



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

February 17, 2021

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

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from my appearance as Director of the Bureau of Prisons before the Committee on the Judiciary, on June 2, 2020, at a hearing entitled "Examining Best Practices for Incarceration and Detention During COVID-19." I hope that this information is of assistance to the Committee.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "M.D. Carvajal", is written over a horizontal line.

M.D. Carvajal
Director

United States Senate
Committee on the Judiciary
Hearing on Examining Best Practices for Incarceration and Detention During COVID-19
June 2, 2020

Federal Bureau of Prisons' Responses to Questions for the Record

Chairman Lindsey Graham

1. A March 2020 BJS report using 2018 data found that 15 out of 122 federal facilities had “video conferencing available to prisoners to communicate with individuals outside of the criminal-justice process.” How many facilities now have that capacity?

Response: The Bureau of Prisons (Bureau) has video-conferencing for social visiting currently available at our 17 female facilities.

2. A March 2020 BJS report using 2018 data identified an average vacancy rate of 15.3% for “medical and health-care positions” in the BOP. Has that vacancy rate improved or declined? How is the Bureau meeting medical staff shortages during the pandemic?

Response: The vacancy rate has improved. It is currently under 12%. The Bureau is using detailees from PHS and private contractors to meet medical staff shortages during the pandemic. Additionally, the Bureau is using a number of recruitment and retention incentives to attract appropriate candidates, and is using a number of recruitment mediums to reach potential candidates.

3. How are rehabilitative programming and productive activities taking place during this period of modified operations?

Response: During COVID-19, some programs continue to operate with social distancing and other safety modifications. Others are temporarily suspended at institutions with high rates of infection, and will be restarted as soon as practicable. We are specifically emphasizing access to Evidence Based Recidivism Reducing (EBRR) and Productive Activities (PA) during this time in accordance with the First Step Act.

4. What is the Bureau’s strategy for continued recidivism-reducing programs in the event of a “second wave” of COVID-19 this fall or future acute outbreak?

Response: The Bureau balances programmatic needs with life safety. The agency will continue to offer modified programming as practicable with recognition of preventing or mitigating future outbreaks. The Bureau published a Request for Information regarding the availability of tablet solutions to, inter alia, deliver programming. The vendor proposals are being reviewed at this time and following that review and analysis, we anticipate the issuance of a potential Statement of Work for a reentry platform that includes the use of tablet technology.

5. According to the Council of State Governments, over 20 states already use electronically secure tablets to provide educational and rehabilitative programming for prisoners. What is the status of such a resource within the BOP? Does the BOP have any plans to provide programming in a similar manner this year?

Response: As noted above, the Bureau published a Request for Information regarding the availability of tablet solutions which satisfy Bureau requirements. The vendor proposals are being reviewed at this time and following that review and analysis, we anticipate the issuance of a Statement of Work for a reentry platform that includes the use of tablet technology.

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

Response: The Bureau is committed to doing everything possible to mitigate the spread of the virus, which includes practicing social distancing and mandating the use of masks by inmates and staff. Institution chaplains make rounds in the housing units to ensure inmates have what they need to practice their faith and, where it can occur safely, inmates can attend some religious services. Recent observances of important holidays in several major faith traditions included both worship and ceremonial meals. In order to reduce the risk of spreading COVID-19, the Bureau suspended volunteer services. This restriction was done to protect both the inmate and staff population, as well as local communities. The Bureau will begin allowing volunteers services as soon as it is determined safe to do so based on the risk/spread of transmission in the local communities.

7. At how many BOP facilities does the Bureau conduct facility-wide survey testing of populations as opposed to exclusive testing of individuals with COVID-19 symptoms? What are the Bureau's immediate and long-term testing goals? Will the Bureau commit to regular, publicly available updates on the testing capacity of the entire system and specific facilities?

Response: The Bureau continues to implement a testing strategy consistent with CDC guidance for correctional institutions, expanding testing capabilities and criteria based on available testing resources, which are now widely available at our facilities nationwide. We have implemented a test in / test out strategy for quarantine that is done for all intakes, exposures, and transfers/release from custody. When mass testing is not done at institutions without a COVID-19 case, institutions are encouraged to do more limited testing of inmates with risk factors, or those who interact with large numbers of inmates because of their job, e.g., food service workers. Specific facility testing data has been available since early in the pandemic, and updated regularly on our public website at www.bop.gov.

8. The news media has reported that inmates in a California state prison purportedly shared a water glass to contract the coronavirus in hopes that it may spread in the facility and they may be released from the detention facility. Has BOP observed any similar conduct in its facilities?

Response: The Bureau is not aware of similar conduct in its facilities. Note in addition that such behavior might not yield the intended result. The Bureau is entrusted with protecting public safety, and releasing a COVID-19 positive individual into the community may jeopardize public safety.

9. A recent GAO Report found that upon release, former inmates face certain challenges that make them more vulnerable to substance abuse, as well as overdose. These challenges include finding housing, employment, transportation, and avoiding associations and situations that may have contributed to their prior criminal behavior. How does releasing prisoners into the community as a result of COVID-19 affect inmate drug treatment and what is BOP doing to mitigate the challenges facing inmates that may lead to a relapse or overdose?

Response: The Bureau offers a number of drug treatment programs, including the Residential Drug Abuse Program (RDAP), that prepare inmates for release with drug treatment, relapse prevention, and community living skills. Inmates complete most requirements while in prison, and upon release to a community setting, treatment continues in support of relapse prevention and recidivism reduction. Although modified in some instances, RDAP services have continued both in prison and in the community.

Inmates who were close to completing RDAP prior to COVID-19 were given the opportunity to complete the program at an accelerated pace. Those who were not nearing completion but were eligible for community placement were given the choice to complete treatment or be placed on home confinement immediately. Inmates who need treatment remain eligible to participate in treatment in the community through Community Treatment Services, regardless of whether they completed treatment in the institution.

Senator Charles E. Grassley

1. Congress passed the CARES Act on March 27 to provide assistance to multiple federal and state partners to address COVID-19. We outlined a number of requirements for the Bureau of Prisons, including increasing video conferencing for inmates, and ensuring that PPE is made available to all staff and inmates. What progress has the Bureau of Prisons made in meeting each of these requirements?

Response: The Bureau is grateful for the \$100 million dollars provided in the CARES Act. As a result of this funding, along with existing Bureau resources, we have purchased extensive quantities of PPE for all 122 institutions, as well as created regional logistic center stockpiles of PPE to replenish institutions as needed. We are also working to create a national logistic center that will manage PPE stockpiles to serve us nationwide going forward.

We have expanded the number of video-conferencing units at our pre-trial detention centers to facilitate attorney-client visitation and judicial proceedings and we are also

piloting the use of tablets at hot spots to facilitate video-conferencing for inmates in outside hospitals to allow them to communicate with their families.

2. Access to counsel – regardless of a pandemic – is crucial to maintaining due process and protecting our adversarial system. I’m concerned that inmates do not have adequate access to phones and video teleconferencing lines, since most facilities limit time outside of the cell to one hour per day and in-person attorney visits have been suspended. How can BOP improve its system and protocols in ensuring consistent access to counsel?

Response: Out of cell time varies by institution and circumstances. Although there were limited periods of time in the past months when it was necessary to limit inmates to their cells, the majority of inmates were not restricted to the cells for 23 hours per day.

Access to legal counsel remains a paramount requirement and is accommodated to the maximum extent practicable. Although legal visits are generally suspended during the enhanced modified operations, case-by-case accommodations are made at institutions. If approved for an in-person visit, the attorney undergoes advanced health screening, to include a temperature check.

In addition, video conferencing has been used in all detention facilities and some stand-alone locations to accommodate communications between inmates and the courts after appropriate security measures were put in place.

Although there were some issues in determining secure video portals, obtaining appropriate equipment, and reallocating staff resources when the attorney visits were first suspended, the Bureau is currently receiving overall positive feedback about access to counsel. Bureau staff regularly communicate with and provide updates to the members of the Criminal Law Committee and other groups where these issues are discussed.

3. Faith based programming is important to include in each Bureau of Prisons facility as part of its efforts to provide recidivism reduction programming for inmates. How is the Bureau ensuring continued access to religious programming and services for prisoners during the pandemic that complies with CDC safety guidelines?

Response: The Bureau is committed to doing everything possible to mitigate the spread of the virus, which includes practicing social distancing. Institution chaplains make rounds in the housing units to ensure the inmates have what they need to practice their faith and, where it can occur safely, inmates can attend some services. Recent observances of important holidays in several major faith traditions included both worship and ceremonial meals. In order to reduce the risk of spreading COVID-19, the Bureau suspended volunteer services. This restriction was done to protect both the inmate and staff population, as well as local communities. The Bureau will begin allowing volunteers services as soon as it is determined safe to do so based on the risk/spread of transmission in the local communities.

4. What are the conditions of the 14-day period of pre-release medical quarantine? What are the advantages and disadvantages to this policy compared to being released to self-quarantine at home?

Response: In preparation for an inmate's release, the inmate is tested prior to entry into the quarantine status and receives another test at the end of quarantine prior to release. During the quarantine, routine temperature and symptom screening is performed. The purpose of the pre-release medical quarantine is to ensure that the Bureau is protecting public safety and is not releasing a COVID-19 positive individual into the community until they meet the CDC criteria for recovered.

Senator Josh Hawley

1. Since the President's Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak on March 13, 2020, how many inmates has the Bureau of Prisons placed into home confinement, a residential reentry center, or other alternative detention?

Response: As of January 12, 2021, the Bureau has 5,858 inmates in Residential Reentry Centers (RRCs), 7,857 inmates in home confinement, and 140 inmates who are awaiting transfer to home confinement in the coming weeks. The home confinement figure is an increase of 5,004 inmates since the Attorney General issued his memorandum to increase Bureau use of home confinement. It is important to note we continue to review all eligible inmates for community placement, thus this number changes on a daily basis.

Crisis furloughs were given to a number of inmates pending approval for home confinement or RRC placement. As of January 6, 2021, 686 inmates were placed on crisis furloughs since the start of the pandemic. The number of inmates in crisis furlough at any given time fluctuates, as inmates move from crisis furlough to home confinement, RRC, or release on a daily basis. For the month of December 2020, there were 36 inmates on crisis furloughs.

2. Of those released since March 13, 2020, how many inmates have been re-arrested for violating the terms of their release or for newly charged offenses, whether by federal, state, local, or tribal law enforcement?

Response: Through January 4, 2021, 88 inmates placed on home confinement as a result of COVID-19 have been returned to secure custody for violating terms of their release, 2 of which were due to new criminal conduct. The Bureau's access to arrest records for state, local, or tribal jurisdictions is constrained by the FBI's Criminal Justice Information Service Security Policy (see below).

- a. Of those re-arrested, how many have been accused of, charged with, or convicted of committing a crime of violence?

Response: One inmate who has returned to secure custody engaged in a crime of violence.

- b. Of those re-arrested, how many have been accused of, charged with, or convicted of committing a firearms offense?

Response: For the above inmate, who was returned to secure custody after being charged with a crime of violence, the offense also involved a firearm.

- c. Of those re-arrested, how many have been accused of, charged with, or convicted of committing a sex offense?

Response: None.

- d. Will you make publicly available all information about inmates who have been re-arrested following their release into home confinement, a residential reentry center, or other alternative to detention as a result of COVID-19?

Response: The Bureau tracks program failures of inmates who return to our custody due to violations while in community placement. The state, local, and tribal arrest data of individuals is under the jurisdiction of the Federal Bureau of Investigation Criminal Justice Information Service (CJIS) and such data is owned by those state, local, and tribal arresting authorities. As such, CJIS security policies restrict the retrieval of such criminal history data for only pre-authorized purposes as well as the publication or redistribution of such data.

3. How does the Bureau of Prisons' process for transferring an inmate into the custody or supervision of federal probation officers or other officers differ from the Bureau's process for doing so prior to COVID-19?

Response: The Bureau has increased communication with United States Probation Offices and with the Administrative Office of the Courts in order to convey any information concerning inmates who are positive for COVID-19, ensuring that they have adequate release plans. A collaborative approach is taken for the transfer of the inmate and steps are taken to reduce the risk of virus exposure.

Senator Thom Tillis

1. What specific assistance has been provided by the Bureau to Butner?

Response: As I noted in my testimony, the Bureau has a sound pandemic plan in place and a well-established history of managing and responding to communicable disease outbreaks, such as influenza. We used this pandemic plan as a springboard for our COVID-19 response planning beginning in January. Along with providing written guidance (Action Plans Phase 1-9) and Best Practices, the Bureau has assisted by

deploying over 130 secondary law enforcement staff from Central Office, other institutions, and the Mid-Atlantic Regional Office to FCC Butner. These staff assisted with operations by augmenting security staffing levels. Additionally, FCC Butner has COVID-19 testing kits, testing media, two ventilators (that can be loaned to the outside hospital if needed), PPE (e.g., masks, N-95s, gowns, gloves), and sanitizing and cleaning supplies. Additionally, weekly teleconferences are held with the Mid-Atlantic Regional Office to discuss operational issues and concerns.

FCC Butner has also received the first and second doses of the COVID-19 vaccine, with 575 staff and 485 inmates volunteering for vaccination as of February 4, 2021.

2. What further actions are being taken by the Bureau to provide assistance to Butner to mitigate the spread of COVID-19?

Response: FCC Butner continues to follow Bureau and CDC guidance, maintains 100% screening of anyone entering the complex, and testing PPE, and sanitation supplies are abundantly available.

3. Local hospitals have reported a surge in inmates with COVID-19. What options are available to Butner and BOP if local hospitals can no longer manage prison patients?

Response: The number of new cases has declined significantly, however, FCC Butner continues to be in daily communication with community hospitals regarding bed space and specifically ICU bed space. FCC Butner maintains strong relationships with the Duke University Medical System which provides access to 3 large hospitals, and also has strong relationships with Granville Health Systems and Maria Parham Health System that can provide additional capacity. FCC Butner also works closely with the UNC Hospital System for access to emergency services. FMC Butner has the capability to handle 4-5 ventilator dependent patients in a non-acute setting, as well.

4. What procedures are you using upon release to monitor former inmates and ensure they are not a threat to public safety?

Response: Inmates who are placed on home confinement are ordinarily monitored via electronic monitoring devices to include GPS bracelets, voice recognition software, or other electronic accountability measures. Additionally, staff conduct random telephonic and in person accountability checks on these individuals to ensure that they are at approved locations.

Inmates that are released from the custody of the Attorney General are not monitored by Bureau staff or contractors as they are generally under the supervision of the USPO.

5. What levels of recidivism are you seeing for those who have been granted either home confinement or early release?

Response: As of January 4, 2021, two inmates who released to home confinement were returned to secure custody due to engaging in new criminal conduct.

6. Are you collecting and monitoring demographic data nationwide for infected inmates?

Response: The Bureau currently has an epidemiologist on-site who is reviewing and analyzing our infection data.

7. Can you provide additional information about how COVID-19 is impacting minorities under your care?

Response: The Bureau is not seeing any disparate impact of COVID-19 on our minority population. Indeed, our COVID-19 positive cases essentially mirror the demographics of our inmate population, which is what one would expect to see. Our mortality rate for minorities is better than the US population rate principally because all inmates in our custody have equal access to quality health care. We aggressively test and monitor our inmate population and continue to provide outstanding health care to all inmates. We are working closely with Operation Warp Speed to provide vaccine to our staff and inmates who volunteer for vaccination nationwide as well.

8. What is your plan to begin providing programming for inmates? What role do you expect digital programming to play as we continue with mitigating COVID-19 and utilizing new strategies to rehabilitate inmates?

Response: During COVID-19, some programs continue to operate with social distancing and other safety modifications. Others must be temporarily suspended at institutions with high rates of infection, and will restart as soon as practicable. The Bureau currently offers a variety of educational programming at the local level via computer-based learning including electronic GED testing. The Bureau is in the initial phases of implementing a learning management solution for inmate education and updating the inmate education network (called “i-Connect”). The Bureau also published a Request for Information regarding the availability of tablet solutions. The vendor proposals are being reviewed at this time and following that review and analysis, we anticipate issuing a Statement of Work for a reentry platform that includes the use of tablet technology.

Ranking Member, Senator Dianne Feinstein

1. Over 5,200 Bureau of Prison (BOP) inmates have tested positive for COVID-19, along with over 600 BOP staff. Two facilities in California, Lompoc and Terminal Island, have alone accounted for over 1,700 of those cases. Twelve inmates have died at those two facilities.

Response: I understand that the Bureau has informed my staff that when all inmates at the low-security Lompoc facility were tested, nearly the entire inmate population tested positive for the virus, though most were not displaying symptoms.

- a. Given the alarming rate of infection among inmates, what adjustments have been made to the Bureau's infection-control practices?

Response: The Bureau continues to follow and update its procedures based on the guidelines and recommendations from the CDC, as well as our own experience in the unique correctional environment. As testing resources became widely available, aggressive testing strategies were implemented to identify positive cases, particularly the large number of asymptomatic positives. Extensive quarantine and isolation measures have also been instituted to minimize risk of transmission in inmates that are releasing or transferring to other facilities and correctional jurisdictions. Finally, we are working closely with Operation Warp Speed to provide vaccine to our staff and inmates who volunteer for vaccination nationwide as well, to include Federal Correctional Complex Lompoc.

- b. When will the Bureau implement universal testing at other facilities?

Response: The Bureau continues to implement a testing strategy consistent with CDC guidance for correctional institutions, with testing resources widely available at Bureau facilities nationwide and aggressive testing procedures in place.

We have implemented a test in/test out strategy for quarantine which is done for all intakes, exposures, and transfers/release from custody. When mass testing is not done at institutions without a COVID-19 case, institutions are encouraged to do more limited testing of inmates with risk factors, or those who interact with large numbers of inmates because of their job, e.g., food service workers.

- c. Do you have any reason to believe that the rates of infection will be lower at other facilities? If so, why?

Response: As information and experience continue to expand regarding the nature and epidemiology of this novel disease, both in the community at large, as well as in the unique correctional environment, the Bureau continues to proactively develop, update, and implement its response to mitigate the spread of COVID-19 within all of its facilities. We are confident that with our increased understanding, our close partnership with the CDC and their recommendations, and guidance and improved testing capabilities, we are better equipped to manage and mitigate COVID-19 infections than when this pandemic first began.

- d. Please provide a detailed description as to how the Bureau is separating and isolating inmates once they have tested positive for the disease, including but not

limited to, what additional housing options the Bureau is utilizing to stop spread of COVID-19 among inmates and staff.

Response: In general, the Bureau has redistributed inmates among vacant housing units and used climate controlled tents to achieve greater social distancing within general population, quarantine, isolation, and recovery units. Isolation is used to separate inmates who are sick from quarantined or general population inmates. Inmates presenting with symptoms of COVID-19-like illness (e.g., fever, cough, shortness of breath) or who test positive, are placed in designated isolation housing. Depending upon the number of individuals and available space, housing units can be utilized for isolation in this order of precedence as determined by the CDC guidance:

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
 - Separately, in single cells with solid walls but without solid doors
 - As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully.
 - As a cohort, in a large, well-ventilated cell with solid walls but without a solid door.
 - As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells.
 - As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. When cohorting is used, individuals are educated to utilize social distancing when possible
- e. Please provide a detailed description as to how the Bureau is separating inmates who have tested negative for the disease, including if and when follow-up testing is provided.

Response: Inmate testing occurs in a variety of settings and circumstances. Inmates who have tested negative may be housed in a general population unit or in a quarantine unit. Both of these settings are physically separated from isolation units where COVID-19 positive inmates are housed and there is no mingling of inmates between these units. Follow up testing occurs in settings where there were earlier identification of cases, and prior to transfer/release and upon intake.

- f. If the Bureau is placing new inmates into a 14-day quarantine upon arrival into a facility, how is the Bureau also ensuring that rotating correctional officers do not transmit the virus to this population?

Response: To the extent possible, institutions have been given guidance to limit staff movement among different inmate populations and units at the institution.

- g. Are all staff and inmates provided with masks? How often are the masks replaced?

Response: Institutions were encouraged to follow CDC guidance that included face coverings. With the issuance of the Bureau's Phase 6 Action Plan on April 13, 2020, and consistent with CDC guidance, the Bureau began issuing and the use of face coverings when staff and inmates are in public areas when social distancing cannot be achieved. As mask supplies were distributed to all inmates and staff, mask use was and remains required. All face coverings and personal protective equipment (PPE) are replaced/reissued consistent with CDC guidance and Bureau training on the appropriate use of PPE to include donning and doffing. Additionally, a memo was issued by the Attorney General on April 14, 2020 regarding the Use of Face Coverings in Department of Justice Workplaces, followed by President Biden's January 20, 2021 Executive Order regarding face coverings.

2. To combat the dangers that COVID-19 poses to vulnerable inmate populations, the Justice Department has issued two separate directives to BOP. On March 26, Attorney General Barr directed BOP to prioritize the use of home confinement. Then on April 3, following passage of the CARES Act, the Attorney General directed the Bureau to prioritize moving vulnerable inmates out of institutions that were experiencing severe spikes in infection rates.

In a response letter you sent to me on May 7, you also mentioned that the Bureau was "working diligently to review our vulnerable and high-risk population" for community placement.

- a. Since the start of the pandemic, how many inmates has BOP released to home confinement or residential re-entry centers?

Response: As of January 12, 2021, the Bureau has 5,858 inmates in RRCs, 7,857 inmates in home confinement, and 140 inmates who are awaiting transfer to home confinement in the coming weeks. This change is an increase of 5,004 inmates since the Attorney General issued his memorandum to increase Bureau use of home confinement. It is important to note we continue to review all eligible inmates for community placement, thus this number changes on a daily basis.

Crisis furloughs were given to a number of inmates pending approval for home confinement or RRC placement. As of January 6, 2021, 686 inmates were placed on crisis furloughs since the start of the pandemic. The number of inmates in crisis furlough at any given time fluctuates, as inmates move from crisis furlough to home confinement, RRC, or release on a daily basis. For the month of December 2020, there were 36 inmates on crisis furloughs.

- b. Since the start of the pandemic, how many inmates has BOP released under the Compassionate Release Program?

Response: The statutory authority for Compassionate Release, or Reductions in Sentence (RIS), is 18 U.S.C. § 3582. The statute provides that the sentencing court (not the Bureau as the question indicates) can release inmates for extraordinary or compelling circumstances. As amended by the First Step Act, section 3582 allows the Director of the Bureau to make a motion on an inmate's behalf to the sentencing court, or for inmates to directly petition the court after 30 days of making a RIS request to the Warden, or the exhaustion of administrative remedies, whichever is sooner. Given this process, it was determined home confinement, which does not require a judicial proceeding, was the more expedient method for the Bureau to place inmates in the community during the pandemic.

Given this context, from March 17, 2020 to February 11, 2021, there have been approximately 2,873 releases by the sentencing court under RIS authority.

- c. How has the BOP worked to comply with the initiative from the Department of Justice to accelerate consideration of community placement for inmates?

Response: The Bureau has identified inmates at risk for COVID-19 and prioritized them for consideration for placement into home confinement. To-date the Bureau has reviewed over 42,000 inmates for placement into home confinement.

- 3. According to the CDC guidelines for correctional and detention facilities, an individual should quarantine for 14 days prior to release. If the individual is released prior to completion of the fourteen days, CDC recommends the facility discuss the release with the local health department to ensure the individual's safe release into the community.

- a. Can you confirm that the Bureau is coordinating with local public health officials if an individual is released from your custody prior to the completion of a fourteen-day quarantine period?

Response: The Bureau continues to coordinate with local public health officials if an individual is released from custody prior to or during the completion of a fourteen-day quarantine period consistent with CDC guidance for correctional institutions.

- b. In how many instances has the Bureau released an inmate who is COVID-19 positive?

Response: The Bureau does not have any means of accessing or providing the data requested as individuals who release from the custody of the Bureau are no longer under our jurisdiction, but rather generally serving a term of supervised release under the jurisdiction of the Administrative Office of the United States Courts.

4. As you know, a number of federal agents have been dispatched by Attorney General Barr against peaceful protesters. According to an internal, unclassified document compiled for the Joint Chiefs of Staff on Thursday, June 4, there are 445 BOP staff who have been deployed thus far to Washington, D.C. (Bloomberg, Federal Plan to Control D.C. Protests Taps 7,600 Personnel, June 4, 2020) Reports indicate, however, that Bureau officers are not identifying themselves. You confirmed during a video conference that same day that you attribute the lack of identification to “the fact that we normally operate within the confines of our institution, and we don’t need to identify ourselves.”

- a. Who made the decision to deploy BOP officers to Washington, D.C.?

Response: The Bureau is under the direction of the Department of Justice (DOJ) and responds to directives at the behest of the Attorney General.

- b. Did anyone notify D.C. Mayor Muriel Bowser?

Response: The Bureau was deployed as a resource to Washington, D.C., and operated as a component within the command structure set forth by Federal and local authorities.

- c. Were BOP officers told not to wear clothing or name badges that might identify them as BOP staff? If so, whose decision was this?

Response: Prior to the emergency deployment, the agency did not require a standardized identifying insignia on the uniforms of Bureau emergency response teams as they generally operate within the federal prisons where staff and inmates clearly know their affiliation. Upon identification of concerns during the June deployment, the Bureau rapidly procured identifying insignia and distributed it to all deployed personnel who served on deployment teams. Going forward, all teams have badges that identify them before interacting outside of the prison setting.

- d. Were they told not to respond when asked who they worked for? If so, whose decision was this?

Response: As outlined in Bureau policy, only the Chief Executive Officer (or designee such as a Public Information Officer) is authorized to speak to the media on behalf of the agency. Administrative action can be taken against staff who ignore policy, particularly when they disclose information related to an ongoing security operation. Staff may speak freely without prior authorization when the topic or circumstances are unrelated to their work for the Bureau.

- e. How is the Bureau’s sending of correctional officers to Washington, D.C. impacting the already critical staffing shortages at its institutions, which have been further exacerbated by the COVID-19 pandemic?

Response: The Bureau's law enforcement mission is multi-pronged and extends beyond our primary prison operations and inmate reentry missions. As sworn law enforcement officers within DOJ, we honor our responsibility to support our nation's law enforcement needs whenever we are called to do so. We ensured throughout the deployment period that we had sufficient staff nationwide both for deployment and prison operations, and noted no issues or concerns with either prong of our mission during that time.

- f. Do you intend to deploy additional Bureau officers to Washington, D.C.?

Response: The total deployment emergency response team personnel to Washington, D.C., was 659. Demobilization was initiated on June 8, 2020, and completed as of June 12, 2020. All teams had returned safely to their duty locations as of that date.

- g. Will you commit to requiring and training your Bureau officers to identify themselves as Bureau officers and provide their names, particularly if asked?

Response: Law enforcement identifiers were provided to all operators on June 6, 2020. Supervisory operators were instructed to identify the agency, upon request. Going forward, the Bureau has ensured that deployment teams are outfitted in standardized uniforms which clearly identify their agency affiliation.

- h. Aside from crowd control and protection, what, if any, law enforcement functions are Bureau officers performing in Washington, D.C.?

Response: The Bureau emergency response teams performed crowd control and protection duties as assigned by the appropriate law enforcement authority while deployed to Washington, D.C.

5. The Federal Correction Complex in Butner, North Carolina, which includes a Federal Medical Center, has one of the worst outbreaks at any federal correctional facility, with approximately 394 inmates and 40 staff testing positive. Thirteen inmates at Butner have died.

A similar Federal Medical Center (FMC) in Fort Worth has had a total of approximately 625 inmates test positive, nearly half the total population. Ten inmates at FMC Fort Worth have died.

- a. Why have there been such severe outbreaks at BOP institutions with specific facilities dedicated to medical care?

Response: The Bureau has designated seven facilities as Medical Referral Centers (MRCs) and they are not immune to the same risks of COVID-19 transmission as the other Bureau institutions. The MRCs may be more prone to transmission as a larger percentage of inmates at these facilities require more

frequent medical trips into the community, increasing risk of exposure. By virtue of their medical mission, the MRCs have a much larger percentage of inmates who are at greater risk for contracting and having more severe disease from COVID-19, such as the elderly and those with an immune-compromised condition.

- b. What is being done to improve infection-control practices at these facilities?

Response: As information and experience continues to expand regarding the nature and epidemiology of this novel disease, both in the community at large, as well as in the unique correctional environment, the Bureau continues to proactively develop, update, and implement its response to mitigate the spread of COVID-19 within all of its facilities. We are confident that with our increased understanding, our close partnership with the CDC and their recommendations and guidance, and improved testing capabilities, we are better equipped to manage and mitigate COVID-19 infections than when this pandemic first began.

- c. Is the Bureau still providing medical care to inmates outside of COVID-19-related treatments?

Response: The Bureau continues to provide all urgent medical care as needed and clinically appropriate. Routine health visits, preventive health visits, and elective care are prioritized based on medical need and acuity.

Senator Patrick Leahy

1. Andrea Circle Bear of the Cheyenne River Sioux was eight and a half months pregnant when she was sent to a federal prison to serve a 26 month sentence for a non-violent offense. She contracted COVID-19 and died three weeks after having an emergency C-section while on a ventilator.

- a. Why wasn't Ms. Circle Bear allowed to serve her sentence in home confinement? Why was she not granted compassionate release?

Response: Ms. Circle Bear had been housed in a county jail beginning in October 2019, and was subsequently sentenced to a 26-month term of imprisonment by the federal court in late January 2020. The federal judge, who was aware of her being pregnant, specifically recommended she be placed in a Federal Medical Center (FMC), and we complied with that judicial recommendation. The United States Marshal Service (USMS) airlifted her to FMC Carswell on March 20, 2020. She was screened for COVID-19 upon arrival in Bureau custody and had no COVID-19 symptoms. Eight days later, she developed symptoms related to her pregnancy (not COVID-19) and was taken to the local hospital and subsequently released by the hospital the same day. Three days later she developed respiratory distress and was returned to the local hospital and found to be COVID-19 positive. The inmate with whom she was

airlifted was also confirmed to be COVID-19 positive. At the time, they were the only two COVID-19 positive inmates at FMC Carswell.

Ms. Circle Bear was only in our custody for 11 days prior to her hospitalization. That very brief period of time was not sufficient to evaluate her for community placement, and certainly not enough time for the courts to process a motion for compassionate release. Our staff worked diligently with Ms. Circle Bear throughout her 11 days in our custody, and work closely with hospital personnel to ensure Baby Circle Bear was reunited with her family as soon as possible. It is also important note that although inmate Circle Bear had a delayed reporting date to prison, a judge revoked that in the previous months because of actions that she took that were deemed potentially harmful to her unborn child. As such, it is unlikely she would have been eligible for home confinement at that time.

- b. Is BOP conducting any kind of investigation into the death of Andrea Circle Bear so it can implement steps to prevent such a tragedy from happening again? If so, will BOP commit to share the results of this investigation or review with the Judiciary Committee?

Response: Consistent with the Bureau's Program Statement on Quality Improvement, a mortality review is completed on every inmate death to include deaths by natural causes or other circumstances. This systemic process of review includes evaluating the healthcare delivery system, evaluating strengths and weaknesses, and conducting corrective action when necessary.

- 2. The BOP website states that it has increased home confinement by 124 percent during the pandemic. But that represents merely two percent of the BOP prison population.
 - a. What is BOP's estimate for the number of BOP inmates who likely meet the eligibility requirements for release to home confinement under the Attorney General's March 26th and April 3rd memoranda?

Response: The initial guidance provided by the Attorney General resulted in a review of approximately 4,000 inmates. After additional discussion with DOJ, the Bureau reviewed an additional 1,200 inmates who were deemed to be high priority. The Bureau has since expanded its review to include additional inmates who are considered to be low risk from a public safety perspective. These evaluations remain ongoing during the duration of the pandemic, and can change rapidly with inmates entering into our custody and others completing their term and releasing.

- b. How many of the inmates who meet the eligibility requirements for release to home confinement have actually been released?

Response: As noted above, the Bureau has and continues to review all inmates in our custody on an ongoing basis using the criteria of the Attorney General's memoranda. Between March 26, 2020 and January 12, 2021, 20,125 inmates

were transferred to home confinement, with an additional 140 scheduled for home confinement/RRC placement by mid-February.

- a. Are inmates with low-level offenses, those with the majority of their sentence served, older adults, and those with pre-existing conditions prioritized for home confinement?

Response: The Bureau is prioritizing the review of the eligible cases by using the Attorney General's guidelines, which direct the Bureau to make assessments based on an inmate's age, vulnerability to COVID-19, crime of conviction, behavioral record, and risk of recidivism, among other discretionary factors.

- b. Has BOP provided any kind of assistance to released inmates' families to assist with the transition or offset additional costs?

Response: No. The Bureau's appropriations from Congress are restricted to the mission and operation of federal prisons and do not extend to providing our appropriated dollars to the families of inmates who have released from our custody. The Bureau does, however, verify that the conditions of the location to which the inmate will be transferred represent a lower risk of contracting COVID-19 than the inmate will face in their Bureau facility prior to release.

3. During your testimony you stated that the BOP is currently relying upon the congressionally-approved PATTERN assessment tool in its determinations of inmates' home confinement eligibility – and not subsequent, draft guidance, obtained by *ProPublica*, that would appear to make it significantly harder for inmates to qualify as minimum risk.

- a. Can you confirm whether BOP is currently utilizing the PATTERN tool as part of its determinations of inmates' home confinement eligibility? Or is it using a modified or separate tool?

Response: The DOJ-created PATTERN tool is part of the home confinement review process.¹ Contrary to the erroneous *ProPublica* report, there have been no changes to PATTERN since it was finalized in January 2020.

- b. Can you confirm whether the BOP has any plans to implement this draft guidance obtained by *ProPublica* or any other guidance that would supervene the PATTERN tool?

Response: As I stated during the hearing, the *ProPublica* reporting was inaccurate. In January, 2020, DOJ publicly announced enhancements to the PATTERN tool. These changes were made in response to issues raised regarding the proposed PATTERN tool during stakeholder listening sessions. The Bureau

¹ See U.S. Dept. of Justice, NCJ 254799, First Step Act Implementation Fiscal Year 2020 90-Day Report (June 2, 2020), <https://www.ncjrs.gov/pdffiles1/nij/254799.pdf>.

subsequently began rescoring inmates using the final version of the PATTERN tool and, after the Bureau concluded its re-evaluation of all inmates, it was determined that approximately 15% of inmates scores were affected. Most inmates received a lower risk assessment score than they previously had, by an almost 2-to-1 margin. Contrary to some reports, there have been no changes to PATTERN since it was finalized in January 2020. DOJ has no plans to change PATTERN prior to its peer review and independent validation next year, and after consultation from the IRC.

4. The BOP's measures to contain the spread of the virus are also impacting incarcerated individuals' access to legal counsel, as attorneys are being restricted from entering facilities. While this pandemic presents many challenges, nothing should impede an incarcerated individual's right to counsel.

- a. There has been conflicting reporting on whether or not individuals in BOP custody are able to call their lawyers at no cost. Are BOP inmates currently able to call lawyers at no cost? If not, what are you doing to ensure that they are?

Response: Staff assist inmates with placing phone calls to their lawyers free of charge. Accommodations for these calls are made at the institution level. Wardens have been reminded of the importance of providing inmates with access to their lawyers especially during these times.

- b. There are some who are concerned that private calls with counsel are being monitored. Can you assure this Committee that BOP is not in any way surveilling or monitoring inmates' confidential calls with their attorneys?

Response: It is well understood and all participants are notified that calls made on the Inmate Telephone System (ITS) are routinely monitored. If an inmate calls their lawyer using ITS, a warning is provided that it is subject to monitoring and individuals consent to such monitoring by accepting calls from the inmate. Inmates as well are provided notice regarding the monitoring of their calls and are informed that unmonitored calls will be provided to them when requested of staff and warranted.

5. According to BOP's testimony, 15 Federal Prison Industry (FPI) factories have been converted to PPE production sites to help increase the supply of PPE available to our frontline healthcare workers. But there have been alarming reports that such prison factories are becoming hotspots for COVID-19 given overcrowded working conditions, scarce sanitizing supplies, lack of ventilation, and other problems.

- a. What is BOP doing to ensure that inmates laboring in FPI factories are not needlessly exposed to COVID-19? What protocols have been established to keep these BOP inmates safe?

Response: All FPI operations have enhanced their safety precautions to limit the possibility of exposing staff and inmates to COVID-19. The specific safety measures vary somewhat by the type of operation. Enhanced precautions enacted at various FPI factories include the following:

- **Symptom Screening:** All staff are symptom- and temperature-checked when they enter a Bureau institution. Inmates are given symptom and temperature checks before entering FPI's factories and are referred to the medical department if they have COVID-19 symptoms, including a fever.
- **Personal Protective Equipment:** All staff and inmates have been issued face masks, which they are instructed to wear at all times. Where appropriate, inmates are given additional personal protective equipment (e.g., gloves, gowns, and goggles).
- **Social Distancing:** Wherever possible, work stations have been spaced a minimum of six feet apart, and staff and inmates are instructed to adhere to social distancing at all times. Most operations have reduced the number of inmates working in the factory or have split the inmate work details into multiple shifts to minimize inmate contact and ensure social distancing. Social distancing floor markers have been added to areas where inmates previously used to congregate (e.g., at metal detectors, time clocks, and tool issuing areas).
- **Disinfecting Work Areas:** FPI factories are cleaning and disinfecting high contact surfaces at regular intervals (e.g., every 30 minutes, every hour, or every two hours). Individual inmate work stations are disinfected multiple times per day. Some factories have added hand sanitizer dispensers throughout the factory.

FPI is committed to keeping our staff and inmate workers safe, and we are continually following CDC, Bureau, and DOJ guidance as information and recommendations evolve.

- b. Has BOP conducted an assessment to determine whether these FPI factories have a higher risk of COVID-19 spreading than BOP's prisons themselves?

Response: Based upon the current scientific understanding of COVID-19 and the extensive protective measures that FPI has put in place, including the social distancing that FPI is generally able to maintain in its factories, we believe FPI's factories have a lower risk of COVID-19 transmission as compared to parts of Bureau facilities where social distancing is not possible.

- c. Has BOP determined how many inmates have contracted COVID-19 as a result of working at an FPI factory?

Response: The Bureau has not identified any inmates who have contracted COVID-19 as a result of working at an FPI factory. If an inmate who works in FPI tests

positive, the factory is shut down and appropriate quarantine and isolation procedures are put in place for the FPI workers.

6. Last Congress, I worked with Senator Portman to secure the passage of our bipartisan Second Chance Act as part of the First Step Act. The Second Chance Act supports state and local reentry programs to reduce recidivism. As non-violent offenders and inmates vulnerable to COVID-19 are being released, however slowly, these programs have never been more important.

- a. What role have Second Chance Act grants played as part of the Justice Department's and BOP's response to the COVID-19 pandemic?

Response: The Bureau does not administer this grant program nor is it eligible for Second Chance Act grants. We welcome the opportunity to partner with state and local entities who may offer reentry programs for inmates releasing from our custody.

7. BOP's website published that as of June 9, there were 2,125 federal inmates who have confirmed positive tests results for COVID-19 nationwide and 3,975 inmates who have recovered, however, testing still remains limited and alternative living arrangements scarce.

- a. Have comprehensive lists detailing all inmates' preexisting conditions been made available to prioritize testing and distancing for high-risk inmates?

Response: During the initial phase of the pandemic, the Bureau identified approximately 27,000 inmates with at least one CDC identified risk factor based on CDC Guidance. After the initial review, all new incoming inmates were reviewed for CDC identified risk factors upon intake.

- b. As inmates test for COVID-19, where are they housed upon waiting for the results? Are inmates taken back to general population risking a spread infection?

Response: Any inmate that is being tested for COVID-19 due to active symptoms of the disease is placed immediately into isolation. All new intakes are tested for COVID-19, with positive inmates immediately placed in medical isolation and negative inmates immediately placed in quarantine. Inmates in both housing statuses are assessed daily. Positive inmates remain in isolation until they meet CDC guidelines for recovered, and negative inmates remain in quarantine for a minimum of 14 days and require a second negative test to exit quarantine. Additionally, inmates must complete the quarantine process with two negative tests prior to transfer or release.

- c. Have any inmates in BOP facilities who have tested positive for COVID-19 been subsequently housed with inmates who have not tested positive? If so, how many inmates, at what facilities, and under what circumstances?

Response: As noted above, inmates who test positive for COVID-19 are placed in isolation status. Once they meet the CDC criteria for release from isolation (recovered), they may be sent back to housing with the general population. As of January 12, 2021 the Bureau has 42,743 recovered inmates.

- d. Have any inmates in BOP facilities who were clearly symptomatic and suspected of potentially carrying COVID-19 been housed with inmates who were not symptomatic? If so, how many inmates, at what facilities, and under what circumstances?

Response: Consistent with CDC guidance, COVID-19 positive inmates, including both symptomatic and asymptomatic, may be housed together. The Bureau is not aware of any symptomatic or lab-confirmed positive inmates who have not met the CDC guidelines for release from isolation who are housed with inmates who were not symptomatic or lab confirmed positive.

- e. Of the recovered population, have inmates been monitored by BOP since recovery? Have any recovered patients relapsed? Are recovered COVID-19 patients released back into general population?

Response: Inmates who meet CDC guidelines for release from isolation (recovered) may be moved to the general population. Inmates who have suffered severe COVID-19 illness may be moved to a Recovery Unit for further observation until they can function in the general population.

The Bureau bases our COVID-19 positive rates on CDC definitions and CDC Guidance on the interpretation of lab results. There is currently no standardized definition on reinfection from the CDC, therefore the Bureau is not able to track these individuals at this time. Additionally, the science surrounding reinfection is still being studied to determine if tests for those who previously tested positive and test positive again are due to re-infection or continuation of the initial infection. The CDC does note that there have been reports of cases where COVID-19 testing continues to be positive in some patients for prolonged periods without direct correlation to viral culture (active virus). Though patients may have recovered from COVID-19 in accordance with CDC guidance, some patients may continue to have sequela of the disease or an exacerbation of their underlying medical conditions.

Senator Sheldon Whitehouse

1. While the First Step Act and the CARES Act gave BOP expanded authority to release people on home confinement and compassionate release, the agency has been slow to use these authorities. Currently, only 1.8% of people are serving a federal sentence on home confinement, and only 144 people were granted compassionate release between December 2018 and April 2020.

- a. How many applications for compassionate release have been filed since March 2020? How many of those applications did BOP respond to within 30 days? How many of those applications has BOP supported?

Response: From March 1, 2020, to December 31, 2020, Bureau Wardens received 27,407 compassionate release requests. Of the 27,407 requests, Wardens denied 19,518 requests within 30 days, and recommended approval of 194 requests within 30 days. In addition, the Director approved 4 requests to support early release within 30 days of the date the Warden received the request, and headquarters denied 39 requests within 30 days of the date the warden received the request.

With regard to the number of the 27,407 requests the Bureau received, regardless of the length of response time, Wardens recommended approval of 319, wardens denied 24,374, the Director approved 27 for support of early release, and headquarters denied 200. It is also important to remember that after the CARES Act, all inmates requesting compassionate release are screened for suitability for home confinement since a home confinement decision can generally be made quicker.

- b. How many applications for home confinement have been filed since March 2020? How many of those applications has BOP granted?

Response: Inmates do not “apply” to be considered for home confinement. All inmates are reviewed for suitability for home confinement, and these evaluations are ongoing as inmates enter and exit the federal system, but any inmate who believes he or she is eligible may also request to be referred to home confinement and provide a proposed release plan to his or her Case Manager. Since March 13, 2020 over 26,000 inmates have transferred to an RRC or home confinement. The home confinement population has grown from a population of 2,476 inmates on March 13, 2020, to 7,857 inmates on home confinement as of January 12, 2021. This is an unprecedented 180% growth in this population.

In *United States v. Pena*, No. 16-CR-10236-MLW (D. Mass.), Stephen Spaulding, the Warden of FMC Devens, testified that BOP policy prohibits considering a prisoner’s COVID-19 vulnerability when evaluating whether the prisoner should

be granted compassionate release. Specifically, he testified as follows:

MR. KATZ: [H]as the Bureau of Prisons or the Department of Justice offered any guidance on [whether COVID-19 could be considered when evaluating compassionate release]?

WARDEN SPAULDING: They said to not use COVID-19 as a sole determination of reduction in sentence or compassionate release.

MR. KATZ: Okay. But so it can be considered? It just can't be the sole determination?

WARDEN SPAULDING: I don't consider COVID-19 as part of the criteria for reduction of sentence or compassionate release based on the 5050.50 program statement.

MR. KATZ: And, again, is that based on guidance you've been given from the Department of Justice or the Bureau of Prisons, or is that just your reading of what 5050.50 requires?

WARDEN SPAULDING: No, sir. It's based on guidance from central office.

a. May 13, 2020 Tr. 43:5-21.

- i. Is it BOP's policy that wardens should not consider COVID-19 when evaluating someone for compassionate release?

Response: Program Statement 5050.50, Compassionate Release/Reduction in Sentence Procedures for Implementation of Title 18 U.S.C. §§ 3582 and 4205(g), as currently written, does not include COVID-19 as part of the Bureau's compassionate release criteria. Please see below for additional discussion.

- ii. What guidance has BOP provided to wardens and other staff regarding whether and how they should consider COVID-19 when considering compassionate release applications? Please provide copies of any written policies or guidance.

Response: The Bureau initially provided staff guidance and a draft response that could be used when COVID-19-based compassionate release requests were received, please see attached. The Bureau also has informally advised staff to review all compassionate release requests, including those raising COVID-19 concerns, to upload all compassionate release requests to the electronic database, and to apply the Bureau's compassionate release criteria when reviewing the requests. As noted below, the Bureau affords each compassionate release request, including those raising COVID-19 concerns, individualized review.

- c. In Pena, Mr. Spaulding also testified that BOP policy only permits wardens to evaluate someone for transfer to home confinement if he has served at least 50%

of his sentence or at least 25% of his sentence and has less than 18 months left to serve. Id. 66:19-67:1. However, BOP's central office will sometimes send wardens "a recommendation to review a specific inmate. We do that. They don't meet the criteria or they do meet the criteria, and if they ask for us to send it up anyway, then I'm required to do that." Id. 67:15-19.

- i. What is BOP's criteria for release to home confinement? How were these criteria determined?

Response: Prior to the COVID-19 National Emergency, the Bureau used the standards in Program Statement 7320.01 Home Confinement and Operations Memorandum Home Confinement Under First Step Act to transfer inmates to home confinement. With the National Emergency, the Bureau modified the use of home confinement based on the CARES Act and the Attorney General's guidance memoranda.

- ii. Which central office officials are responsible for making recommendations for release to home confinement? How do those central office officials identify those individuals? What criteria do those central office officials use to determine whether to recommend them for home confinement? Please provide copies of any written policies or guidance.

Response: In general, Central Office staff are ordinarily not involved in the making of recommendations for release to home confinement. During the National Emergency, headquarters staff identified prioritized criteria to develop initial rosters to assist Regional and Institution staff with identifying those inmates who on their face may have met the eligibility priorities as outlined by the Attorney General. These rosters were not inclusive of all inmates who might be eligible nor were they prima facie determinative that the inmate was eligible; rather, they were provided to assist in prioritizing the review of inmates at the local level.

- iii. How many individuals have been released to home confinement based on the recommendations of central office officials? Please provide a list.

Response: The Bureau established a headquarters multi-disciplinary/multi-division review committee for a case exception review process. Cases that met the initial criteria related to the COVID-19 health risk factors as outlined by the CDC but were identified at the institution level as not meeting all the criteria in the Attorney General's memoranda, were considered for the exception review. As of January 23, 2021, a total of 3,977 cases have been reviewed with 2,794 denied, 962 approved for home confinement and 221 approved for RRC placement.

iv. BOP released Paul Manafort to home confinement even though he had neither served at least 50% of his sentence nor had served at least 25% of his sentence and had less than 18 months left to serve.

a. Which central office officials participated in the decision to release Mr. Manafort to home confinement? Did any other Department of Justice (DOJ) or Trump administration officials participate in that decision?

Response: Inmate Manafort was identified initially and referred for home confinement on April 16, 2020. He was then reviewed by the multi-disciplinary committee along for final review. At the time of the referral, he met all the criteria outlined in the Attorney General's memoranda.

The Bureau is unaware of anyone outside of the Bureau participating in the decision making process.

b. How was Mr. Manafort identified as a candidate for release on home confinement?

Response: Inmate Manafort was identified by the local institution staff as he was over 70 years old (a qualifying COVID-19 risk factor) and met the criteria of the Attorney General's memoranda. An emphasis of the early guidance from Bureau headquarters was to prioritize those inmates who were older (over 65 years of age) as well as recidivism risk and security level criteria.

c. What communications, if any, did BOP central office officials have about Mr. Manafort's release with other DOJ or Trump administration officials?

Response:

The Bureau is unaware of anyone outside of the Bureau participating in the decision making process.

2. The First Step Act instructed DOJ to "develop and release publicly on the Department of Justice website a risk and needs assessment system." BOP initially released a description of this new system, PATTERN, last year. At that time, numerous groups raised concerns that the system was plagued with racial and gender bias. While BOP has made some changes to PATTERN since then, the system has not been subjected to peer review or independent validation.

- a. When does DOJ intend to subject PATTERN to peer review or independent validation?

Response: See response below.

- b. Attorney General Barr directed BOP to prioritize individuals who are categorized as “minimum risk” under PATTERN for release to home confinement. Why is BOP relying on an untested system to make release decisions?

Response: PATTERN was developed by independent researchers well-versed and experienced in developing risk assessment instruments in the correctional/criminal justice context. These researchers were engaged and were overseen by the National Institute of Justice (NIJ), not the Bureau. NIJ also sought feedback of PATTERN from outside stakeholders and the First Step Act (FSA) Independent Review Committee. As a result of that feedback, DOJ approved and implemented additional changes to PATTERN, which the Bureau incorporated. In accordance with the FSA's requirements, earlier this year NIJ issued a solicitation for consultants to review and validate PATTERN. Additionally, the original NIJ PATTERN researchers and Bureau research staff developed a technical research paper which is currently undergoing internal review. Once approved for publication, the research community will have an opportunity to learn and understand the methodology and calculus involved in developing PATTERN, enabling peer review.

3. Public health experts agree that adequate testing is essential to controlling the spread of COVID-19, particularly in congregate settings like jails and prisons. Rhode Island, for example, is proactively testing individuals at ACI to identify asymptomatic individuals and control the spread.

- a. What are BOP's protocols are for when an individual in custody is tested for COVID-19?

Response: Please refer to the Bureau's attached quarantine and isolation guidance.

- b. Does BOP test individuals for COVID-19 before releasing them to RRCs or their homes? If not, why not?

Response: Please refer to the Bureau's attached quarantine and isolation guidance.

- c. What are the barriers to proactively testing all individuals in BOP custody? What additional resources or authorities are necessary to implement this vital precaution?

Response: The Bureau continues to implement a testing strategy consistent with CDC guidance for correctional institutions, and has significant testing resources available nationwide to meet this need. We have implemented a test in / test out strategy for quarantine which is done for all intakes, exposures, and transfers/release from custody.

4. When mass testing is not done at institutions without a COVID-19 case, institutions are encouraged to do more limited testing of inmates with risk factors, or those who interact with large numbers of inmates because of their job, e.g., food service workers. As BOP has exercised its home confinement authority, more people are serving more of their sentences in residential reentry centers (RRCs) and other non-prison settings.

- a. RRCs are currently bearing additional, unexpected costs due to PPE for necessities like PPE. These costs go beyond what the facilities budgeted for in their contracts. Does BOP plan to reimburse RRCs for these costs?

Response: RRC and home confinement contracts allow for contractors to submit equitable adjustments for any costs that could not have been estimated at the time of contract award. As equitable adjustments are submitted for costs associated with the COVID-19 response, the Bureau reimburses contractors for reasonable costs associated with the pandemic.

- b. What is BOP doing to ensure that there is adequate bed space available at RRCs and supervision capacity for home confinement for all individuals who will be eligible for release in future years?

Response: The Bureau continues to evaluate contract RRC and home confinement needs nationwide. Since the passage of the FSA, the agency has awarded 75 RRC contracts and has an additional 45 solicitations pending, resulting in a net increase of over 1,000 RRC beds available to the agency.

- c. What is BOP doing to estimate and budget for reimbursement costs to RRCs in FY 2021 and subsequent years?

Response: The Bureau consistently reevaluates budgetary needs for RRC and home confinement costs. As a result of the pandemic, budgetary revisions are currently being reevaluated for FY 2021 and beyond.

- d. In some instances, people may be on home confinement for 10 years or longer without the ability to participate in evidence-based recidivism reduction programming and earn early termination of their sentence, as contemplated in the First Step Act.

- i. What recidivism reduction programming, such as drug treatment, is currently offered at RRCs?

Response: Inmates in RRCs receive assistance with obtaining a job, a residence if needed, identification, and other reentry resources through the RRC. They also continue to receive drug treatment, mental health, and sex offender treatment through community treatment contracts. EBRR and PA programming under the FSA are designed to be provided by Bureau staff in our facilities. Participation in such programs offers inmates an opportunity to be considered for earlier placement in community settings (RRCs or home confinement).

- e. What additional funding or authorities would BOP need to expand these program offerings and validate their quality?

Response: The Bureau is grateful for the support of both the Trump Administration and Congress in support of our budget. The Bureau will work with DOJ to identify budget requirements for our mission and operations.

Senator Christopher A. Coons

1. I very much appreciate Dr. Allen's testimony in response to my questions that there was no reason for the Bureau of Prisons (BOP) not to provide testing data by facility. I also appreciate BOP's response after the hearing indicating that you have instructed BOP's Information Technology Department to work with the appropriate subject matter experts to make this data available to the public on the BOP website. Please confirm when you expect this information to be made available.

Response: The Bureau began posting inmate testing data on its coronavirus resource area on the public website (<https://www.bop.gov/coronavirus>) on June 12, 2020. The data published in that resource area is updated daily.

2. You testified that BOP identified approximately 27,000 inmates that have at least one risk factor for severe illness to due to COVID-19.
 - a. Please enumerate the specific risk factors that BOP considered in establishing this population of 27,000.

Response: The Bureau relies on the guidance of the CDC in determining risk factors for adverse impact if infected with COVID-19. The risk factors include: asthma, liver disease, chronic kidney disease being treated with dialysis; diabetes; persons aged 65 years and over; and persons with severe obesity. The full list of COVID-19 risk factors can be seen here: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

- b. To date, how many of these 27,000 inmates (1) have been granted home confinement, (2) were denied home confinement after individual review, (3) were denied home confinement due to quantitative criteria or offense characteristics

without individual review, and (4) remain potentially eligible for individual review but that review remains pending?

Response: As we have moved well beyond the initial evaluation period following the Attorney General's memoranda, all inmates within are system have been reviewed for suitability for home confinement, and these evaluations are ongoing as inmates enter and exit the federal system. Additionally, any any inmate who believes he or she is eligible may also request to be referred to home confinement and provide a proposed release plan to his or her Case Manager. Since March 13, 2020 over 26,000 inmates have transferred to an RRC or home confinement. The home confinement population has grown from a population of 2,476 inmates on March 13, 2020, to 7,857 inmates on home confinement as of January 12, 2021. This is an unprecedented 180% growth in this population.

- c. Does BOP plan to consider all inmates in group (4) individually?

Response: All inmates to-date have been reviewed individually. Institution staff will continue to review inmates for potential eligibility due to changes in time remaining to serve, age, health status, incident report history, viable release plans, resolution of pending charges or detainers, and PATTERN Risk level and Security level decreases.

- d. Please provide, based on current resources and processing times, when BOP expects to finish assessing the individuals in group (4).

Response: Group 4 individuals are not a fixed group. As circumstances change and inmates are identified, they will be subsequently reviewed and potentially referred for placement. We will continue to review our inmate population and refer them based on eligibility criteria. This referral process is an on-going process and will continue as the National Emergency continues.

- e. What procedures does BOP have in place to assess inmates for COVID-19 vulnerability and potential home confinement who entered the BOP system after the population of 27,000 was identified?

Response: The Bureau will continue to identify potentially eligible inmates. Additionally, institution staff will continually review inmates for potential eligibility as they arrive at their designated institution and/or their status changes.

- f. Is BOP prioritizing or restricting its use of home confinement to individuals in particular facilities? If so, please specify the facilities.

Response: The Bureau prioritized its review on the inmates who meet the criteria set out by the Attorney General's but individual reviews are occurring at all facilities for identified inmates meeting the criteria. There have also been concentrated efforts to review inmates at institutions considered hotspots.

3. You testified that the criteria that BOP utilizes for home confinement is “out of the Attorney General’s guidance memos” and thus “everything that [BOP has] done...is out there, on the record.” But you also recognized that BOP has, at least at one point, used criteria that an inmate have served at least 50 percent of their sentence or have served 25 percent of their sentence with less than 18 months remaining. These criteria are not in either of Attorney General Barr’s memos regarding home confinement.
- a. Please set forth any quantitative criteria or offense characteristics that, under current BOP policy, renders an individual categorically ineligible for consideration for home confinement and thus part of group (3) in question 2.b above.

Response: The initial rosters of inmates generated to identify high priority inmates excluded those inmates with convictions of Sex Offenses, Violent Offenses, and Terrorism. Disqualifying criteria also included inmates with detainers or who are recidivism risks (e.g., those with escape or significant discipline history.) Individual reviews were conducted of inmates on the roster to ensure the information and eligibility were correct.

- b. Please set forth any quantitative criteria or offense characteristics that do not render an individual ineligible but that BOP has applied to prioritize its assessment of individuals in group (4) of question 2.b above.
- i. Please also provide the extent to which those prioritized groups have been evaluated.

Response: Prioritization is focused on percentage of time served and age as those criteria are dynamic factors that affect eligibility. Additionally, decreases in PATTERN Risk level and Security level, as well as an inmate’s institutional conduct and the existence of detainers are reviewed as a routine part of the review process conducted by Case Management staff.

- ii. Please provide BOP’s current expectation as to criteria that it will use, if any, to prioritize further processing.

Response: At this time during the National Emergency, staff will continue to use the current criteria as defined by the Attorney General Memoranda to prioritize and review inmates whose eligibility may have changed.

4. You testified that BOP has been using home confinement instead of compassionate release “because it is quicker.” You also testified that in compassionate release, “[t]he court is the deciding official of whether or not that individual gets a reduction in sentence.” This latter statement omits that the Department of Justice has repeatedly argued—and many courts across the country have concluded—that under 18 U.S.C.

§ 3582(c)(1)(A) and U.S.S.G. § 1B1.13 App. Note 1(D), courts are bound by BOP's guidance on what constitutes "extraordinary and compelling" circumstances rendering someone eligible for compassionate release.² Yet, BOP has not revised its guidance, BOP Program Statement 5050.50, to include COVID-19 vulnerability as such a circumstance, notwithstanding a bipartisan letter sent by fourteen U.S. Senators on March 23, 2020 urging it to do so. The result is that inmates in courts that consider themselves bound by BOP's guidance are unable to even have their claim of COVID-19 vulnerability *considered* as a basis for compassionate release, no matter how extraordinary or compelling the court may find their circumstances.

- a. Has BOP considered how its failure to modify its guidance—setting aside its decision to focus its resources on processing home confinement cases over compassionate release—has barred many inmates from even having their claim of extraordinary or compelling circumstances considered by the courts?

Response: The Bureau believes that using home confinement as a means to move appropriate inmates to the community is the most efficient way to address COVID-19-related concerns. An inmate's placement in home confinement is not reviewable by the courts and is within the discretion of the Bureau. Compassionate releases under Title 18 U.S.C. § 3582, when recommended by the Bureau, are ultimately decided by courts and usually take longer to effectuate. Additionally, inmates on home confinement are still within the custody of the Bureau and can be medically treated and medically managed accordingly, particularly if the inmate is not terminally ill. Inmates who receive a compassionate release, on the other hand, are released from Bureau custody, most often to supervision by the U.S. Probation Office.

- b. Is it BOP's position that COVID-19 vulnerability can never constitute "extraordinary and compelling" reasons warranting compassionate release?
 - i. If so, please explain how that position is tenable.
 - ii. If not, please explain why BOP has not modified its guidance accordingly.

Response: It is not the Bureau's position that COVID-19 vulnerability can never constitute "extraordinary and compelling" reasons warranting compassionate release. Although the formal policy statement was not specifically amended, guidance was sent out the field to have Reduction in Sentence (RIS) requests under existing criteria relating to illness, debilitation, and age to be evaluated in the context of COVID-19

² See, e.g., *United States v. Mollica*, 14-cr-329, 2020 WL 1914956, at *4 (N.D. Ala. Apr. 20, 2020); *United States v. Goldberg*, 12-cr-180, 2020 WL 1853298, at *4 (D.D.C. Apr. 13, 2020); *Riley v. United States*, 19-cr-1522, 2020 WL 1819838, at *8 (W.D. Wash. Apr. 10, 2020); *United States v. Brummett*, 07-cr-103, 2020 WL 1492763, at *3 (E.D. Ky. Mar. 27, 2020); *United States v. Garcia*, 5-cr-40098, 2020 WL 2039227 (C.D. Ill. Apr. 28, 2020); *Bradley v. United States*, 10-cr-0191, 2020 WL 2772077 (S.D. Ala. May 28, 2020).

vulnerabilities, while also evaluating whether the inmate would be appropriate for home confinement.

Once an inmate makes a motion to the sentencing court, the position of the government in response to that motion is determined by the U.S. Attorney's Office. The Executive Office for U.S. Attorneys (EOUSA) issued guidance in July 2020 that stated under the criteria of the U.S. Sentencing Guidelines, vulnerability to COVID-19 based on CDC guidance is an extraordinary and compelling circumstance alone, but the U.S. Attorneys should then argue as to whether or not a release would be appropriate given offense history, risk of recidivism, release plans, and other factors.

Recently EOUSA updated its guidance again, advising that the 30-day exhaustion period is not jurisdictional as previously argued, but can be waived by U.S. Attorney's Offices for equitable reasons.

As noted above, RIS requests are ultimately approved or denied by the sentencing court. The litigation positions of DOJ allows courts to consider the merits of these cases as appropriate. The Bureau continues to review RIS requests in the context of the pandemic, while also using home confinement and an expeditious mechanism to protect vulnerable offenders and reduce its population.

5. Since the start of the pandemic, how many compassionate release petitions has BOP received?

a. How many has it granted?

Response: From March 1, 2020, to December 31, 2020, the Bureau's Director approved 27 requests for support of compassionate release.

b. How many has it denied?

Response: From March 1, 2020, to December 31, 2020, Bureau wardens denied 24,374 compassionate release requests and Bureau headquarters denied 200 compassionate release requests.

c. How many has it taken no action on?

Response: As of February 11, 2021, with regard to requests received between March 1, 2020 and February 11, 2021, 2,769 compassionate release requests remain open at various stages of review. Specifically, 2,743 of these requests remain under review at the institution level, and 26 remain under review at headquarters.

6. I understand that some courts have held that if BOP denies a petition for compassionate release within the 30-day window (even with a boilerplate denial), then the inmate is required to fully exhaust remedies within BOP before they can petition the court—a process that takes longer than 30 days. Please provide information about how frequently BOP denies petitions within the 30 days, the steps required to fully exhaust remedies within BOP, and the length of time that it generally takes to fully exhaust remedies.

Response: With regard to how frequently the Bureau denies compassionate release requests within 30 days, From March 1, 2020, to December 31, 2020, Bureau Wardens received 27,407 compassionate release requests. Of the 27,407 requests, Wardens denied 19,518 requests within 30 days and headquarters denied 39 requests within 30 days of the date the warden received the request.

The Bureau's administrative remedy procedures are detailed at 28 C.F.R. §§ 542.10 – 542.19, and in Program Statement 1330.18, Administrative Remedy Program.

Time frames for responses to administrative remedies are provided in 28 C.F.R. §§ 542.10 – 542.19, and in Program Statement 1330.18, Administrative Remedy Program.

7. I appreciate Dr. Jeffrey Allen's testimony that BOP has been expanding its testing capabilities and created criteria based on the availability of testing resources. I also appreciate that BOP will now be testing all new inmates and processing them through quarantine sites. I understand, however, that BOP is "not currently recommending that all inmates be tested unless those supplies are available," notwithstanding Dr. Scott Allen's testimony that aggressive, universal testing is needed to control and identify possible outbreaks.

- a. What is BOP's current testing capacity per day?

Response: The Bureau continues to strive to maximize testing capabilities throughout our institutions. We have obtained a national contract with a commercial lab to perform high volume testing for inmates throughout our institutions. We have also secured 250 Abbott ID NOW testing machines through the Department of Health and Human Services (HHS), as well as up to 10,000 test kits on a weekly basis.

- b. Has BOP set targets for testing capacity? If so, please specify.

Response: All institutions have access to the national contract commercial lab testing for high volume inmate testing needs. All institutions now have Abbott ID NOW testing machines and test medium.

- c. In which facilities has BOP concluded that comprehensive testing is needed? Please specify.

Response: Please see response below.

- d. What are the current bottlenecks to expanding testing further? Please comment on whether each of the following are bottlenecks: funding, availability of testing kits or devices, lab capacity, testing supplies such as swabs or reagents, or logistical challenges.

Response: The most significant hurdles are time and staffing. The staffing needs required to perform testing as well as oversee daily symptom checks, temperature checks, and re-testing of all inmates in quarantine and isolation are significant when added to an already demanding correctional health and public health workload for the existing health services delivery system. On average, Abbott ID NOW tests take 10-15 minutes per sample and require 2 staff members to efficiently obtain and run samples per machine. Even with large volume testing through the commercial labs, it takes significant staff resources to coordinate, perform, and track mass testing in a manner that utilizes appropriate social distancing and necessary infection prevention measures. Mass testing often involved multiple tests (serial testing) for many inmates. The time required for mass testing samples to be run and resulted are sub-optimal as Bureau samples are considered Priority 2 level by the CDC. The Bureau has obtained some additional staffing resources at certain institutions to oversee quarantine and isolation units through contracts, internal deployments, temporary duty requests thorough HHS, and assistance from the Ohio National Guard (one institution).

- e. Insofar as funding limits available testing capacity:
 - i. How much funding would be required to comprehensively test the inmate population?
 - ii. What about the inmate population as well as staff?

Response: The Bureau continues to implement a testing strategy consistent with CDC guidance for correctional institutions, and has significant testing resources nationwide. We are expanding testing to almost every situation other than universal testing of all inmates at institutions without COVID-19. We have implemented a test in / test out strategy for quarantine which is done for all intakes, exposures, and transfers/release from custody, as well as a test-in strategy for isolation.

When mass testing is not done at institutions without a COVID-19 case, institutions are encouraged to do more limited testing of inmates with risk factors, or those who interact with large numbers of inmates because of their job, e.g., food service workers.

- 8. A Manhattan federal judge in an April 19 decision criticized BOP's institution of a "14-day quarantine" in BOP facilities once an inmate has been determined to be released, describing it as "Kafkaesque" and "neither a quarantine nor limited to 14 days." The Attorney General's April 3 memo noted that individuals granted home confinement could

serve that 14-day quarantine “in appropriate cases subject to your case-by-case discretion, in the residence to which the inmate is being transferred.”

- a. The BOP reported to the judge that in FCI Butner at the time, contrary to the Attorney General’s memo, BOP was *not* exercising case-by-case discretion to allow individuals to serve the 14-day quarantine at home but was instead as a rule requiring it to be served within the facility. Please provide information regarding the extent to which BOP continues to require these 14-day quarantines to be served in facilities or is now exercising the case-by-case discretion that the Attorney General contemplated.

Response: With limited exceptions, the Bureau continues to quarantine all inmates for 14 days prior to their release to a RRC or to home confinement.

- b. Please provide information on the proportion of individuals being granted home confinement today who are allowed to serve the 14-day quarantine at home versus those who are required to serve it in the facilities and how that proportion has changed over time.

Response: With limited exception, all inmates are quarantined for 14-days prior to release to crisis furlough, transfer to home confinement or RRC, or released directly to the community. Those inmates released on crisis furlough, while pending transfer to home confinement or RRC, were instructed to self-quarantine during the crisis furlough. The only exceptions to the 14-day quarantine requirement were those inmates who have been granted immediate release by the court and were not already under quarantine. Inmates that were immediately released were instructed to self-quarantine at home for 14-days.

- c. Insofar as BOP continues to have some individuals serve the 14-day quarantine in BOP facilities, please set forth the policies limiting the interactions of the group under “quarantine” with individuals outside the group.
 - i. Are there any circumstances where new inmates can be added to the group after the 14-day period starts?

Response: Please refer to the provided Bureau quarantine and isolation guidance.

- ii. Are there any times of the day (e.g., exercise, showers, meals) where individuals in the group being quarantined are exposed to inmates outside the group?

Response: Please refer to the provided Bureau quarantine and isolation guidance.

- iii. How does BOP address the issue of staff exposing the group and thereby defeating the purpose of the “quarantine”?

Response: Please refer to the provided Bureau quarantine and isolation guidance.

- d. Does BOP engage in “cohorting” when positive or suspected cases are identified?

- i. Centers for Disease Control and Prevention (CDC) guidance specifies that cohorting is to be used only as a “last resort.” What alternatives does BOP consider before use of cohorting?
- ii. Please explain how, if at all, BOP’s cohorting procedures differ from those of the 14-day quarantine upon release discussed above.

Response: Isolation is used to separate inmates who are sick from quarantined or general population inmates. Inmates presenting with symptoms of COVID-19-like illness (e.g., fever, cough, shortness of breath) or who test positive, are placed in designated isolation housing. When cohorting is used, individuals are educated to use social distancing when possible. Depending upon the number of individuals and available space, housing units can be used for isolation in this order of precedence as determined by the CDC Guidance:

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully.
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door.
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells.
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Inmates who are placed in isolation are not housed with inmates who are placed in quarantine.

9. Please provide information on the availability of telework for suitable administrative or other staff at BOP.

Response: Policy permits non-institution staff who are not required to perform face-to-face duties to telework between one and three days per week. Additionally, in response to the pandemic, maximum telework has been offered to non-institution staff who are able to accomplish their work remotely.

10. Please provide information on the availability of paid sick leave for BOP employees.

Response: Paid sick leave is available for all staff per Office of Personnel Management guidelines. Staff earn four hours of sick leave per pay period and there is no limit to the number of hours that may be carried over from one year to the next.

11. Please provide information about compliance reviews that BOP has conducted to ensure facilities are following CDC and BOP guidance relating to COVID-19.

a. Please summarize the key findings and deficiency areas.

Response: See response below.

b. Please summarize any remedial actions taken.

Response: CDC and local health departments have provided onsite and telephonic consultation at several facilities addressing areas to include additional improvements in isolation housing, adding hand sanitizer stations, performance of symptom and temperature checks for asymptomatic individuals, modifications to laundry operations, modifications to food service operations, and increased staff and inmate education. Recommendations were used to further improve both existing operations at those facilities as well as incorporated into Bureau-wide guidance.

Consistent with the Bureau's Program Statement on Quality Improvement, the Bureau conducts a mortality review on every inmate death to include deaths by natural causes or other circumstances. This systemic process of review includes evaluating the healthcare delivery system, evaluating strengths and weaknesses, and conducting corrective action when necessary.

Additionally, on August 10, 2020, the Bureau's Program Review Division began conducting COVID-19 Compliance Review Teams (CCRT) reviews at Bureau facilities. The purpose of these reviews is to evaluate compliance, monitor response, and develop further mitigation strategies to the COVID-19 pandemic. Checklists were created to conduct the reviews, which combine CDC and Bureau guidance and directives related to the management of COVID-19 and mitigation of disease transmission.

We will continue conducting CCRT reviews throughout the pandemic, ensuring every Bureau facility is reviewed. Currently, reviews have been completed at 95% of our facilities. The Bureau collected and published *Recommendations & Best Practices for Preventing/Reducing Transmission COVID-19* as a result of these reviews and this information has been shared with all institutions. Issues and concerns noted in the CCRT reviews are further reviewed and addressed with the Wardens, allowing them to quickly take corrective action.

Senator Richard Blumenthal

1. On May 12, 2020, the District Court for the District of Connecticut issued a temporary restraining order (TRO) instructing FCI Danbury to “adopt a process for evaluating inmates with COVID-19 risk factors for home confinement . . . that is both far more accelerated and more clearly focused on the critical issues of inmate and public safety.” In its TRO, the court stated that the Warden at FCI Danbury indicated that “BOP is prioritizing . . . those inmates who either (1) have served 50% or more of their sentence, or (2) have 18 months or less remaining in their sentence or have served 25% or more of their sentence.” The court also pointed to a Danbury Inmate Bulletin dated April 21 that listed eight criteria that inmates must purportedly meet to be eligible for home confinement, including that the “[i]nmate must have served at least 50% of their sentence.”³

When I asked you about this time served requirement, you stated BOP instituted the policy that an inmate must have served at least 50 percent of their sentence to be eligible for home confinement transfer “in order to triage” because there were “about 27,000 inmates that met . . . at least one COVID-19 risk factor.”

- a. When did BOP begin to “triage” inmates for home confinement eligibility due to COVID-19?

Response: The Attorney General Memorandum was signed on March 26, 2020. The Bureau provided a roster of priority inmates and guidance to the field on March 28, 2020.

- i. Please list the factors or criteria by which BOP “triage[d]” inmates. For each factor or criterion, please state whether it is consistent with the CARES Act⁴ or the policies set forth in the memoranda issued by the Attorney General on March 26⁵ and April 3.⁶ If a factor or criterion is not consistent with the CARES Act or these memoranda, please explain why BOP considered it in BOP’s review of inmates eligible for home confinement.

Response: Initial priority review was based on the existence of a COVID-19 risk factor, a PATTERN Risk Level of Minimum, and Low or Minimum Security level. Additionally, inmates convicted of violent offenses, sex offenders, criminal aliens, and inmates with detainers or significant misconduct were excluded. After initial triage, additional clarifying guidance was provided under the authority of the CARES Act and by DOJ, which increased the number of people eligible by lowering

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

⁴ Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat 281.

⁵ Memorandum from Attorney General Barr on “Prioritization of Home Confinement As Appropriate in Response to COVID-19-19 Pandemic” to Bureau of Prisons Director Carvajal (March 26, 2020), <https://www.justice.gov/file/1262731/download>.

⁶ Memorandum from Attorney General Barr on “Increasing Use of Home Confinement at Institutions Most Affected by COVID-19-19” to Bureau of Prisons Director Carvajal (April 3, 2020), <https://www.justice.gov/file/1266661/download>.

the percentage of time served, the age of consideration to 50 years old, and inmates with minor misconduct were included for review.

- ii. Is BOP still “triag[ing]” inmates? If not, please state when BOP stopped “triag[ing]” and list the factors or criteria by which BOP has reviewed inmates for home confinement eligibility since then. For each factor or criterion, please state whether it is consistent with the CARES Act or the policies set forth in the memoranda issued by the Attorney General on March 26 and April 3. If a factor or criterion is not consistent with the CARES Act or these memoranda, please explain why BOP considered it in BOP’s review of inmates eligible for home confinement.

Response: Please see above. The Bureau continues to review all inmates within our population under the criteria outlined in the Attorney General Memoranda and clarifying guidance provided by DOJ.

- b. The TRO specifically ordered FCI Danbury to eliminate “all requirements that [an] inmate [has] served some portion of his or her sentence to be eligible for placement on home confinement.”

- i. Has FCI Danbury eliminated “all requirements that [an] inmate [has] served some portion of his or her sentence to be eligible for placement on home confinement” per the TRO? If not, please explain why not.

Response: FCI Danbury has complied with the TRO's home confinement criteria when conducting the inmate home confinement placement reviews.

- ii. Has BOP eliminated this requirement at other correctional facilities? If not, please explain why not.

Response: The Bureau still considers percentage of a sentence served as a factor when conducting reviews; however, inmates are not automatically excluded if they have not served a certain percentage of their sentence; rather, they are not prioritized for early consideration for home confinement.

- 2. With respect to FCI Danbury as of June 9, 2020 and as of the date on which the answers to these Questions for the Record are submitted to the Senate Committee on the Judiciary:

- a. Please state the current inmate population.

Response: As of January 28, 2021, FCI Danbury’s total population was 798.

b. Please state the total number of inmates who have been identified as:

i. Medically vulnerable pursuant to the TRO cited in Question 1.

Response: 313 as of June 18, 2020.

ii. Potentially eligible for home confinement release under 18 U.S.C. 3624(c)(2) and 34 U.S.C. 60541 notwithstanding enactment of the CARES Act (P.L. 116-136) and the Attorney General's April 3 memorandum.

Response: 68 as of June 18, 2020.

c. Please state the total number of inmates of those who have been identified as medically vulnerable pursuant to the TRO [Question 2(b)(i)] who have been assessed for eligibility for home confinement release.

Response: 313 as of June 18, 2020.

d. Please state the total number of inmates of those who have been assessed for eligibility for home confinement release [Question 2(c)] who were determined to be eligible for home confinement release.

As of June 18, 2020, 39 inmates were approved for home confinement, but only 35 were actually transferred. Two released via Compassionate Release, one released via Good Conduct Time prior to receiving a home confinement date, and one transferred to an RRC.

e. Please state the total number of inmates of those who were determined to be eligible for home confinement release [Question 2(d)] who have been approved for home confinement release. For those inmates who were not approved, please explain why.

Response: As of June 18, 2020, 39 inmates were approved for home confinement, but only 35 were actually transferred, as noted in 2d above.

Reasons for denial are as follows: Current sex offense (6); no viable/approved release plan (3); categorized as a high risk of recidivism under PATTERN (2); denied due to distance of residence which would impede the ability to appropriately monitor the inmate (1); current violent offenses (2); denied by home confinement committee after a review of the totality of the case and evaluation factors (4).

f. Please state the total number of inmates of those who have been approved for home confinement release [Question 2(e)] who have:

i. Been transferred to home confinement.

Response: 35 as of June 18, 2020.

- ii. Not yet been transferred to home confinement.

Response: 0 as of June 18, 2020.

- a) For those inmates who have not yet been transferred to home confinement, please explain why.

Response: Not applicable.

- b) When does BOP expect that all inmates at FCI Danbury who have been identified as medically vulnerable pursuant to the TRO, assessed for eligibility for home confinement release, determined to be eligible for home confinement release, approved for home confinement release, but not yet transferred to home confinement, will be transferred to home confinement?

All inmates found eligible on the medically vulnerable list were approved and released to an RRC or home confinement, or released through another method as outlined above. The Bureau continues to monitor inmates to see if they are suitable for home confinement as the inmates or CDC factors change.

- g. To the extent the information is available, for each of the above questions, please provide the following demographic data: the age of the inmates, the race of the inmates, and the gender of the inmates.

Response: Of the 68 available referrals, the available demographic data is as follows:

Age

24 or Less: 0
25 – 35: 9
36 – 54: 46
55 and Over: 13

Race

White: 41
Black: 25
Asian: 2

Gender

Male: 34
Female: 34

3. In your written testimony, you stated, “As the pandemic grew more widespread, the Bureau began aggressively screening the inmate population for inmates who were appropriate for transfer to [Residential Reentry Centers] or Home Confinement for service of the remainder of their sentences.” You also noted, “The Attorney General has issued guidance as to which inmates should be considered for home confinement,” and further explained, “Staff are conducting individualized assessments to ensure inmates are appropriate for community placement both from a public safety perspective and given their own specific needs and circumstances.”
- a. Does such an “individualized assessment” involve a medical examination for COVID-19 risk factors, as established by the Centers for Disease Control and Prevention (CDC)?
- i. If no, how does that comport with the Attorney General’s May 26 memorandum, which specifically directed BOP to consider the vulnerability of inmates to COVID-19, in accordance with CDC guidelines, when determining whether to grant inmates for home confinement release?

Response: See response below.

- ii. If so, can you confirm whether the “[s]taff . . . conducting [these] individualized assessments,” in all BOP correctional facilities, have the necessary medical or health care training to identify and recognize these COVID-19 risk factors?

If yes:

- a) Please describe that medical examination and the “guidance” under which “inmates should be considered for home confinement.”

Response: The CDC has identified several medical factors that increase an individual’s risk for more severe disease due to COVID-19. Within those medical factors, they also list specific medical conditions and/or parameters of severity. The Bureau uses those factors and conditions in individually identifying the inmate population that have at least one of the CDC’s criteria. In cases where the inmate’s condition(s) are not clear, further review is performed by nursing, Advanced Practice Providers and/ or physicians.

- b) Please list the criteria an inmate must meet to be referred for home confinement. If an inmate does not meet the requisite criteria to be referred to home confinement, is there a process by which that inmate, at a later time, can undergo a subsequent assessment, or is

the initial determination not to refer an inmate for home confinement a complete bar to home confinement?

Response: Prior to the COVID-19 National Emergency, the Bureau used the standards in Program Statement 7320.01 Home Confinement and Operations Memorandum Home Confinement Under First Step Act to transfer inmates to home confinement. With the National Emergency, the Bureau modified the use of home confinement based on the CARES Act and Attorney General's guidance Memoranda. Institution staff will continually review inmates for potential eligibility due to changes in time remaining to serve, age, health status, incident report history, viable release plans, resolution of pending charges or detainers and PATTERN Risk level and Security level decreases.

- c) How does BOP intend to conduct these assessments for release to home confinement as the COVID-19 pandemic continues to evolve both in and outside of correctional facilities? Please explain what additional or different criteria BOP will consider in conducting these assessments.

Response: The Bureau will continue to review inmates for potential eligible cases consistent with routine release processing and community consideration. Additionally, institution staff will continually review inmates for potential eligibility due to changes in time remaining to serve, age, health status, incident report history, viable release plans, resolution of pending charges or detainers and PATTERN Risk level and Security level decreases.

If no:

- d) Which "[s]taff," then, is "conducting [these] individualized assessments" and what qualifies them to conduct medical examinations for COVID-19 risk factors? At what point, if any, does a trained medical or health care professional examine an inmate for these risk factors? If not, please explain why not.

Response: Not applicable. See above response.

- e) How can BOP be confident that any one inmate "should be considered for home confinement" if the staff making that determination lacks the requisite medical or health care training to identify and recognize COVID-19 risk factors?

Response: Not applicable. See above response.

- f) Is it possible that inmates have been denied consideration for home confinement on the basis of an incorrect or inaccurate assessment by untrained staff? Regardless, is there a process by which an inmate who has been so denied can undergo a subsequent assessment for home confinement release, or is the initial determination not to refer an inmate for home confinement a complete bar to home confinement?

Response: Not applicable. See above response. Note also that inmates may seek review of any staff decision using the Administrative Remedy Process.

4. In your written testimony, you also stated that BOP cannot “release inmates [to home confinement] who would be worse off outside Bureau facilities than inside.” You then list certain examples of inmate “who would be worse off,” including “those whose medical conditions could not be adequately cared for by the health systems that are themselves overwhelmed by the response to COVID-19 infections in the general community” and inmates “who do not have safe housing” or “housing that is not subject to appropriate safeguards for home confinement.”

- a. Please identify who makes the determination that an inmate would be “worse off” outside a BOP facility under home confinement release compared to remaining “inside”? Please state their medical or health care qualifications.

Response: Release planning for inmates with significant medical issues typically involves input from the healthcare provider team, to include nursing, Advanced Practice Providers, and/or physicians along with the case social worker, as well as any ancillary services such as Physical/ Occupational Therapy, and wound care services, among others.

- b. Please describe the basis for making a determination that an inmate “would be worse off outside Bureau facilities than inside”? Are the aforementioned examples (e.g., “those whose medical conditions could not be adequately cared for by the health systems that are themselves overwhelmed by the response to COVID-19 infections in the general community” and inmates “who do not have safe housing” or “housing that is not subject to appropriate safeguards for home confinement”) that you included in your written testimony the only instances BOP has determined to be “worse off outside Bureau facilities than inside”? If not, please describe the other instances in which BOP has determined an inmate to be “worse off outside Bureau facilities than inside.”

Response: The aforementioned healthcare team will review the inmate patient’s medical needs in relation to what the proposed home confinement setting is able to provide. Considerations in this process include handicap accessibility, availability of assistance for Activities of Daily Living (e.g., family member vs. home health aide), access to appropriate transportation to medical appointments

and services, and availability of specialty medical services (e.g., dialysis, wound care). Considerations specific to COVID-19 also include whether there are other individuals within the proposed setting who are infected or are themselves at high risk of severe disease due to COVID-19, and whether social distancing within that setting is practicable, if necessary.

5. Since your testimony on June 2, 2020, there have been reports of unidentified BOP officers at several peaceful protests in response to the death of George Floyd, including in Washington, D.C.⁷

Following this reporting, a BOP spokesperson released a statement confirming that BOP officers had been dispatched around the country. The statement read: “The Bureau of Prisons (BOP) has specialized Crisis Management Teams (CMTs), including Special Operations Response Teams, which are highly trained tactical units capable of responding to prison disturbances, and providing assistance to other law enforcement agencies during emergencies. . . . The BOP’s CMTs also include Disturbance Control Teams, that specialize in crowd control scenarios. . . . Per the request of the Attorney General, the BOP has dispatched teams to Miami, Florida, and Washington, D.C.”⁸

- a. Please describe the following:
 - i. The regular operational role and responsibilities of these “specialized Crisis Management Teams” in BOP facilities.

Response: While each crisis situation has unique features, most contain common features that aid staff in managing these situations effectively. To prepare for any possible situation, the Bureau employs a multi-pronged strategy for responding, consisting of:

- Planning Section Team (PST)
- Crisis Negotiation Team (CNT)
- Crisis Support Team (CST)
- Disturbance Control Team (DCT)
- Special Operations Response Teams (SORT)
- Evidence Recovery Team (ERT).

In the case of the national response, DCT and SORT personnel were deployed.

⁷ Zolan Kanno-Youngs, *Unidentified Federal Police Prompt Fears Amid Protests in Washington*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/2020/06/04/us/politics/unidentified-police-protests.html>.

⁸ Luke Barr & Quinn Owen, *As Washington DC militarizes amid George Floyd protests, some experts say it's gone too far*, ABC NEWS (June 4, 2020), <https://abcnews.go.com/Politics/trump-deploys-federal-police-crack-protests/story?id=71050111>.

- ii. The role and responsibilities these “specialized Crisis Management Teams” have, or had, since being dispatched to “assist . . . other law enforcement agencies” in response to the aforementioned protests.

Response: The Bureau emergency response teams performed crowd control and protection duties as assigned by the appropriate law enforcement authority while deployed to Washington, D.C. These duties included the protection of federal property.

- b. Please describe the training these “highly trained tactical units capable of responding to prison disturbances” have undergone. In addition:
 - i. Please explain the extent to which these “highly trained tactical units” have been trained to respond non-prison “disturbances” involving the general public outside of BOP facilities, including whether these “units” were trained on the local policies and rules of the jurisdiction to which they had been or are dispatched. If not, please explain why not.
 - ii. Please explain the extent to which these “highly trained tactical units” have undergone any training related to engaging with the general public outside BOP facilities, including whether these “units” were trained on the local policies and rules of the jurisdiction to which they had been or are dispatched. If not, please explain why not.

Response: DCTs receive at least 40 hours of training annually. Eight hours are for completion of certification standards. This training is conducted in quarterly segments. The following training is mandatory for DCT. The training hours are administered equitably during the training year to fulfill the training requirements:

- Use of Force
- Use of Less Than Lethal Munitions
- Formations/Planning

Twelve hours of related training (discretion of institution). This portion of training focuses on use of the riot baton, defensive tactics, deployment of security equipment in tactical scenarios, team communication procedures, and review and walk-through of breach plans.

The SORT mission is specifically designed to equip each designated institution with a flexible and effective response to unconventional and high-risk situations. There are emergency situations that require the SORT and DCT to work in consolidated efforts to resolve incidents, thus requiring the teams to rely on each other’s skills. Annually, individual team members are required to meet qualification guidelines issued by Bureau headquarters for overall team qualification. Guidelines for

completing team/individual annual qualifications are distributed annually to each region by the Office of Emergency Preparedness by November 15 for the following calendar year. Teams must certify annually and no longer than 14 months from the date of the previous certification.

As early as 1992, the Bureau has responded to national emergencies or events involving the general public (e.g., Los Angeles Civil Disturbances; World Trade Center Protests in Seattle; 2002 Winter Olympics in Salt Lake City; Hurricanes Katrina and Harvey; and U.S. territories of the South Pacific for the 2019 typhoon). During deployment, the Bureau response teams fall under the jurisdiction of the Bureau of Alcohol, Tobacco, Firearms, and Explosives; Federal Bureau of Investigation; and U.S. Marshals.

- c. Please list all the locations to which BOP officers had been, or are currently, dispatched in response to the aforementioned protests. For each location, please state whether the relevant state or local authority requested that BOP dispatch officers to their jurisdiction. If BOP officers were not requested, please explain why BOP officers were, or have been, nevertheless dispatched.

Response: The Bureau response teams were deployed to Washington, D.C.; Miami, Florida; and Portland, Oregon. The teams were deployed at the behest of the Attorney General to protect federal office and judicial complexes.

6. You have since stated, in response to reporting that BOP officers so dispatched were refusing to identify themselves, “I’m not aware of any specific Bureau of Prisons personnel being told not to identify themselves. What I attribute that to is probably the fact that we normally operate within the confines of our institution and we don’t need to identify ourselves. Most of our identification is institution specific and probably wouldn’t mean a whole lot to people in D.C. . . . I assure you that no one was specifically told, in my knowledge, not to identify themselves.”⁹

- a. Please describe how a BOP officer who has been, or is currently, dispatched outside “the confines of [BOP] institution[s]” but is not visibly identifiable as BOP, will be held accountable if he or she is alleged to have used excessive force or taken otherwise improper action against the general public?

Response: Bureau employees are required to abide by the Standards of Employee Conduct, which include provisions for reporting any use of excessive force or any other type of misconduct by a fellow employee during the commission of their official duties.

⁹ Luke Barr & Quinn Owen, *As Washington DC militarizes amid George Floyd protests, some experts say it's gone too far*, ABC NEWS (June 4, 2020), <https://abcnews.go.com/Politics/trump-deploys-federal-police-crack-protests/story?id=71050111>.

- b. Please state whether BOP will, with respect to BOP officers who are currently dispatched outside “the confines of [BOP] institution[s]” or will be so dispatched, require them to visibly display identifying information in a clearly visible fashion, including that they are employed by BOP, their last name, and their badge number.

Response: Prior to the deployment, the agency did not require standardized identifying insignias on the uniforms of Bureau emergency response teams as these staff generally operate within the federal prisons where staff and inmates clearly know their affiliation. The Bureau rapidly procured identifying insignia and distributed it to all deployed personnel as a result of the concerns being raised. There are no statutes requiring Federal Law Enforcement Officers to display their last name or badge number and depending on the context, doing so may present a life safety risk (See Title II of the FSA “Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act of 2018” which was created in honor of murdered Bureau correctional officer Albarati).

- c. Please explain what specific steps BOP has taken, is taking, or will take to ensure that non-BOP persons do not infiltrate or otherwise impersonate the BOP officers who are currently or will be so dispatched. What action, if any, will BOP take if it is determined that non-BOP persons have infiltrated or otherwise impersonated BOP officers who have been, are currently, or will be so dispatched?

Response: Bureau team members are well-known and recognizable by their team leaders and team peers as they are co-workers and train extensively together. Specific deployments, such as the Washington, D.C. deployment, are tracked using the Incident Command System so the presence of Bureau staff at assigned locations is known and overseen by Incident Commanders.

- 7. In response to the aforementioned protests, CDC Director Robert R. Redfield has said “that demonstrators in regions that have not yet controlled the [COVID-19] outbreak should ‘highly consider’ getting tested.”¹⁰

- a. Please state whether the BOP officers who have been, or are currently, dispatched outside “the confines of [BOP] institution[s]” been tested for COVID-19. If so, please state whether any of the officers so dispatched have tested positive for COVID-19. If an officer has tested positive after being dispatched outside “the confines of [BOP] institution[s],” please explain the steps BOP has taken or will take to ensure that these officers have not and will not introduce COVID-19 into the BOP institutions in which they work when not so dispatched.

Response: For the Bureau emergency response teams deployed in response to the protests, voluntary testing for COVID-19 was offered to all dispatched and

¹⁰ Lena H. Sun, *CDC director says protesters should consider getting tested for coronavirus*, WASH. POST (June 4, 2020), <https://www.washingtonpost.com/health/2020/06/04/cdc-director-says-protesters-should-consider-getting-tested-COVID-19-19/>.

supporting Bureau staff. Bureau staff were also provided a letter signifying their involvement with the protest response so upon return to their normal duty locations, they could obtain additional testing through available community resources.

All deployed staff members were issued PPE for travel home and provided instructions for obtaining testing with a local medical provider in their respective communities upon return. Emphasis was placed on doing so not only for their health but those of their family members.

Moreover, all deployed staff were placed on 14 days of quarantine status and were instructed not to return to the secure confines of the institution during the quarantine period.

8. Please describe what effect, if any, the dispatch of these BOP officers outside “the confines of [BOP] institution[s]” have had on BOP’s overall response to COVID-19 in BOP institutions.

Response: Institutions were on modified operations due to the pandemic and inmates were sheltered in place with limited movement. As a result of the civil unrest and intelligence indicating credible threats against law enforcement, Regional Directors were given the authority to secure their institutions. This security measure was of limited duration and ended as the teams were being returned to their field locations. The Bureau was not adversely impacted by these deployments.

Senator Mazie K. Hirono

1. The COVID-19 pandemic has highlighted the importance of effective reentry services and support. Last September, Hawaii lost its only RRC, Mahoney Hale, which had been run by a nonprofit for 29 years. At the hearing, I asked you about the Federal Bureau of Prisons’ (BOP) efforts to reopen a residential reentry center (RRC) in Hawaii. I appreciate that you committed to providing my office regular updates about BOP’s efforts to reopen an RRC in Hawaii.

When I asked your predecessor about this at a hearing in November 2019, she said BOP was working to reopen an RRC in Hawaii and expected to do so soon – within the next several months or so. Yet, BOP staff has informed my office of at least five extensions of the solicitation, including one before the pandemic. BOP’s inaction on this matter has prolonged individuals’ time in BOP prisons because there is no RRC in Hawaii.

- a. What steps has BOP taken before and during the pandemic to ensure that a residential reentry center will be available in Hawaii?

Response: The Bureau has posted five solicitations seeking to procure RRC services in Hawaii. No proposals were received to the first four solicitations. The Bureau has worked aggressively with contractors to encourage them to consider

siting an RRC in Hawaii. On November 19, 2019 the fifth solicitation was posted which allows contractors the ability to propose RRC services and/or Day Reporting Center (DRC) services (electronic monitoring and programming services for inmates on home confinement). At this time the solicitation is active and currently open. The Bureau worked closely with the community and our RRC providers and we are very optimistic that this solicitation will result in a proposal being submitted.

- b. Although your predecessor committed to provide regular updates to my office on the progress of reopening an RRC in Hawaii, my office usually gets information only when asked. Will your staff proactively provide updates on a monthly basis going forward?

Response: Regular updates are provided to your Senior Counsel by the Bureau's Office of Legislative Affairs. They generally occur on about a monthly basis or when new information is available.

- c. I have a timeline that BOP shared on the RRC in Hawaii, but it would be helpful for me if you can provide a timeline from January 2019 that is written in non-technical terms so anyone can understand it. For the extensions, I would like the date and additional time granted for each one.

Response: Below is the timeline for the five solicitations that have been posted for RRC/DRC Services located within the boundaries of the Island of Oahu, Hawaii.

April 26, 2018 – Solicitation 15BRRC18R00000071 was posted and closed on June 25, 2018, no offers received. The solicitation was structured as a 10 year contract in which the Bureau would pay a daily per diem per inmate a minimum guarantee of 22 beds up to a maximum of 51 beds in-house and 10 home confinement placements.

September 10, 2018 – Solicitation 15BRRC18R00000119 was posted and closed on November 08, 2018, no offers received. The solicitation was structured as a five (5) year contract in which the Bureau would pay a daily per diem per inmate a minimum guarantee of 22 beds up to a maximum of 64 beds in-house and six (6) home confinement placements.

April 22, 2019 – Solicitation 15BRRC19R00000201 was posted and closed on June 19, 2019, no offers received. The solicitation was structured as a five (5) year contract in which the Bureau would pay a flat monthly rate each month regardless of population up to 64 beds in-house and six (6) home confinement placements. This was an attempt by the Bureau to make solicitation more appealing for contractors.

September 3, 2019 – Solicitation 15BRRC19R00000253 was for Day Reporting Center services only (electronic monitoring and programing services for inmates on home confinement). The solicitation was structured for five (5) years and also included a fixed monthly amount for 30 placements on home confinement. The solicitation was cancelled on October 16, 2019 after further market research revealed the Bureau may have a potential contractor interested in providing RRC services.

November 19, 2019 – Solicitation 15BRRC20R00000270 was posted and was initially set to close on January 17, 2020. The solicitation is structured for 10 years and guarantees the potential contractor 53 beds in-house, 10 placements on home confinement and/or 23 placements under DRC. The contract is for a maximum of 70 beds in-house, 15 home confinement placements and/or a maximum of 30 placements under the DRC.

Extensions to Current Solicitation

January 7, 2020 – Amendment 1 was issued to extend the closing date from January 17, 2020 to March 4, 2020. This was done as a result of one or more potential offers requesting an extension.

February 28, 2020 – Amendment 2 was issued to extend the closing date from March 4, 2020 to March 18, 2020. This was done as a result of one or more potential offers requesting an extension.

March 13, 2020 – Amendment 3 was issued to extend the closing date from March 18, 2020 to April 3, 2020. This was done as a result of one or more potential offers requesting an extension.

March 27, 2020 – Amendment 4 was issued to extend the closing date from April 3, 2020 to May 22, 2020. This was done as a result of one or more potential offers requesting an extension.

May 22, 2020 – Amendment 5 was issued to extend the closing date from May 22, 2020 to July 24, 2020. This was done as a result of one or more potential offers requesting an extension.

July 22, 2020 – Amendment 6 was issued to extend the closing date from July 24, 2020 to October 2, 2020. This was done as a result of one or more potential offers requesting an extension.

September 23, 2020 – Amendment 7 was issued to extend the closing date from October 2, 2020 to January 8, 2021. This was done as a result of one or more potential offers requesting an extension.

January 6, 2021 – Amendment 8 was issued to extend the closing date from January 8, 2021 to April 9, 2021. This was done as a result of one or more potential offers requesting an extension.

- d. What is BOP's planned timeframe for reopening an RRC in Hawaii?

Response: A Hawaii-based RRC is a top priority for the Bureau. To provide an accurate timeframe, the Bureau first must receive a responsive proposal from a contractor. If the Bureau receives a proposal(s) by April 9, 2021 and it contains valid zoning, proper documentation, and meets the requirements outlined in the solicitation, then the goal would be to award within six (6) months. The solicitation allows the contractors a 120 day window once a contract is awarded to build and/or renovate and hire staff to become operational.

2. I have not yet received responses to my questions for the record from the last BOP oversight hearing on November 19, 2019. I had asked about the impact of Mahoney Hale's closure in Hawaii. I had also asked about your predecessor's prior testimony before the House Judiciary Committee in October 2019, where she stated that BOP "target[s] all of our eligible inmates to go out through a residential reentry program because we feel that's a good halfway step back for them."

- a. What percent of federal inmates who are released transition to the community through RRCs?

Response: 74%.

- b. Did any residents of Mahoney Hale return to federal prison when this RRC closed on September 30, 2019? If so, how many?

Response: Only one inmate was returned to FDC Honolulu. The inmate was approved by the United States Probation Office (USPO) for home confinement under the Federal Location Monitoring Program, however after testing positive for alcohol use the USPO rescinded the approval.

- c. To date, how many federal inmates scheduled to reenter the community in Hawaii have become eligible to transfer to an RRC, but have had to remain in prison without residential transitional services due to the closure of Mahoney Hale?

Response: The Bureau does not have the capability to produce that data, but as noted in the response to question (d) below, we can provide projected releases to Hawaii generally.

- d. Over the next five years, how many federal inmates are scheduled to reenter the community in Hawaii?

Response: We currently have data for the next three years projected as

follows:

Release between 12-02-2020 and 12-01-2021: 57

Release between 12-02-2021 and 12-01-2022: 48

Release between 12-01-2022 and 12-01-2023: 49

(We also note that the Bureau's public website displays historical data as to the number of inmates released per each state dating back to 1992:

https://www.bop.gov/about/statistics/statistics_inmate_releases.jsp).

- e. In the absence of an RRC in Hawaii, what transition services are currently made available to federal inmates who are ready to reenter the community in Hawaii?

Response: The Bureau is currently using the Federal Location Monitoring program through the USPO.

- 3. At the November 2019 BOP hearing, I asked your predecessor about whether BOP is following Congressional notification requirements when BOP makes significant changes to an RRC, including closures. She acknowledged that it is BOP's responsibility to make sure that Congress is aware of these changes to RRCs. As you are aware, once a residential reentry center closes, it is very difficult to reopen one. For this reason, when Congress provided FY2018 and FY2019 funding, the Senate Committee on Appropriations "require[ed] BOP to alert the Committee before adopting any significant change in policy or practice involving RRCs or other recidivism-reduction measures." For FY 2019, the Committee directed BOP "not to cancel or modify any existing contracts for RRCs if another BOP-contracted RRC facility does not exist within 100 miles of the existing RRC," and "[i]n instances where RRC contracts are expiring, the Committee direct[ed] BOP to take interim and emergency measures to prevent facility closures and the interruption of services, including by expediting solicitations and re-solicitations for existing services."

- a. Has BOP followed these Congressional notification requirements in every instance in which it has made significant changes to an RRC?

Response: Yes.

- b. When did BOP notify Congress that the only residential reentry center in Hawaii was closing?

Response: The Hawaii RRC contract was not canceled or modified, which would require Congressional notification. Instead, the Hawaii RRC contract expired and the contractor did not wish to extend or submit for a new contract. Since the RRC's closing in Hawaii, the Bureau has adopted the practice to notify, in instances not only when there are cancellations or modifications initiated by Bureau, but also in cases where the contractor has decided to discontinue providing services.

There is a current solicitation that is pending for an RRC in Hawaii.

- c. What “interim and emergency measures” had BOP taken to try and prevent the closure of Mahoney Hale and the interruption of services?

Response: The Bureau posted a solicitation almost 17 months prior to the expiration of the Mahoney Hale contract. The solicitation was posted on April 26, 2018 and closed June 25, 2018. No responses were received. A second solicitation was posted on September 10, 2018 and closed on November 8, 2018 and again, no responses were received. Bureau management staff visited Mahoney Hale in March, 2019 and the contractor indicated the owner of the building was in negotiations to sell the property. The Bureau posted a third solicitation for a firm-fixed price contract on April 22, 2019 and closed on June 19, 2019, and no responses were received. On May 20, 2019 the Bureau received a formal notice from T.J. Mahoney that they would not be submitting a proposal due to the building that housed the RRC having been sold by the owner to the City and County of Honolulu.

- d. When BOP seeks to open or maintain an RRC, what is the average number of solicitations BOP issues before it is able to successfully open or keep an RRC open?

Response: While this information is not tracked, typically only one solicitation is posted for currently operating RRCs. There have been times in which the Bureau has attempted to site a new RRC and, due to no proposals being received, the Bureau has resolicited for a second time.

- e. Over the past thirty years, in each instance when BOP has sought to open or maintain an RRC in Hawaii, how many solicitations did BOP need to issue before being able to award or renew a contract?

Response: While our automated records do not go back thirty years, based on the information we have available it appears that, prior to the current challenges with the Mahoney Hale solicitation, only one solicitation was ever posted in the past to renew the contract in Hawaii.

- f. What steps did BOP take to ensure that solicitations for an RRC in Hawaii accurately accounted for the unique circumstances in Hawaii, such as high staffing and property costs?

Response: After posting the first solicitation and receiving no responses, the Bureau attempted each time to make each subsequent solicitation more appealing to potential bidders. The second solicitation posted on September 10, 2018 was announced as an indefinite-delivery indefinite-quantity contract for a five-year period with a guaranteed minimum number of beds associated with each option year. The third solicitation posted on April 22, 2019 was a firm-fixed price

contract in which the Bureau was willing to pay a monthly fee for a set number of beds versus paying per bed per inmate. Although Hawaii is unique in its location, it is not unique in the challenges faced by many states and metropolitan areas regarding staffing, property costs, and zoning. The Bureau reviews each proposal and determines if the price is fair and reasonable based on these factors.

4. The residential reentry center in Hawaii that recently closed was run by a nonprofit that used a trauma-informed approach to providing transitional program and services. They acknowledged that up to 90 percent of its female residents reported a history of childhood sexual abuse, which may contribute to developing maladaptive coping behaviors. As BOP closes its residential reentry centers run by nonprofits, there is a concern that BOP will increasingly rely on for-profit companies to run RRCs.

- a. How many residential reentry centers closed in the last five years?

Response: Since 2016, the earliest date for which data is available, 32 contracts have been closed. Of the 32 contracts, 16 were closed in 2016 due to low utilization and realignment of resources and 16 contracts were closed at the contractor's request or due to poor performance. In most of these cases the Bureau continues to conduct market research to gather information for possible contracts in those areas. For example in Oklahoma, we were able to solicit and award a new contract that included two locations (Oklahoma City/Tulsa) where previously we only solicited for one location, Oklahoma City.

- b. How many of the current residential reentry centers are run by for-profit companies and how many are run by nonprofit organizations?

Response: The Bureau currently contracts with approximately 150 organizations for RRC services. Although the exact amount of non-profit and for profit contractors fluctuates frequently due to expiring contracts and new awards, typically about two-thirds of our contracts are operated by non-profit organizations.

- c. Five years ago, how many of the current residential reentry centers were run by for-profit companies and how many were run by nonprofit organizations?

Response: Historical data of this nature is not tracked in our database.

- d. What accountability mechanisms are in place to provide for oversight of RRCs?

Response: The Bureau has scheduled and unscheduled monitorings of each RRC facility, during which Bureau staff perform on-site inspections of the contractor's facility to evaluate performance. Contract size dictates the number of monitorings, however on average, RRCs are monitored three to four times a year.

5. In October 2019, Rep. Cicilline asked your predecessor about a problem of inmates who are eligible to be at residential reentry centers not being sent to these centers, but remaining in prison. She informed him that her understanding was that BOP tries to get inmates to residential reentry centers “as quickly as we can” and she agreed to take a look at this problem he identified.

What did BOP find with respect to this problem Rep. Cicilline identified and how has it been addressed?

Response: Subject-matter experts in the Bureau’s headquarters continue to evaluate RRC and home confinement needs nationwide. As such, since the passage of the FSA we have awarded 75 solicitations and have an additional 45 pending for a net increase of over 1,000 new available beds. Additional emphasis has been placed on ensuring that all eligible and appropriate inmates are transferred to a RRC in a manner that addresses their reentry needs based upon individualized assessments of their need and available resources. We did not find that any systematic issues exist with the transfer of appropriate inmates to RRCs or home confinement commensurate with their identified needs.

6. On April 28, Ms. Andrea Circle Bear died from COVID-19, while in BOP custody. This was just four weeks after she gave birth to her daughter. She was one of 68 people in BOP custody who have died due to COVID-19. At the hearing, you were asked about the pregnant women in your custody.

- a. To date, how many pregnant women have you identified in BOP custody?

Response: As of January 14, 2021, there are 17 pregnant women in Bureau custody. Of these, seven are in Bureau facilities, seven are in a Residential Reentry Center/Mothers and Infants Together (MINT) program and three are on home confinement.

- b. How many pregnant women been released to home confinement or released early?

Response: Since March 26, 2020, the Bureau has placed 41 pregnant women into the community via multiple methods including Residential Reentry Center/MINT Programs, home confinement, or release. For pregnant inmates not eligible for home confinement, many were placed in the community-based MINT programs. MINT programs allow mothers to reside with their babies after they give birth for six months to one year.

- c. What steps are you taking to ensure that pregnant women receive proper medical care and screened for possible release in a timely manner?

Response: Since the onset of COVID-19, the Bureau has followed CDC guidance. In the case of pregnant women, the CDC indicates, based on current

knowledge, that they may be at an increased risk for severe illness from COVID-19 compared to non-pregnant persons, and that there may be an increased risk of adverse pregnancy outcomes, such as preterm birth, among pregnant women with COVID-19. Out of an abundance of caution, the Bureau is providing additional measures to ensure the safety of pregnant and postpartum inmates. All inmates are screened for COVID-19 symptoms at intake using the Inmate COVID-19 Screening Tool and are quarantined for 14 days. If they are transferring to community custody such as release to probation services, home confinement, or a MINT Program, they are also quarantined for 14 days prior to release or transfer. Since the onset of COVID-19, all pregnant inmates have been reviewed for community placement such as home confinement and/or extended placement at MINT. Additionally, some requirements were waived for MINT participation and program capacity was expanded. Whenever possible, pregnant detainees scheduled to enter into Bureau custody for service of sentence are placed directly into community placement without ever entering a Bureau facility.

- d. On average, how long does it take for BOP to identify a medically vulnerable individual who is eligible for home confinement or early release and to actually release her or him during the pandemic?

Response: The length of time will vary depending on individual circumstances such as whether the inmate has or has not been quarantined, whether they have a viable release plan and if not, steps needed to establish a release plan, and other individual factors. During the pandemic, we are making every effort to move expeditiously on these transfers to community placements. If there are no impediments, transfer can often occur as soon as the inmate completes their 14 day quarantine.

7. On May 7, 2020, the BOP released figures reporting that there were 110 individuals with lab-confirmed COVID-19 in its privately run prisons, which is less than 1 percent of the approximately 17,000 individuals incarcerated there, and that no deaths had been reported. Previous statistics from BOP on lab-confirmed COVID-19 cases did not include information from privately run prisons.

- a. What is the current number of lab-confirmed COVID-19 cases at privately- run prisons?

Response: As of January 29, 2021, the current number of lab-confirmed COVID-19 inmate positive cases in private prisons is 141.

- b. How many incarcerated individuals at privately run prisons have been tested for COVID-19?

Response: As of January 25, 2021, 3,250 inmates have been tested for COVID-19.

- c. Why did it take BOP weeks to report COVID-19 cases in privately-run prisons?

Response: The reporting on the Bureau's public website is not manual; it is automated based on a structured data file. The website design accounts for this specialized file structure. While COVID-19 cases at privately-run prisons were being reported to our Emergency Operations Center, staff needed to integrate the data structure into the larger dataset to provide for uniform reporting, conduct testing and confirm results and finalize its display on the website.

8. BOP has faced serious overcrowding over the years. A 2012 GAO report found that BOP overcrowding negatively affected the safety and security of staff and inmates and the ability to provide reentry programs to inmates. While changes to reduce sentences, like the Fair Sentencing Act, have improved things, BOP facilities still face significant crowding and understaffing. In any major change like this, it may be difficult to reverse the culture of an institution as large as BOP. The dangers of overcrowding are only magnified during a pandemic.

- a. What steps have you taken to ensure that BOP officials are implementing the First Step Act to maximize the number people who benefit from the law?

Response: During COVID-19, some programs continue to operate with social distancing and other safety modifications. Others are temporarily suspended at institutions with high rates of infection, and will be restarted as soon as practicable. The Bureau must and will continue to balance programmatic needs with life safety. The agency will continue to offer modified programming as practicable in the event of future outbreaks.

9. BOP has experienced chronic staffing shortages. In a November 2018 hearing before the House Committee on Oversight and Government Reform, the Department of Justice Inspector General stated, "[s]taffing and overcrowding present constant challenges for BOP in carrying out its mission to confine offenders in safe, humane and cost-efficient environments." In July 2017, the Senate Committee on Appropriations wrote, "[w]hile BOP reports that there is a higher incidence of serious assaults by inmates on staff at high- and medium-security institutions than at the lower security facilities, to meet staffing needs, the BOP still routinely uses a process called 'augmentation', whereby a non-custody employee is assigned custody responsibilities." The Committee's report directed "BOP to curtail its overreliance on augmentation and instead hire additional full-time correctional staff before continuing to augment existing staff." Staffing shortages create even more challenges during a pandemic.

- a. What steps has BOP taken to improve is recruitment of new employees?

Response: The Bureau has offered a variety of incentives and conducted numerous recruitment events. The Bureau has hired 3,582 new employees in calendar year 2020. This is an increase of more than 400 over calendar year 2019

and more than double the combined total of 1,718 for calendar years 2017 and 2018.

- b. What are BOP's short-term and long-term plans to address these chronic staffing shortages?

Response: The Bureau is using a broad array of incentives and innovative hiring strategies and career fairs to target staffing increases. We have hired several contractors to work in our consolidated staffing unit to assist with the hiring effort. Additionally, we reemployed 20 former Bureau staff members to work in our consolidated staffing unit and security and background investigation unit to help expedite hiring. We are working with the Department on alternative hiring authorities in an effort to expedite hiring. We have offered a five percent retention incentive to all Bureau staff eligible to retire in an effort to retain experienced staff.

The Bureau is currently working with Accenture to develop a National Branding and Marketing campaign to inform the public about the various career opportunities with our Agency, and better engage with the public. We have developed specific search campaigns, targeted on the two regions with the greatest staffing needs and are conducting multiple virtual recruitment events (to include our virtual nursing event), using social media platforms to reach candidates nationwide. In the short period of utilization we have seen a 200% increase in engagement and traffic to our website and USAJOBS. We are tracking the data and analytics of all advertisements and virtual events. The end product of this project will produce multiple media ad campaigns, updated photos, videos and print marketing material and will increase the pipeline of candidates in hard to fill locations.

- c. What steps has BOP taken to curtail its overreliance on augmentation and hire additional full-time correctional staff before relying on augmentation?

Response: The Bureau has almost 500 more correctional staff since May of 2019, and this is largely due to the agency's ongoing aggressive hiring efforts and recruitment and retention incentives. Augmentation hours have not decreased, however, largely due to the pandemic response. Hundreds of secondary law enforcement staff (5 CFR 831.904) from non-institution settings including headquarters, regional offices, training centers, and the Grand Prairie complex were deployed to institutions to provide staff coverage due to COVID-19. These deployments are considered augmented, as these staff are working correctional posts.

10. A number of high profile events have highlighted the state of disrepair of many of BOP's facilities. For example, in January and February 2019, the Brooklyn Metropolitan Detention Center was without heat over a seven-day stretch that included some of the coldest days of the year. In another example, reports suggest that staff are forced to put

inmates in the high-rise Houston Federal Detention Center on lockdown at least once per month as a result of malfunctioning elevators. These are just a few examples of the impacts of BOP's failure to properly maintain its facilities.

- a. Has BOP performed a complete inspection or audit of its facilities to determine the repairs necessary to eliminate the present maintenance backlog? If so, what were the results of that inspection or audit?

Response: Policy requires institution staff to perform detailed annual inspections of all areas of their physical plants and provide a list of projects for all items that are in need of remedial action. There are currently 332 projects totaling \$988 million on the Modernization and Repair Unfunded Priorities List.

- b. What factors does BOP consider in prioritizing the repairs necessary to eliminate the maintenance backlog?

Response: Life safety, security, and infrastructure are used to prioritize necessary repairs.

- c. What is the projected cost and timeline for BOP to eliminate the maintenance backlog?

Response: The current maintenance backlog is approximately \$988 million, and the timeline to eliminate the maintenance backlog is dependent on the funding being provided and the staff resources to complete these repair activities.

- d. What is BOP's plan for better maintaining its facilities in the future to prevent a recurrence of the current situation?

Response: The Bureau has reconfigured the Annual Building and Grounds Inspections to be maintained in an updated Total Maintenance System (iTMS) in an effort to maintain a comprehensive document to monitor Building Automation Systems (BAS) and Electrical Infrastructure (E&I) issues identified at the institutions. The updated iTMS provides the Bureau the ability to access real time reports and categorize the issues in critical areas using the latest and accurate data. The Bureau is able to review and take action in the order of the most urgent needs of the agency. Central Office and Regional Office Administrators are also examining inspections and project requests with a focus on areas that will effect BAS and E&I.

Senator Cory Booker

1. Eleven percent of the federal prison population is 56 or older and particularly susceptible to the spread of COVID-19. Despite this, BOP has only released 2 percent of its total population due to the spread of COVID-19. Why has BOP failed to fully utilize its authority to release more individuals to home confinement?

Response: In these unusual times, when the agency has been asked to manage our prisons safely and securely, provide reentry programs safely and securely, implement FSA requirements safely and securely, and transfer a large number of inmates to community custody safely and securely. We have done an exceptional job in circumstances that have been profoundly daunting. It is no accident that our guidance and work with the CDC informed their guidance to state and local corrections and detention facilities. We have proudly and diligently stood at the forefront of this pandemic, and I remain proud of the incredible work of my staff as we – just like all of you in your communities – have confronted this emerging and evolving virus.

We continue to use expanded home confinement authorities in ways that are consistent with guidance from the Attorney General and consistent with our critical mission of public safety and concerns for crime victims.

2. BOP has not provided updated data on the number of people it has tested for COVID-19. Besides a tweet where your agency said that “of the roughly 2,700 inmates tested, approximately 70% have tested positive for COVID-19,” scant information on testing has been provided. The Council of Prisons Locals, which represents more than 30,000 BOP employees, has called for mass testing of all prison employees and incarcerated individuals. I also joined Senator Warren in sending you a letter calling on your agency to conduct universal COVID-19 diagnostic testing of all incarcerated individuals and BOP staff and to make data available on the number of people tested.
 - a. How close is BOP to implementing mass testing across all its facilities and what steps is BOP taking to make mass testing available?

Response: The Bureau continues to implement a testing strategy consistent with CDC guidance for correctional institutions, and has significant testing resources available nationwide. We have implemented a test in / test out strategy for quarantine which is done for all intakes, exposures, and transfers/release from custody, and a rapid test-based strategy for placement in isolation.

When mass testing is not done at institutions without a COVID-19 case, institutions are encouraged to do more limited testing of inmates with risk factors, or those who interact with large numbers of inmates because of their job, e.g., food service workers.

- b. Does BOP plan to publicly report the number of people tested disaggregated by the type of test administered, the number of hospitalizations, and case fatality rates? If not, please explain why.

Response: The Bureau began posting inmate testing data on the public website on June 12, 2020. Additionally, inmate and staff positive, recovered, and fatality rates by institution have been posted on that site daily since April 6, 2020. That

data is updated daily. During the week of February 1, 2021, staff and inmate vaccination data was added to the public website as well.

- c. Does BOP plan to publicly report the number of people who tested positive for COVID-19 disaggregated by race, ethnicity, sex, age, primary language, disability status, and whether the individual had an underlying health condition that made them more susceptible to COVID-19 related complications as defined by the Centers for Disease Control and Prevention?

Response: The Bureau reports extensive and significant data on our COVID-19 action plans, operational status, and inmate and staff testing and vaccinations, diagnostic information, and recovery status on our public website. We commit to continue to be transparent in our postings, which change daily and are updated daily. Because the Bureau provides health care equitably to all inmates regardless of demographics, there is no bias in relation to infection or treatment for offenders.

- d. Please provide the testing capabilities at each BOP facility.

Response: The Bureau uses a variety of testing capabilities defined in two major categories: 1) Abbott ID NOW systems distributed to all Bureau institutions and 2) use of high volume testing capabilities through the use of contractual agreements with commercial laboratories.

- e. Please provide the written guidance or policies that are in place to determine who is tested and how often re-testing occurs at each BOP facility.

Response: Please see the attached testing availability guidance.

- 3. As of June 2, 2020, BOP has reported more than 5,800 cases of COVID-19 among its staff and people under its custody. Nearly half of its facilities have confirmed active cases. Additionally, 68 people have died from COVID-19, including one Bureau staff member even though that is not confirmed on BOP's website. Your agency has admitted that those numbers represent an undercount. Please provide details on steps BOP is taking to improve data collection and public reporting on those who have contracted or who have died from COVID-19.

Response: The Bureau began posting inmate testing data on the public website on June 12, 2020. Additionally, inmate and staff positive, recovered, and fatality rates by institution have been posted on that site daily since April 6, 2020. That data is updated daily. That data is an accurate and transparent reflection of the current status of operations and COVID-19 management within the Bureau, and in no way reflect an undercount. In fact, the Bureau has been more transparent in terms of COVID-19

reporting than any federal agency other than the CDC not only as to the breadth of information being shared but as to the regular updates.

4. BOP announced the expansion of COVID-19 testing through the use of Abbott ID Now. Has BOP been following the U.S. Food and Drug Administration warnings and recommendations related to the potential inaccuracies of Abbott ID's test results? If not, does BOP plan to follow those warnings and recommendations?

Response: The Bureau has expanded and continues to use the Abbott ID NOW testing systems. The agency is aware of the U.S. Food and Drug Administration warnings and recommendations related to potential inaccuracies, specifically those related to "false negatives". The agency does not make any final management decisions based on a negative Abbott test, and follows-up a negative Abbott test in a symptomatic person with a PCR test performed at a commercial lab.

5. I sent you a letter with several other members of Congress expressing concern and disappointment that individuals under BOP custody were being transferred to newly-designated federal prison quarantine sites without first being tested for COVID-19. One of those designated federal prison quarantine sites is FCI Fairton in New Jersey. Can you confirm that BOP has ceased the transfer of individuals to quarantine sites without first testing them for COVID-19?

Response: The Bureau temporarily suspended most movement within the agency as we sought to mitigate the spread of COVID-19, and this included a suspension of movement into FCI Fairton. As of June 18, 2020, movement was down by 94% as compared to the same time period last year. However, it is critical to note that the criminal justice system has not stopped arresting, prosecuting, and sentencing individuals in federal courts. The Bureau has no control over who the courts sentence and remand to our custody, and we must take those inmates into our system. As these inmates come into our system, we must also move designated inmates to properly balance our institution populations consistent with safety, security, and programming needs nationwide. As such, we must reinitiate movement throughout our system, to include at FCI Fairton, but all Bureau-controlled movement of inmates are tested and quarantined prior to movement, with only COVID-19 negative inmates being moved. As of the week of February 1, 2021, movement is at approximately 50% as compared to the same time period last year.

6. Please provide me with the number of people who work at FCI Fort Dix and FCI Fairton who are on the health care staff and the level of health care training they have received.

Response: The Medical Department at FCI Fort Dix is composed of a diverse multidisciplinary team of 41 staff members. There is currently 1 Clinical Director (Physician), 1 Health Services Administrator, 2 Assistant Health Services Administrators, 4 Staff Physicians, 3 Dentists, 2 Dental Hygienists, 3 Pharmacists, 3 Advanced Practice Provider (APP)s, 13 Nurses, 2 IOP/IDC Nurses, 2 Paramedics, 1 Medication Technician,

2 Medical Records Technicians, and 2 Administrative Assistants. Aside from the Bureau staff, there is also a cadre of contract medical providers at FCI Fort Dix. This cadre consist of 2 Medical Assistants, 2 Radiology Technicians, and 2 Optometrists.

The Medical Staff at FCI Fairton is composed of a diverse multidisciplinary team of 16 staff members. There is currently 1 Acting Clinical Director (Physician), 1 Assistant Health Services Administrator, 1 Dentist, 1 Dental Hygienists, 1 Pharmacists, 3 APPs, 4 Nurses, 1 IOP/IDC Nurse, 1 Paramedic, 1 Medication Technician, and 2 Medical Records Technicians. Aside from the Bureau staff, there is also a cadre of contract medical providers at FCI Fairton. This cadre consists of 1 Radiology Technician, 1 Dental Assistant, 1 Laboratory Technician, 1 Podiatrist, and 1 Optometrist.

7. Are all BOP staff and health care providers regularly tested for COVID-19 at FCI Fort Dix and FCI Fairton?

Response: The staff and contractors are screened daily for symptoms and temperature upon their arrival at the institution. Staff have been made aware of locations in the community where testing is available. The Bureau currently does mandate testing of staff but strongly encourages staff to seek and leverage community testing resources. Staff at both locations have reported no difficulty receiving testing in their local communities. Should a staff member report a challenge obtaining a test, the Bureau has a national contract that immediately ships a self-test to the staff member.

8. Has BOP staff at FCI Fort Dix and FCI Fairton received training on properly fitting Personal Protective Equipment (PPE), disposal of PPE, and operations of non-touch infrared thermometers? If so, what does that training consist of?

Response: The Occupational Safety and Employee Health Staff at FCI Ft Dix and FCI Fairton are trained to properly conduct workplace hazard assessments to identify workplace hazards and develop administrative controls, implement engineering controls and select appropriate PPE to mitigate and eliminate such hazards. Safety Staff provide and coordinate comprehensive annual PPE training including training employees in respiratory hazards to which they are potentially exposed during routine and emergency situations. Training of employees occurs in the proper use of respirators, including putting on and removing them, any limitations on their use, proper fit, maintenance, and disposal. The training is conducted in a manner that is understandable to the employee and provided prior to requiring the employee to use a respirator in the workplace. Trainers ensure that each employee can demonstrate knowledge of at least the following:

- Why the respirator is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the respirator.
- What the limitations and capabilities of the respirator are.
- How to use the respirator effectively in emergency situations, including situations in which the respirator malfunctions.

- How to inspect, put on and remove, use, and check the seals of the respirator.
- What the procedures are for maintenance and storage of the respirator.
- How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators.

Retraining is administered annually and when the following situations occur:

- Changes in the workplace or the type of respirator render previous training obsolete.
- Inadequacies in the employee's knowledge or use of the respirator indicate that the employee has not retained the requisite understanding or skill.
- Any other situation arises in which retraining appears necessary to ensure safe respirator use

Regarding non-touch infrared thermometers, web-based training is available for all staff via the agency's intranet website, accessible to all staff.

9. Do medical staff or medical contractors who work at FCI Fort Dix and FCI Fairton work at more than one facility? If so, how many facilities do they operate in?

Response: A contract optometrist services both FCI Fort Dix and FCI Fairton.

10. How is BOP coordinating with New Jersey public health officials regarding its response to COVID-19?

Response: FCI Fort Dix regularly contacts the Burlington County Department of Health, reports all positive cases, and submits a weekly report to them on the institution's COVID-19 status. FCI Fairton is in frequent contact with Cumberland County Department of Health, reports all positive cases, and submits a report to them weekly (more frequently if conditions warrant).

11. How does BOP staff at FCI Fort Dix and FCI Fairton enforce social distancing?

Response: FCI Fairton does a number of things to enforce social distancing. Staff hold many of their meetings via teleconference instead of in-person, and have closed their staff gym to stop people from congregating. Regarding the inmates, they limit the number of inmates allowed out of their cells at any given time. They allow small groups of inmates to go the recreation area to walk the track and get some fresh air. They also allow them out of their cells in small groups to enable them to work on their legal cases as needed. To further limit personal contact, as with all facilities in the Bureau, social visiting has been cancelled.

FCI Fort Dix practices similar procedures as Fairton uses. Many of their staff meetings are now held via teleconference, they have closed their staff gym, and social visiting has

been cancelled. In the inmate housing units, they are controlling the amount of inmates that are out of their rooms at one time to limit personal contact. This restriction includes when inmates go to the laundry, commissary, outdoor recreation, and to food service during “grab and go meals”. In addition, in the housing units, there is a limit to how many inmates can be in the common TV rooms and common areas, and the inmates are required to sleep head to toe.

At Fort Dix’s Camp, which was the only section of the institution to have positive inmates, they have separated the two sleeping areas (A and B wings) to assure there is no contact, and all institution services are conducted on an alternating schedule. In addition, inmates have an empty bunk between beds and sleep head to toe.

12. Does BOP staff at FCI Fort Dix and FCI Fairton require all staff and incarcerated people to wear face masks? If so, how does it enforce the use of face masks?

Response: FCIs Fairton and Fort Dix require all staff and inmates to wear facemasks. If staff are observed not wearing a face mask, they are instructed to put on their face mask. Reminders are sent out periodically to staff to ensure they are wearing their mask. Inmates are required to wear their face masks whenever they leave their cells or rooms. If a staff member observes an inmate outside of their cell or room without a facemask on, the inmate is instructed to place a mask over their face.

It is mandatory for all inmates and staff to wear face coverings (three washable cloth masks were issued to each staff member and inmate), and these can be exchanged and replenished as needed. There have been several reminders and postings sent to staff and inmates, as well as postings throughout the institution. Inmates are reminded throughout the day and corrected if they are observed not wearing their face covering. Department Heads and Executive Staff similarly remind staff if they are observed not wearing a face covering.

13. Have either FCI Fort Dix or FCI Fairton contracted with a professional cleaning service since the beginning of the public health crisis? If so, please provide the number of instances broken down by facility.

Response: All Bureau institutions have access to contracting for professional cleaning if needed during the pandemic.

14. Has BOP staff at FCI Fort Dix and FCI Fairton consulted with public health experts on how to maintain prison programming?

Response: Yes, the Bureau clinical and infectious disease specialists have reviewed all of the Bureau phased responses to COVID-19 at multiple levels.

15. What prison programming is currently available at FCI Fort Dix and FCI Fairton? Has BOP staff at FCI Fort Dix and FCI Fairton consulted with public health professionals on

how best to educate BOP staff and those under its custody on the dangers posed by COVID-19? If so, what information has been provided to BOP staff and residents regarding COVID-19?

Response: The Education Department at FCI Fort Dix has continued to program through the COVID-19 pandemic. Independent study groups have been monitored on both the East and West Compounds focusing in the skills areas concerning GED completion. GED testing resumed June 8, 2020 while keeping safe distancing in mind. FCI Fort Dix has continued to program in the area of Adult Continuing Education Courses. These courses have a large enrollment and have been critical in helping to foster good inmate behavior. FCI Fort Dix has been exceptionally innovative in the area of vocational training during the COVID-19 pandemic. They have created distant learning vocational training courses in three separate areas that are rotated through different housing units every three weeks. FCI Fairton's Education Department has continued to have independent study classes for GED. These classes are self-paced.

All of the Bureau's phased responses to COVID-19 are reviewed by Bureau clinical and infectious disease specialists. CDC posters and guidance are posted throughout the institutions especially high traffic areas for staff and inmates to review. Inmates have been educated in town hall settings and additionally through computer bulletin board messages. Staff are updated on COVID-19 guidance regularly via email and via publications on the agency intranet. Staff have also been educated and updated with new information via teleconferences for each shift at each institution.

16. How is food service handled at FCI Fort Dix and FCI Fairton to ensure the safety of BOP staff and incarcerated individuals?

Response: Since the beginning of the COVID-19 pandemic, FCI Fort Dix has limited the number of inmate workers to only required amounts. All AM Food Service workers are all housed in the same unit building. When the shift is over, they clean and disinfect all areas in the Food Service building and go back to their unit. The same procedures are used for PM workers, all of whom are from the same unit as well but not the same unit as the AM workers. All inmates and staff wear face masks and gloves while at work. Each and every high traffic area within Food Service is cleaned and disinfected on an hourly basis. Units are called to Food Service one at a time to pick up their meals. Once an entire unit has been fed, all Food Service areas are cleaned and disinfected before the next unit is called.

At FCI Fairton, currently there are no inmate Food Service workers in Food Service. Bureau staff complete all food preparation and delivery. The food is prepared and delivered to the inmate housing units for each meal and staff are wearing proper PPE.

17. Does BOP staff at FCI Fort Dix and FCI Fairton deliver food to incarcerated people? If so, what precautions does BOP staff take in handling food?

Response: FCI Fort Dix only delivers food to the Special Housing Unit. All other inmates are called by individual housing unit to pick up their food from Food Service. With regard to the Special Housing Unit feeding, food is cooked and kept at proper temperatures according to policy. The food is then placed in trays, by trained Food Service workers, then the trays are placed in a hot box to keep them at the correct temperature while being delivered to the Special Housing Unit. All food is served and consumed within a four hour time period from being removed from the heating units.

Currently, FCI Fairton staff members deliver food to the inmate population. All food is cooked and kept at proper temperatures and is served and consumed within the four hour time period from being removed from the heating units. Staff are properly wearing PPE when preparing and delivering food to the inmate population.

18. Is BOP continuing to run the Federal Prison Industries (FPI) during the public health crisis? If so, please provide what facilities FPI is still operating at.

Response: On March 31, 2020, all FPI factories were closed, except those converted to the production of personal protective equipment and FPI's two farm operations. In April, FPI brought a small number of additional factories online with limited staff to work on products for the Department of Defense and the Department of Homeland Security that those agencies deemed mission critical.

On June 1, the Bureau halted operations temporarily due to the ongoing civil disturbance nationwide. FPI is in the process of resuming its operations. Where FPI is reopening factories, it is doing so based on local conditions and with enhanced safety protocols. FPI provides inmates with valuable job training and practical work skills that substantially enhance their ability to successfully reintegrate into society and obtain gainful employment following release from prison. Such work is also considered to be a valuable program pursuant to the FSA. Even during this ongoing crisis, FPI maintains its mission to help ensure that inmates who leave Bureau facilities are prepared to reenter society successfully.

Please see the attached factory operation status report as of June 18, 2020.

19. "Cohorting," is the practice of quarantining together many individuals who have been exposed to someone with COVID-19 or tested positive for COVID-19. This practice cuts against guidance from the CDC, which states, "Ideally, cases should be isolated individually, and close contacts should be quarantined individually." Is BOP using the practice of cohorting? If so, what is the agency doing to transition away from the practice as quickly as possible?

Response: The Bureau is following the CDC Guidance on Management in Correctional and Detention Facilities. When possible, we are quarantining inmates in individual cells. In some cases, we have brought in climate controlled tents to quarantine inmates to increase our ability to socially distance.

20. Many human rights advocates and public health experts consider solitary confinement a form of torture. In fact, the United Nations Special Rapporteur on torture said that prolonged use of solitary confinement amounts to torture.

a. Do you agree that prolonged use of solitary confinement amounts to torture?

Response: Our goal is to house inmates in the least restrictive environment possible that still provides for safety and security of our inmate population, our staff, and the public. But just as there are times in the community where individuals need to be housed in a secure location based upon misconduct or criminal activity to protect public safety, there will be times when individuals in prison engage in misconduct that risks the safety of our staff and the other inmates and must be housed securely. Inmates in restricted housing have staff interaction, are provided medical and mental health services, and religious, educational, and recreational programming opportunities as appropriate.

21. Is BOP using solitary confinement or the segregated housing units to isolate people who have contracted COVID-19?

Response: Depending upon the number of individuals and available space, housing units can be used for isolation in this order of precedence as determined by the CDC guidance. When cohorting is used, individuals are educated to utilize social distancing when possible:

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully.
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door.

Senator Kamala D. Harris

1. *Nationwide Lockdown*

On June 1, the federal Bureau of Prisons (BOP) announced that it had ordered a nationwide lockdown due to the protests across the country after the police killing of George Floyd. BOP wrote: “In light of extensive protest activity occurring around the country, the BOP—in an abundance of caution—is implementing an additional, temporary security measure to ensure the good order and security of our institutions, as well as ensure the safety of staff and inmates.”

a. Did BOP have any information to suggest that outside protests were a legitimate threat to the security of its institutions nationwide?

Response: The Bureau had internal and external intelligence reporting that detailed general and specific threats against law enforcement.

- b. What less restrictive alternatives did BOP consider to effectively maintain safety short of a nationwide lockdown?

Response: The Bureau was on modified operations at the time of the lockdown due to COVID-19.

- c. How long did the BOP lockdown last?

Response: Regional Directors had the latitude to keep institutions secured until all deployed staff return to duty. The national lockdown lasted approximately six days.

2. *Pregnant and Postpartum Women in BOP Custody*

In early May, 30-year-old Andrea Circle Bear died of COVID-19 at a federal prison in Texas. She was pregnant when she entered prison and she was serving a two-year sentence on a non-violent drug charge. She died about three weeks after having an emergency C-section while on a ventilator.

- a. How many pregnant and postpartum women remain in BOP custody?
- b. How many pregnant and postpartum women have been transferred to home confinement since March 26, 2020?
- c. How many pregnant and postpartum women have been recommended for compassionate release since March 26, 2020?

Response: As of January 14, 2021, seven pregnant or postpartum inmates are currently in Bureau operated correctional facilities. An additional 10 are currently in community placements (e.g., transferred to home confinement, and RRC, or the Mothers and Infants Together Program, which allows mothers and children to reside together in an RRC setting that is specially modified for housing the infants). Since March 26, 2020, the Bureau has placed 41 pregnant women into the community via multiple methods including Residential Reentry Center/MINT Programs, home confinement, or release.

3. *Private Prisons*

I understand that BOP has been coordinating with private prisons to prepare for and address the spread of COVID-19, but what is less clear are the mechanisms to hold these privately run facilities accountable.

- a. What are the consequences for private prisons that fail to adhere to BOP guidance or CDC recommendations related to COVID-19?

Response: Contract modifications were executed requiring the contractors to follow CDC guidelines during epidemics/pandemics. Failing to meet the terms and conditions of the contract may result in deficiencies, deductions and potential contract termination.

- b. Have any private prisons suffered these consequences since the start of the COVID-19 pandemic?

Response: Non-conformance of requirements related to the COVID-19 pandemic have not been identified to-date at any private prison.

According to the data published on BOP's website, there appear to be few positive COVID-19 cases in privately run federal prisons.

- a. Are there fewer positive cases in private prisons because there has been less testing in those facilities?

Response: Most private facilities are located in remote areas. Thus, their location alone assists in mitigating the spread of the COVID-19 virus from being introduced via surrounding communities. Further, populations in private providers are primarily criminal aliens and remain fairly static due to decreases in immigration proceedings, which further limits the introduction of the disease via new admissions.

4. *Testing*

A wide range of constituencies, including BOP employees and the ACLU, have demanded universal COVID-19 testing for incarcerated individuals and staff.

- a. Do you have a plan in place to achieve universal testing for incarcerated individuals and staff? If yes, what is the timeline for universal testing in BOP facilities?

Response: The Bureau continues to implement a testing strategy consistent with CDC guidance for correctional institutions, and has significant testing resources

nationwide. We are expanding testing to almost every situation other than universal testing of all inmates at institutions without COVID-19. We have implemented a test-in/test-out strategy for quarantine which is done for all intakes, exposures, and transfers/releases from custody, and have a rapid test-based strategy for placing inmate's in isolation.

When mass testing is not done at institutions without a COVID-19 case, institutions are encouraged to do more limited testing of inmates with risk factors, or those who interact with large numbers of inmates because of their job, e.g. food service workers.

For staff, the Bureau encourages staff to obtain testing through local community resources on a voluntary basis. Staff have generally been readily able to access testing in their local communities. Should a staff member experience difficulty in obtaining testing, we have a national contract for immediate shipment of a COVID-19 self-test.

- b. Has BOP held any individuals in solitary confinement because they are sick with COVID-19? If yes, which facilities have engaged in this practice? If no, how has BOP confirmed that this is not happening in its institutions?

Response: The Special Housing Unit (SHU) is not used for medical isolation or quarantine. However, it is possible an inmate who was already housed in SHU subsequently developed COVID-19. In that case, the inmate would not be moved, but would be medically monitored consistent with the protocols for medical isolation.

As a general matter, depending upon the number of individuals and available space, general housing units can be used for isolation in this order of precedence as determined by the CDC guidance. When cohorting is used, individuals are educated to utilize social distancing when possible:

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully.
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door.
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells.

- c. Has there been any suggestion, encouragement, or pressure from the Trump administration to you or your team about which testing companies to engage with?

Response: No.

Senator Amy Klobuchar

- 1. Under guidance from the Centers for Disease Control, correctional facilities can help mitigate the spread of the coronavirus by ensuring access to hygiene supplies, cleaning supplies, and protective equipment, and by modifying operations to allow people to maintain physical space during meals and recreation.
 - a. Over 6,000 inmates and 600 BOP staff have tested positive for the coronavirus. In your view, what steps could BOP have taken to prevent this degree of infection?

Response: Since the onset of the pandemic, the Bureau has worked closely with the CDC and based its procedures on the CDC's recommendations. As information and experience continue to expand regarding the nature and epidemiology of this novel disease, both in the community at large, as well as in the unique correctional environment, the Bureau continues to proactively develop, update and implement its response to mitigate the spread of COVID-19 within all of its facilities.

- b. You testified that BOP has recently started to test asymptomatic inmates. Could BOP have slowed the spread of the virus if it had begun testing asymptomatic inmates earlier?

Response: The Bureau began testing asymptomatic inmates in consultation with CDC and local public health authorities in certain situations. As well, the availability of testing resources at the outset of the pandemic was extremely scarce, but the Bureau now has significant testing resources thus can test far more broadly. It is important to recall, the potential for asymptomatic transmission for this novel virus was not known to be an issue during the nascent stages of the pandemic.