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**CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS**

**COMMITTEE ON THE JUDICIARY**  
**SUBCOMMITTEE ON CRIME, TERRORISM,**  
**AND HOMELAND SECURITY**

**OVERSIGHT HEARING ON:**  
**“FEDERAL BUREAU OF PRISONS AN**  
**U.S. MARSHALS SERVICE”**

**2141 RAYBURN**  
**9:00 A.M.**  
**WEDNESDAY, DECEMBER 2, 2020**



- Thank you, Chairwoman Bass and Ranking Member Sensenbrenner, for convening this important oversight hearing on the Federal Bureau of Prisons and the U.S. Marshals Service of the United States Department of Justice.
- Let me thank our witnesses for their testimony and attendance:
  1. **Michael Carvajal**, Director of Bureau of Prisons; and
  2. **Donald W. Washington**, Director of U.S. Marshal Service.

- Director Washington, welcome back to the Judiciary Committee; the first time we discussed criminal justice issues and racial inequalities was back in 2006 when you were the U.S. Attorney for the Western District of Louisiana and the location of the notorious and infamous ‘noose hanging from tree’ incident in the town of Jena, Louisiana.
- Madam Chair, this hearing is particularly timely given the stress the COVID-19 pandemic has placed on our economy, our public health infrastructure, our election apparatus, and our criminal justice system, not to mention the 13.7 million Americans who were infected or the loss of life, so many unnecessary, of more than 269,000 of our fellow Americans.

### **COVID-19 RESPONSE**

- In early 2020, a new, highly contagious and deadly virus, was coursing its way through Wuhan, China and in but a few short weeks later, had spread to the United States, landing initially on the West Coast and later wreaking havoc on New York City.
- On March 13, 2020, the President declared the virus, COVID-19, a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, tribes, territories and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
- Just a few days later, on March 21, 2020, the Metropolitan Detention Center (MDC) in Brooklyn reported the first COVID-19 case involving a prisoner in BOP custody.
- In response to the crisis, Congress sprang into action to respond to the pandemic and the House and Senate negotiated the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law by President Trump on March 27, 2020.
- Among other things, the CARES Act included a provision giving the Attorney General and the BOP authority to expand the use of home confinement during the covered emergency period. The day after the CARES Act was signed into law, 49-year-old Patrick Jones became the first BOP prisoner to die from COVID-19 and since then many have followed, including the well-publicized case of 30-year-old Andrea High

Bear, who died from COVID-19 at FMC Carswell, shortly after giving birth on a ventilator.

- The Bureau of Prisons operates 122 facilities and has contracts with 12 private facilities and, additionally, prisoners still technically in BOP custody but who are transitioning into the community are held in approximately 165 residential reentry centers (RRCs) around the country.
- As of November 27, 2020, 126 facilities and 59 RRCs had confirmed COVID-19 cases.
- BOP has tested at least 80,199 prisoners and at least 23,323 have tested positive, with 3,187 still pending test results as of November 27, 2020, for a **positivity rate of 29.08%**.
- The number of COVID-19 infections in BOP facilities continues to rise, with no end in sight, leading one expert to note that a positivity rate of almost 30%, if extrapolated to the entire federal correctional population, indicates a rate of infection four to five times higher than what BOP reports.
- Indeed, COVID-19 is ripping through BOP, as it is in other prison systems, infecting incarcerated individuals at a rate at least 4.77 times that of the general population, and causing deaths at nearly twice the national rate.
- Press releases put out by the BOP reveal that the majority of those who have died in custody from COVID-19 were at a higher risk of complications from the virus, and BOP knew that they were.
- A tragically common refrain found in these press releases reads: “Mr. [X], who had long-term, pre-existing medical conditions which the CDC lists as risk factors for developing more severe COVID-19 disease, was pronounced dead...”
- In addition, nearly a third of those who have died in BOP’s care were 65 years of age or older; obviously, their age—and vulnerability as a result of it—was also a fact known to the BOP.



- Public health experts agree that prison populations must drop to create space.
- The National Academy of Sciences, Engineering, and Medicine (NAS) recently concluded that lowering prison populations is essential to saving lives and controlling the spread of COVID-19.
- Even BOP Director Michael Carvajal has acknowledged as much, stating during a Senate hearing in June, 2020, that “[p]risons by design are not made for social distancing.
- But, to date, it is quite evident that there is no commitment or desire on the part of the Attorney General or the BOP to take the aggressive action to release prisoners to home confinement that has been repeatedly requested by numerous members of this Committee and of Congress.
- As of November 27, 2020, the BOP website reported that 145 prisoners and two staff members had died from COVID-19, including several deaths at RRCs. In a separate link, BOP also reported 12 additional deaths in private prisons under contract with BOP.
- The four deaths of prisoners on home confinement that are also reported are *in addition* to these, for a total of 161 BOP prisoners dead from COVID-19, as of November 27, 2020.
- Also reported on the BOP website, were the 4,523 prisoners and 1,381 staff with confirmed positive test results and 19,775 prisoners and 1,843 staff who had “recovered.”
- But the data on the BOP website does not tell the whole story.
- There is, however, no available explanation for how BOP determines that a prisoner has recovered.
- At least four individuals—Adrian Solarzano, Gerald Porter, Robert Hague-Rogers, and Marie Neba—died from COVID-19 after either testing negative or after BOP erroneously pronounced them “recovered.”
- In addition, despite the fact that people of color get sick and die of COVID-19 at rates higher than whites and higher than their share of the

population, BOP has made no effort to report demographic data to help the public better understand whether certain demographic groups are experiencing greater impact from the virus while in custody.

- Many stakeholders have reported serious problems in BOP's management of COVID-19, including the inadequacy of personal protective equipment, both in relation to the quantity and the quality of supplies provided; continued transfers of people between facilities; inadequate testing of both incarcerated people and staff; forcing staff to work even while displaying symptoms of the virus; ignored medical requests; confusing information about policies related to home confinement, early and compassionate release; and negligence regarding the housing and cleanliness conditions required to protect against the virus.
- BOP has instituted a policy that requires individuals approved for release to home confinement be placed in quarantine for 14 days before they can be released from the facility.
- But individuals placed in quarantine are not tested for COVID-19 and they quarantine in a group.
- If a prisoner shows COVID-19-related symptoms during the 14-day period, the clock is reset and that individual and all the other people in the same quarantine group must quarantine for another 14 days.
- This results in a potentially indefinite delay in release—even after release is approved.
- Across the country, courts have recognized that BOP undertreats or ignores COVID-related symptoms, despite findings by the Centers for Disease Control and Prevention (CDC) that COVID-19 can “result in prolonged illness even among persons with milder...illness.”
- During the pandemic, medical care for chronic conditions has been delayed and, in many cases, withheld entirely.
- An OIG inspection of the Metropolitan Detention Center (MDC) in Brooklyn, found that sick call requests dating to early July 2020 had not been scheduled or seen as of late September 2020.



- At the Federal Correctional Complex (FCC) in Oakdale, Louisiana, the Inspector General found that the facility failed to isolate or quarantine prisoners who were exposed to COVID-19 or who tested positive for the virus, despite the fact that BOP's own Pandemic Response Plan requires that a person who tests positive for COVID-19 must be immediately placed under medical isolation.

### **CARES ACT COMPLIANCE**

- The CARES Act included a provision giving the Attorney General and the BOP authority to expand the use of home confinement during the covered emergency period and permits the BOP Director to extend the maximum amount of time for which a prisoner may be placed on home confinement, when the Attorney General "finds that emergency conditions will materially affect the functioning" of BOP.
- The Attorney General made this finding on April 3, 2020, but unfortunately, the Attorney General and the BOP have severely underutilized the authority given to them by Congress to release prisoners to home confinement, even in cases where the prisoners are medically compromised.
- Additionally, the CARES Act implementation process has been mired in problems.
- For example, in two high-profile cases involving associates of President Trump who were serving time in BOP, his former lawyer, Michael Cohen, and his former campaign manager, Paul Manafort, were released early to home confinement.
- Around the time of these releases, BOP stated that it was prioritizing for release to home confinement those prisoners who had served at least 50 percent of their sentences, or who had 18 months or less left and had served 25 percent of their sentences.
- In fact, the time-served criterion had not been mentioned in the Attorney General's previously-issued guidance memos but under the new criteria, Cohen's release was at least arguably proper, especially because there were several COVID-19 cases in the facility where he was housed.

- Manafort's release was and is inexplicable, as there were no COVID-19 cases where he was located and, unlike Cohen, he had not served the minimum amount of time required under the policy.
- More generally, the criteria devised by the Attorney General for release to home confinement under the CARES Act are still too narrow, arbitrary, and do not focus on releasing the most vulnerable.

### **COMPASSIONATE RELEASE**

- Under Title 18, United States Code, section 3582(c)(1)(A), a sentencing court may reduce the term of imprisonment of a prisoner for "extraordinary and compelling reasons," an action known as "compassionate release."
- The First Step Act of 2018 expanded compassionate release so that individuals may now file a motion directly with the court 30 days after they first make a request with the Warden of the facility where they are housed.
- Unfortunately, the 30-day delay, coupled with DOJ's routine opposition to release, prevents vulnerable defendants from obtaining critical release.
- During the first three months of the pandemic, for instance, BOP approved only 11 of the 10,940 requests it received, a meager 0.1% of the requests.
- Madam Chair, Waylon Young Bird wrote 17 letters pleading to be freed from Springfield Medical Center.
- He tested positive one day after writing his final letter and died a week later.
- Andre Williams—who was 78 years-old and had undergone a quadruple coronary bypass in BOP custody—sought compassionate release before the COVID-19 pandemic, which on April 1, 2020, the court granted.

- But four days later, while still in BOP custody and waiting for release, he tested positive for COVID-19, and on April 12, he died in prison while his son was en route to bring him home.

### **U.S. MARSHALS SERVICE (USMS)**

- Madam Chair, turning now to the U.S. Marshals Service, I note that according to the Office of the Inspector General of the Department of Justice, as of August 2020, the U.S. Marshals Service had custody of over 61,000 individuals awaiting trial, sentencing, or transfer into BOP, about 70% of whom were held in over 850 different state, local, or tribal facilities under the terms of intergovernmental agreements.
- Unfortunately, the USMS has a long history of resisting efforts to perform proper oversight over the conditions of confinement in the non-federal detention facilities it contracts with to hold individuals in USMS custody.
- Former USMS officials have reported that the agency operates with “an attitude of indifference,” and that they leave “the jails to do what they will.”
- This is intolerable since the fact is that the overwhelming majority of individuals under USMS care are pretrial detainees, who have not yet been convicted or who have not yet been sentenced.
- In August 2020, the USMS acknowledged that almost 3,500 individuals in its custody had tested positive for COVID-19 and 13 had died.
- On October 8, 2020, those numbers had grown to 5,550 and 17, respectively, and by November, 6,676 individuals in USMS custody had tested positive and 20 had died.
- Federal public defenders across the country report dire conditions in facilities under contract with the USMS.
- Defense attorneys report that those testing positive rarely receive any treatment unless severe symptoms appear, necessitating transfer to an outside medical facility, and in some instances, pretrial clients have died and attorneys have first heard the information from a source other than the USMS.



- Finally, and as disturbing as everything else that has been uncovered, we now know that in response to the largely peaceful protests that sprung up organically across the nation following the killing of George Floyd, the Department of Justice (DOJ), along with other federal agencies, deployed federal officers and agents in and around Washington, D.C.
- The Attorney General assumed a leadership role in authorizing and coordinating the deployment of federal agents, who came from the United States Secret Service, the U.S. Marshals Service, the Drug Enforcement Administration, the BOP and the United States Park Police, among others.
- Starting on June 3, 2020, a number of heavily armed officers, wearing no identifying uniforms, nametapes, or badges, positioned themselves in the area surrounding the White House complex.
- When questioned by the media, these individuals refused to disclose their affiliation or names.
- Only after investigative reporters discerned the symbols on a number of the officers' shirts did the DOJ and BOP confirm that these officers were members of the Special Operations Response Team (SORT) deployed from BOP Crisis Management Teams (CMT).
- Madam Chair, this is just a partial litany of the actions for which the leadership of the Bureau of Prisons and U.S. Marshals Service needs to account to this Committee.
- Madam Chair, thank you again for convening this most important hearing.
- I yield back my time.