a facility could claim that most people they scheduled for a sick call appointment ultimately received one, but there was no actual record of the original requests, including what symptoms were being reported. This theme, of undocumented or ignored sick call requests, including COVID-19 symptoms, was common throughout my COVID-19 inspections and represented a significant source of mistrust and acrimony between BOP health staff and their patients. At the root of this problem was often a lack of appreciation for the critical role of sick call, as well as chronic understaffing for the number of sick call requests.[3] As a result, when COVID-19 arrived, incarcerated people relied on broken systems of sick call to seek care. Many of the public

[2] https://theintercept.com/2020/05/01/mdc-brooklyn-jail-coronavirus-medical-records/ and https://www.clearinghouse.net/chDocs/public/PC-NY-0082-0026.pdf pp 3,4.
[3] https://bloximages.chicago2.vip.townnews.com/lompocrecord.com/content/tncms/assets/v3/editorial/d/f3/df325d91-1e1d-5fc6-b1e4-c6b9c16fd1ed/5f748b8696819.pdf.pdf and https://oig.justice.gov/sites/default/files/reports/20-086_0.pdf.

statements I encountered about nobody having COVID-19 symptoms in a facility reflect a lack of looking, not a lack of illness. While some facilities implemented proactive screening for COVID-19, these approaches were mostly limited to housing areas where there was already a concern and also failed to ask people about their symptoms, simply relying on temperature checks, which can be unreliable. The result of the baseline deficiencies in sick call within BOP facilities was that people reporting illness were not seen in a timely manner, and that without a system to track where symptoms of COVID-19 were being reported via sick call, many facilities were missing a basic epidemiologic tool, symptom surveillance.

Chronic care is another area where pre-existing weakness in the BOP health services worsened the morbidity and mortality of COVID-19. People with chronic health problems have long reported delays in their scheduled care for asthma, diabetes, hypertension and other common health problems in BOP facilities. Unlike community health systems, the approach to chronic care in BOP facilities appears to focus on the process of scheduling and resolving individual encounters, a largely administrative task. Individual medical directors are likely aware of some of the sickest patients, but in the facilities I have inspected, there was not a practice of classifying the chronic care patients based on level of disease control. For example, if 40% of the people in a prison were in the chronic care service, nobody would be able to report what percentage of them were poorly controlled for their specific disease. For example, a common scenario I encountered was to hear that a person needed two asthma inhalers, one for emergencies and one for daily control, but that they had only been given a single 'rescue' inhaler. As a result, they used their 'rescue' inhaler daily and were rarely, if ever, assessed for their level of asthma control. The clinical approach I encountered over and over again was that individual physicians would have the responsibility to address these issues based on BOP policies, but without any tracking of how well this was occurring. One of the clear lessons of COVID-19 is that we need to think of the subset of people with poorly treated chronic health problems as having higher risk of serious illness or death, and we cannot address their level of disease control if we do not think of them as a cohort so we can measure and intervene.

A third area of health concern that pre-dates COVID-19 inside the BOP system is access to behavioral health care. I utilize the term behavioral health to include mental health as well as treatment for substance use. While this represents a broad range of issues, I will point out just two concerns; solitary confinement of patients with serious mental illness and access to medications for substance use disorders. While the topic of solitary confinement has received significant attention within and concerning the BOP, the use of isolation or solitary confinement among people with serious mental illness has not been well addressed and remains a significant problem. When the Inspector General of the DOJ addressed this issue in 2017, they found that the BOP lacked the same standards present in many state prisons systems to protect people with mental illness from extended solitary confinement. They also found that since the implementation of the new BOP mental health policy in 2014, the number of people receiving mental health services has decreased by 30%. This stands in stark contrast to almost every other carceral system I am aware of, where this share of the incarcerated population has been increasing dramatically. In their report, the DOJ IG detailed an example of this problem;

"This treatment trend was particularly pronounced among SMU inmates at USP Lewisburg, which confined over 1,100 SMU inmates as of June 2016. Based on our sample of SMU inmates, we found that, prior to the new policy, the number of inmates (16) whose mental health care level was increased equaled the number of inmates (16) whose care level was decreased. In contrast, after the new policy was adopted, all 27 inmates whose care level changed had a decrease and therefore ostensibly required less treatment. By May 2015, only about 2.5 percent of SMU inmates at USP Lewisburg were categorized as requiring regular treatment, compared to about 11 percent of ADX inmates and 7 percent of SHU inmates nationwide, which we believe raises treatment concerns for inmates in USP Lewisburg's SMU."[4] One feature of this problem that is largely unaddressed, is the manner by which people who are suicidal or who engage in self-harm may be placed into solitary confinement that is labelled 'mental health watch' or some other given another pseudo-health name. This practice has been identified by the USDOJ as violating constitutional rights of incarcerated people but is often the standard approach in prison settings and has not yet been reviewed comprehensively within the BOP since the DOJ findings letter regarding MA DOC.[5]

The second area of behavioral health deficiencies that pre-date COVID-19 is an almost total lack of access to methadone and suboxone in BOP facilities. Substance use disorder is one of the most common health issues among people in BOP custody and the failure to treat substance use disorders increases in-prison mortality and drives illicit markets. In addition, overdose death after release from prison is a major cause of the increase in post-release death and these medications can and have been safely utilized in carceral settings for decades.[6] Despite public statements acknowledging the need to expand access to these lifesaving medications, a recent GAO report identified that almost none of the people who would qualify to them have received have. In addition, the GAO documented that BOP lacks many of the programmatic and structural infrastructure to meet their stated goals.[7] While the BOP has expanded the number of facilities designated to prescribe these medications, they have not reported on the most critical data point, what percentage of people who are clinically eligible for receiving them are being offered or are engaged in treatment?[8]

These two issues (solitary confinement for people with mental illness, and access to methadone and suboxone) are closely tied to management of COVID-19. Many facilities suspended group therapy and other mental health out of cell treatment options because of COVID-19 concerns, so people with mental health issues who were also locked behind a cell door have experienced the trauma of COVID-19 absent the minimal care their were receiving before the pandemic. In similar fashion, many facilities suspended or slowed their rollout of medications for substance

[4] https://oig.justice.gov/reports/2017/e1705.pdf
[5] https://www.justice.gov/opa/pr/justice-department-alleges-conditions-massachusetts-department-corrections-violate
[6] https://store.samhsa.gov/sites/default/files/d7/priv/pep19-matusecjs.pdf
[7] https://www.gao.gov/products/gao-20-423#:~:text=In%20fiscal%20year%202019%2C%20it,naltrexone%2C%20buprenorphine%2C%20and%20methadone
[8] https://www.bop.gov/inmates/custody_and_care/docs/rdap_locations_20201001.pdf

use disorder and we have yet to hear from the BOP how those services will be fully expanded to all patients who meet the clinical criteria for treatment.

Recommendations

The BOP cannot address all of these challenges on its own. Some improvements, such as creating a standardized and clinically-driven approach to sick call may be achievable with increased oversight and resources for provision of care. But tackling the longstanding issues with chronic care and behavioral health services will require new and expended partnerships particularly with the CDC and SAMHSA.

There is one critical task that remains undone regarding the BOP and COVID-19, even after all staff and incarcerated people have been offered vaccines; we must have an independent assessment of all COVID-19 deaths, including those that occurred in private facilities. In my work investigating the adequacy of COVID-19 responses in BOP facilities, I have encountered a great many strengths in the overall and local COVID-19 responses. Strengths like effective staff screening, implementing vaccination programs for high-risk patients and creating new inpatient treatment capacity. But I have also encountered significant deficiencies in how or whether basic CDC guidelines and the BOP policies in place at the time were being implemented. These deficiencies include a lack of attention to the role that inmate work crews play in the spread of COVID-19, a lack of attention to symptoms of COVID-19 and lack of sufficient health staff to provide care once outbreaks develop. There is no doubt that many of these strengths saved lives and conversely, that many of these deficiencies led to preventable illness and death. One cannot be true without the other. Yet to date, there has not been any systemic and independent review of deaths from COVID-19 in BOP custody, although a recent call for exactly this type of analysis was sent to the Inspector General of the DOJ.[9] I strongly support this proposal, but it highlights a more significant problem for the BOP, the lack of independent assessment in how deaths are reviewed. In my work, have spoken to scores of detained people, staff, inspected facilities and reviewed tens of thousands of pages of medical records as well as facility polices and records. When I have reviewed the cases of people who died from COVID-19, I have found that both the internal review, and the external review that BOP has paid a consultant for come to the same conclusion, that there were no deficiencies in care. These reviews have not met my or community standards for how deaths should be investigated, in that they have not focused on two important questions; did the patient receive the standard of care and was their death at all caused by conditions inside the facility? These are not always simple questions to answer, but they require both skill and the will to probe beyond simply reporting that a patient had pre-existing illness and then died from COVID-19 related illness. They also require connecting deaths to systemic barriers to care or other health risks that are created inside a prison setting.

[9] https://www.cnn.com/world/live-news/coronavirus-pandemic-vaccine-updates-03-18-21/h_da9af577035e29c42d4024c22840c8dc

In order for the BOP to improve its overall health services, and prepare for the next infectious disease outbreak, I believe the following recommendations are essential;

1. An independent assessment of COVID-19 related deaths among people in BOP and Marshalls custody should occur, with focus on a. whether each person received the standard of care and b. whether delays/denials of care or other environmental issues contributed to their death.
2. All facilities within BOP should standardize their sick call systems and staffing to ensure that sick call requests are retained and that requests result in timely care.
3. The BOP should consider partnering with the CDC to create a population health plan that;
    a. Identifies and tracks chronic disease morbidity mortality and level of control.
    b. Creates an injury surveillance and prevention program, including traumatic brain injury, that both tracks the rates of various injuries and also works to implement injury reduction programs and their effectiveness
    c. Implements a plan for suicide prevention and substance use treatment that is based on evidence from the CDC and SAMHSA and includes a roadmap and regular reporting on the resources required to fully implement access to methadone and suboxone and minimize the use of isolation.
    d. Identifies racial, gender and other disparities in how care is provided or accessed.

Conclusion

The BOP faces an important choice in how they respond to COVID-19 and work to improve their health services. In community health settings, we do not allow a hospital or clinic to be the arbiter of how well they are doing. Instead, we rely on external agencies and authorities with health expertise for this critical work, whether through the state or federal oversight. Currently, the BOP is left to make its own assessments about the quality and scope of its health care, and only sporadic investigations by the Inspector General of the Department of Justice provide any alternative viewpoints. This is wholly insufficient and leaves incarcerated people at a systematic disadvantage because the organizations and structures that measure and promote health for the rest of the nation are excluded from the care they receive. The BOP has an opportunity to start addressing this unequal system of care, and it must start with an honest assessment of COVID-19 deaths and partnership with the CDC and other true health organizations.

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