

**CORRUPTION, ABUSE, AND MISCONDUCT AT
U.S. PENITENTIARY ATLANTA**

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

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JULY 26, 2022
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CONTENTS

Opening statements:	Page
Senator Ossoff	1
Senator Johnson	4
Senator Padilla	36
Prepared statements:	
Senator Ossoff	45
Senator Johnson	50

WITNESSES

TUESDAY, JULY 26, 2022

Erika Ramirez, Ph.D., Former Chief Psychologist, U.S. Penitentiary Atlanta ..	6
Terri Whitehead, Former Jail Administrator, U.S. Penitentiary Atlanta	8
Rebecca Shepard, Staff Attorney, Federal Defender Program, Inc.	10
Michael Carvajal, Director, Federal Bureau of Prisons	21

ALPHABETICAL LIST OF WITNESSES

Carvajal, Michael:	
Testimony	21
Prepared statement	86
Ramirez, Erika, Ph.D.:	
Testimony	6
Prepared statement	52
Shepard, Rebecca:	
Testimony	10
Prepared statement	63
Whitehead, Terri:	
Testimony	8
Prepared statement	58

APPENDIX

Senator Grassley's July 25, 2022 Letter to FBI and DOJ	95
Senator Johnson's July 26, 2022 Letter to DOJ, FBI, ODNI, and DOJ OIG	99
Letter from Judge Timothy C. Batten, Chief United States District Judge	102
Responses to post-hearing questions for the Record:	
Mr. Carvajal	105

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TUESDAY, JULY 26, 2022

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

Present: Senators Ossoff, Hassan, Padilla, Johnson, and Scott.

OPENING STATEMENT OF SENATOR OSSOFF¹

Senator OSSOFF. The Permanent Subcommittee on Investigations (PSI) will come to order.

Today's hearing continues a 10-month bipartisan investigation of corruption, misconduct, and abuse at U.S. Penitentiary Atlanta (USPA), a Federal prison in the State of Georgia.

The evidence the Subcommittee has secured to date reveals stunning long-term failures of Federal prison administration that likely contributed to loss of life, jeopardized the health and safety of inmates and staff, and undermined public safety and civil rights in the State of Georgia and the Southeast Region of the United States.

The Subcommittee has secured and reviewed thousands of pages of internal documents from the Bureau of Prisons (BOP) and interviewed dozens of witnesses, including BOP whistleblowers, current and former staff, Federal judges, Federal defenders, and former senior leaders at the Bureau of Prisons.

The investigation has revealed that gross misconduct persisted at this facility for at least 9 years, and that much of the damning information revealing misconduct, abuse, and corruption was known to BOP and accessible to BOP leadership during that period.

For many years, this facility has been extremely dangerous and insecure. Correctional Services staff at USPA engaged in misconduct with impunity and, according to BOP's own internal investigations, lacked regard for human life. Vast quantities of contraband, including weapons and narcotics, flowed through the prison, enabled by staff corruption.

Conditions for inmates and pretrial detainees have been abusive and inhumane and, in my view, violated both the Eighth Amendment right to be free from cruel and unusual punishment and the Sixth Amendment right to counsel.

¹The prepared statement of Senator Ossoff appears in the Appendix on page 45.

Interviews and records reveal a facility where inmates, including presumptively innocent pretrial detainees, were denied proper nutrition, access to clean drinking water, and hygiene products; lacked access to medical care; endured months of lockdowns with limited or no access to the outdoors or basic services; and had rats and roaches in their food and cells.

One Federal judge told the Subcommittee that USPA is an embarrassment to the judicial system and noted that incarceration at USPA is like adding another layer of punishment due to the appalling conditions.

Another Federal judge wrote a letter to the USPA warden in January of this year to express his deep concern regarding the persistently abusive conditions that were reported to him, including detainees subjected to “a month of 24-hour solitary confinement with only a Bible for entertainment or reading,” “no change of clothes for several weeks,” “lack of access to mail,” “a week with only a paper jumpsuit and paper blankets for an inmate on suicide watch,” and “blockage of written communications between attorney and client.”

Given these conditions, it is perhaps not surprising that USPA has led the Nation’s Federal prison facilities in suicides, and four of the last four inmates deceased from suicide were found to have been using narcotics at the time of their death—this despite repeated warnings from BOP’s own investigators that the prison was failing to prevent the flow of contraband into the facility, failing to implement suicide prevention policies, failing to respond with urgency to suicide attempts by inmates, that there was a lack of, and I quote, “regard for human life” among the staff and—this is another direct quote from the BOP’s own internal investigations—“a dangerous and chaotic environment of hopelessness and helplessness, leaving inmates to their own means to improve their quality of life.”

In a November 2020 suicide investigation report, one of thousands of pages of documents that this Subcommittee unearthed, BOP’s own investigators found that the staff’s delayed medical response “represents gross indifference to preserving life and violates inmates’ constitutional rights.” That from the BOP’s own internal investigators.

Since at least 2014, BOP leadership was warned in its own internal audits and investigations, documents secured by this Subcommittee, that failures and misconduct were persistent and severe. Failures documented during this period include: failure to conduct rounds in the Special Housing Unit (SHU); improper handling and management of firearms; failure to search for contraband; failures to train staff in suicide prevention; improper storage of large quantities of narcotics; the free and open flow of contraband within the facility, including in the Special Housing Unit; mishandling of evidence related to inmate suicides; inoperable surveillance cameras; and inoperable perimeter security infrastructure.

Here are some direct quotes, again, from the BOP’s own internal audits which this Subcommittee secured: “complacency, indifference, inattentiveness, and lack of compliance with BOP policies and procedures”; “a lack of oversight throughout the institution”; and

“USP Atlanta presents significant security concern for the Southeast Region. Both national and local policies are being violated on a regular basis.” Again, the BOP’s own internal investigations and reports available to BOP leadership for years.

In one instance cited by BOP internal investigators, prison staff had to borrow a razor blade from a prisoner to cut the ligature suspending a prisoner who had hanged himself in his cell. In another instance, officers intentionally disabled drug detection equipment used to identify trace amounts of narcotics coming into the prison at one of the entrances.

Yet despite these unequivocal internal reports of abuse and misconduct, the situation continued to deteriorate.

Today our witnesses include two individuals with more than 45 years of combined experience working within the Bureau of Prisons and several years working at U.S. Penitentiary in Atlanta. Dr. Ramirez, who comes forward today as a whistleblower, previously served as the chief psychologist at USPA and remains employed by the BOP. Ms. Whitehead previously served as the jail administrator at USP Atlanta and recently retired after nearly 30 years of service.

Dr. Ramirez, Ms. Whitehead, I applaud your courage in coming forward to speak publicly about your experiences working at the U.S. Penitentiary Atlanta and at the Federal Bureau of Prisons. I know this was not an easy decision for you, and I know I speak for the Subcommittee on a bipartisan basis when I say that we are grateful for your bravery today. We will look harshly upon and seek accountability for any retaliation you may experience as a result of your testimony.

Our investigation is also about the impact of corruption and dysfunction at USP Atlanta on the criminal justice system and the rights of incarcerated people. Many of these individuals subjected to these conditions have not gone to trial or been convicted of a crime. They are presumptively innocent pretrial detainees. Today we will hear from Ms. Shepard, an experienced Federal defender, who will testify about her clients’ experiences at USPA.

Later we will hear from Bureau of Prisons Director Michael Carvajal, who was the Assistant Director for Correctional Programs from 2018 until 2020, with oversight over Correctional Services nationwide, and who has served as Director of the agency since 2020.

Director Carvajal’s testimony is critical to our ongoing investigation.

After months of bipartisan requests for Director Carvajal’s voluntary testimony, on July 14th the Subcommittee issued a subpoena to compel it. As an accommodation to the Department of Justice (DOJ), and in recognition of Director Carvajal’s presence this morning, this subpoena has been withdrawn, and Director Carvajal is testifying today on a voluntary basis.

My preference is always to pursue investigations in a cooperative spirit and without resorting to compulsory process. However, so long as I chair this Subcommittee, it will continue vigorously, professionally, and judiciously to pursue these investigations in the public interest. Where necessary, the Subcommittee will use all of its authorities to pursue the information vital to that work.

Today is the next step in our investigation, but not the last.

I thank Ranking Member Johnson and his staff for their continued cooperation during this bipartisan investigation. At this hearing there will be discussion of some difficult topics concerning treatments of people suffering from mental illness and suicide. I want to note that people experiencing mental health crises or thoughts of suicide can call a new nationwide hotline, 988, to be connected with trained counselors.

I thank again the Ranking Member for his cooperation and yield to him for his opening statement.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Thank you, Mr. Chairman. I also want to thank the witnesses for your appearance here. Dr. Ramirez in particular, I want to say that we will unequivocally protect you from any retaliation that you may suffer because of this.

I think the Chairman has done a very good job of summarizing the issues that we have uncovered here. I want to commend both the Chairman, your staff, and my staff for doing a really pretty thorough investigation here. I know we were not able to issue the report because we did not get cooperation. But we will be issuing a report, and I am looking forward to that. I think it will be very complete. Again, I to commend everybody involved in this.

Mr. Chairman, I would like to enter my prepared statement in the record¹ because it would repeat an awful lot of what you said. But I would like to spend a few minutes here. I did not come to the U.S. Senate to be an investigator. I came here because we are mortgaging our kids' future, and we still are. But when I became Chairman of the Senate Committee on Homeland Security and Governmental Affairs (HSGAC), a lot of people do not realize it because it is not in the title, that is the Senate's oversight committee. We have a responsibility to start looking into things, conduct oversight, and do investigations.

Now, of course, being Ranking Member on the Permanent Subcommittee on Investigations, that is what we do. I would hope this experience will start opening up your eyes. My 6 years as Chairman of the Committee certainly opened up my eyes at how weakened congressional oversight has become over the years.

We have very limited enforcement power, and as a result, the agencies thumb their nose at us. I think you saw that here. These are legitimate issues. These are longstanding problems. The fact that the Department of Justice, the Bureau of Prisons, were not fully cooperating in this is absurd.

I held a hearing as Chairman of the full Committee on the Bureau of Prisons. I asked in 2018 for an investigation by the Office of Inspector General (OIG). We still do not have that report. I guess it is still in progress. This was in 2018.

Again, this hearing is long overdue. This is on specifically with Atlanta, but we ought to be asking how prevalent is this? But because the agencies are not transparent, because they are not cooperating, we need whistleblowers to come forward. This is my appeal to anybody in Federal agencies who has worked diligently, with integrity, for your agencies: if you are working for an agency

¹The prepared statement of Senator Johnson appear in the Appendix on page 50.

that has lost its credibility, is not operating with integrity, please come forward. We need to hear you. The agencies and the departments are not going to correct their own problems. They are not going to make them public. The only way these problems are corrected is if they are made public, and that is with congressional oversight and public exposure. We need whistleblowers.

I have to highlight an extraordinary letter written yesterday by Senator Chuck Grassley involving a joint investigation we have been conducting for a couple of years. Finally some whistleblowers have come forward, and, quite honestly, I do not know if they are from the Federal Bureau of Investigation (FBI) or the Department of Justice. But it is extraordinary what he reveals in his letter to FBI Director Wray and Attorney General Garland. To quote, "There was a scheme in place among certain FBI officials to undermine derogatory information connected to Hunter Biden by falsely suggesting it was disinformation."

Now, I do not want to go too far into this. This is not necessarily the forum for this, but it is exactly the forum to encourage more whistleblowers to come forward, because one of the reasons this is so near and dear to my heart is both Senator Grassley and I were falsely accused of accepting and disseminating Russian disinformation. Is this where this came from? Did those false accusations against the Chairmen of Senate Committees duly authorized with the responsibility to conduct oversight and investigations, were we smeared and undermined by our own FBI?

I would like to enter Senator Grassley's letter into the record.¹ I would also like to enter the letter I wrote to Attorney General Garland, to Christopher Wray, to Director of National Intelligence (DNI) Haines, as well as Inspector General (IG) Horowitz. I would also like to enter that in the record.²

Senator OSSOFF. Without objection.

Senator JOHNSON. Again, if you are a whistleblower in the Department of Justice, the FBI, please come forward. If you want to restore integrity and credibility to your agencies, come forward and tell Congress so the American people understand the truth.

I would also make that appeal to people working in our Federal health agencies. Our response to Coronavirus Disease 2019 (COVID-19) has been a miserable failure, largely because our health agencies have not been transparent. I have written 43 oversight letters to the agencies. Where I have gotten responses, they are non-responsive responses. Generally, I do not even get answers.

This lack of transparency must end. We must restore congressional oversight, because the American people deserve the truth. Every one of the confirmed Secretaries or agency heads come before Congress, they raise their hand, and they swear that they will comply with legitimate congressional oversight. Then they do not. This has to end. The American people deserve transparency, they deserve honesty, they deserve the truth.

Mr. Chairman, I appreciate the work you have done on this. This was important information. The only way this is going to get fixed in Atlanta and other prisons is if the American public is aware of

¹ The letter from Senator Grassley appear in the Appendix on page 95.

² The letter from Senator Johnson appear in the Appendix on page 99.

what is going on, because obviously the Bureau of Prisons is not fixing it. They have not fixed it. This requires public pressure, and that requires congressional oversight.

I commend you for drawing the line and insisting on cooperation. We did not get it. We finally got it at the 12th hour. But this is exactly what is required, and, again, I am hoping you are now realizing a fraction of the frustration I have been feeling for 6 years trying to get to the bottom and trying to provide the American people the truth.

Thank you.

Senator OSSOFF. Thank you, Ranking Member Johnson, and I appreciate your will to investigate issues in the Bureau of Prisons at U.S. Penitentiary Atlanta and, indeed, at other facilities, and we will continue that work together.

We will now call our first panel of witnesses for this morning's hearing.

Dr. Erika Ramirez, a current Bureau of Prisons employee and the former chief psychologist at U.S. Penitentiary Atlanta.

Ms. Terri Whitehead, retired from the Bureau of Prisons after more than 30 years of service, she served most recently as jail administrator at U.S. Penitentiary Atlanta before retiring in December 2021.

Ms. Rebecca Shepard is a trial attorney with the Federal Defender Program in the Northern District of Georgia whose office has frequently represented inmates at the U.S. Penitentiary in Atlanta.

I appreciate all of you being with us this morning, and I especially want to thank you for the courage to come forward and speak out. We look forward to your testimony.

It is the custom of this Subcommittee to swear in all witnesses. At this time I would ask all of you to please stand and raise your right hand. Do you swear the testimony you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. RAMIREZ. I do.

Ms. WHITEHEAD. I do.

Ms. SHEPARD. I do.

Senator OSSOFF. Let the record reflect that the witnesses answered in the affirmative. You may take your seats.

We will be using a timing system today. All of your written testimony will be printed in the record in its entirety, and we would ask that you try to limit your oral testimony to no longer than 5 minutes.

We will begin with you, Dr. Ramirez. You may deliver your opening statement.

**TESTIMONY OF ERIKA RAMIREZ, PH.D.,¹ FORMER CHIEF
PSYCHOLOGIST, U.S. PENITENTIARY ATLANTA**

Dr. RAMIREZ. Good morning. It is my professional and personal honor to participate in this hearing.

¹The prepared statement of Dr. Ramirez appear in the Appendix on page 52.

I am here today seeking accountability for the appalling situation at United States Penitentiary Atlanta, once the flagship of the BOP. It is now a penitentiary in name only.

As the chief psychologist at USP Atlanta from 2018 to 2021, I repeatedly reported ongoing, uncorrected, gross mismanagement of suicide prevention practices, staff misconduct, and general operational deficiencies. Unfortunately, the only response I received was unlawful retaliation. I was involuntarily transferred to a Federal Correction Institution (FCI) in Seagoville, Texas.

Though I am speaking today in my personal capacity, I have been an employee of the Federal Bureau of Prisons for 15 years. For the first 11, I was assigned to various psychology departments at high or maximum security male institutions. From 2015 to 2018, I was a psychologist with a supervisory role in the supermax, also known as the Administrative Maximum Security (ADX), the facility in Florence, Colorado, the most secure institution in the country.

In 2018, I accepted the chief psychologist position at USP Atlanta, where my mission was to turn around a deficient, failing psychology department. I was responsible for integrating standardized procedures on inmate mental health issues, the provision of sound clinical care to the inmate population, developing and implementing mental health treatment and best practices, and tracking and analyzing program adherence.

Like most BOP employees, I am first and foremost a Federal law enforcement officer (FLEO). In addition to providing mental health care, I am responsible for ensuring the safety and security of the community, the staff, and the inmate population. That includes patdowns, searches, and other security-related duties.

Upon my arrival and for the duration of my time at USP Atlanta, the facility was falling apart. Elevators were inoperable for months at a time. The walls were infested with mold. Whenever it rained, the sewer would back up and overflow onto the recreation yard—sometimes leaving a foot of human waste behind.

Security-wise, there was little to speak of. Given the volume and flagrancy of the contraband, it was obvious that cell searches were not being properly conducted, if at all. For instance, I confiscated a microwave that I found while searching an inmate's cell. Two days later, I found the same microwave in another cell. It was the same serial number.

Of course, my assignment and primary concern was inmate mental health and suicide prevention. In the roughly 4 years, eight inmates at USP Atlanta died by suicide—two prior to my arrival and six during my tenure. To put this into perspective, Federal prisons typically see between one and three suicides over a 5-year period. Any loss of life is tragic and unacceptable, which is why it is particularly devastating to see such disregard for human life at USP Atlanta.

BOP policy requires that a suicide reconstruction team is sent to investigate circumstances of any inmate suicide. The team prepares a report detailing findings and making recommendations to prevent reoccurrences. This report is sent to onsite regional and national offices in the BOP, and the institution and region must provide a written response to any recommendations.

While at USP Atlanta, I reviewed seven reconstruction reports, each prepared by different teams, and all seven reports featured some of the same issues: inmates suffering from ongoing substance abuse, easy access to drugs, unit rounds which were required to be done every half-hour were routinely skipped for hours at a time.

I repeatedly expressed my concerns about other systematic failings to management, and nothing was done. Despite the desperate need for reform, any suggestion for change was met with resistance. "That is not the Atlanta Way."

Some of the examples of the Atlanta Way included: an employee yelling threats and obscenities, aggressively approaching an executive staff member. Though I was 5 months pregnant and terrified, I stepped between the two and pushed the employee away. I reported the employee to local and regional management, and nothing was done.

Another time, my husband was repeatedly hit by a staffer. He required medical attention, the attacker remained at work. I was warned to stay away from him.

In 2020, a program review team found that the staff had broken machines intended to detect traces of drugs. This has been going on for a year. The agency's response was to move 43 mid-level supervisors who were not involved in any misconduct across the country. During the height of the COVID pandemic. Our families had set down roots, and we had worked tirelessly trying to fix the institution. The agency refused to give us responses.

Today I am asking that you help this agency. Staff it at 100 percent. Provide mid-level management with tools to actually make changes. We have tremendous responsibility, and yet we have little authority being reassigned based on the agencies refusal to hold staff accountable. When there is discipline, make it fair and swift.

I thank you for your time.

Senator OSSOFF. Thank you, Dr. Ramirez.

Ms. Whitehead, you may now deliver your opening statement.

TESTIMONY OF TERRI WHITEHEAD,¹ RETIRED SENIOR MANAGER, U.S. PENITENTIARY ATLANTA, FEDERAL BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE

Ms. WHITEHEAD. Good morning. Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee, thank you for inviting me to testify today.

Who am I and why am I here? I am an upper-management retiree after serving more than 30 years with the Federal Bureau of Prisons. I am here because of the many abuses and gross mismanagement I personally witnessed while serving at USP Atlanta. I was shocked and appalled by the USP Atlanta big picture. On a daily basis, there were numerous policy violations which put the staff, inmates, and the local community in danger. For example, there were so many rats inside the facility dining hall and food preparation areas that staff intentionally left doors open so the many stray cats that hung around the prison could catch the rats. It is never a good idea to leave prison doors open.

¹The prepared statement of Ms. Whitehead appear in the Appendix on page 58.

There was no professional pest control service in place because management officials could not work together and determine which departmental budget was responsible for the cost.

I arrived at USP Atlanta in August 2020, 6 months into the pandemic, and at that time staff were not provided appropriate personal protective equipment (PPE) to perform their duties during the pandemic. Also, there were no designated COVID-19 isolation or quarantine areas in the detention center unit.

In August 2020, it was reported half of the 300 security cameras did not operate appropriately, and the other half were off by 3 hours. This was not the first time this had been reported. There were missing security controls and equipment to include keys, handcuffs, and pepper spray. Key control at other Bureau facilities that I have worked is paramount to maintaining safety and security.

Then there is the Atlanta Way. The Atlanta Way is far from the norm and certainly not the Bureau of Prisons Way. Most of the staff at USP Atlanta are very proud that Atlanta does things intentionally different. The BOP has a policy on staff conduct and ethics. Reports of unethical behavior must be investigated and, if warranted, discipline is imposed. However, at USP Atlanta, the Atlanta Way is that staff are not held accountable for misconduct, inmates are not challenged for negative behavior, and the regular maintenance and routine repairs are non-existent.

Staff members are actually involved in physical fights at work. Cases are uninvestigated and/or staff are subsequently promoted within. Marijuana is routinely smelled inside the prison, but there are no searches to determine which inmates are smoking. Inmates are observed in zombie state, and nothing is done in an effort to determine the source of illegal substances.

All BOP staff members are correctional workers first, to include secretaries, psychologists, teachers, and wardens. Conducting searches is Corrections 101 at BOP facilities. I never saw a pat search conducted at USP Atlanta, and in August 2020 and July 2021, reports indicate area searches were not being done.

As the jail administrator at USP Atlanta, I tried to make positive changes by voluntarily training less experienced staff, by correcting security violations, and reporting staff misconduct. My efforts were very unappreciated. I was ostracized by staff. I was victimized by the agency with a forced relocation to a Texas facility, which led to my retirement much earlier than planned. In August 2021, the pseudo-solution to addressing the USP Atlanta problems was to move 43 management officials out of 432 staff members.

What I witnessed was outrageous. I never expected to be here today. Now that I am, I ask for your immediate help. I truly believe the problems can be fixed with the right people and mind-set. Please continue the kind of oversight you are doing today. Hopefully it will result in real accountability and stop the abuses you are hearing about. Thank you for your time.

Senator OSSOFF. Thank you, Ms. Whitehead.

Ms. Shepard, you may now deliver your opening statement. To our panelists, you may hear buzzes and bells from the camera, and they have nothing to do with you or your time. They are just indi-

cators of what is happening on the floor, so do not be alarmed. Ms. Shepard.

TESTIMONY OF REBECCA SHEPARD,¹ ASSISTANT FEDERAL PUBLIC DEFENDER, FEDERAL PUBLIC DEFENDER FOR THE NORTHERN DISTRICT OF GEORGIA

Ms. SHEPARD. Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee, thank you for inviting to me this hearing.

Today I focus my testimony on the unacceptable conditions of confinement for clients who are detained pretrial, awaiting trial and presumed innocent, at USP Atlanta.

Defenders see firsthand how USP Atlanta subjects people to inhumane and substandard conditions and limits their access to attorneys, which in turn interferes with their Sixth Amendment right to counsel. The result is deplorable and punitive conditions which courts, defenders, and our clients have observed for decades.

I want to begin by sharing a clear picture of what life inside is like. One client—and I will call him “Jacob” for the purpose of this hearing—described his experience in a 2019 affidavit that I have submitted at Exhibit B. Jacob was held in an overcrowded pod where he was locked into his cell for 24 hours a day, 3 to 4 days at a time. He was one of three people squeezed into a two-person cell. When Jacob was allowed outside of his cell, it was for less than an hour every few days. The pod only had six showers and three phones that had to be shared by about 100 people, making it impossible for everyone to shower and make phone calls.

When out of his cell, Jacob had to choose whether to call his family or to call his attorney, but he could not do both. Even worse, Jacob’s cell was infested with roaches, and when he asked for cleaning supplies, the guards merely laughed.

I am sorry to say that Jacob’s experience is not at all unique for Atlanta pretrial detainees. During my 8 years as a defender, I have seen clients routinely locked down and allowed out of their cells for extremely limited periods of time, such as only 15 to 30 minutes, 3 to 4 times a week, or only an hour each day. These lockdowns persist for months. Clients are treated as though they are in solitary confinement, not because of their behavior but because of their misfortune in being placed at USP Atlanta.

Lockdowns mean that my clients cannot meet their basic human needs, cannot communicate with their families, cannot visit with clergy, and cannot participate in productive programming.

Jacob also described receiving substandard food and hygiene at USP Atlanta. His dinner was routinely slices of bread and packages of expired deli meat, and he could not supplement his diet with commissary because it was limited to only instant coffee and potato chips.

Again, Jacob’s experience is not unique. Our clients go months at a time with only sack lunches provided for every meal served in their cells. Sometimes they find bugs in their food, and we see the impact as our clients lose weight and become emaciated.

¹The prepared statement of Ms. Shepard appears in the Appendix on page 63.

Given these fundamental failures of care, it should come as no surprise that USP Atlanta routinely denies our clients access to mental health treatment, including medication, therapy, and access to mental health professionals. As Chairman Ossoff referenced earlier, one person on pretrial detention was held for a week on suicide watch without access to treatment or medication, provided only a paper gown and paper blankets.

I want to turn to a different topic next, which is how USP Atlanta interferes with the Sixth Amendment guarantee of effective assistance of counsel. USP Atlanta's practices and policies do not allow us to fulfill our constitutional and ethical obligations of zealous advocacy.

First, there are scheduling delays and difficulties, as USP Atlanta staff member fail to respond to requests for legal meetings, often for several days and despite repeated requests. It is not unusual for the date of the expected meeting to pass and for there to still be no response from staff members. Scheduling a meeting does not mean that the meeting will actually happen because of the facility's chaos and disorganization.

When we do get to meet with our clients, it is often after hours of waiting. While we wait, we are on the clock, along with the experts and interpreters that often come along with us. Taxpayers are bearing the cost of USP Atlanta's incompetence.

Clients' access to their discovery, the government's evidence against them, is also limited because clients do not have enough access to the law library due to the lockdowns and have no ability to review electronic discovery with their attorneys. Even when a court has intervened and ordered USP Atlanta to allow law library access, the facility has failed to comply.

The circumstances that we detail today are inhumane and unjust, but they are avoidable, and they should not be the norm. Unfortunately, the problems at USP Atlanta are part of a larger story of systemic dysfunction. My written statement includes several recommendations for ways this body could address this unconscionable state of affairs.

Thank you very much for the opportunity to testify today, and I welcome any questions you may have.

Senator OSSOFF. Thank you, Ms. Shepard, and to all of our panelists.

I will now begin with my first round of questions. Ms. Shepard, I would like to begin with you. I am going to enter into the record a letter¹ from Judge Timothy C. Batten, Chief United States District Judge, Northern District of Georgia, to the warden at U.S. Penitentiary Atlanta from just January of this year.

Now, our review of internal BOP records demonstrates that a pattern of misconduct and dysfunction persists at least as far back as 2014 at this facility. This is from January of this year. The judge asks the warden for answers with respect to reports of rats in the building, roaches in the food, poor nutrition and emaciation of inmates; lack of access to hygiene products, lack of access to medication, lack of access to mail, limited access to toothbrush and toothpaste; no change of clothes for several weeks; a month of 24-

¹The letter referenced by Senator Ossoff appears in the Appendix on page 102.

hour solitary confinement with only a Bible for entertainment or reading; a week, as you mentioned with only a paper jumpsuit and paper blankets for an inmate on suicide watch without mental health treatment; only being permitted 15 minutes out of a cell every day to bathe, make phone calls, and use the library; blockage of written and other communications between attorney and client; and difficulty arranging interview between inmate and psychologist.

Is this consistent with your experience? What does this say about the state of affairs—this is just in the jail at U.S. Penitentiary. I want to remind everyone, these are presumptively innocent pretrial detainees. These conditions would be appalling if any human being were subjected to them. We are talking about people who have been convicted not of the crime they have been charged, if any crime at all. Would you please comment?

Ms. SHEPARD. Yes, Chairman Ossoff, that is representative of our experience. We have observed the same conditions that are detailed in that letter, and I would like to make clear to the Subcommittee, these are not conditions that were created or result from the COVID-19 pandemic. These are conditions that we have seen for as long as I have been going to USP Atlanta, which dates back to 2014, and for my colleagues, even further back. They have also been reflected in records established in front of the district court as well as in front of the Eleventh Circuit.

Senator OSSOFF. I cited in my opening statement a note in a BOP internal investigative document, the BOP's own staff stating on the record that they believed misconduct in the prison constituted a violation of constitutional rights. What do these conditions mean for access to counsel, the Sixth Amendment right that every defendant has to be in consultation with their attorney and receive effective counsel?

Ms. SHEPARD. As I alluded to in my earlier statement, it is difficult to the point of, in some cases, impossible for us as attorneys to communicate with our clients. There are extremely lengthy delays in our clients receiving legal mail. But it is a necessary part of our representation of our clients to meet with them, to discuss the evidence against them, to discuss what their legal strategy will be. All of those conversations require contact with our clients.

It is not unusual for it to take several weeks, if not longer, to even schedule an opportunity to go into the facility. Again, when we do get into the facility, our time with our clients is extremely limited, largely due to the chaos and dysfunction that exists within the facility.

Just getting into the facility, being processed in, there is often—even if we have an approval from an administrator to come for the meeting, the people at the front gate do not have that. They did not know we were coming. No one is assigned to actually monitor the meeting. All of those delays end up creating a situation where our time with our clients is extremely limited. The consequence of that is that then hearings that the court has scheduled often have to be delayed. It is not unusual for us to have to ask the judge for continuance after continuance after continuance because we are not able to prepare for a hearing or to file motions because we simply do not have access.

Senator OSSOFF. Thank you, Ms. Shepard.

Dr. Ramirez, I want to talk about access to narcotics in the facility, the impact on mental health. I noted that internal BOP reports that the Subcommittee secured dating back as far as 2014 noted severe deficiencies in the ability to manage and prevent the flow of contraband, including drugs and weapons, throughout the facility. I noted an event in the last 5 years when BOP's own internal investigators found that the staff had deliberately disabled a spectrometer meant to detect trace amounts of narcotics entering the facility.

In the summer of 2021—this is just in the very recent past—after 8 or 9 years of BOP's internal reports noting the failure to prevent contraband, there were seized heroin, methamphetamine, suboxone, marijuana, tobacco, more than 100 instances that summer of locating narcotics, Ecstasy, synthetic marijuana, K2, not to mention a kilogram of marijuana found in a locked education storage closet, 300 grams of marijuana found on a worksite, 158 pills of a variety of loose prescriptions, 170 grams of methamphetamine in a common area, weapons, and nearly 500 cell phones, all inside the facility, all found in a few sweeps in the summer of 2021.

Please describe the problem at USP Atlanta with respect to access to narcotics and how it intersects with your work in mental health and the suicides that you saw while you were there.

Dr. RAMIREZ. Unfortunately, the ease of access to drugs makes it very difficult for mental health providers to differentiate between genuine mental illness and the effects of whatever unknown substance the individual may be on. We spend much of our time initially assessing, what the individual is experiencing. Is this because of drugs? Have you had depression? It takes much longer to tease out whether this is an organic issue or something created by a chemical that was recently ingested.

Unfortunately, the lack of security, routine searches, routine drug testing, it is such that we always have to assume that the inmate is intoxicated and is not necessarily presenting an organic mental illness. It certainly creates a delay in developing a treatment plan and moving forward on how to best help that individual.

Senator OSSOFF. Thank you, Dr. Ramirez. The suicide investigation reports that the Subcommittee secured over many years reveal negligent staff responses to suicides in progress, and negligent staff conduct before, during, and after suicides. This is April 2016: Correctional services staff had failed to locate the inmate for a scheduled mental health treatment. Census counts were not being properly conducted and documented. October 2017, this is a quote: "Staff responded with no apparent sense of urgency to the inmate hanging in his cell, logged no rounds on the SHU that day. No evidence pertaining to the suicide was retained." This is the BOP's own internal findings.

Another suicide October 2019: Rounds on the SHU were not performed; a delay in the initiation of life-saving measures; mishandling of evidence again.

My final question, with the Ranking Member's indulgence, Ms. Whitehead, for you, staff misconduct, staff failure to follow policy. Based upon your experience, how deficient were the management processes that should have caused staff to adhere to BOP policies

and procedures? Once you are concluded, it will be the Ranking Member's turn. Thank you.

Ms. WHITEHEAD. Thank you for that question, Senator. As I said, the BOP has a policy on misconduct, and the way it happens, if it is observed, you write a memo, you report it. I personally have reported maybe six instances when I was in Atlanta in about 16 months. I was never interviewed. There are fights; staff fight each other, physical fights in the prison. Those cases are not investigated. There are staff that curse each other in the presence of inmates. I have witnessed it. I have reported it. I have never been interviewed.

When staff do not report to work, they are absent without leave (AWOL). Three hundred hours of AWOL, and that staff member continues to go to work. Without a system of controls in place to curb misconduct among staff, the inmates feel that they can do whatever they want to do.

Senator OSSOFF. Thank you, Ms. Whitehead.

Ranking Member Johnson.

Senator JOHNSON. Thank you, Mr. Chairman.

Ms. Shepard, quickly, you are generally dealing with people in pretrial detention, correct?

Ms. SHEPARD. My testimony was focused on that. We also represent—for example, I have a client right now who is charged with committing a criminal act while inside the facility, so we have different sorts of—

Senator JOHNSON. OK. Are those individuals separated, those populations, pretrial detainees versus the general prison population?

Ms. SHEPARD. Yes, and there is also an additional population at the facility, which is transferees. Inmates who are being transferred from one BOP facility to another, those should also be separated. We have seen, I have seen clients who were pretrial who were in the same pod or unit as transferees, people who were already serving a sentence.

Senator JOHNSON. The whole prison sounds like a horror show, but is it particularly broken in terms of pretrial detention, or is there really no difference?

Ms. SHEPARD. I believe that is accurate, yes. The egregious lockdown conditions that I have described, the egregious nutrition and hygiene conditions that I have described, are specific to pretrial detainees.

Senator JOHNSON. OK. Ms. Whitehead, I am deaf in one ear, and you are very soft-spoken, so if you could get your microphone a little bit closer to you so I can hear better. You obviously have served in a number of prisons around the country. I think my main question to you is: How extraordinary, how out of the ordinary is Atlanta and the Atlanta Way versus other situations you have been in?

Ms. WHITEHEAD. As I indicated, I was shocked, I was appalled by the conditions at Atlanta. Cell phones. In July 2021, approximately 700 cell phones were recovered in a sweep in Atlanta.

Senator JOHNSON. Quickly, while we are on cell phones, describe why that is such a problem in a prison.

Ms. WHITEHEAD. Inmates are not allowed to have cell phones in a prison. Inmates can actually call hits on anybody outside of the prison using a cell phone. Cell phones are not monitored. Inmates can make drug transactions, commit further crime utilizing a cell phone.

Senator JOHNSON. Again, that is a big problem when you have 700 cell phones in a prison.

Ms. WHITEHEAD. It is huge.

Senator JOHNSON. Go on.

Ms. WHITEHEAD. Cell phones are in other institutions. To put it in perspective, there may be one cell phone to 50 inmates at another institution. Atlanta had approximately 1,400 inmates and 700 phones were found. That is one to every other inmate.

Senator JOHNSON. You started your career in Atlanta.

Ms. WHITEHEAD. I did.

Senator JOHNSON. I do not want to age you but you had a career all over the country, and then you came back really at the tail end of your career.

Ms. WHITEHEAD. Yes.

Senator JOHNSON. Do you have any idea how long conditions were as you found them? Is this something that had been going on for years?

Ms. WHITEHEAD. When I started my career as USP Atlanta as an intern, I was learning the Bureau, the Bureau Way I was learning the Bureau. I traveled to about eight institutions over 30 years gathering knowledge, learning policies, and I went back to Atlanta. I was very proud to go back to Atlanta. When I got to Atlanta and I saw that Atlanta operated totally differently from other institutions, it was a shocking moment that Atlanta is far off the grid when it comes to the BOP.

Senator JOHNSON. There are problems at other Bureau of Prisons but nothing like Atlanta?

Ms. WHITEHEAD. Not that I have experienced.

Senator JOHNSON. Not even close.

Dr. Ramirez, there is generally somebody in charge, there is some leader of the pack, so to speak. There is somebody generally in charge. My guess is it is not necessarily the warden. Do either of you know who is in charge there, really? Who created the "Atlanta Way"?

Dr. RAMIREZ. I think the "Atlanta Way" has been ongoing for many years, long before I started at the Bureau and probably even before Ms. Whitehead. In my experience at USP Atlanta, I think the warden, though identified at the leader per se, has very little authority. The Southeast Regional Office where the regional director is is about 12 miles away. From my experience that office had a lot of input and oversight into what was going on in the institution, though they may or may not have been informed about the minutiae of what was going on at the institution they are aware of the state of the institution. I think it is kind of divided.

Senator JOHNSON. I realize the sensitive nature of my question here, because I am shocked, quite honestly, how much retaliation we actually see within government agencies. I understand the fear. But I am trying to determine who is in the end responsible for this. You can say, the director; you can the warden. I am trying to figure

out exactly why this continued to go on and on and on. I know both you and Ms. Whitehead attempted to report these things. Who did you report this to?

Dr. RAMIREZ. I reported it both to the warden and the regional director. In some cases, as it related to the suicides, it was reported to Central Office D.C. I think a lot of what you are seeing is years and years of staff and management not being held accountable. It enables further misconduct, almost making it normal.

Senator JOHNSON. When you reported that to the warden or somebody at the regional center, is it your assessment they were fully aware of this, they realized there was nothing they were going to do about it or could do about it and they ignored your concerns?

Dr. RAMIREZ. Yes, my assessment was they were fully aware. I know they were fully aware because I advised them myself. In many cases, I believe they chose to take no action because it was far more difficult to take action than to look the other way.

Senator JOHNSON. Would those people in charge, would they fear of retaliation themselves, and not necessarily career retaliation but physical retaliation from people in the prison?

Dr. RAMIREZ. In my opinion, I do not believe that they would be in fear of physical retaliation, but I do believe that the regional director is a political position to some degree, and there is quite a bit of caution when attempting to address misconduct.

Senator JOHNSON. With your indulgence, Mr. Chairman, Ms. Whitehead, can you bring some context? I think you understand the thrust of my questions here. When there are ongoing problems, it goes on and on and on, and people are aware of it, but they are simply not addressing it. Can you explain why?

Ms. WHITEHEAD. It appears the problems in Atlanta have been growing for years. Atlanta has a reputation. At one point it was the flagship of the Bureau of Prisons. Atlanta has a reputation; there is the Atlanta Way. Typically, wardens will make a round through Atlanta, maybe 2 to 3 years. They have a career to keep growing. If you go to Atlanta and you per se rock the boat or you do not go along with the Atlanta Way, then it can ruin your career.

Senator JOHNSON. The people that report to you as the warden, they would be able to ruin your career if you do not discipline them and correct what is happening at the prison. Again, I am trying to understand this.

Ms. WHITEHEAD. The warden does have limited ability to make change, particularly at Atlanta. The regional director, who is the warden's supervisor, has more stake or more weight in making change in Atlanta. If the warden goes against the regional director's view of Atlanta, then the warden is going to be moved.

Senator JOHNSON. OK. The responsibility really falls on the regional director's shoulders rather than the warden's shoulders.

Ms. WHITEHEAD. More so for Atlanta.

Senator JOHNSON. OK. Thank you, Mr. Chairman.

Senator OSSOFF. The Ranking Member's line of questioning brings to mind, I think, something that is important that we establish here today, which is that these issues are longstanding, and these issues have been known to the BOP, this information has been accessible to BOP leadership dating back at least 9 years, according to the records that we have secured from the Bureau of

Prisons. All the way back in 2014, we have internal BOP documents warning about deficiencies in suicide prevention practices, Dr. Ramirez, at the facility. Yet a full 6 years later, November 2020, here is something from a suicide investigation, U.S. Penitentiary Atlanta: “Past reconstruction teams”—the teams that conduct these investigations, this report reads. “Past reconstruction teams have made many of the same recommendations noted below in this report. The need for attention to detail, adherence to BOP policy, and regard for human life among Correctional Services staff.”

“Regard for human life among Correctional Services staff.”

Here is another report, another suicide about 8 months later: “Once again this reconstruction revealed complacency, indifference, inattentiveness, and lack of compliance with BOP policies and procedures. These lapses contributed to a dangerous and chaotic environment of hopelessness and helplessness, leaving inmates to their own means to improve their quality of life.”

What does it mean in a prison, Dr. Ramirez, if the Correctional Services staff—and these are not my words, folks; these are the words of the BOP’s own internal investigators—“lack a regard for human life”?

Dr. RAMIREZ. It makes it impossible for psychology services or even health services to do their job. We are all one team, but certainly Correctional Services is the backbone of any institution. If they are not doing the minimum, we are then unable to provide the treatment necessary to help improve mental health across the institution. If we cannot stop inmates from accessing substances, from engaging in self-harm routinely and having access to various contraband, we cannot provide them mental health services. It just makes it impossible, sir.

Senator OSSOFF. Thank you, Dr. Ramirez.

Ms. Shepard, the impact on the physical health of those incarcerated at this facility—and, again, I want to keep emphasizing this, that particularly in your case we are talking about pretrial detainees. Let me be clear that there is no excuse for this treatment and abuse of any human being in any facility of the U.S. Government or in the world. When we are talking about pretrial detainees, we are talking about folks who are being held before or while their cases are tried. They have not been convicted. They are presumptively innocent.

We heard from a Federal judge that so depraved are the conditions at U.S. Penitentiary Atlanta that, if folks are convicted and sentenced, they depart downward from the Sentencing Guidelines because they consider incarceration at this facility to be punishment upon punishment.

I would like for you to describe what you have seen in terms of the impact on detainees’ and inmates’ health of lack of access to nutrition, clean water, and so on?

Ms. SHEPARD. We see this on a regular basis with clients who are detained pretrial at USP Atlanta, significant changes not only in physical health but also in mental health. In terms of physical health, we see, as I described earlier, clients who are losing weight, losing muscle mass, sleep-deprived. All of those take a very physical toll on our clients’ health, and we see that and we point that out to the judges to help them understand and explain what these

clients are subject to that is different, it is not what we expect out of Federal pretrial detention. It is not what clients at different Federal pretrial detention centers within the district experience.

But there is also a significant toll on their mental health. The extreme isolation of being in these lockdown situations, unable to communicate with family members for days on end, and even when they are able to wait in line and make that phone call, there is a line behind them, and so the pressure to keep that communication short, even when they are able to make it, it is—again, these are individuals who are entitled to the presumption of innocence and who our system has taken custody of. This treatment is deplorable, and it bears visible consequences in terms of both physical and mental and emotional health.

Senator OSSOFF. In the land of the free, before you have been convicted of any crime, you can be locked up 23 hours a day without access to food or clean water, without enough time to take a shower, with paper clothes, without enough time to call your family, by the U.S. Department of Justice, without access to counsel. It is a disgrace to the U.S. Government.

I want to ask you, Ms. Whitehead, for your response to the concluding paragraph from the 2020 Security Assessment—again, after years and years of warnings and internal BOP reports about gross deficiencies, misconduct, security lapses. Here is how that 2020 Security Assessment that the Subcommittee secured concluded: “U.S. Penitentiary Atlanta presents significant security concern for the Southeast Region. Both national and local policies are being violated on a regular basis. The staff at USP Atlanta are quality staff, but without proper leadership, oversight, and accountability, failed to follow proper security procedures. USP Atlanta requires immediate corrective action.”

We have heard that before in internal audits, the demand by those investigators for action now. What was it like for you and others working in the facility to work in that environment?

Ms. WHITEHEAD. When I arrived at Atlanta, my very first day I sat in my car, and I said, “What the hell? Where does this happen in the Bureau of Prisons?” I know that there are very good staff in Atlanta that want to follow policy, that want to do the right things. However, without that leadership, without being held accountable to follow those policies, it is a disservice to the staff and the inmates and the local community.

The report saying that there must be immediate action is correct. However, I am still waiting on that immediate action. When I was in Atlanta, I did not see any action to the 2020 report. I did not see any action to the July 2021 situation other than to move the management staff.

Senator OSSOFF. Thank you, Ms. Whitehead.
Ranking Member Johnson.

Senator JOHNSON. Thank you, Mr. Chairman.

I want to go on. This concluding paragraph is quite short. It also says, “The lieutenants’ office is not being held accountable and is in need of additional oversight. The staff morale appears average to below average. There appears to be a great deal of animosity between line and executive staff.”

Ms. Whitehead, can you describe the line of authority? Who is the lieutenant? You do not have to name names, but in terms of the line of management, what is the lieutenants' office?

Ms. WHITEHEAD. There is line staff. The lieutenants' office is the first-line supervisors of Correctional Services.

Senator JOHNSON. This would be right underneath the warden?

Ms. WHITEHEAD. Right underneath the captain. It is the warden—

Senator JOHNSON. The warden has captains reporting to him?

Ms. WHITEHEAD. At Atlanta, the captains report to the associate warden; the associate warden reports to the warden. Therefore, the lieutenants are the first-line supervisors. The captain would be the second; the associate warden, the third; and the warden is the fourth inside the institution.

Senator JOHNSON. OK, basically four layers of management inside the prison.

Ms. WHITEHEAD. Absolutely.

Senator JOHNSON. Then the warden reports to the regional director.

Ms. WHITEHEAD. Yes.

Senator JOHNSON. It seems like this report is really calling out the lieutenants, four layers down. I have managed things in the past. I first go to the top, recognizing an awful lot of things happen underneath and the top management may be unaware of it. But I think it is interesting to note that this report really focuses on the fourth line of management inside that prison. Can you explain what is wrong with the top three layers that they are not providing proper oversight to the lieutenants? Is that where the power is? The lieutenant level, is that where the Atlanta Way got developed and the other three layers are just ignoring it?

Ms. WHITEHEAD. No. It is a collective problem. As far as that report goes, it talks a lot about Correctional Services, about making rounds, about conducting searches. The lieutenants' office is pretty much responsible for training the officers in those areas. The suicide reports and that August 2020 report indicates staff were not conducting searches, staff were not making rounds. If the lieutenants are making the rounds and supervising the staff, the Correctional Services staff, then that report indicates some of those things should not have happened. It is a very tight institution, the different levels. The captain communicates with the lieutenants on a daily basis. The associate warden communicates with the lieutenants on a daily basis. Therefore, if the lieutenant knows that it is going on, then the captain should know. Then the captain should let the warden and the associate wardens know. It is not correct that the upper three levels did not know what was going on either.

Senator JOHNSON. It says there is animosity between line and executive staff. So define "line." Is executive staff the top two layers, three layers, four layers? Where is the animosity occurring?

Ms. WHITEHEAD. The executive staff is the top layer. The line staff would be the first layer. A lot of the line staff—

Senator JOHNSON. Define it in terms of the lieutenants, captains, what we were just talking about earlier.

Ms. WHITEHEAD. That is the line staff. The very first line of supervisor will be the lieutenants' office.

Senator JOHNSON. In this report, do you know where is the animosity between the first-line staff and the lieutenants' office and above?

Ms. WHITEHEAD. It appears that it is between the first-line staff and the lieutenants' office, and then it appears that the lieutenants' office have issues with the next level from that report.

Senator JOHNSON. Dr. Ramirez, can you explain why there is all this animosity?

Dr. RAMIREZ. In my experience at Atlanta, the bargaining staff, meaning the officers, the secretaries, oftentimes give pushback to their first-line supervisors, so the lieutenant, as is referenced there.

Senator JOHNSON. You said the bargaining staff. That would be the unionized workers?

Dr. RAMIREZ. Yes, sir. That is what they mean by line staff.

Senator JOHNSON. Then lieutenant and above are outside the union?

Dr. RAMIREZ. Yes, sir.

Senator JOHNSON. There is one potential fault line.

Dr. RAMIREZ. In my experience, what I witnessed at Atlanta was oftentimes the lieutenants would attempt to address an issue; the line staff may push back, and it created animosity because the captain, the associate warden, and the warden expect a job to be done. The lieutenant is in my experience I have witnessed them being very frustrated with being unable to get whatever done.

Senator JOHNSON. Is that because they simply cannot enforce the directives because the union will not allow it to be enforced? I mean, is there some labor-management issue that is part of this? Is the Atlanta Way, is that really a bottom-up phenomenon that it is the unionized workers that have created this Atlanta Way and line management simply cannot enforce anything for whatever reason?

Dr. RAMIREZ. I certainly think that there are challenges with the union and management at Atlanta. I would also say, as I mentioned in my testimony, that the agency's accountability for any type of staff misconduct, that entire process is so convoluted. If an employee—

Senator JOHNSON. When you staff accountability, is that disciplining the union, the bargaining—

Dr. RAMIREZ. Disciplining any staff member.

Senator JOHNSON. Anybody?

Dr. RAMIREZ. Yes—

Senator JOHNSON. OK. Let me just—because I want to get to one other question. I think it was Dr. Ramirez, in your testimony you talked about teachers and classes, and there is plenty of staff to teach, but you have only seen one course being conducted there. My guess is we are going to hear from the Director, it is always a staff issue, it is always a money issue. Sometimes it certainly is. Can either one of you explain why you got teachers and education staff and no classes going on except for that one instance?

Dr. RAMIREZ. Again, at least in my experience, what I witnessed at Atlanta, it was very difficult to account for the staff. There was quite a bit of animosity not only between the line staff and management but also between staff who were not Atlanta staff, meaning we came from other institutions.

Senator JOHNSON. The outsiders.

Dr. RAMIREZ. The outsiders. There was quite a bit of divide between the staff, and so it made for a somewhat cat-and-mouse game at times.

Senator JOHNSON. Ms. Whitehead, do you have a comment on that?

Ms. WHITEHEAD. Dr. Ramirez is right on point.

Senator JOHNSON. Thank you, Mr. Chairman.

Senator OSSOFF. Thank you, Ranking Member Johnson. Thank you again so much to our witnesses on this panel for your courage, for coming to speak out about what you have experienced at U.S. Penitentiary Atlanta.

This concludes Panel 1, and the hearing will be in recess until approximately 11:30 a.m. while we vote, Ranking Member Johnson. You are excused with gratitude from the Subcommittee.

[Recess.]

The Subcommittee will return to order.

We will now call our second panel of witnesses for this morning's hearing. Michael Carvajal is the Director of the Bureau of Prisons. He has served in the Bureau of Prisons for the past 30 years, most recently having served as the Assistant Director for the Correctional Programs Division, after which he was appointed to the position of Director of the Bureau of Prisons in February 2020.

Director Carvajal, thank you for being here. It is the custom of this Subcommittee to swear in all witnesses, so at this time I would ask you to please stand and raise your right hand. Do you swear the testimony you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CARVAJAL. Yes, I do.

Senator OSSOFF. Thank you, Director Carvajal. You may be seated. Let the record reflect that the witness answered in the affirmative.

We will be using a timing system today, and, Director Carvajal, all of your written testimony will be printed in the record in its entirety, but we would respectfully ask you try to limit your oral testimony to no more than 5 minutes. You may begin with your opening statement.

TESTIMONY OF MICHAEL D. CARVAJAL,¹ DIRECTOR, FEDERAL BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE

Mr. CARVAJAL. Good morning, Chairman Ossoff, Ranking Member Johnson, and distinguished Members of the Subcommittee. I am pleased to be here voluntarily to speak on behalf of more than 35,000 corrections professionals who diligently support the Bureau's critical law enforcement mission.

I want to stress that what happened in Atlanta is unacceptable. We recognize the gravity of the alleged misconduct at that facility, and in July 2021, we determined that it was in the best interests of the institution to take significant action. We reassigned staff, transferred inmates, lowered the security level, and began updat-

¹The prepared statement of Mr. Carvajal appears in the Appendix on page 86.

ing infrastructure at the facility. Importantly, we refocused the staff toward changing the culture.

The Bureau has expended significant resources, implemented corrective actions meant to ensure USP Atlanta's operational compliance with policies and expectations. Regional leadership routinely visits the institution to provide oversight and review progress.

In April 2022, I conducted a site visit to personally inspect the facility and assess the culture. I found the staff to be receptive of and motivated by the recent changes that we instituted, and I observed firsthand the substantial physical improvements for the ongoing repairs.

The regional office recently conducted a security assessment. While the report is not yet final, preliminary findings indicate that corrective actions have increased staff training, enhanced security measures, internal controls, improved internal auditing, and strengthened inmate and staff accountability.

To address the aging infrastructure at USP Atlanta, we temporarily closed housing units to make necessary renovations. As repairs are completed and units are reopened, inmates will be returned to a safer environment.

We are also in the process of upgrading the infrastructure and the installation of fiber optics that will support more modern security systems. That said, our ability to complete this critical work, including the replacement and addition of security systems and cameras, depends on our ability to fund these projects.

For context, the current backlog of major modernization and repair projects throughout the Bureau is approximately \$2 billion. However, over the last 10 years, the Bureau has received an average of \$95 million annually to address these projects. This gap means that we must continually make difficult decisions about what projects to prioritize throughout the agency, which creates challenges when addressing infrastructure issues at 100-year-old institutions such as USP Atlanta.

We continually strive to improve suicide prevention efforts within the BOP. Inmate suicide rates historically run lower than those of the general public. In recent years, we have taken meaningful steps to reduce the likelihood of suicides at USP Atlanta and agency-wide.

For example, in the spring of 2021, we created a task force to review strategies to reduce single celling, revised our suicide prevention policy, enhanced recommendation follow-up procedures, and expanded use of reintegration housing programs. We also provided additional suicide prevention training and added 100 new positions to our psychology services with at least 50 more anticipated this fiscal year (FY).

Properly addressing this conduct is also an agency focus. The Bureau employs multiple levels of oversight intended to ensure that its institutions are operating according to policy. This includes reviews performed by central and regional offices, local institutions, and outside entities.

In addition, all staff have a responsibility to protect inmates and each other by reporting misconduct. In fact, failure to report misconduct is a policy violation, and all potential violations are re-

ferred to the appropriate investigative authorities. We are constantly looking for ways to strengthen this oversight and do better.

Part of the Bureau's effort to curb misconduct includes contraband interdiction. We continue to combat the threat of contraband such as drugs, weapons, and cell phones, which are introduced into our institutions through ever-evolving methods. In addition to our standard security practices, we are currently working on several new systems to address this issue, and we have provided supplemental training to staff.

The Bureau has made significant strides in addressing these staffing needs over the past few years, and we created a national recruiting office, which uses creative methods and marketing to attract candidates. They also target recruitment efforts at institutions that have difficulty attracting applicants. Increasing and maintaining our staffing within appropriated funding levels remains a priority. In 2021, we hired over 3,000 staff, and this year we have added over 1,200 new staff. We have proven that we can hire, and although hiring is not an issue at the majority of our locations, we are routinely outbid by competing corrections or law enforcement agencies that pay higher wages.

Accordingly, we continue to consider how we can use additional incentives and hiring flexibilities so that we can be more competitive. USP Atlanta is currently staffed at nearly 90 percent, while the inmate population is approximately 42 percent. Recruitment and retention efforts are ongoing to maintain institution staffing at a safe and appropriate level.

I appreciate the opportunity to discuss these issues with you, and I look forward to your questions.

Senator OSSOFF. Thank you, Director Carvajal, for your opening statement.

You became Assistant Director for the Correctional Programs Division in August 2018. Without objection, I will enter into the record the BOP's job description for that role, providing "national policy direction and daily operational oversight of correctional services."

You were appointed Director in February 2020. Is it fair to say you have overseen corrections across the BOP from 2018 to present?

Mr. CARVAJAL. Yes, Senator. As part of the leadership team for the agency, that is correct.

Senator OSSOFF. Thank you, Director Carvajal. You would agree with me, sir, that as Director, you are responsible for what happens at this agency?

Mr. CARVAJAL. Senator, as the agency head, I am overall responsible for everything that occurs at the agency.

Senator OSSOFF. Thank you, Director Carvajal. The buck stops with you. Yes?

Mr. CARVAJAL. Yes, Senator, as you are aware, we have a very large and complex organization, so there is a clear delineation of authority. The way our system is set up, as the Director, as I stated, yes, every facility has a senior-level manager, a chief executive officer (CEO), who is responsible for every facility. Above him is a Regional Director—

Senator OSSOFF. Understood, Director Carvajal, but my time is limited, and the buck stops with you, correct?

Mr. CARVAJAL. Correct.

Senator OSSOFF. OK. I would suggest leaving the microphone on in the interest of time.

It is the mission of the Bureau of Prisons to confine “offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure.” That is according to the BOP. Correct?

Mr. CARVAJAL. Correct.

Senator OSSOFF. Thank you. If BOP is not doing these things, the buck stops with you. Correct?

Mr. CARVAJAL. As I stated, Senator, ultimately I am responsible for everything that occurs in this agency, but this is a very large and complex organization. You have to—

Senator OSSOFF. Director Carvajal, I appreciate it is a large and complex agency, but you are the Director. I think we have established that the buck stops with you.

As you know, USP Atlanta is a prison complex that holds pretrial detainees, meaning people who have been charged with crimes but not yet convicted. As you know, in our country they are presumed innocent.

During our investigation we have uncovered horrific reports of conditions of incarceration for all prisoners at USP Atlanta, but in particular for the presumptively innocent pretrial detainees. What in brief, Director, does it mean for a detainee in your custody to be presumptively innocent?

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

Senator OSSOFF. What does it mean for a detainee in your custody to be presumptively innocent?

Mr. CARVAJAL. Precisely that, that they are presumed innocent until proven guilty. They are going through the system. They are pretrial.

Senator OSSOFF. That is right. They are presumed innocent until proven guilty. A Federal judge in the Northern District of Georgia wrote a letter to the warden of USP Atlanta in January of this year, which I entered into the record earlier in this hearing. I think it is an extraordinary letter. This is from January of this year. It cites credible accounts—this is a Federal district judge, in fact, the chief judge for the district panel—of the following issues at USP Atlanta, particularly for pretrial detainees who are presumptively innocent: “rats in the building, roaches in the food, poor nutrition and emaciation, lack of access to hygiene products, lack of access to medical care, including prescription medication”; “a month of 24-hour solitary confinement with only a Bible for entertainment or reading”; “a week with only a paper jumpsuit and paper blankets for an inmate on suicide watch, without mental health treatment or medication.”

Have you seen this letter before today?

Mr. CARVAJAL. I would have to actually see it, Senator. I get lots of letters, and I am sure my staff are familiar with it.

Senator OSSOFF. But you have not seen this letter until today?

Mr. CARVAJAL. No.

Senator OSSOFF. You understand that several of the witnesses we have heard from today have also cited unacceptable conditions of incarceration, particularly for pretrial detainees? You heard that testimony?

Mr. CARVAJAL. The testimony of the panel before?

Senator OSSOFF. Yes.

Mr. CARVAJAL. No, I did not hear it.

Senator OSSOFF. You did not hear that testimony. Understood. We will make sure to get you a copy.

For a facility in as dire straits as U.S. Penitentiary Atlanta where the inmate population has been depopulated by somewhere around 50 percent as a result of extraordinary measures in the middle of 2021 after massive amounts of contraband and weapons were found, after years and years of documented failures, why would you not be aware of a letter from the chief judge of the Northern District of Georgia citing rats, roaches, emaciation of detainees, lack of access to hygiene products? You would not be aware of that? No one brought that to your attention?

Mr. CARVAJAL. Senator, that is precisely how our organization works. We have a Regional Director that is responsible for oversight of that facility along with the CEO. That is precisely why, when I did become aware of the issues in Atlanta, I took the action that we took. That is precisely why we took that action, because when it did rise to my level, it rose to my level, and we took immediate action. We did the things that we did, including reducing the population, reassigning the leadership team so that we could address the cultural issue that had developed there.

Senator OSSOFF. Thank you, Director Carvajal. Now, you took over as the Assistant Director for Correctional Services, in 2018. You would have familiarized yourself with some of the most significant problems at major BOP facilities entering that role, yes?

Mr. CARVAJAL. If it was brought to my attention, Senator, again—

Senator OSSOFF. It was brought to your attention, or did you proactively familiarize yourself with conditions at facilities?

Mr. CARVAJAL. Senator, I believe it is important for you to understand how our organization works. Regional Directors have primary responsibility oversight for those facilities. Assistant Directors are more at the central level headquarters who are in charge of implementing policies and ensuring that we follow the rules and regulations. There are distinct differences between those.

It is assumed that the Regional Director will provide oversight, and they are responsible to ensure compliance with policies, rules, and regulations at the local level.

Senator OSSOFF. Thank you, Director Carvajal. You said you took immediate action when these issues were brought to your attention. A November 2018 suicide investigation found that staff who initially responded to the medical emergency did not appear to have a sense of urgency. You were the Assistant Director for Correctional Programs.

August 2019, inspection by the Southeast Regional Office reported missing weapons, significant failures to follow use of force, medical, and rape prevention policies, improper or non-use of metal

detectors. At that point you were the Assistant Director for Correctional Services.

An August 2020 suicide investigation—I believe now you are the Director—says, “We have made many of the same recommendations noted in this report, the need for attention to detail, adherence to BOP policy, and regard for human life among Correctional Services staff.”

What does it mean to you to hear as the Director of Bureau of Prisons a report from your own investigators that staff at this facility lack regard for human life?

Mr. CARVAJAL. It is completely unacceptable, Senator. That is precisely why I took the actions that I did when I became aware of it.

Senator OSSOFF. Would it surprise you to learn that the BOP’s own internal documentations show that it was aware of these conditions at USP Atlanta as far back as 2015?

Mr. CARVAJAL. I am now aware of that, Senator. That is precisely why we took the actions that we did in reassigning the leadership team; and looking at the way the structure works, the Regional Director is responsible to implement and make sure of compliance with those things. It is apparent that we had an issue there. When it rose to my level, as the Director of the agency, we took immediate action.

Senator OSSOFF. Just to be clear, and then my time will be up and we will turn to Ranking Member Johnson. But when you were the Assistant Director for Correctional Programs, it had not risen to your level, that at this facility where BOP internal investigators had for more than half of a decade noted and referred to BOP leadership’s significant deficiencies, some of them life-threatening, major security lapses. You were not aware that there were reports of missing weapons, failures to follow use of force, medical, and rape prevention policies, improper or non-use of metal detectors or spectrometers, failure to conduct rounds in the SHU, deficient inmate disciplinary processes? These are the BOP’s own internal investigative records. You were the Assistant Director at the national level for Correctional Programs. Were you or were you not aware in 2019 that these conditions prevailed at this facility? It is a yes or no question.

Mr. CARVAJAL. Senator, as I stated, the Regional Director has oversight, primary responsibility. We have internal processes in place where we speak about these issues—

Senator OSSOFF. You were not aware?

Mr. CARVAJAL. I did not have primary responsibility over that area.

Senator OSSOFF. You say you did not have responsibility. My question is: Were you aware?

Mr. CARVAJAL. I do not recall, Senator, without knowing—truthfully, we have a lot going on in a very large, complex organization. I assure you that if I was aware, as with anything, I would have conducted or taken action. It was the primary responsibility—

Senator OSSOFF. Thank you, Director Carvajal. My time is up, and I yield to Ranking Member Johnson.

Senator JOHNSON. Mr. Director, thanks for coming here. Let us try to clarify things in terms of the organization. I have been in

large organizations. You have line operation authority, and then you have staff over here doing human resources and other types of things. They are completely separate. Is that what your testimony is when you were the Assistant Director for Correctional Programs? You were really outside of the line operation authority and it was not your responsibility to be aware of exactly what was happening operationally within the prisons?

Mr. CARVAJAL. That is correct, Senator. I appreciate the opportunity to explain. As the Director of the agency, I am overall responsible. The buck stops with me. However, our organization is very large. Assistant Directors at the headquarters level are responsible for implementing policies and procedures. The operational daily oversight of a facility is the primary responsibility of the Regional Director and, more importantly, the CEO of that facility.

By analogy, let me make it like this. A prison is like a city. The warden would be like the mayor, responsible. If they have issues or need assistance, they report up to the Regional Director, who would be in this case by analogy like a Governor, the central office being like Federal assistance. Without that information and requests coming up to us, we are not directly involved in that.

We also have the approval of the Deputy Director or the Director to get involved in those operational—

Senator JOHNSON. OK. I think that is clarified. Do you know generally when you first became aware of the problems in Atlanta? Because you have served in a bunch of other correctional facilities. When did it hit your radar screen?

Mr. CARVAJAL. It hit my radar screen when I took the action. We have a lot going on. We have lots of facilities. There is no possible way—that is why we have a delineation—

Senator JOHNSON. So when you became aware of it, you took immediate action—

Mr. CARVAJAL. Took the action.

Senator JOHNSON [continuing]. In the summer of 2021.

Mr. CARVAJAL. Yes.

Senator JOHNSON. When was the first time have you ever heard of the phrase “the Atlanta Way”?

Mr. CARVAJAL. I heard that phrase during—when I became aware and as we were getting reports back, that is how we determined that there was a cultural issue and a breakdown there, an obvious one. That is why we took the actions we did to reassign the leadership team.

Senator JOHNSON. Which members of the leadership team—you do not have to name names. I mean give me the functions. Who did you replace?

Mr. CARVAJAL. We looked at all of the leadership team. We started with the warden and the executive leadership, and we certainly reassigned them for various reasons. The majority of the leadership team, all middle managers and above, because the obvious breakdown—

Senator JOHNSON. Are you talking about the mayor and his staff, or are you talking about the Governor—I am using your analogy.

Mr. CARVAJAL. Yes.

Senator JOHNSON. Did you replace anybody at the regional center?

Mr. CARVAJAL. The mayor and his staff, according to the analogy. The Regional Director was due to mandatory retire in October. I made the decision to replace him with a new Regional Director approximately 5 months early.

Senator JOHNSON. OK. As the Chairman pointed out, though, you took those actions in the summer. It did not fix the problem. I will take you at your word that you had not seen that letter from the judge, but in January 2022, it is still pretty shocking conditions at Atlanta. How close are you monitoring the situation and the effectiveness of your corrective action?

Mr. CARVAJAL. As I stated, Senator, I made a visit there in April to ensure that things were——

Senator JOHNSON. April 2022?

Mr. CARVAJAL. April 2022. This is an ongoing challenge in old facilities. The warden I know is on it. What I observed there was that they were addressing these issues. We have constant challenges every day. When we become aware of them, we address them. I would expect that when that letter came in that the current warden, the permanent warden there is addressing those issues immediately, and that is what we expect at any facility.

Senator JOHNSON. Ms. Whitehead, in her testimony, which you did not hear, she served in Atlanta in the early 1990s, came back at the tail end of her career, and her testimony was that she was shocked at the conditions. And, you have seen other prisons. You have been in different correctional facilities. You know how the procedures ought to work.

When you first became aware of what was happening in Atlanta, what was your reaction?

Mr. CARVAJAL. Exactly as I stated, Senator. It is absolutely unacceptable. That is why we took the actions we did.

Senator JOHNSON. Again, you did not hear the testimony. I was trying to determine who really was in charge. We kind of went through the Regional Directors, then there is basically four layers of line management, ending at the lieutenant. You have the warden, and you have captains, and you have social workers, and then you have the lieutenants. I think we should call them those in the bargaining unit. You have the union line employees. One of the conclusions of the 2020 report was that the lieutenants' office is not being held accountable and is in need of additional oversight. Then it talked about how there appears to be a great deal of animosity between line and executive staff.

Having run organizations, I realize sometimes people at the top, information just does not filter up. I have got that. People cover things up, they do not want to let the boss know, that type of thing. Having looked into this, do you have an analysis of what went so haywire, why things were so wrong for so long in Atlanta? I know you took care of some of the management team, but, was there a union component to this, animosity between the union line staff and management?

Mr. CARVAJAL. We do have a collective bargaining agreement, and the union does represent the line staff. But the issue, the breakdown that happened here, which was completely unaccept-

able, was the cultural issue there of line staff not being held accountable. A failure to follow policy is unacceptable. We have to have leaders and managers that enforce and hold people accountable. That is why we made the decision to remove the team, because they obviously were not holding line staff who do the job accountable. That is precisely why we moved them.

Senator JOHNSON. So, you replace the warden. Did you replace captains?

Mr. CARVAJAL. I believe it was in the summer of 2021, the captain, the associate warden—the captain, who is considered the chief of police in that city, and the associate warden were both removed from their positions because of their failures. The warden was eventually removed. Keep in mind that we have due process and we have to respect their rights, too. We eventually removed the warden, so we had some actings. Then when I became aware of the overall cultural issue, which is completely unacceptable, we made a tough decision by removing the entire management team. These are all individuals—this was not—

Senator JOHNSON. Does that include lieutenants and every—

Mr. CARVAJAL. Yes.

Senator JOHNSON. Did you bring those in from other facilities then?

Mr. CARVAJAL. Yes, we did.

Senator JOHNSON. When did you make that move?

Mr. CARVAJAL. It was ongoing. In fact, there may be some that are still—it is an ongoing process because we do have to make sure that—our employees have rights. We are not doing this—

Senator JOHNSON. I understand.

Mr. CARVAJAL. We are following personnel guidelines.

Senator JOHNSON. If I could have the indulgence of the Chairman here, did you ever have an overall meeting with individuals in the bargaining unit, the line guards? Did you ever meet with the lieutenants? What did you do or were you kind of talking to the warden and the captains when you went in there and did your analysis?

Mr. CARVAJAL. I did not—that occurred below me, the different meetings. When I toured in April, I walked around that facility and interacted with all staff. In fact, my goal was to meet and speak to as many staff as possible in an informal environment. I answered many questions. I got lots of questions, and I had lots of interactions. That is why I visited the facility.

Senator JOHNSON. How long was your visit and how many times did you visit it?

Mr. CARVAJAL. I am sorry?

Senator JOHNSON. How long was your visit and how many times did you visit it?

Mr. CARVAJAL. That is the first time I visited there, and that was a day-long visit.

Senator JOHNSON. OK. Thank you, Mr. Chairman.

Senator OSSOFF. Thank you, Ranking Member Johnson.

Director Carvajal, I am going to begin with some citations, some reports prior to your tenure and leadership, then move to the present.

July 2014, BOP scored USPA's Correctional Services Department as deficient. Deficiencies included unqualified staff assigned to armed posts, mishandled video footage, failure to conduct rounds, failure to use spectrometers to detect contraband, failure to implement suicide prevention policies. Let us discuss a few of these. That specific deficiency, unqualified staff assigned to armed posts—again, unqualified BOP staff assigned to armed posts shows up on the following Correctional Services audits for U.S. Penitentiary Atlanta, August 2015, December 2015, staff assist visit from November 2016, April 2019, while you are, as you earlier acknowledged, responsible for implementing policies and procedures for Correctional Services across the country, the October 2021 Operational Review and the August 2020 Security Assessment. In your view, is it OK for a prison to assign unqualified staff to armed posts?

Mr. CARVAJAL. It is unacceptable, Senator.

Senator OSSOFF. Why didn't anyone fix this problem? We can limit the discussion to when you were in senior leadership, April 2019, August 2020, October 2021.

Mr. CARVAJAL. I cannot answer why it was not fixed. It is unacceptable. That is why we took the action we did. The warden in that facility should have been ensuring that his staff were conducting these follow-ups and making sure of policy compliance, and ultimately the responsibility of that Regional Director who had oversight of that facility should have ensured compliance with those policies. It is unacceptable.

Senator OSSOFF. And you were not aware of any of these issues at USPA until last year? That is your testimony, correct?

Mr. CARVAJAL. Correct.

Senator OSSOFF. Understood. Let us talk about contraband interdiction efforts. In addition to the July 2014 audit which found that staff had failed to use spectrometers to detect contraband, numerous other audits—recognizing some of this is before your tenure and leadership—reported issues with contraband interdiction at the prison, including June 2015, staff not using the ion spectrometry device to test contractors and volunteers entering the prison; November 2016, metal detectors at the facility not maintained or inspected; May 2017, the Special Investigative Services Department was storing drugs “in excess that are not needed as evidence” and which could “pose a potential threat to the security of the institution.”

Now, those were before you assumed supervisory responsibility over BOP's Correctional Services or, as you put it, responsible for implementation of policies and procedures. I would have expected that that official would have reviewed some of these reports from problematic facilities. That is water under the bridge. Let us talk about while you were in charge.

August 2019, Assistant Director for Correctional Programs, staff member entering the front lobby setting off metal detectors; front lobby officer waving them through; one ion spectrometry machine broken at the west gate; all contractors entering the facility using the front lobby and never screened; after, at this point, 5½ consecutive years of reports indicating failures to prevent contraband from entering.

January 2020, USPA staff are damaging the ion scan to prevent the device from being used. The machine has not been utilized in over one year. Before you become Director at the Bureau of Prisons, staff are engaged in “purposeful destruction of drug detection equipment.” That is one month before you became Director.

Now we continue. August 2020, you are the Director. The review team observes multiple USPA staff triggering the metal detector in the front lobby but continuing into the prison unimpeded; allowing for unauthorized items to be introduced into the institution.

October 2021, you are the Director. Staff not routinely conducting pat searches; no documentation memorializing confiscated contraband; repeated suicide reconstruction reports at the facility with the most suicides of any prison in the country about how the deceased inmates are high when they killed themselves.

Are these acceptable practices for one of your prisons?

Mr. CARVAJAL. No, Senator, they are not acceptable. Precisely why we took the action that we did to cure the obvious cultural breakdown of people not following policy. Contraband interdiction is a daily process that relies on human beings doing their job, conducting searches and following proper rules and procedures. That is the basics of what we do. That is what ultimately led to this breakdown. But it takes leadership to provide oversight and make sure that these things are being done, and that is the ultimate responsibility of that warden, that leadership team, and the responsibility of the Regional Director to ensure compliance through oversight.

Senator OSSOFF. Respectfully, Director Carvajal, you are continuing to drive responsibility down the chain of command. But my question for you is this: You spent 2 years as the Assistant Director for Correctional Services, in your words, responsible for implementing policy and procedures at the national level. You are then the Director of the Bureau of Prisons, and you have not familiarized yourself with any of this. You are unaware of any issues at USP Atlanta. It is clearly your most troubled facility. You were ignorant of these problems until the middle of 2021. That is your testimony today.

Mr. CARVAJAL. Senator, things like that, because of the delineation of authority, wouldn’t normally rise to my level. We have a chain of command and procedures that are followed.

Senator OSSOFF. Yes, you were ignorant of this until the middle of 2021.

Mr. CARVAJAL. Senator, it was obvious that there was a breakdown that that did not reach my level, and that is why we took the action that we took. There is a delineation of authority, and we trust people—these are Senior Executive Service (SES) people at the highest level who have that responsibility. We have very good policies, Senator, when they are followed. The breakdown here is that people consciously chose not to follow the policy. Not always. In those cases where it was a training issue—that is why we focused on training. It is our responsibility to make sure the staff know these policies and train them. It is ultimately the responsibility of every individual to follow those policies and, when people do not, to report misconduct. We have processes for all these things, and they all work very well. It is not our policies that were

broken. It was the failure to follow those policies, and that is why we took the action that we did.

Senator OSSOFF. Director Carvajal, when in August 2020 the central office under your command conducted a Security Assessment of U.S. Penitentiary Atlanta and found that it posed “a security risk to the Southeast Region of the United States,” you were not aware of that?

Mr. CARVAJAL. I am not certain which document you are referring to, Senator.

Senator OSSOFF. I am referring to an August 2020 Security Assessment conducted by the central office under your authority which found extensive, pervasive security failures, and said, “U.S. Penitentiary Atlanta is a security threat to the Southeastern United States.” This was not a routine inspection. This was a Security Assessment carried out by the central office while you were the Director of the Bureau of Prisons. You have testified here today you were unaware of any issues regarding this facility until the middle of 2021. Did you read the Security Assessment which identified that one of your facilities was “a security threat to the Southeast United States”? Yes or no.

Mr. CARVAJAL. Senator, those reports normally would not rise to my level because they are handled—

Senator OSSOFF. You did not read it—

Mr. CARVAJAL [continuing]. At that level of that authority.

Senator OSSOFF. Thank you, Director Carvajal.

Ranking Member Johnson.

Senator JOHNSON. Director Carvajal, one of the more troubling security breaches was the fact that out of 263 cameras, 142 were inoperable or out of service. Has that been corrected?

Mr. CARVAJAL. Senator, we are in the process of correcting all those issues. I am aware of that. Nationwide, we have challenges with cameras, and Atlanta is no different. We are correcting that problem. We have directed resources to address those issues.

Senator JOHNSON. I would think that would be a top priority because it is such a crucial asset in terms of protecting everybody, Bureau of Prisons personnel, inmates. I am concerned that here we are in July 2022, and this was delineated in 2020.

Mr. CARVAJAL. Senator, as I stated in some of my remarks, you have to understand the complexity. We have competing resources. Cameras are a great tool, first off, and we appreciate the support and the assistance to get those addressed. Cameras will not prevent contraband or crime or anything else. It is a tool that we use to manage it. The people are the ones doing their job—

Senator JOHNSON. OK. I got you.

Mr. CARVAJAL. We are correcting it, though.

Senator JOHNSON. In the close of your testimony, you said you appreciate the opportunity to come before us. I do not envy your task. But let me ask you, why did it take a subpoena to get you to testify here?

Mr. CARVAJAL. Senator, I am here voluntarily, and I would defer the process to the Department. But I have appeared before Congress five times in my tour, and I am voluntarily here, and I welcome the legitimate oversight that you provide.

Senator JOHNSON. I do realize we withdrew the subpoena, and I agreed with that decision, because you did appear. But it took us issuing a subpoena to get you here. Were you involved in any discussions regarding your testimony here?

Mr. CARVAJAL. Senator, to the best of my knowledge, we have complied with all the requests.

Senator JOHNSON. No, please answer my question. Were you involved in discussions with anybody in the Department of Justice regarding you testifying before this Committee?

Mr. CARVAJAL. I was aware of the request. I said I would—

Senator JOHNSON. Were you involved in discussions? Did you talk to anybody in the Department of Justice about testifying here today?

Mr. CARVAJAL. When I became aware of the request, I have spoken to appropriate people—

Senator JOHNSON. Who?

Mr. CARVAJAL [continuing]. In the Department of Justice.

Senator JOHNSON. Who? Who did you speak to in the Department of Justice about testifying here today?

Mr. CARVAJAL. The Office of Legislative Affairs.

Senator JOHNSON. Who?

Mr. CARVAJAL. Mr. Hyun.

Senator JOHNSON. OK. It is not that hard to provide a name. What did those discussions involve?

Mr. CARVAJAL. They involved making sure that we appropriately put the proper people up here to best answer your questions. In this case, operationally I know we provided a couple of staff to answer questions that were interviewed and to make sure that we provided all the documents.

Senator JOHNSON. Did you have discussions once our subpoena was issued?

Mr. CARVAJAL. Yes.

Senator JOHNSON. What did those discussions involve? In other words, because you appreciated the opportunity, why didn't the Department of Justice allow you to just appear before us and take advantage of the opportunity to discuss these issues with us?

Mr. CARVAJAL. Senator, I will defer those questions to the Department. I am here voluntarily—

Senator JOHNSON. Yes, but you are here, and—

Mr. CARVAJAL [continuing]. I never said I would not come.

Senator JOHNSON. The reason I am asking these questions is congressional oversight has been significantly weakened over the years. I am fully aware of it. I understand the full frustration of Members of Congress trying to get the truth to the American public. That is our job. But the agencies thumb their nose at Congress with impunity. As important as your testimony is in terms of the problems at Atlanta, maybe even a bigger issue for me in this hearing is: Why did it take a subpoena to get the Director of the Bureau of Prisons to come here and testify before us, to help us conduct our oversight? What is going on in the Department of Justice that they refused to be transparent until Congress, the Senate, has to issue them a subpoena?

We bring department heads before our committees, have them testify before us. We almost always ask them the question: Will

you comply with congressional oversight requests? And to a person, because they apparently want the job, they always raise their hand and say, "Absolutely, I will cooperate with you. I will work with you. I will provide you the information that you request." Then they rarely do. Not on the important stuff, not the things that might embarrass their agency. I think they even look at Presidents with the attitude that this, too, shall pass. That arrogance on the part of these agencies, on the part of the Department of Justice, the FBI, and our Federal health agencies must end. It is that arrogance, it is that lack of transparency, it is that dishonesty that have Americans losing confidence in these institutions that, quite honestly, they need to have confidence in.

It is an unsustainable state of affairs in a democracy when the chief Federal law enforcement division, the FBI, cannot be trusted to be non-political, shows themselves to be completely political, when the Department of Justice blocks our ability to talk to one of their Directors with legitimate oversight, when our Federal health agencies have not been honest and transparent regarding a pandemic.

This lack of transparency has to end, and congressional oversight needs to be kicked into high gear. I appreciate what Chairman Ossoff has done on this one issue, but there are just so many more.

Thank you.

Senator OSSOFF. Thank you, Ranking Member Johnson.

Director Carvajal, you no doubt pay attention to the number of inmate suicides in your various prisons. Yes?

Mr. CARVAJAL. Yes.

Senator OSSOFF. Which BOP facility has the most inmate suicides over the past 5 years?

Mr. CARVAJAL. I do not know that information right off my head.

Senator OSSOFF. It is U.S. Penitentiary Atlanta. I would think this would be a facility that would have been on your radar even if just for the number of inmate suicides leading the Nation.

November 2018, for example, at that time you are the Assistant Director for Correctional Programs. An inmate died by hanging. BOP investigation finds staff who initially responded to the medical emergency did not appear to have a sense of urgency. Officers did not conduct rounds prior to the suicide. Inmate orderlies were caught on camera passing contraband to inmates under their cell doors. Did that concern you at the time?

Mr. CARVAJAL. I am certain it did, Senator. I believe that is part of the issue here, is that we have been siloed in the past. That is part of the reason that we are looking at making these changes and improvements. The Reentry Services Branch oversees the Psychological Branch. Correctional Programs Division was not responsible for—

Senator OSSOFF. Hold on just a second. We are getting into the organization chart again. Listen, November 2018, inmate died by hanging. No sense of urgency in the staff response. This is a BOP internal document. Officers did not conduct rounds prior to the suicide. Inmate orderlies were caught on camera passing contraband to inmates under their cell doors.

You said in the previous round of questions that you were not aware of these issues at USP Atlanta until mid-2021. You were not aware of this?

Mr. CARVAJAL. Senator, we have 121 facilities at the highest level that I keep track of. That is why the delineated authority goes down—

Senator OSSOFF. This would not have risen to your level?

Mr. CARVAJAL. I expect to be briefed by the appropriate people. In this case it would have been the Assistant Director, telling us there were issues at that facility.

Senator OSSOFF. This would not rise directly to your level?

Mr. CARVAJAL. Without going back and knowing the individuals—I am notified of any suicide or major incident.

Senator OSSOFF. That is right.

Mr. CARVAJAL. Ongoing. I am notified of that. We have reporting procedures.

Senator OSSOFF. That is right because you are cc'd on the report, and that is why I am having trouble with your testimony that you were not aware of any issues at this facility until the middle of 2021, because as the Assistant Director for Correctional Programs, you received the investigation reports for each of the suicides. Lack of urgency, failure to conduct rounds, inmate orderlies passing contraband under cell doors—those came directly to you.

Were you aware of these issues at U.S. Penitentiary Atlanta prior to the middle of 2021?

Mr. CARVAJAL. Senator, we get all those reports, and part of our responsibility is to look at training and development and things of that nature. When I tell you I am not aware specifically, I cannot remember specifically what I did in that time.

Senator OSSOFF. OK.

Mr. CARVAJAL. I do know that I read those reports—

Senator OSSOFF. Understood.

Mr. CARVAJAL [continuing]. We took appropriate—

Senator OSSOFF. Your testimony is that you do not recall.

Mr. CARVAJAL [continuing]. Action to address those issues.

Senator OSSOFF. You took appropriate action. OK. That was November 2018. You are the Assistant Director of Correctional Programs. The report was sent to you. You say you took appropriate action.

October 2019, just under a year later, you are still in this position. Inmate died by hanging. “Staff delayed the initiation of life-saving measures. Staff failed to perform rounds before, during, and after the suicide.”

Same issues. What action had you taken to resolve these issues at the facility with the most suicides of any prison in the Federal system?

Mr. CARVAJAL. We provide corrective action, internal controls. Keep in mind, Senator, that over time, when these repeat deficiencies and things, it is not always the same people in charge. That is the ongoing challenge that we face, that we have to continuously train staff. It is not always the same staff involved. We see repeat deficiencies. That is the frustration of the nature of our business, is that we have over 35,000 staff. It is not the same people involved at all of these—

Senator OSSOFF. Yes, 35,000 staff—

Mr. CARVAJAL [continuing]. Which is ongoing. It is an ongoing challenge.

Senator OSSOFF [continuing]. But you are here with us today, and you are the Director. We are going to get back to these reports and this timeline in a moment, but I am going to reserve the balance of my time and yield to my colleague Senator Padilla.

OPENING STATEMENT OF SENATOR PADILLA

Senator PADILLA. Thank you, Mr. Chair. I am glad we had an opportunity to come back for the second panel. I know the first panel had a very focused emphasis on U.S. Penitentiary Atlanta. But with the number of Federal facilities in California that I have been hearing from, I wanted to take the opportunity to raise a couple of these questions.

My office has received reports that BOP personnel at FCI Mendota were flouting COVID protocols, leading to the transportation of COVID-positive detainees and spikes in infections.

Now, Senator Feinstein and I sent a letter to the Attorney General (AG) seeking answers concerning these allegations back in April. However, the agency response we received failed to reply to our specific concerns raised concerning FCI Mendota. Mr. Carvajal, I appreciate you looking through some notes here. Hopefully we can get some clear insight as to what is happening.

My first question is: How do you respond to the allegations that I am raising here today that we first wrote about back in April?

Mr. CARVAJAL. Senator, we certainly do not expect anyone to flout COVID—we have very good procedures in place, and they are followed. I am generally aware of that letter, and we have 122 facilities. Again, I go back to that we have Regional Directors—we have processes in place to provide oversight. We take these allegations seriously. We look into them, and we do the corrective action. The continuous challenge is that it is different people. Zero tolerance for unacceptably not following policies. We look into these things, and we address them.

Senator PADILLA. You say there are protocols and they are followed. We sent you a letter saying we are hearing protocols are not being followed, and it is a dangerous situation, this pandemic. The response, again, is not informative or helpful whatsoever other than we have protocols and they are being followed, and if not, we are going to look into it. We already communicated to you months ago that we understand they were not being followed.

As part of our follow-up with you, I am aware that BOP utilized compliance review teams to ensure that facilities comply with protocols. Now, after Senator Feinstein and I raised concerns about FCI Mendota, was a compliance review team deployed to ensure compliance with COVID protocols?

Mr. CARVAJAL. Senator, I do not know in this particular instance, but we do use compliance teams. We also ensure that we follow the Center for Disease Control and Prevention (CDC) processes and guidelines. I would expect that they were, again, delegated. I have 122 facilities. There is the delineation of authority, and I fully expect those follow-ups to be done, and when they are not, that we have procedures to address that.

Senator PADILLA. I am beginning to share the frustration with the Chair here on lack of a definitive answer. Given what I have described so far, and you are familiar with the letter, it seems like you were perusing it in your binder, would you agree that it would be appropriate to deploy a compliance review team after such concerns are raised?

Mr. CARVAJAL. Yes, Senator, and I do not know why we did not. I will ask that question and follow up. I would expect that the appropriate Regional Director requested the team or that the Assistant Director with oversight for that area would deploy a team. But I cannot answer that right now because I do not know.

Senator PADILLA. Let me try a different issue. Augmentation, the BOP practice involving the push of civilian employees into duties usually performed by correctional officers, has long been scrutinized. Unless you tell me you believe otherwise, I will continue. As of last year, nearly one-third of Federal correctional officer jobs were vacant. That is a significant percentage. As a result, staff members who serve as cooks, teachers, and nurses have been forced to guard detainees. Just this week, my office received reports that at FCI Dublin staffing has been so low that the drug treatment program had to be shut down. Now, this is clearly a dangerous and unsustainable situation.

Mr. Carvajal, what efforts have you personally taken to overcome staffing shortages at BOP? Not what issues may be in place or efforts may be in place by others, but your personal involvement in addressing staffing shortages.

Mr. CARVAJAL. Senator, my personal involvement as well as the agency's, it is a top priority. Staffing remains a concern. It has been a concern. We struggle like everyone to get employees, but we are using incentives. We are looking at offering more recruitment and retention incentives. We need to better our training. We certainly need to attract candidates to the area.

One of the challenges at Dublin, as I referred to earlier, is that we have trouble competing with the pay scale in that area. We have a hard time attracting candidates. Certainly staffing is a priority. An institution is safer when it is well staffed, and we strive to add staff.

I would like to address the augmentation and make sure that everyone understands that all of our staff are equally trained. They are all Federal law enforcement officers. They go through the same training. Although they may have a primary duty working in food service or another discipline, which we certainly want them to do, the safety and security mission comes first. Oftentimes, we do not like doing it, but we have to complete that mission first in order for anything else to happen. We have to use staff in those areas. They are properly trained. All of our staff are equally trained and expected to perform those functions as we call correctional workers first.

Senator PADILLA. You are saying nurses and teachers are equally trained and prepared to do the duty of all other correctional officers?

Mr. CARVAJAL. Senator, they go through the exact same training that our correctional officers go through.

Senator PADILLA. Ongoing training or—

Mr. CARVAJAL. Senator, that is one of the challenges that we are trying to do to improve the agency, is conduct more training. When we have the luxury of doing that training, we try to do advance training; we are implementing a new program for correctional officers. But at this point, all of our staff receive the same training, annually, refresher training. There is no advance training that correctional officers receive, Senator.

Senator PADILLA. That should ring alarm bells here as well. I know my time is running out, but let me conclude with this and emphasizing the point about vacancies are dangerous, both for detainees as well as for staff. It is critical that trained guards be available to respond to critical situations so that those who are not trained to do so are not placed in harm's way. Again, the lives of both detainees and staff are on the line.

Now, my office has also received outreach due to a number of detainee suicides at FCI Mendota, and according to reports, the latest suicide occurred while Recreation Department staff members were supervising detainees. Recreation Department staff members were supervising detainees.

Mr. Carvajal, I do not believe that the staff members should perform duties that lie outside the scope of their employment, especially when it comes to correctional supervision. I want to ask additional questions here because the responses are a recurring theme. You say it is a priority; you say there are incentives. But the number, a third of the positions vacant, shows failure, in my opinion. Something has to change, and you are the person at the top.

Thank you, Mr. Chair.

Senator OSSOFF. Thank you, Senator Padilla.

Director Carvajal, I want to pick up where we left off on this discussion of suicides at USP Atlanta. We noted that when you were the Assistant Director for Correctional Programs responsible for implementing policies and procedures nationwide, you directly received these suicide investigation reports.

November 2018, officers not conducting rounds prior to a suicide; orderlies caught on camera passing contraband to inmates under their cell doors.

October 2019, delayed initiation of life-saving measures; staff failure to perform rounds before, during, and after a suicide.

Then you assumed the directorship. August 2020, inmate died by hanging; officer not conducting proper rounds; unsupervised inmate orderlies passing items under the cell doors to other inmates.

Same pattern, same issues, but your testimony today—and I want to be clear about this because, Director Carvajal, I have to be frank with you, I find it hard to believe that you were not aware of these issues, as you have testified, until the middle of 2021 given that you had national responsibility for oversight and implementation of correctional programs. That is your testimony today as well. Given that you received these reports directly, given that internal BOP investigations found that over more than half a decade this was one of the most troubled facilities in the entire country, your testimony today is, nevertheless, that until the middle of last year, you were unaware of this.

If that is true, it suggests that the directorship of the Bureau of Prisons is an office that has no idea what is happening within the system of Federal prisons.

August 2020, here is what the investigation revealed. You are the Director. "Once again this reconstruction revealed complacency, indifference, inattentiveness, and a lack of compliance with BOP policies and procedures."

By the way, the same policies and procedures for which you had national responsibility to implement in your prior role.

Continuing the quote, "These lapses contribute to a dangerous and chaotic environment of hopelessness and helplessness, leaving inmates to their own means to improve their quality of life."

You were unaware of this. You had no idea this was going on at U.S. Penitentiary Atlanta. That is your testimony today.

Mr. CARVAJAL. Senator, the Psychology Services Branch is under the Reentry Services Branch. Correctional Programs works with them. Generally, those reports are routed to us. We get many reports. We have 122 facilities. We work together—

Senator OSSOFF. Director, it is a yes or—were you aware—

Mr. CARVAJAL. Senator, I—

Senator OSSOFF [continuing]. We have been through the organization chart. Were you aware? Were you aware after you served for 2 years with national responsibility for the implementation of policies and procedures when you were personally copied on reports citing severe deficiencies in the conduct of these officials that contributed to the death of inmates? Were you aware prior to the middle of last year that there were serious problems at U.S. Penitentiary Atlanta? I do not want the organization chart. I want to know: Were you aware, yes or no, prior to the middle of last year of these serious problems at U.S. Penitentiary Atlanta? Very simple question.

Mr. CARVAJAL. Senator, I was generally aware, but I do have responsibility for a very large organization—

Senator OSSOFF. OK, you were aware.

Mr. CARVAJAL [continuing]. Which happen—

Senator OSSOFF. You were aware. Now let us discuss what action you took. When BOP's internal investigators reported that the corrections officers in this facility—and you were generally aware of the issues; we have now established that—lacked regard for human life, what action did you take?

[No response.]

Let me ask another question. When in August 2020 your own head office, the central office—not the regional office, not the warden, not a staff assist visit—your office, August 2020, a year before you earlier said you first became aware of these issues and took action, said that this facility was a security risk to the Southeastern United States, what action did you take?

Mr. CARVAJAL. It is the responsibility of the Regional Director to take those actions, and that is why I took the action I took when it rose to my level.

Senator OSSOFF. It was a central office report. It was a BOP central office Security Assessment. August 2020, the central office concludes this facility poses a threat to the security of the Southeastern United States. What action did you take?

Mr. CARVAJAL. I would expect that the Assistant Director and the Regional Directors take the appropriate action and brief us on that. That is what did not occur——

Senator OSSOFF. But the buck stops with you. We established that, didn't we, Director?

Mr. CARVAJAL. It absolutely does, Senator.

Senator OSSOFF. So you took no action——

Mr. CARVAJAL. That did not——

Senator OSSOFF [continuing]. Director Carvajal?

Mr. CARVAJAL [continuing]. Occur. If I did not take action, it is because it was not brought to my attention. That was a failure. That is why when it did get on my radar, we took the actions we took.

Senator OSSOFF. You took no action, and the buck stops with you. Correct?

Mr. CARVAJAL. Correct.

Senator OSSOFF. Let me read you some more excerpts from reports of suicide when you were the Director of the Bureau of Prisons at this facility. "The improper medical response represents gross indifference to preserving life and violates inmates' constitutional rights." November 2020. Would it not be brought to the attention of a Director of Bureau of Prisons that BOP investigators have found that there is gross indifference to the preservation of life and violations of constitutional rights in your facilities? If that is not the kind of thing that is brought to the attention of a Director of Bureau of Prisons, we have serious problems in this bureaucracy. Was that brought to your attention, November 2020?

Mr. CARVAJAL. I do not recall, Senator, but that is precisely why we are making changes with the way that the Bureau is structured and looking at making changes, for that reason. It was an obvious breakdown in communication. There is much information in a large organization that comes to us, and I certainly expect people at that appropriate level to brief the Deputy Director and myself on these issues that should have been forefront of the radar. That is why we have taken the action we have taken.

Senator OSSOFF. November 14, 2021, the Associated Press (AP) reports that more than 100 BOP workers have been arrested, convicted, or sentenced for crimes since the start of 2019, including a warden indicted for sexual abuse, an associate warden charged with murder, officers taking cash to smuggle weapons, and supervisors stealing property. Your response?

Mr. CARVAJAL. It is unacceptable. Their process of investigations, we have over 35,000 staff, 100 since 2019. Even one is unacceptable if it occurred and they are being investigated. But that is less than one-half percent of our staff. The majority of our staff do the right thing, Senator. When they do not——

Senator OSSOFF. Less than—100——

Mr. CARVAJAL [continuing]. We expect them to be——

Senator OSSOFF. One hundred workers under your direction in less than 2 years, convicted or sentenced for crimes. Have you been successful in rooting out criminal activity at the Bureau of Prisons under your tenure?

Mr. CARVAJAL. We absolutely think that is unacceptable. We expect people to follow the law. We take an oath. We are sworn law

enforcement officers, and we have processes, and we work with outside entities to hold staff accountable. We take all allegations very seriously, but there is an investigative process that they must go through, and we respect those processes and support them.

Senator OSSOFF. Is the Bureau of Prisons able to keep female detainees safe from sexual abuse by staff? Yes or no.

Mr. CARVAJAL. We strive to do that, Senator.

Senator OSSOFF. Is the Bureau of Prisons able—I am sure you strive. Is the Bureau of Prisons able to keep female detainees safe from sexual abuse by staff? Yes or no.

Mr. CARVAJAL. Yes, we are.

Senator OSSOFF. You are.

Mr. CARVAJAL. In those cases when things happen, we hold people appropriately accountable.

Senator OSSOFF. You are the Director at a time when one of your prisons is known to staff and inmates as a “rape club.” The Associated Press reports that, “Inmates say they have been subjected to rampant sexual abuse by correctional officers, and even the warden, and were often threatened or punished when they tried to speak up.” That is at Dublin. Is that true?

Mr. CARVAJAL. A case is under investigation. I will not talk about the specifics, but I will tell you that it is unacceptable, and we expect people to be held accountable for breaking the law, if it occurred. We have taken measures to address those issues, and I find it completely unacceptable, as do most of the staff. But everyone has a responsibility. We cannot address something to that nature if we were unaware of it, and in those cases when we became aware of it, we should be doing something about it, and we are.

Senator OSSOFF. Is it true that one of your prisons is known to staff and inmates—this is Dublin—as a “rape club”? Is it true?

Mr. CARVAJAL. I do not know that—

Senator OSSOFF. You do not know?

Mr. CARVAJAL [continuing]. Anyone calls it a “rape club.”

Senator OSSOFF. This is the Associated Press reporting that staff and inmates at FCI Dublin called it “rape club,” and that “inmates say they have been subjected to rampant sexual abuse by correctional officers and even the warden and were often threatened or punished when they tried to speak up. Do you know if that is true? Is that true?

Mr. CARVAJAL. It is being investigated, and if anything—

Senator OSSOFF. I understand. My question is—

Mr. CARVAJAL [continuing]. Is true, we are going—

Senator OSSOFF [continuing]. If it is true.

Mr. CARVAJAL [continuing]. To hold people accountable.

Senator OSSOFF. Is it true?

Mr. CARVAJAL. I do not know if it is true.

Senator OSSOFF. You do not know if it is true.

Mr. CARVAJAL. It is being investigated. There is a process, Senator, that we respect, and it is going through. I do not go by what the Associated Press or anyone says. We have processes to investigate these things. It is unacceptable for any place to be known as a “rape club” or condone that. We do not expect it from our staff, and we certainly take the priority and the safety of all inmates in

our custody, as well as our staff, completely seriously. That kind of language is unacceptable. We do not expect anyone to use it.

Senator OSSOFF. In 2021, the U.S. settled a lawsuit brought by 15 female inmates at a BOP facility in Florida—that is Coleman—who were raped, assaulted, and harassed by male officers. In one particularly harrowing account, an inmate said she was raped every Wednesday for 6 months at a warehouse where she had been assigned to work.

Is the Bureau of Prisons able to keep female detainees safe from sexual abuse by assault? Your testimony remains yes?

Mr. CARVAJAL. Yes.

Senator OSSOFF. Fifteen female inmates raped, assaulted, and harassed by male officers, a woman raped every Wednesday for 6 months at a warehouse, and your testimony today is that the Bureau of Prisons is able to keep female detainees safe from sexual assault.

Mr. CARVAJAL. Senator, we have a complex mission, and if we could stop that from happening completely, we would. We would have zero suicides, no crimes would ever be committed, and we would absolutely not allow anything like that to happen. In those cases when they do, we hold people accountable. There is a process. I cannot speak to what happened at Coleman because I was not involved in it. I was not in the process of it. I am familiar with what you are speaking about. It makes me sick to see those things happen. We try our best to prevent them. When we can we do; and when we cannot, we do something about it. That is the best I can tell you. If I could have kept that from happening, Senator, it never would have happened.

Senator JOHNSON. Director, a number of times you said you have a complex organization, and I do not doubt that. I do not think the Chairman doubts that. When you have a complex organization, you need reporting mechanisms in place to hold people accountable. I think what I find most troubling here is the fact that there were not those reporting systems in place. Apparently it is structural that these Regional Directors or these divisions are kind of fiefdoms of their own and apparently do not seem like they are responsible for reporting to the Director at all. That is a real problem. I think that the whole purpose of oversight is to understand what is happening, where the breakdowns are occurring so we can fix it.

First of all, do you agree with that assessment, that there simply was not the reporting mechanism? I know the August 31, 2020, report that I have been referring to, that is a memorandum for the Regional Director of the Southeast Region. But, something with those types of revelations, it ought to automatically go up to the top.

When I ran an organization, I would always tell the people who reported to me, do not be making decisions that I really needed to be aware of, that I needed to make that decision, do not take that responsibility onto yourself. That is the whole job of being the boss, to get the tough ones, to hear the really bad news that needs to be corrected.

To tie into what the Chairman has been talking about, is your testimony that you were literally completely out of the loop of all

these reports to these regional divisions and that is the way the system is supposed to work?

Mr. CARVAJAL. No, Senator, and I agree that that is one of the challenges. We are taking steps to look at reorganization or looking at—I think we have been stuck in a silo. I believe that is where some of these breakdowns occurred. We put a lot of trust in our senior level. These are Senior Executive Service members at the top of the leadership. They have delineated authority, and we expect them to use that good judgment—

Senator JOHNSON. Listen, in any organization you delineate authority. But the person in charge, the people in charge—it is not just you. It is the Attorney General; it is people who serve in the Department of Justice.

I have one follow-up question. In response to my question in terms of who did you discuss your testimony with, you did say an individual from the Office of Legislative Affairs. Is that the only person you discussed your testimony with? Inside the Department of Justice, was that the only person you discussed your testimony with?

Mr. CARVAJAL. Yes, Senator. Me directly, my staff work with their staff. That is who I—

Senator JOHNSON. You did not talk to anybody else inside the Department of Justice about the subpoena that was issued, whether or not you were going to appear here today or not, or about your testimony? You only spoke to one person in the Department of Justice? That is your testimony here.

Mr. CARVAJAL. Yes, Senator. Not regarding this particular instance, this particular issue I worked through the Office of Legislative Affairs at the Department of Justice.

Senator JOHNSON. What do you mean by “this particular issue,” about testifying here, cooperating with this Committee in terms of oversight?

Mr. CARVAJAL. Senator, you asked me who I spoke to specifically about the subpoena.

Senator JOHNSON. About the subpoena, OK. What about did you talk to anybody in the Department of Justice about the overall effort by this Subcommittee to investigate and conduct oversight over the Bureau of Prisons? Did you talk to anybody in the Department of Justice regarding that?

Mr. CARVAJAL. I have not. My staff work closely with the Department of Justice, but I have not spoken to anybody directly about this Committee’s work.

Senator JOHNSON. It is almost willful ignorance. That is what I find disturbing. It almost appears to be willful ignorance. Do not want to know what is happening below me. Do not want to hear about rapes, do not want to hear about suicides. We have the structure set up. It is going to be the Regional Directors; it is their problem. That is what needs to change here. People have to be held accountable.

Again, I appreciate you coming here. What I do not appreciate is how difficult it was to get you here. I do not appreciate, from my standpoint, the obstruction to this Committee’s investigation and our oversight by somebody in the Department of Justice. I do not think it was this fellow from the Office of Legislative Affairs. I

think somebody else or some other persons did not want this hearing to occur, did not want to cooperate with this investigation.

I give kudos to the Chairman for pursuing this against resistance and obstruction. I think we see why this is so important. There are some serious problems. I am sorry, they have not been effectively addressed. They have not. I wish they had been. These are outstanding issues for years. Somebody has to be held accountable.

Thank you, Mr. Chairman.

Senator OSSOFF. Thank you, Ranking Member Johnson, and, Director Carvajal, that is going to conclude the questions today.

I want to close with this: I am sure I do not need to tell you that we are talking about human beings in the custody of the U.S. Government. We heard from a representative of the Federal Defender's Office: emaciated from lack of nutrition; with vermin crawling through their cells into which they are overcrowded and locked down for 23 hours a day with inadequate time to take a shower, call their family, or call their lawyer; people who have been convicted of no crime, pretrial detainees; inmates hanging themselves in Federal prisons, addicted to and high on drugs that flow into the facilities virtually openly; and as they hang and suffocate in the custody of the U.S. Government, there is no urgent response from members of the staff, year after year after year. It is a disgrace.

For the answer to be other people deal with that, I got the report, I do not remember, it is completely unacceptable.

Now, these issues are deeper than your leadership personally. This is clearly a diseased bureaucracy, and it speaks ill to our national values and our national spirit that we let this persist year after year and decade after decade. If this country is going to be real about the principles at the core of our founding and our highest ideals, there has to be change at the Bureau of Prisons, and it has to happen right now. With your departure and the arrival of a new Director, I hope that moment has arrived.

With that, the hearing is adjourned.

[Whereupon, at 12:43 p.m., the Subcommittee was adjourned.]

A P P E N D I X

CHAIR OSSOFF'S OPENING STATEMENT

The Permanent Subcommittee on Investigations will come to order.

Today's hearing continues a ten-month bipartisan investigation of corruption, misconduct, and abuse at U.S. Penitentiary Atlanta, a federal prison in the State of Georgia.

The evidence the Subcommittee has secured to date reveals stunning long-term failures of federal prison administration that likely contributed to loss of life; jeopardized the health and safety of inmates and staff; and undermined public safety and civil rights in the State of Georgia and the Southeast Region of the United States.

The Subcommittee has secured and reviewed thousands of pages of internal documents from the Bureau of Prisons and interviewed dozens of witnesses, including BOP whistleblowers, current and former staff, federal judges, federal defenders, and former senior leaders at the Bureau of Prisons.

The investigation has revealed that gross misconduct persisted at this facility for at least nine years, and that much of the damning information revealing misconduct, abuse, and corruption was known to BOP and accessible to BOP leadership during that period.

For many years, the facility has been extremely dangerous and insecure. Correctional Services staff at USPA engaged in misconduct with impunity and, according to BOP's own internal investigations, lacked regard for human life. Vast quantities of contraband including weapons and narcotics flowed through the prison, enabled by staff corruption.

Conditions for inmates and pre-trial detainees have been abusive and inhumane, and in my view, violated both the Eighth Amendment

right to be free from cruel and unusual punishment and the Sixth Amendment right to counsel.

Interviews and records reveal a facility where inmates, including presumptively innocent pretrial detainees, were denied proper nutrition, access to clean drinking water, and hygiene products; lacked access to medical care; endured months of lockdowns with limited or no access to the outdoors or basic services; and had rats and roaches in their food and cells.

One federal judge told the Subcommittee that USPA is an embarrassment to the judicial system and noted that incarceration at USPA is like adding another layer of punishment due to the appalling conditions.

Another federal judge wrote a letter to the USPA Warden in January 2022 — this year — to express his deep concern regarding the persistently abusive conditions that were reported to him, including detainees subjected to “a month of twenty-four hour solitary confinement with only a Bible for entertainment or reading,” “no change of clothes for several weeks,” “lack of access to mail,” “a week with only a paper jumpsuit and paper blankets for an inmate on suicide watch,” and “blockage of written communications between attorney and client.”

Given these conditions it is perhaps not surprising that USPA has led the nation’s federal prison facilities in suicides, and four of the last four inmates deceased from suicide were found to have been using narcotics at the time of their death. This despite repeated warnings from BOP’s own investigators that the prison was failing to prevent the flow of contraband into the facility, failing to implement suicide prevention policies, failing to respond with urgency to suicide attempts by inmates, that there was a lack of, and I quote, “regard for human life” among the staff and — this is another direct quote from the BOP’s own investigations — “a dangerous and chaotic environment of hopelessness

and helplessness, leaving inmates to their own means to improve their quality of life.”

In a November 2020 suicide investigation report, BOP’s own investigators found that the staff’s delayed medical response, quote, “represents gross indifference to preserving life and violates inmates’ Constitutional rights.”

Since at least 2014, BOP leadership was warned in its own internal audits and investigations that failures and misconduct were persistent and severe. Failures documented during this period include:

- Failure to conduct rounds in the Special Housing Unit
- Improper handling and management of firearms
- Failures to search for contraband
- Failures to train staff in suicide prevention
- Improper storage of large quantities of narcotics
- The free and open flow of contraband within the facility, including in the Special Housing Unit
- Mishandling of evidence related to inmate suicides
- Inoperable surveillance cameras
- Inoperable perimeter security infrastructure
- Here are some direct quote: “complacency, indifference, inattentiveness, and lack of compliance with BOP policies and

procedures.”

- “a lack of oversight throughout the institution”
- “USP Atlanta presents significant security concern for the Southeast Region. Both national and local policies are being violated on a regular basis.”

In one instance cited by BOP internal investigators, prison staff had to borrow a razor blade from a prisoner to cut the ligature suspending a prisoner who had hung himself in his cell. In another instance, officers intentionally disabled drug detection equipment used to identify trace amounts of narcotics coming into the prison at one of the entrances.

Yet despite these unequivocal internal reports of abuse and misconduct, the situation continued to deteriorate.

Today, our witnesses include two individuals with more than 45 years of combined experience working within the Bureau of Prisons and several years working at the U.S. Penitentiary in Atlanta. Dr. Ramirez, who comes forward today as a whistleblower, previously served as the Chief Psychologist at USPA but remains employed by the BOP. Ms. Whitehead previously served as the Jail Administrator at USP Atlanta and recently retired after nearly 30 years of service.

Dr. Ramirez, Ms. Whitehead, I applaud your courage in coming forward to speak publicly about your personal experiences working at the U.S. Penitentiary Atlanta and at the Federal Bureau of Prisons. I know this was not an easy decision for you. And I know I speak for the Subcommittee when I say that we are grateful for your bravery today. The Subcommittee and the Senate will look harshly upon and seek accountability for any retaliation you may experience as a result of your testimony.

Our investigation is also about the impact of corruption and dysfunction at USP Atlanta on the criminal justice system and the rights of incarcerated people. Many of these individuals have not even gone to trial yet or been convicted of a crime. Today we will hear from Ms. Shepard, an experienced federal defender, who will testify about her clients' experiences at USP Atlanta.

Later, we will hear from BOP Director Carvajal, who was the Assistant Director for Correctional Programs from 2018 until 2020, with oversight over Correctional Services nationwide, and who has served Director of the agency since 2020.

Director Carvajal's testimony is critical to our ongoing investigation.

After months of bipartisan requests for Director Carvajal's voluntary testimony, on July 14, the Subcommittee issued a subpoena to compel it. As an accommodation to the Department of Justice, and in recognition of Director Carvajal's presence this morning, this subpoena has been withdrawn and Director Carvajal is testifying today on a voluntary basis.

My preference is always to pursue investigations in a cooperative spirit and without resorting to compulsory process. However, so long as I chair this Subcommittee, it will continue vigorously, professionally, and judiciously to pursue investigations in the public interest. And where necessary, the Subcommittee will use all of its authorities to pursue the information vital to that work.

Today is the next step in our investigation, but it is not our last.

I thank Ranking Member Johnson and his staff for their continued cooperation during this bipartisan investigation and yield to him for his opening statement.

Opening Statement of Ranking Member Ron Johnson
“Corruption, Abuse, and Misconduct at U.S. Penitentiary Atlanta”
July 26, 2022

As submitted for the record.

Over the last 10 months, the Permanent Subcommittee on Investigations (“PSI”) has conducted oversight of the U.S. Federal Bureau of Prisons (“BOP”), specifically examining the conditions at the prison in Atlanta, Georgia known as “U.S. Penitentiary Atlanta” or “USPA.” This bipartisan investigation uncovered a history of corruption at USPA that jeopardized the safety and security of staff and inmates at the prison.

The Subcommittee interviewed dozens of former USPA staff who spoke about the widespread dysfunction at the prison and described the culture of corruption that plagued USPA for years. Throughout these interviews, the Subcommittee heard how inept leadership at the prison ignored security failures and allowed corrupt staff to avoid accountability for misconduct. PSI learned that USPA and BOP staff even used a specific phrase to describe this pervasive culture of corruption at the prison. They called it: “the Atlanta Way.”

Based on PSI’s reviews of BOP’s audits of USPA from 2013-2021, it was clear that “the Atlanta Way” led to years of unacceptable conditions at the prison. These audits identified a series of security failures, also known as “deficiencies,” at the prison, many of which were repeatedly left unaddressed. Although USPA leadership vowed to correct the problems identified in each audit, the failures persisted. Some of the most egregious failures included: staff intentionally damaging drug-detecting equipment, staff not knowing proper loading and unloading procedures for their weapons, and more than half of the security cameras at the prison were not working. By the summer of 2020, a BOP review team was left to conclude, “USP Atlanta presents significant security concern” and “Both national and local polices are being violated on a regular basis.” Repeated audits revealed that USPA was inundated with weapons, cellphones, drugs, and other contraband.

One of today’s witnesses, Dr. Erika Ramirez, a current BOP employee who served as USPA’s chief psychologist from 2018 through 2021, provided the Subcommittee with even more evidence showing the prevalence of narcotics at the prison. Dr. Ramirez came to PSI as whistleblower and disclosed rampant drug use, including synthetic marijuana, which documents showed was linked to inmate suicides. I want to thank Dr. Ramirez for coming forward to testify and say unequivocally that any retaliation against you or other whistleblowers will not be tolerated.

Your decision to come forward with records about the inadequate conditions at USPA provided this Subcommittee with a greater understanding of the consequences of the security failures at the prison. The same cannot be said about the Department of Justice (“DOJ”). Over the course of PSI’s investigation, the DOJ consistently stood in the way of the Subcommittee’s examination of these security failures and the culture of corruption at USPA.

As PSI attempted to get more information about USPA and interview key witnesses with knowledge of the corruption and safety concerns at the prison, DOJ obstructed the Subcommittee's investigation. For many months, DOJ failed to provide complete and unredacted records that were responsive to PSI's requests, jeopardizing the integrity of the Subcommittee's investigation. DOJ refused to make BOP Director Carvajal available for testimony which ultimately culminated in PSI issuing a subpoena to the director for his appearance at today's hearing.

During my chairmanship of the Homeland Security and Governmental Affairs Committee, I examined the challenges in the federal prison system and, in December 2018, instructed the DOJ Office of Inspector General ("OIG") to review BOP's policies, procedures, and responses to allegations of sexual harassment, abuse, and misconduct at a number of BOP institutions. The OIG recently informed my staff that this work is still ongoing.

Hopefully, through this Subcommittee's investigative work and the OIG's findings, BOP will make necessary changes to end the culture of corruption at USPA and correct other potential failures throughout the federal prison system. Meaningful change can only begin to occur when all BOP officials who committed wrongdoing are held accountable. I thank the witnesses for appearing before the Subcommittee today and I look forward to your testimony.

Senate Homeland Security & Governmental Affairs Committee
Permanent Subcommittee on Investigations
July 26, 2022 Hearing
Corruption, Abuse, and Misconduct at U.S. Penitentiary Atlanta
Written Testimony of Erika Ramirez, PhD
Former Chief Psychologist, U.S. Penitentiary-Atlanta

Chairman Ossoff, Ranking Member Johnson and members of the Subcommittee. It is my professional and personal honor to participate in this hearing.

I consider it imperative that you understand the shocking situation at U.S. Penitentiary (USP) Atlanta that has brought me here today. I repeatedly reported ongoing and uncorrected gross mismanagement of suicide prevention practices which I believe were allowing needless inmate suicides to happen. I was then retaliated against for my reporting – I was involuntarily transferred at the end of 2021 from USP-Atlanta to the Federal Correction Institution (FCI) in Seagoville, Texas. That retaliation was illegal.

About Me

I have been an employee of the Federal Bureau of Prisons (BOP) for 15 years at four BOP duty stations. I am now the Chief Psychologist at FCI-Seagoville.

For three and one-half years, from 2018 through 2021, I was the Chief Psychologist of USP-Atlanta. There, I provided oversight for mental health services, including Non-Residential Drug Treatment and the Secure Mental Health Step Down Program (SMH-SDP).

SMH-SDP is a residential Psychology Treatment Program developed as a result of litigation connected to federal supermax or Administrative Maximum Security (ADX) prisons, *Cunningham v Department of Justice*. The federal class action case concerned treatment of maximum-security male inmates with serious mental illness, a history of violence, and lack the skills to function in a general inmate population. I was responsible for integrating standardized procedures on inmate mental health issues, including: the provision of sound clinical care to inmates; developing and implementing mental health treatment best practices and policies; tracking and analyzing program adherence to policy; and ensuring that management complies with agreed upon programmatic and policy changes.

For my first 11 years, I was assigned to the psychology departments of high or maximum-security male prisons. From 2015-2018, I was posted to ADX-Florence, Colorado as the ADX Psychologist. I was a member of the multidisciplinary team that worked on the *Cunningham* settlement. Our goal was to improve the mental health treatment of inmates across BOP.

My Two Roles

My position at each duty station has been in the Psychology Services department, and my focus has been and always will be providing the best possible mental health treatment to inmates. But

I also am, like most BOP employees, a federal law enforcement officer. In addition to providing mental health care, I am responsible for ensuring the safety and security of the community, the staff, and the inmate population. I, too, routinely pat down inmates, search cells and other areas, respond to institution emergencies and, at times, have taken on the role of Correctional Officer.

Though this may seem unorthodox for a licensed psychologist, I have found the two roles complement each other. I have used my professional psychology skills to assist in deescalating violent situations, providing inmates with skills for successful re-entry and decreasing future criminal behavior by treating underlying causes.

Daily Challenges

Working in a correctional facility can be and often is dangerous, extremely stressful and unpredictable. Once you enter a prison and step into a prison yard, there may be several hundred violent offenders surrounding you. It is a life changing event. Staff have much higher rates of PTSD, depression and suicide. During my career, I have buried far too many co-workers who committed suicide.

Each day we leave the outside, everyday world. When there is an emergency inside, we do not go home -- we are required to run toward the situation. Our families are left waiting for us, often without notice. Far too often we witness the worst in mankind -- then return home attempting to put aside the emotional pain and acting as if everything is fine (it's not).

The regular violence my husband (also serving in the BOP) and I encountered led us to apply for a transfer to USP-Atlanta. We thought it would be better for our mental and physical health. We were wrong.

About USP-Atlanta and Early Warnings

USP-Atlanta was once the flagship of the BOP. It is now a penitentiary in name only. When I was there it was actually a medium security facility, with a separate jail, Special Housing Unit (SHU), SMH-SDP, and a satellite camp. It housed around 1,800 inmates and approximately 425 staff.

Before I started, I was told USP-Atlanta had a variety of issues – most recently deficient/failing Program Review ratings in numerous departments. The problems in the psychology department were so bad that the Program Review had been halted prior to completion. That only happens when the reviewers conclude they cannot feasibly proceed with the review because the department is so deeply broken.

I also knew from the news about the very serious problems at the USP-Atlanta satellite camp. Reportedly, “escorts” were brought into the facility; through a hole in the fence contraband like alcohol, cellphones, drugs and cigarettes was easily obtained by inmates. Investigations of corrupt staff had led to criminal convictions for introduction of contraband, sexual assault of inmates and acceptance of bribes.

Yet even with this advance information, I and other managers could never have been prepared for what was actually going on.

First Day Problems

When I first arrived, I discovered my new office had been “searched” by staff (inmates do not carry keys). Basic office items were either missing or inoperable. There was a computer on the desk but an inoperable scanner and printer. I had a dilapidated desk with inoperable drawers, the desk chair had only part of one arm, and you were sure to tip over if you leaned back. I asked for replacements.

None were forthcoming. I asked about the procedures for getting replacements. Often, I got no answers, or was told, “we’ll take care of it.” But nothing was ever done. It took over six months to get replacements – and only after I personally carried heavy furniture to my office.

Shocking Conditions*Deteriorating Physical Plant*

The infrastructure throughout USP-Atlanta was in serious disrepair. The problems had been obviously ignored for many years. Elevators were inoperable for months at a time; phones and computers were regularly inoperable; and sanitation needed significant improvement. The walls contained mold and, even with the Georgia heat, offices had broken air conditioning.

Rain caused havoc. Almost any amount would cause the sewer to back up and overflow onto the recreation yard -- sometimes leaving a foot or more of human waste behind. To this day the sewer overflows. Each day I passed a gaping hole in the ceiling that poured water into a bucket every time it rained; it was often referred to as the building’s “water feature.” That hole and bucket remained for my entire time at USP-Atlanta.

Contraband

Inmate living areas were dirty. Cells were packed with impermissible property far outside of BOP policy. It was obvious that cell searches were impossible, neglected and not frequently conducted. For instance, I found a microwave in a cell during a search. I confiscated it as major contraband. Two days later I found the *same* microwave in another cell (it had the same serial number).

I was astonished. During my career I have searched many cells. At other institutions, major inmate contraband is usually hidden or disguised. Not so at USP-Atlanta. Contraband was out in the open. Inmates knew from experience that longstanding, complacent staff were not going to search them.

No or Little Education in the Education Department

USP-Atlanta’s education department was fully staffed. Over eight months, I passed by its classroom multiple times each day. In all that time I almost never saw a class being taught. The records will confirm that. Teaching was so nonexistent that I was shocked when one day I saw a teacher at the white board teaching inmates Spanish. I believe the department is still fully staffed yet there are no general education classes, no First Step Act classes (required by law), and very limited vocational programming.

“That’s Not the Atlanta Way”

Often, when a change in staff procedure was suggested, staff would refuse to follow the change because, “that’s not the way we [(Atlanta)] do it.”

Staff Refuse to Abide by Needed Change to Daily Schedule

For instance, from the day I started I could not figure out USP-Atlanta’s daily schedule. At every BOP institution there is a daily workday schedule that includes, at the bottom of each hour, 10 minutes to allow for inmates to move from one location to the next. It allows inmates to arrive on time to, among other appointments, psychology treatment and medical visits. It is important for accountability, structure and the safety and security of the institution.

The 10-minute period was not included in USP-Atlanta’s daily schedule. Management held meetings, gathered staff input, added the period to the daily schedule, and set the date for implementation. Nothing happened. Staff ignored the change because “that’s not the way we do it.” Worse, staff that followed the change were treated as outcasts. Even when non-cooperating staff were counseled and written up for misconduct, the schedule change had not taken effect before I left USP-Atlanta.

Staff Repeatedly Fail to Correct Cited Deficiencies

Here are other examples of the “Atlanta Way.” In January 2020, a Program Review team found that staff had broken the machine intended to detect traces of drugs and that it had not been used for more than one year. Even after repairs were made, the machine was damaged again. The team wrote in their report: “The refusal of staff to utilize, and their purposeful destruction of drug detection equipment is not acceptable behavior.”

The 2020 review team also noted that staff assigned to gun towers, an armed post, were unaware of proper weapon loading and unloading procedures. Despite efforts to train staff to correct this problem, I understand a 2022 review team identified the same deficiencies.

Unchecked Violence Among Staff

Workplace violence occurred frequently. In one instance, I witnessed an employee yelling threats and obscenities, and aggressively approaching a member of the executive staff. Though I was five-months pregnant and terrified, I stepped between them and pushed the employee away. I reported the employee to management. Nothing was done. This same employee has had no less than seven other similar incidents over four years yet remains at BOP.

Another time, my husband was repeatedly hit by another staffer and required immediate medical attention. Notwithstanding this misconduct, the attacker remained at work, and I was warned to stay away from him because I was a mid-level supervisor and had no protections.

Inmates were well aware of staff-on-staff violence and divisiveness. Some inmates were far too comfortable, too familiar with some of the staff. The typical boundaries seemed extremely blurred; inmate workers were seen almost as a peer to some staff. The inmates knew about their families, upcoming vacations, house projects.

Failures to Prevent Suicides

During my time at USP-Atlanta six inmates died from suicides. There were two more inmate suicides just prior to my arrival. Per BOP policy, a team -- typically consisting of two psychologists and a regional administrator -- is sent to the institution to conduct a Suicide Reconstruction. The team looks at, among other areas, the inmate's background, medical history, antecedent circumstances, institution dynamics, and mental health history.

A report is prepared and sent to the institution and other BOP offices detailing findings and making personnel, programmatic and policy recommendations in an effort to prevent recurrences. The institution must provide a written response to any recommendation. Each department head is expected to provide written responses related to their area of responsibility.

While at USP-Atlanta, I reviewed seven Suicide Prevention reports. In all seven, 30-minute unit rounds were not done in accordance with policy, each inmate suffered from on-going substance abuse and had easy access to narcotics. There were three suicides that occurred in the SHU. All three reports stated that the SHU inmate orderlies were unsupervised and were observed passing contraband. As of January 2022, these deficiencies remained.

A November 2020 report summarized the problem as follows:

Past [suicide] reconstruction teams have made many of the same recommendations noted below in this report: the need for attention to detail, adherence to BOP policy, and regard for human life among Correctional Services staff and, at times, other departments.

A June 2021, report stated:

Once again this reconstruction revealed complacency, indifference inattentiveness and lack of compliance with BOP policies and procedures. These lapses contribute to a dangerous and chaotic environment of hopelessness and helplessness.

I repeatedly expressed my concerns about these and other systemic failings to management. Nothing was done.

Involuntary Transfer and Retaliation

In August 2021, I and 43 other mid-level supervisors, were told we were being transferred to BOP institutions around the country. We were essentially given "take it or leave it" notices: "If you do not report to this position, you will be subject to administrative action up to and including removal." I was devastated, as were my colleagues. Our families had set down roots in Atlanta for the long haul. At the time, I was building an addition to my home.

We asked why this was being done and why -- out of 425 staffers -- us. We were given varying answers. An Assistant Regional Director said, "the media and DOJ were putting pressure on the

BOP to take some action.” USP-Atlanta was in the spotlight – and not in a good way.¹ We were told someone in “the Central Office” had decided who would stay and who would go.

All 43 of us were initially involuntarily transferred to institutions requiring family relocation. Later, five were offered positions in the Atlanta area. I was not one of them. I relocated at considerable expense to me, my family and BOP -- in my case alone the estimated move/relocation expense is more than \$250,000. Much more importantly, my family and I will never recover from the damage BOP has caused. To date, none of the managers forced to move have been reimbursed for any of their out-of-pocket relocation costs; BOP has advised us it may take as long as eight months before we are reimbursed. Many of the managers, including myself, now find themselves struggling to make minimum payments, fees and interest accumulating daily on debts caused by the BOP’s actions.

I believe BOP’s actions against me are tied to my reports of ongoing gross mismanagement at USP-Atlanta. Under the federal whistleblower laws, BOP will eventually have to demonstrate to a judge and jury by clear and convincing evidence – a high evidentiary standard – that it would have taken the same action even without my whistleblowing. They cannot and will not meet that burden.

My Requests to You

I am here to advocate for those dedicated hard-working BOP law enforcement professionals I have had the privilege and the honor to work with over the past 15 years. The vast majority of staff are doing the right thing every day; they want to work in a safe environment where people are professional, treated fairly and held accountable.

But the current BOP employee discipline system is so complicated and convoluted it is ineffective. Staff discipline should be fair, swift, and corrective. It wasn’t at USP-Atlanta. Please push BOP to streamline the process.

Please also work to ensure that mid-level managers like me have tools and meaningful support to address misconduct and deficiencies. We have tremendous responsibilities but little authority. As reflected by these involuntary transfers, we merely get the blame. Hold all responsible individuals accountable. That has not happened here.

Lastly, provide our institutions with the necessary funding and resources. Fund our institutions to 100%; right now we are funded for staffing at 93%, even though we handle far more programs and paperwork than just a few years ago.

* * *

What was happening at USP-Atlanta is in some ways still happening at USP-Atlanta. There must be greater accountability all around.

Thank you.

¹ See, e.g., Atlanta Journal Constitution, *Atlanta Federal Pen Nearly Vacant Amid Corruption Investigation* (Aug. 20, 2021), available at <https://www.ajc.com/news/crime/exclusive-atlanta-federal-pen-nearly-vacant-amid-corruption-investigation>.

Senate Homeland Security & Governmental Affairs Committee
Permanent Subcommittee on Investigations
July 26, 2022 Hearing
Corruption, Abuse, and Misconduct at U.S. Penitentiary Atlanta
Written Testimony of Terri Whitehead
Retired Senior Manager, U.S. Penitentiary-Atlanta
Federal Bureau of Prisons
U.S. Department of Justice

Chairman Ossoff, Ranking Member Johnson, and members of the Subcommittee.

Thank you for inviting me to testify today.

I am here to testify about the many abuses and gross mismanagement I personally witnessed while serving at United States Penitentiary (USP) Atlanta from August 2020 until I retired in December 2021 – earlier than I had planned.

Introduction

I am especially saddened to be testifying about USP-Atlanta. I held USP-Atlanta near and dear to my heart -- it was my homestead facility where I started work as an intern in 1990 and I became a part of the Bureau Family. I became a member of a small group of people who helped me understand what it means to be a “correctional worker first,” to know the Bureau of Prisons (BOP) as a policy-driven agency.

I learned and practiced BOP policy, and how following policies and procedures made for safety and security of all involved to include staff, inmates, and the surrounding communities. During my 30 years at BOP, I was promoted to positions of increasing authority, including Unit Manager, Case Management Coordinator, Executive Assistant, Camp Administrator, and Jail Administrator.

When I was offered the opportunity to return to the facility, after working at many different level and security facilities, I initially thought I had been blessed to be selected Jail Administrator, an upper-management position.

I arrived at USP-Atlanta on August 17, 2020. It is an understatement to say I was disappointed and saddened by the conditions and practices I found.

Day-One Problems

From my very first day onwards, I confronted appalling conditions. Sanitation levels were far below what I experienced at other BOP facilities over three decades. There were obvious safety violations. Staff accountability was minimal. The facility looked as if building repairs had not been made for an exceptionally long time.

At end of my first day, I sat in my car in the parking lot for several minutes to make real what I had just saw. As a seasoned correctional worker, all I could come up with was “what the hell.” For the next 16 months, I said this daily.

No Basic Supplies

When I arrived, I had no office equipment, a broken desk, and no office chair. According to the earlier Jail Administrator, the office had been fully functional upon his departure, but someone must have gotten its keys and “robbed” it. Another staff member shared office supplies with me. New office furniture and a printer was ordered. They were delivered about three months later. Another staff member, who transferred to USP Atlanta from a facility in Pennsylvania, told me he did not have a desk for at least a year.

Especially shocking was the absence of COVID-19 masks. At my earlier facility, masks were supplied at least twice a week to staff. At USP-Atlanta, masks were not provided to staff until September 2020 – six months after the start of the pandemic.

The “Atlanta Way”

I quickly encountered the “Atlanta Way.” It was shorthand to justify the status quo and provide cover to bureaucrats.

For instance, in early 2021, while serving as Acting Associate Warden, I was appalled to learn of USP-Atlanta’s repeated bureaucratic failures to deal with infestations of rodents in food preparation areas. I was contacted, via email, by the Southeast Regional Office Food Service Administrator who indicated someone had reported cats and rats inside of inmate food preparation areas. I then met with the food service staff management who told me rat infestation had been a recurring problem and food service staff intentionally left doors open so that cats could catch the rats. Rats were getting into inmate food!

I was told USP-Atlanta had no professional pest control program because two management officials did not agree which department budget would pay for the pest control service. I tried to schedule a meeting with the responsible officials to solve the problem. But the meeting never happened. When I followed-up, I was told “it was taken care of.” I am not positive about that. I *am* positive that the staff involved behaved as if I had made a big deal of a normal situation. That was the “Atlanta Way.”

On more than one occasion, I smelled the distinct odor of marijuana in the facility, including in USP-Atlanta’s main corridor. I immediately reported it to the Captain on duty. I was told nothing could be done, the smell was not abnormal and they probably could not tell who was smoking. That too was the “Atlanta Way.”

At the BOP institutions where I worked, the detection of cigarette smoke in a prohibited area would trigger immediate administrative action. That was what “being a correction officer first” meant to me and my BOP colleagues.

The “Atlanta Way” is the wrong way. But I was greatly outnumbered. Even at least one of the Acting Wardens understood and adopted it. I quickly learned that the staff who knew better went along with the “Atlanta Way” to not become an outcast or being viewed as going against the grain. A federal prison can be an extremely dangerous place, and staff, as correctional workers first, have a duty to keep a safe and secure facility. At USP-Atlanta, where security cameras do not properly operate and inmate negative behavior is unchecked, you do not want to be outcast. Although I had worked at USP-Atlanta in the past, I was viewed as an outsider.

Security Failures

In August 2020, one week after my return to USP-Atlanta, BOP conducted an unannounced or surprise security assessment of the facility. The results confirmed the reason for my disappointment and sadness.

In my career, I’ve seen a lot but reading the assessment report shocked the hell out of me. I just could not believe a federal institution charged with housing inmates and keeping safety and security was in such disarray. The assessment report showed no evidence of correctional work. The most shocking part was that *the same issues were found in prior assessments and had not been corrected.*

On the Friday of my second week at USP-Atlanta, the Warden informed the senior staff he would not be returning to USP-Atlanta the following Monday. I never saw him again. For the next 14 months, there were “Acting Wardens” who rotated through three-week “tours.” Of course, this caused significant confusion and increased lack of accountability.

Following the security assessment, additional supervisors were added. Instead of two Associate Wardens and Captains, three were assigned. But the safety and security issues were not corrected. According to the assessment: one-half of the security cameras did not work, and the other half were “off by three hours;” numerous safety and security equipment (keys, hand cuffs, pepper spray) was “missing.” Nude images taped to cell walls demonstrated that staff were not addressing negative inmate behavior. In 30 years, I have never been afraid of inmates or to work in a federal prison. But because of these and other failures, I was nervous when working in less populated areas of USP-Atlanta.

No Staff Training

Following the August 2020 security assessment, there were no trainings to control contraband, effective communication, incident report writing, unit searches or key storage and usage.

For example, according to BOP policy, newly selected Case Managers must be trained within 90 days of assuming a caseload. That was not being done. An Associate Warden told me that was the “Atlanta Way.” The official in charge of training, who began working shortly after I arrived, was, like me, appalled and very frustrated.

Problems in the DCU

The Detention Center Unit (DCU) at USP-Atlanta contains nearly 600 beds for pre-sentenced inmates and transit inmates. Its many problems, exemplified USP-Atlanta’s many failings. It was the “Atlanta Way.”

Upon my arrival, there were obvious signs of mold on the ceilings and walls, an infestation of roaches and rats, cats roaming the hallways, holes in the ceiling (ceiling tiles and drywall missing), graffiti on the walls, elevators not working, three inmates sleeping in two-man cells, inadequate food portions, not enough laundry (jump suits, towels, rags, underwear, socks), standing water on the floor, and no assigned COVID-19 Isolation or quarantine areas.

It was a daily struggle to get enough clean laundry for the inmates, repairs done, or decent food. According to the Facilities Manager, there was no money to make the repairs, and the DCU was not a priority. According to the Health Services staff, setting up COVID-19 isolation and quarantine areas were not their responsibilities. According to the Food Service Administrator, he could not control the food carts once they left Food Service. Prior to my arrival, a dryer in the DCU Laundry caught fire, which resulted in the DCU Laundry being closed. The USP Laundry did a poor job of keeping the USP Laundry and the DCU Laundry on a regular basis.

Daily, the DCU was severely understaffed by correctional officers, which is a safety and security issue. Usually, if there were staff available, they were newly hired staff with less than six months on the job. Because of COVID-19, BOP staff did not attend the Introduction to Techniques Training. Therefore, new untrained staff were routinely assigned to the DCU.

Assaults and Contraband

In the DCU alone, there were at least three staff assaults, one inmate assault resulting in death, and numerous inmate fights. Newly assigned staff, who have not been professionally trained, will not properly respond to emergencies. They do not know how. The DCU staff did not conduct pat searches, cell searches, or unit searches. This results in hard contraband -- including cell phones and illegal drugs.

A Warden that I had worked with prior to USP-Atlanta, contacted me several times to say that arriving inmates to his facility from USP-Atlanta, arrived with cell phones and drugs on almost every bus. I informed USP-Atlanta's then-Acting Warden, she questioned the Warden's information and said a complaint call would be made to that Warden's Regional Director.

The receiving institution was able to detect the contraband because a scanner chair was used at that facility. I tried, unsuccessfully, to use a scanner chair at USP-Atlanta. My effort ended with the Receiving and Discharge staff and the Lieutenants pointing fingers at which staff were supposed to conduct the search. Again, it was the "Atlanta Way."

Staff Misbehavior

BOP has a policy on staff conduct and ethics. Reports of unethical behavior are investigated and if warranted, discipline is imposed.

That was not always so at USP-Atlanta. Here are a few examples.

- In 2020, a staffer was disciplined for physically fighting with another staff member inside the prison. Six months later the staffer was promoted to management. BOP policy requires two years between discipline and promotion.
- In 2017, another staff member was accused of beating an inmate. The Office of Internal Affairs sustained the case in 2020. However, in the interim that staff member was promoted twice.

- In 2021, a staff member racked up more than 300 hours of absences without leave. Yet at the time I retired (in 2021), no action had been taken.
- I reported at least three problem staff cases to the USP-Atlanta Acting Warden for failure to follow supervisor's instructions, breach of security, inattention to duty, and refusing to wear a mask for COVID-19 purposes. As of today, I have not been interviewed about any of those cases.

In July 2021, over 700 cell phones, and numerous hard contraband items and illegal drugs, were found inside USP-Atlanta. Most of the inmates were moved to other prisons and approximately 40 management officials (who had been at Atlanta less than five years) were involuntarily transferred to other facilities. Even though USP-Atlanta has a staff compliment of approximately 432 there were no staff discipline cases connected to the July 2021 incident. The staff members not transferred are still at USP Atlanta or the BOP's Southeast Regional Office.

All BOP facilities employ staff members who do not always follow the rules. At each facility where I have worked, I have known staff members to be disciplined, and at times even arrested. But staff at USP-Atlanta were not held accountable. It was the "Atlanta Way."

As USP-Atlanta's Jail Administrator, I tried to change staff behavior in part through guiding and mentoring. I modeled best practices by showing up early and staying late, to work with staff assigned to all shifts. I worked closely with the union and voluntarily trained management staff on the collective bargaining agreement. I wrote discipline memorandums for investigation. I supplied templates from other institutions, to show how BOP policies and procedures are followed at other facilities.

Sadly, nothing seemed to work. But I was determined to keep trying. As a "reward" for my efforts, I was dismissed. I received a Management Directed Relocation to Texas, which forced me to retire earlier than I had planned.

* * *

This is outrageous. I never expected to be here today. Now that I am I ask for your immediate help. I truly believe the problems can be fixed with the right people and programs.

Please also continue the kind of oversight you are doing today. It may stop the abuses you are hearing about.

Thank you.

Testimony of Rebecca Shepard
Assistant Federal Public Defender
Federal Public Defender for the Northern District of Georgia
Before the Homeland Security and Governmental Affairs Committee
(HSGAC) Permanent Subcommittee on Investigations (PSI)

Hearing on
“Corruption, Abuse, and Misconduct at U.S. Penitentiary Atlanta”

Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for holding this hearing and for the opportunity to testify. My name is Rebecca Shepard. I am a trial attorney with the Federal Defender Program, Inc. of the Northern District of Georgia, a federal community defender office based in Atlanta. At any given time, Federal Public and Community Defenders and other appointed counsel under the Criminal Justice Act represent 80 to 90 percent of all federal defendants because they are unable to afford counsel. An overwhelming majority of people held in federal pretrial detention—whether in the custody of BOP or the United States Marshals Service (USMS)—are our clients.

I. Introduction

Today, I will focus my testimony on the unacceptable conditions of confinement for clients who are detained pretrial—awaiting trial and presumed innocent—at the U.S. Penitentiary (USP) Atlanta. My clients, like every other person held in federal detention, are parents, children, siblings, and friends. Each deserves to be treated with basic human dignity. Each deserves adequate access to counsel to assist with difficult decisions like whether to plead guilty or go to trial. But USP Atlanta is not meeting these basic standards. Its failures have harmed our clients, impeded our ability to adequately represent our clients, and delayed the resolution of their cases.

The problems at USP Atlanta are part of a larger story about why strong oversight of the BOP and USMS is so desperately needed. Conditions like these are replicated at BOP pretrial detention facilities and local jails under contract with the USMS throughout the United States. But for too long, and regardless of who holds political power, DOJ, BOP, and the USMS have ignored congressional oversight, the courts, independent auditors, and whistleblowers calling them to account for these deficits. This lack of accountability has gotten progressively worse, culminating with Director Carvajal’s refusal to appear before this body for testimony absent

congressional subpoena.¹ I am grateful to speak to you today about the urgent need for change.

II. The Role of Federal Public Defenders

The Sixth Amendment to the Constitution guarantees individuals accused of crimes the assistance of counsel.² Federal public defenders, along with counsel appointed under the Criminal Justice Act (CJA), serve this imperative through the zealous representation of individuals charged with federal crimes who cannot afford counsel. Our representation may include bond hearings, preliminary hearings, filing and briefing pretrial motions such as motions to suppress, evidentiary hearings, plea negotiations, plea hearings, trial, and sentencing hearings. If our clients are convicted, we represent them on appeal. If our clients elect to cooperate with law enforcement by providing evidence to assist an investigation or even acting in an undercover capacity, we represent them in that process as well.

To provide effective assistance, defenders must work closely with our clients to investigate and assess the strength of the government's case, and to counsel clients through difficult decisions such as whether to plead guilty, go to trial, or file an appeal. Building a strong relationship of trust with our clients is essential to our work.

III. USP Atlanta

USP Atlanta operates a pretrial detention facility where many clients in our district are housed. Accordingly, we have unique insight into the facility. To appreciate the urgent nature of the crisis at USP Atlanta, and other BOP and USMS facilities, it is essential to start with a clear picture of what life inside is like.

A. Inhumane and unsafe conditions.

Pretrial clients detained at USP Atlanta have not been convicted of a crime and are entitled to the presumption of innocence. But they are subject to deplorable and punitive conditions that have persisted for many years:

Conditions of confinement. For decades, clients detained at USP Atlanta have been subject to extensive "lock downs," during which they are confined to their cell almost completely. Twenty years ago, the Eleventh Circuit considered a case where

¹ Mike Balsamo & Michael Sisak, *Senate Panel Subpoenas Federal Prisons Director to Testify*, Wash. Post (Jul. 18, 2022), https://www.washingtonpost.com/politics/senate-panel-subpoenas-federal-prisons-director-to-testify/2022/07/18/c30d5cca-06db-11ed-80b6-43f2bfcc6662_story.html.

² U.S. Const. amend VI.

a client “spent six years in presentence confinement, of which five years were spent in USP Atlanta in 23-hour-a-day lockdown. He testified that he had not been outside in five years.”³ Despite the Eleventh Circuit’s recognition of the “extraordinary” nature of these conditions, they persist. In 2016, a judge in my district described such conditions as “excruciating,” and acknowledged that to be “put into segregation simply by virtue” of getting placed at USP Atlanta, “not because of something else you did ... makes it all the more so.”⁴ That judge recognized that “those are not the normal conditions for most pretrial detainees.”⁵

While locked down, clients cannot access anything other than a sink and toilet: there are no showers, no phone calls, no law library, no access to the chaplain, and no commissary. Over the eight years I have been a defender in Atlanta, I have seen clients routinely locked down and allowed out of their cells for only (1) 15-30 minutes, 3 times a week; (2) 1 hour, 3 times a week, or (3) 1 hour each day. These extensive lock down periods have often persisted for months—for example, in 2014-2015 our clients were only allowed out of their cells for 1 hour, 3 times per week, for more than 11 months.

The brief periods our clients are released from their cells do not permit them to regularly shower, speak to their families and lawyers, or review materials related to their case.⁶ One of our clients was held on an overcrowded pod (unit) with approximately 100 other people. Due to overcrowding, the pod had three people in two-person cells. For many days in June and July, in the heat of the Atlanta summer, his pod had no air conditioning or airflow. The pod had only six showers and three phones, making it impossible for everyone to shower and make phone calls when released, resulting in long lines and abbreviated times for the actual call. Our client was routinely forced to choose between calling his family or his attorney; he could not do both. (Often, calling an attorney is not even an option, because our clients are released after business hours.)

³ *United States v. Pressley*, 345 F. 3d 1205 (11th Cir. 2003).

⁴ See Ex. A, Redacted Transcript. Note that I have redacted this transcript to protect the privacy of my client.

⁵ *Id.*

⁶ See Exhibit B & C, Redacted Affidavits. Note that I have redacted these affidavits to protect the privacy of our clients.

Even worse, our client's cell and pod were infested with roaches, and the facility provided no supplies to clean the cells in order to prevent vermin. When our client asked for cleaning supplies, the guards laughed at him.

The conditions this client encountered were not exceptional: they represent the norm for individuals held pretrial at USP Atlanta. The cruel but routine choices my clients must confront about whether to shower, speak to a loved one or lawyer, or study their legal case, before returning to a cramped, infested, and often too-hot cell, are inhumane and unjust.

Nutrition and Hygiene. Clients at USP Atlanta also experience substandard food and hygiene conditions including:

- Inadequate access to clean water for bathing and drinking. Our clients experienced several weeks where they were told not to drink the water because of “problems with the pipes,” or to even use water from the taps to brush teeth or bathe. Clients were given conflicting reasons for the prohibition, including “arsenic in the pipes” and “mold.” My office never got a clear answer. During these periods, clients were not provided with sufficient water for drinking, let alone enough to use for basic hygiene.
- Months without any hot meals, during which clients are provided only sack lunches for every meal. Clients reported that dinners of only a sandwich were routine, and one observed that the packages of sandwich meat indicated dates long-past expiration.
- Weight loss and emaciation due to poor nutrition.
- Limited commissary, sometimes including only instant coffee and chips. My client showed me the commissary list they actually receive, and it is very different from what is advertised on USP Atlanta's public website. (While this might seem a small matter, due to the limited meals provided, my clients depend significantly on commissary to supplement their diets.)
- Roaches or bugs in food.
- Access to showers only three times per week—but due to limited time out of cell, clients often cannot shower even that frequently.
- Change of clothes not available for several weeks—at best, change of clothes only available a maximum of three times per week. Several clients reported that they were provided with only one set of underclothes that they were

expected to wear those for two to three weeks at a time, with no alternative provided.

- Limited access to toothbrushes and toothpaste.

Lack of access to mental health treatment. Pretrial detainees are routinely denied mental health treatment at USP Atlanta, including lack of access to medication, therapy, and mental health professionals. Moreover, when attorneys hire outside experts to conduct mental health evaluations of our clients, USP Atlanta staff is so unresponsive and disorganized that the facility causes delay and has even prevented the doctors' access to the clients.

We have had clients who have been sent to other facilities in BOP to be evaluated for their competency to stand trial. In some of those cases, BOP doctors at the other facilities deemed that the clients could be restored to competency with medication. But when our clients were returned to USP Atlanta, the staff fail to provide them with the prescribed medication regime, causing our clients to decompensate and become, again, incompetent to stand trial.

Recently, a client reported being held for a week on suicide watch, without any access to mental health treatment and medication. He reported that he was only provided a paper jumpsuit and paper blankets.

Facility in disrepair. The state of USP Atlanta is obvious to any observer: there is inadequate heating and cooling in the building, and there are leaks and water damage that have existed, unrepaired, for years. As mentioned above, bugs and rats infest the buildings. At one point there were multiple dead roaches in the attorney meeting rooms that remained in place over the course of several months

B. Inadequate access to counsel.

The Sixth Amendment requires not just that defense counsel be appointed, but that counsel provide effective assistance.⁷ Individuals are denied their right to effective assistance of counsel when, for example, "counsel is called upon to render assistance under circumstances where competent counsel very likely could not."⁸ The inevitable result of inadequate access to counsel is ineffective representation, and in some cases, wrongful conviction. This leads not only to obvious human costs, but

⁷ *United States v. Cronin*, 466 U.S. 648 (1984).

⁸ *Bell v. Cone*, 535 U.S. 685, 696 (2002); *see also* *United States v. Morris*, 470 F.3d 596, 601-02 (6th Cir. 2006) (finding ineffective assistance of counsel where defense counsel lacked the opportunity to speak with the client privately, lacked full discovery, and lacked the time to investigate the case and to adequately assess a plea offer before its expiration).

also to unnecessary fiscal costs from prolonged or unjust incarceration and collateral adjudications to correct errors.

USP Atlanta's policies and practices (which do not always conform to written policy) do not allow us to communicate with our client as needed to fulfill our constitutional and ethical obligations of zealous advocacy. Some examples follow:

Scheduling delays and difficulties. USP Atlanta requires attorneys to schedule legal visits in advance and for visit requests to be approved by staff. On its face, that is not a significant obstacle. However, USP Atlanta staff members consistently fail to respond to requests for legal meetings, often for several days and despite the requests being repeatedly resent. It is not unusual for the date of the requested meeting to pass and still have no response from the prison staff.

Moreover, USP Atlanta changes its scheduling policies frequently and without prior notice to clients or their lawyers. Currently, legal visits are allowed only two days per week, between 8:00 a.m. and 3:00 p.m. This is the third iteration of a visitation schedule in this calendar year. With each change in policy, USP has exacerbated scheduling difficulties by *reducing* the days available for legal visits.

Clearing the hurdle of getting a meeting approved and scheduled does not assure it will occur because of the chaos and disorganization of the facility. For example, it is common that staff at the visitor entry gate (1) do not know the facility's policy for legal visits; (2) do not have any record of the confirmed, scheduled visit; (3) cannot summon a staff member to transport the attorney or the client to the meeting room; and (4) cannot timely process visitors. The staff we encounter at USP Atlanta frequently appear untrained and uninformed about the facility's policies and procedures. Attorneys often wait for more than an hour after arriving at the designated time for staff to process them into the building due to confusion and disorganization among the staff.

Recently, a colleague with a prescheduled legal visit arrived at the entry door to USP Atlanta to find it locked. She knocked for two hours, but no staff member ever responded. Her attempts to call and email the facility from outside the building went unanswered. Later, after finally giving up and returning to the office, she received a call from the staff member who had scheduled the visit asking why she failed to show up—when she had been outside of the building trying to contact anyone inside the prison for hours.

In short, Defenders comply with USP Atlanta's shifting protocols for legal visits, but in our experience, the facility staff does not. In addition to interfering with

attorney-client communication and our clients' Sixth Amendment right to effective assistance of counsel, USP Atlanta's disorganization and failure to adhere to its own policies is expensive. When appointed counsel retains a professional expert or interpreter to visit a client, taxpayers bear the burden of paying the hourly rates for these professionals during the delays caused by USP Atlanta staff.

Conditions of legal meetings. USP Atlanta also fails to provide meeting rooms that both allow for confidential attorney-client communication and allow adequate monitoring for safety. USP Atlanta has legal meeting rooms that are private and monitored, but it will not use that space for our pretrial clients. Instead, the facility requires defenders to either meet with our clients in the same room as a staff member, which violates our duty to ensure confidentiality, or meet with clients in a room that is out of sight of any staff members.

Legal calls and video visits. Prior to the COVID-19 pandemic, we could not conduct video visits with clients at USP Atlanta. Although there was no clear policy on legal calls, we could arrange legal calls if the client's case manager was amenable. Under current policy, the facility will allow legal video visits up to one hour and legal calls up to 30 minutes. But these calls are held in a counselor's office and lack confidentiality, so they do not provide the opportunity to discuss sensitive or privileged matters. And the scheduling process is the same as for in-person meetings, so there are frequently delays and difficulties scheduling, just as there are for in-person meetings.

Access to discovery. "Discovery" refers to the evidence against a client that the government produces to the client and her lawyers. Defenders carefully review this evidence with our clients in order to investigate and assess the strength of the government's case, identify any constitutional defects that could be the subject of pretrial motions, and determine the best resolution for the case. Delays in clients receiving and reviewing discovery cause delays in resolving the case. This is harmful to our clients because it extends the time they are held in pretrial detention. It is also burdensome to the entire court system because it can result in unfair or unjust outcomes, requiring later adjudication, or impede the expeditious resolution of cases.

Nearly all federal cases involve electronic discovery, such as video or audio recordings, the contents of cell phones, extensive records or documents, and other items that cannot be produced on paper. While it is often difficult for clients in pretrial detention to access electronic discovery because of limited computer availability, USP Atlanta compounds difficulties through two policies: detainees are

not provided sufficient access to the law library to review electronic discovery, and attorneys are not permitted to review electronic discovery with clients.

USP Atlanta does not allow pretrial detainees sufficient access to the law library to adequately review their electronic discovery. As detailed above, our clients are frequently “locked down” and not allowed to exit their cells. When they are released from their cells, they must use that time to perform myriad tasks: shower, get commissary, make calls to their family members and friends, make calls to their attorneys, or visit the law library. This is simply not enough time to meaningfully review discovery in a complex federal case. For example, in recent years there have been months-long periods where detainees are only released from their cell for 30 minutes or an hour, three times a week. Clients reported having to decide whether to wait in line to make a phone call home or wait in line to take a shower—both addressing their basic hygiene needs and reviewing the evidence in their case was impossible.

USP Atlanta also does not allow attorneys to bring electronic devices or computers into the facility for legal meetings, so we cannot review electronic discovery with our clients. In one recent case, the client’s lack of access to the discovery was causing delay and prohibiting him from preparing for trial. His defender asked the district court to enter an order directing the warden and staff of USP Atlanta to allow him access to the prison law library before and during trial. The court agreed and entered the order. However, the prison staff refused to carry out the judge’s order, and the client was not allowed to access the library as the court ordered. The client reported that he was told by USP Atlanta staff that the judge was not in charge of what happened in the jail. Even when defenders seek remedies from the court and our requests are granted, it offers little relief.

C. Unjust outcomes.

The pretrial conditions at USP Atlanta have repercussions beyond the hardships experienced by detained clients. The barriers to effective attorney-client communication consistently result in delays in resolving cases and unduly extend the periods our clients are subjected to egregious pretrial conditions. Defenders are forced to seek continuances—often repeatedly—because we cannot comply with court deadlines when we cannot communicate with our clients. These delays burden the court system.

Notably, probation officers in our district face the same obstacles to communicating with USP Atlanta and cannot timely schedule presentence interviews with detained clients because staff do not respond to their requests. Presentence interviews are a

necessary step before sentencing, and when the interview cannot be conducted, the sentencing hearing is delayed.

In some cases, judges have attempted to facilitate attorney or probation officer meetings with clients detained at USP Atlanta by ordering USMS to transport the client to the courthouse. This is a work-around to avoid additional delay in resolving a case—but it burdens USMS and court resources and is not a solution to the problems caused by the mismanagement at USP Atlanta.

The conditions at USP Atlanta are avoidable and should not be the norm. There are other non-BOP pretrial detention facilities in our district, where clients can reasonably communicate and meet with counsel, are able to access their discovery and participate in their defense, and are not subject to such egregious conditions. For example, some of our clients are held at Robert A. Deyton Detention Facility (“RADDF”). There, our clients are permitted to walk around freely in their pod and spend time outside in the yard each day. They can shower daily and access phones for calls to family and counsel. The facilities are not infested with vermin, and clients are given supplies to keep their cells clean.

IV. Systemic Dysfunction in Federal Detention

While it is beyond the scope of my testimony to offer a complete account of the poor conditions of confinement and limited access to counsel that characterize many other sites of federal pretrial detention across the country, I will offer examples from two very distinct places—New York and Kansas—to illustrate the conditions defenders regularly witness at detention facilities run by BOP or contracted by the USMS.

A. Metropolitan Detention Center (MDC), New York.

MDC Brooklyn is the largest federal pretrial detention center in the United States and houses approximately 1600 people, most of whom are awaiting trial in the Southern and Eastern Districts of New York. The facility has been the repeated subject of scathing reports by DOJ Office of Inspector General (OIG) on topics ranging from poor facilities management, sexual abuse of detained individuals by officers, and failures of management of the Special Housing Unit.⁹ There have been high-profile, systemic failures at the facility, such as a week-long blackout in

⁹ See, e.g., DOJ OIG, *Review and Inspection of Metropolitan Detention Center Brooklyn Facilities Issues and Related Impacts on Inmates, Evaluation and Inspections Report* (Sept. 2019); DOJ OIG, *Management of the Special Programs Unit at the Federal Bureau of Prisons Metropolitan Detention Center in Brooklyn, New York*, Evaluation and Inspection Division, 15-08 (September 2015).

the dead of the New York winter in January 2019, which left detainees in the dark, freezing cold, with no legal or family access.¹⁰ The facility has a long history of interference with legal access to clients, and the Federal Defenders of New York have had a Sixth Amendment lawsuit pending against the facility since February of 2019.¹¹

Despite years of dysfunction and scrutiny by auditors, Congress, and the courts, the situation at MDC remains dire, and has been exacerbated by the recent closure of the only other federal pretrial facility in New York. Since the closure, corruption at MDC has substantially increased, with officers bringing in weapons, cellphones, and drugs. In the past two years, four people in custody at MDC have died by suicide, with two suicide deaths since the closure. Medical care has faltered even further, leading judges to have to intervene to obtain even the most basic care for people who are detained. Issues with legal access persist, and have worsened, despite two years of court mediation between BOP and the Federal Defenders of New York.

B. USP Leavenworth, Kansas.

Until recently, clients of the Federal Defender for the District of Kansas were held pretrial at a USMS-contracted private facility, CoreCivic Leavenworth. The facility was dangerously understaffed, poorly managed, and incapable of safely housing the people detained there. Basic human needs were not met, food was restricted, contact with legal counsel and family was denied or curtailed,¹² medical care was limited, and showers were infrequent because the facility was too unsafe.¹³ Last

¹⁰ *Hearing on the Fed. Bureau of Prisons and Implementation of the First Step Act Before the Comm. on the Judiciary of the H. Subcomm. on Crime, Terrorism, and Homeland Sec.*, 116th Cong. (Statement of David Patton at 5), (Oct. 17, 2019), <https://bit.ly/3kfSAJF> pdf

¹¹ *Federal Defenders of NY v. Federal Bureau of Prisons*, 19cv 660 (MKB) (EDNY).

¹² CoreCivic Leavenworth was also embroiled in litigation surrounding the confidentiality of attorney client communications after it was discovered that the facility was recording attorney-client communications, and then routinely providing those recordings to federal prosecutors. See Chris Haxel, *Prosecutors Held in Contempt Over Leavenworth Tapings, Judge Will Hear Prisoners' Appeal*, NPR in Kansas City (Aug. 14, 2019), <https://www.kcur.org/news/2019-08-14/prosecutors-held-in-contempt-over-leavenworth-tapings-judge-will-hear-prisoners-appeals#stream/0>; Dan Margolies, *Leavenworth Inmates Reach \$1.45 Million Settlement Over Taped Attorney-Client Phone Calls*, NPR in Kansas City (Aug. 26, 2019), <https://www.kcur.org/news/2019-08-26/leavenworth-inmates-reach-1-45-million-settlement-over-taped-attorney-client-phone-calls>.

¹³ See ACLU Kansas, *ACLU, Public Defenders Urge White House to Shut Down Violent Private Corrections Facility in Kansas* (Sept. 4, 2021), <https://www.aclukansas.org/en/news/aclu-public-defenders-urge-white-house-shut-down-violent-private-corrections-facility-kansas>.

year, the facility was closed by executive order, and pretrial clients were transferred to a BOP facility, USP Leavenworth.

Unfortunately, poor conditions of confinement and insufficient access to counsel persists for people now detained pretrial at USP Leavenworth. There, people have been locked down 20 to 22 hours a day, and the facility continues to fail to provide timely and confidential attorney-client access. Clients' requests to place calls to attorneys are routinely unfulfilled, and legal mail is inexplicably returned or delivered to clients after it has been opened outside their presence.

Because of these issues, the federal public defenders in Kansas and Western District of Missouri have concluded that shifting people from CoreCivic to an unprepared and unresponsive BOP facility was, in many ways, a lateral move.

V. Policy Solutions

If past predicts future, there is good reason to believe that the conditions I have described today will persist absent aggressive action by Congress and the Department of Justice. There are several steps Congress could take to intervene and improve the currently inhumane conditions:

Strengthen congressional oversight of federal detention. I commend this committee for prioritizing BOP oversight at a time when, as Senator Ossoff has recognized, "America's prisons and jails are horrifically dysfunctional and too often places where brutality and criminality are prevalent."¹⁴ I am also encouraged by Senators Ossoff and Braun's recent launch of the Senate Prison Policy Working Group, and stand ready to assist in its efforts to "improve the safety and well-being of incarcerated people and staff, reduce recidivism rates, and promote transparency within the prison system."¹⁵

To address the issues I have detailed today, I encourage the Committee to expand its oversight efforts to include DOJ and the USMS, two entities that bear significant responsibility for the systemic defects I have summarized. The USMS, in particular, is responsible for the majority of individuals in federal pretrial custody,¹⁶

¹⁴ Press Release, Jon Ossoff, U.S. Senator for Georgia, Sens. Ossoff, Braun Launch Bipartisan Working Group to Examine U.S. Prison Conditions, Promote Transparency (Feb. 17, 2022), <https://www.ossoff.senate.gov/press-releases/sens-ossoff-braun-launch-bipartisan-working-group-to-examine-u-s-prison-conditions-promote-transparency/>.

¹⁵ *Id.*

¹⁶ The USMS does not own or maintain its own detention facilities, but instead houses those in its custody in state and local detention facilities pursuant to Intergovernmental Agreements (IGAs), or in private jails pursuant to contracts. Most people in federal pretrial detention are held in facilities

but it is rarely held to account for egregious conditions of confinement in its contract facilities.¹⁷

Congress should also establish an independent body to provide regular oversight of the BOP and USMS. “Independent oversight is essential to preventing problems before they occur, but also can be useful to provide accountability when things go wrong.”¹⁸ Independent auditors can “conduct inspections on demand, speak confidentially to prisoners and staff, and respond to inquiries from families with incarcerated loved ones.”¹⁹

End the federal pretrial detention crisis. The root cause of many of the problems that I have described today is the extraordinarily high rate of federal pretrial detention. The dramatic increase in pretrial detention rates over the past 40 years has transformed the federal system into one that U.S. Probation and Pretrial has characterized as “more oriented towards pretrial detention than release.”²⁰ Criminologists have concluded that the rising detention rate “cannot be explained by the changing risk profile” of individuals charged with federal offenses, “but rather by changes in how the system regard[s] pretrial release and those entitled to it.”²¹

This orientation towards detention is not necessary to protect community safety or prevent non-appearance. Nearly everyone released before trial appears in court and very few are arrested for new crimes while on pretrial release. In 2019, 99% of people released appeared for court, and more than 98% had no arrests for new

contracted by USMS: During FY 2021, the average daily federal detention population was 63,679 people; of that number, 46,866 were held in state and local facilities. See U.S. Marshals Service, *Fact Sheet: Facts and Figures, 2022*, <https://www.usmarshals.gov/duties/factsheets/facts.pdf>.

¹⁷ See Seth Freed Wessler, *Inside the US Marshals’ Secretive, Deadly Detention Empire*, Mother Jones (Dec. 2019), <https://www.motherjones.com/crime-justice/2019/10/inside-the-us-marshals-secretive-deadly-detention-empire/> (detailing inhumane conditions of confinement and failures in USMS audit practices).

¹⁸ *Hearing on Oversight of the Federal Bureau of Prisons Before the S. Comm. on the Judiciary*, 117th Cong. (Statement of Kevin Ring at 7), (Apr. 14, 2021), <https://famm.org/wp-content/uploads/FAMM-Statement-on-BOP-Oversight-Hearing-4.15.pdf>

¹⁹ *Id.*

²⁰ See Thomas H. Cohen & Amaryllis Austin, *Examining Federal Pretrial Release Trends over the Last Decade*, 82 Fed. Probation 2 at 10 (2018).

²¹ *Id.* at 4 (citing James Byrne & Jacob Stowell, *The Impact of the Federal Pretrial Services Act of 1982 on the Release, Supervision, and Detention of Pretrial Defendants*, 71 Fed. Probation 2 (2007)).

crimes on release.²² These numbers hold steady for the federal districts with the highest release rates in the country.²³ Despite this evidence, prosecutor requests for detention have risen dramatically over the past 20 years: in 1997, prosecutors sought detention in 56% of cases; in 2019, they did so in 77% of cases.²⁴

Congress can intercede to reduce this unjustified rate of federal pretrial detention, and curtail its impacts on access to counsel:

- **Pass the Smarter Pretrial Detention for Drug Charges Act of 2021**, 117th Congress (S. 309; H.R. 5722). This common sense proposal has bipartisan support in the House and the Senate, and would significantly reduce unnecessary pretrial detention by eliminating the Federal Bail Reform Act’s “presumption of detention” in certain drug cases.²⁵ A 2017 study by U.S. Probation & Pretrial Services that found that “[t]he presumption [of detention] has contributed to a massive increase in the federal pretrial detention rate,” and over-detains low-risk individuals in drug and gun cases.²⁶
- **Pass the Effective Assistance of Counsel in the Digital Era Act**, 117th Congress (S.3524; H.R. 546). In February, the House of Representatives passed this bill with overwhelming bipartisan support; Senators Wyden (D. Or.) and Lummis (R. WY) have co-sponsored a Senate companion. The bill would prohibit BOP from monitoring the contents of electronic

²² See AO Table H-15 (Dec. 31, 2019), available at Mot. for Bond, *United States v. Rodriguez*, No. 19-CR-77 (E.D. Wis. Apr. 2, 2020), ECF No. 41, Ex. 1, archived at <https://perma.cc/LYG4-AX4H> (Attachment C) (showing a nationwide failure-to-appear rate of 1.2% and a rearrest rate of 1.8% in 2019).

²³ In 2019, the six districts with the highest release rates (average 69.08%) had an average failure to appear rate of 0.42% and an average re-arrest rate of 0.91%. See *supra* note 25; Admin. Office of the U.S. Courts, *Judicial Business: Federal Pretrial Services Tables* (“AO Table”) *Table H-14A: U.S. District Courts --- Pretrial Services Release and Detention, Excluding Immigration Cases For the 12-Month Period Ending December 31, 2019*; see also Alison Siegler & Erica Zunkel, *Rethinking Federal Bail Advocacy to Change the Culture of Detention*, *The Champion* 46, 47 & fig. 1 (July 2020), <https://bit.ly/3BOU3vP>.

²⁴ See AO Table H-3A, U.S. District Courts --- Pretrial Services Recommendations Made for Initial Pretrial Release Excluding Immigration Cases for the 12-Month Period Ending Sept. 30, 2019, <https://bit.ly/3EQs28X> (Attachment D).

²⁵ 18 U.S.C. § 3142.

²⁶ Amaryllis Austin, *The Presumption for Detention Statute’s Relationship to Release Rates*, 81-SEP Fed. Probation 52, 57, 61 (2017), <https://bit.ly/3CRLn99>.

communications between incarcerated persons and their attorneys, with narrow exceptions.

CONCLUSION

For years, I have observed first-hand how USP Atlanta subjects people who are detained while they await trial and are presumed innocent to inhumane conditions. I have observed how USP Atlanta's practices interfere with individuals' constitutional right to effective assistance of counsel by failing to provide adequate access to counsel. Despite consistent and vigorous efforts by defenders to advocate for our clients and demand improvements, the conditions at USP Atlanta have only worsened. Because USP Atlanta has failed to improve its practices on its own and has flouted interventions by the court, I am skeptical that conditions will improve without aggressive action by Congress and the Department of Justice. It is long past time for drastic change.

Unfortunately, I know from defense counsel in other parts of the country that USP Atlanta is not alone in its unacceptable treatment of persons detained pretrial. This is unacceptable and must be systemically and aggressively addressed by Congress and Department of Justice leadership. I urge this Subcommittee to treat these issues with the urgent attention they deserve. Thank you for the invitation to share my perspective on these important issues.

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,) [REDACTED]
)
) JANUARY 26, 2016
)
VERSUS)
)
[REDACTED],)
DEFENDANT.)
_____)

BEFORE THE HONORABLE AMY TOTENBERG
UNITED STATES DISTRICT COURT JUDGE
SENTENCING HEARING
VOLUME II

APPEARANCES:

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STENOTYPE/COMPUTER-AIDED TRANSCRIPTION
*** **

1 standing by their father, which is great, but it doesn't
2 necessarily tell me everything. I am glad to know that. And
3 I am glad for the future because I think it is a positive
4 thing for [REDACTED] future that they are there and
5 something for him to live by.

6 He is a complicated person, but I do know that up until
7 these incidents, he never had posed a danger for society.
8 It is not like I was seeing these -- we were seeing a history
9 of outbursts, violence before all of these incidents that we
10 are talking about and that probably with somebody
11 approximately at age 40 is about the best predictor of
12 anything else I could know. Not that anything is a perfect
13 predictor, people -- we have more and more understanding of
14 how people can be deranged and go off, even if we don't
15 understand the dynamics of that. So, I would be loathe to
16 make clear predictions, but the criminal history or the lack
17 of it is a good one and can't say age 50 he won't get back
18 into meth either. Although the older you get, the less
19 likely it is. It is not impossible, but this has been a no
20 doubt excruciating experience and part of the, you know, being
21 put into segregation simply by virtue of where you got put,
22 not because of anything else you did at the Atlanta Pen, makes
23 it all the more so. Because those are not the normal
24 conditions for most pretrial detainees to be in segregation
25 for 23 hours a day.

EXHIBIT B

DECLARATION OF [REDACTED]

My name is [REDACTED], and I am over the age of 18. The information contained in this DECLARATION is based upon my personal knowledge.

I am presently incarcerated at the United States Penitentiary in Atlanta, Georgia ("USP-ATL"). I have been at USP-ATL since May 2, 2019.

Since my arrival at USP-ATL on May 2, 2019, I am locked down inside my cell along with my cellmates for 24 hours for three to four days at a time. During the 24-hour lockdown, my cellmates and I are not allowed out of our rooms, nor are we allowed showers, telephone privileges, or visitation during this time. When we are allowed out of our cells every three to four days, we are only allowed out for approximately one hour. Showers have been provided once every five days where about 100 inmates are released from their cells and have a limited amount of time (approximately one hour total for everyone in the pod) in which to shower and/or use the telephone. There are approximately six showers and three phones in my pod, so it is impossible for all 100 inmates to use the shower and the phones in that very limited time.

Since my arrival at USP-ATL, I have been provided with one set of underclothes that I have been expected to wear for two to three weeks at a time, as I am not provided with a clean alternative.

Food is always served in our cells. For our dinner meal, only a sandwich is provided and the packages of sandwich meat indicate expiration dates of 2017 and 2018. Commissary is very limited, including only instant coffee and chips.

Due to the restrictive nature of the 24-hour lockdown policy at USP-ATL, I do not have access to telephone and/or computers at this facility. I am unable to communicate with my family and my attorney.

For several days during June and July 2019, there was no air conditioning nor any airflow inside of the cells.

Due to overcrowding, there are three people in two person cells. Roaches are visible in rooms/pods, and cleaning products are not available. Where I was previously at Robert A. Deyton Detention Facility, we were provided cleaning products to keep our cells clean. After seeing roaches in my cell here, I asked the guards for cleaning products, and they laughed at me.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 1, 2019 [REDACTED]

EXHIBIT C

DECLARATION OF [REDACTED]

My name is [REDACTED], and I am over the age of 18. The information contained in this DECLARATION is based upon my personal knowledge.

I am presently incarcerated at the United States Penitentiary in Atlanta, Georgia ("USP-ATL"). I have been at USP-ATL since October 2, 2019.

Since my arrival at USP-ATL on October 2, 2019, I am locked down inside my cell along with my cellmate for 24 hours for three to four days at a time. During the 24-hour lockdown, my cellmate and I are not allowed out of our rooms, nor are we allowed showers, telephone privileges, or visitation during this time. When we are allowed out of our cells on Monday, Tuesday, Thursday and Friday, we are only allowed out for approximately one hour to shower, make calls to family, use the computer to work on our case or talk to our attorney. There are long lines and it is impossible to do all of this in one hour. For the past ten months there have only been two or three working showers for 200+ inmates. A few weeks ago the number of working showers has moved up to five. If you have no money for Commissary then you have no toiletries. Since the Covid situation USP-ATL has been providing soap and some toiletries to keep the inmates clean but in a very limited quantity. Some of the cells in the pod have had plumbing issues and the toilets are not flushing.

Since my arrival at USP-ATL, I have been provided with one set of clothing, which consists of a jumpsuit, socks, t-shirt and boxer shorts. These items have to be washed in the sink and hung up to dry in your cell or outside in the summer time to dry faster. I have nothing to wear until they dry.

The food, which is terrible, is always served in our cells. For our dinner meal, only a peanut butter sandwich has been provided since March of 2020. The Commissary is very limited, and items provided have expired dates on them. There is no table or chair and I have to eat my meals on the bed or floor sitting near the toilet.

Due to the restrictive nature of the 24-hour lockdown policy at USP-ATL, I do not have access to telephone and/or computers at this facility. I am unable to communicate with my family and my attorney. There are also no activities, classes or programs available to the inmates

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September ____, 2020.

[REDACTED]



Department of Justice

STATEMENT OF

**MICHAEL D. CARVAJAL
DIRECTOR
FEDERAL BUREAU OF PRISONS**

BEFORE THE

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS – PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
UNITED STATES SENATE**

FOR A HEARING ON

**“CORRUPTION, ABUSE, AND MISCONDUCT AT U.S. PENITENTIARY
ATLANTA”**

**PRESENTED
JULY 26, 2022**

Statement of Michael D. Carvajal
Director, Federal Bureau of Prisons
Before the Committee on Homeland Security and Governmental Affairs –
Permanent Subcommittee on Investigations
United States Senate
July 26, 2022

Good morning, Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee. You have asked me to come before you today to discuss the Bureau of Prisons' (Bureau's) response to concerns regarding operations at United States Penitentiary (USP) in Atlanta, GA, and I am pleased we reached an agreement for my voluntary appearance here today. It is a privilege to speak on behalf of the Bureau's approximately 36,000 staff—corrections professionals who support the agency's critical law enforcement mission. I am committed to ensuring that Bureau staff remain guided by the values of respect, integrity, courage, and correctional excellence, and that we carry out our mission with the highest levels of competency as we serve our stakeholders.

I am honored to work alongside some of the finest corrections professionals in the world. I have spent 30 years in the Bureau following my service in the military, starting as a Correctional Officer, moving up through the ranks of Correctional Services to become a Warden and then a Regional Director. I was then an Assistant Director for the Correctional Programs Division and became the Bureau's eleventh Director on February 25, 2020. Next week, on August 2, 2022, a new director will be sworn in: Colette S. Peters.

As an agency, and throughout the ranks of its dedicated staff, the Bureau continuously works to ensure the safety of staff, inmates, and surrounding communities. We recognize the gravity of the alleged misconduct at USP Atlanta. It is and was unacceptable—and must never happen again at that facility or any other. That is why we responded with strong steps in the summer of 2021 to address the problems at that institution. We believe it is essential that we continue improving the efficiency and effectiveness of our operations. We are specifically focused on several areas that relate to expressed concerns regarding operations at USP Atlanta and which also impact operations at all of our institutions:

- Increasing staffing throughout the agency to fill appropriated vacancies;
- Strengthening agency management and operations;
- Reducing the risk of suicide within our inmate population; and
- Investigating and reducing criminal activity within our agency.

**INCREASING STAFFING THROUGHOUT THE AGENCY TO FILL APPROPRIATED
VACANCIES**

One of our key priorities is fully staffing our institutions. Hiring and retention of staff remains a priority for the Bureau, as higher staffing levels afford the Bureau the flexibility and stability needed to carry out its mission, including the expansion of programs as required by the First Step Act.

In 2021, the Bureau made a successful push to hire new employees. By June, the Bureau had filled over 94% of its “Line” Correctional Officer (COs) positions, the highest level in recent years. In October, the Bureau focused hiring on maintaining some of its previous staffing gains, ending 2021 with over 92% of Line CO positions filled. The success of the Bureau’s hiring effort was due to its ability to run targeted recruitment campaigns for specific positions and regions. In 2019, the Bureau contracted with an outside consultant to develop a comprehensive recruitment campaign to fill vacancies. That contract involved: 1) creating a new agency branding campaign that is based on extensive research about public perceptions of the Bureau, its mission, and impediments to hiring; 2) improving the messaging and visual appeal of the Bureau’s job postings and website; 3) launching online recruitment events and targeted ad campaigns, including extensive use of social media; and 4) developing new data analytics capabilities to measure the effectiveness of these efforts. The Bureau now has a national recruitment office responsible for recruitment of positions across the agency.

Currently, the Bureau has an FTE level of 36,422. We understand that staffing shortages are a serious issue and we are dedicated to taking a strategic approach to address them. In early 2022, we analyzed Bureau staffing data to identify opportunities to make significant advances in staffing, particularly for Correctional Officers.

Certain facilities are chronically difficult to staff for a variety of reasons, including competition from state and local organizations that pay a higher salary as well as the rural location of some facilities. In summer 2021, the Bureau secured approval from the Office of Personnel Management (OPM) to offer an increased group retention incentive at USP Thomson in an effort to correct significant staffing shortages. Within a few months of implementing that incentive at Thomson, the CO fill rate increased from 56% to 78%. In an effort to build on that success, the Bureau worked closely with the Department and OPM to obtain approval for the use of three new flexibilities at FCC Beaumont, FCI Berlin, FCC Florence, FCI Herlong, FCI Mendota, USP Thomson, and FCC Yazoo City. In late-May 2022, OPM approved our request for accelerated promotions, Direct Hire Authority, and a 25% retention incentive for Correctional Officers. We are now implementing those incentives at all seven facilities. In addition to the use of incentives, the Bureau is providing direct assistance to USP Thomson, FCC Florence, and FCC Yazoo City by assigning National Recruitment Specialist positions to focus on hiring at each of those facilities.

It is important to note that increased hiring and the use of incentives requires additional funding. For example, in the last quarter of FY21, the Bureau budgeted \$2.3M for the new 25% group retention incentive at USP Thomson. The use of the new incentives at six facilities is similarly costly.

We are also pursuing additional strategies to modernize our hiring across the Bureau to give us the flexibility and stability we need to carry out our mission successfully. Our hiring strategies are designed to reduce overreliance on overtime and augmentation, *i.e.*, when fellow staff with equivalent law enforcement training provide necessary coverage for correctional officer positions. To identify and analyze these challenges, the agency has solicited and awarded a contract to a consulting firm to assess institutional staffing levels, and use of overtime and augmentation. The contractor delivered the first iteration of an automated staffing tool prototype to the Bureau in June and, together with subject matter experts, is piloting this tool in the Mid-Atlantic region. The contractor also delivered an analysis of current overtime, augmentation, and

incentive payments, along with recommendations to standardize the Bureau's overtime reporting processes across regions to make it more efficient and actionable. Shortly, the contractor will also begin to develop ways to identify employee groups at high-risk of separation. The resulting data will ultimately be used, along with input from the high-risk groups themselves, to inform the options of incentives that Wardens are able to offer individual employees.

The Bureau is currently using several national recruitment flexibilities to assist in hiring highly qualified candidates. In an effort to retain experienced staff and help maintain our staffing levels, a 5% retention incentive was offered to all staff eligible to retire in 2019 to remain with the agency past their retirement eligibility date. Additionally, to address our medical staffing challenges, the Bureau recently expanded the coverage of its existing Title 38 special pay authority to include not only psychiatrists, but all employed physicians and dentists. Using this authority, the Bureau now pays psychiatrists', physicians', and dentists' salaries that are competitive with other federal agencies and, in certain locations, the private sector.

We believe these efforts will have a significant, positive impact on the safety, security, and programming opportunities at our facilities. In particular, staffing is a key component to successful implementation of the First Step Act (FSA). While the Bureau has sufficient types of programs to meet individual needs, the only way to increase capacity is by hiring additional qualified professionals to deliver these programs. The Bureau is using staff positions allotted under the FSA to expand capacity in female programs, mental health and drug treatment, and career and technical training. We are committed to maximizing the use of FSA funds for position allotments, as authorized, to ensure all interested and eligible inmates are able to benefit from our many programs. The Bureau is committed to maintaining appropriate staffing levels as doing so is critical to the safety and security of federal prisons.

USP Atlanta is authorized for 517 staff positions and is currently staffed at nearly 90%, while the current offender population is approximately 42%. Recruitment and retention efforts are ongoing to maintain institution staffing at a safe and appropriate level. Multiple staff briefings have been conducted with USP Atlanta staff to keep them informed of institution operations, clarify staff expectations, and increase morale and motivation. USP Atlanta has also developed a succession plan in which each staff member will be interviewed to determine their career goals and develop a plan for them to reach their goals. Plans will be tailored to individual staff goals, to increase staff engagement.

STRENGTHENING AGENCY MANAGEMENT AND OPERATIONS

Auditing of Operations

It is essential that the Bureau continually improve operational insight through a combination of internal auditing practices and external accrediting. In accordance with agency policy, Program Statement 1210.23, Management Control and Program Review Manual, the agency utilizes multiple levels of internal controls to evaluate and improve operations. The policy is found at https://www.bop.gov/policy/progstat/1210_023.pdf.

The Bureau's management control program includes assessment activities at all levels of the agency, including both informal review and feedback, along with formalized assessments. The assessments are conducted by internal staff and external stakeholders. While the COVID

pandemic has required adjustments to a number of standard procedures, the Program Review Division generally conducts a review of all program areas at each location at least every three years. External contractors also generally conduct ACA and PREA audits at each site on a rotating three-year schedule. Institutions conduct Operational Reviews of program areas at each location every 10 to 14 months between Program Reviews. Recently, we have been able to reduce the number of COVID-related delays and resume these reviews on a regular basis.

Management control of institution operations also includes reviewing activities at the regional and agency (national) level. In addition to examining institution operational review documentation, regional administration conduct staff technical assistance visits and institutional character profile visits.

In response to concerns identified in previous reviews, the Southeast Regional Office conducted a Security Assessment at USP Atlanta in July 2022, with particular emphasis on reassessing deficiencies and vulnerabilities identified during the 2020 Security Assessment. The 2022 assessment verified corrective actions implemented have improved USP Atlanta's security measures and internal controls, including security enhancements, increased staff training, internal auditing, and inmate accountability. A variety of daily, weekly, and monthly tracking measures have been implemented to ensure compliance with previously identified deficiencies.

Infrastructure Improvements

Maintaining and improving aging infrastructure remains a significant concern for the Bureau. Of the 122 institutions operated by the agency, almost one-third are more than 50 years old, and about one-half are more than 30 years old. Infrastructure within many of these facilities is rapidly deteriorating and in need of extensive work and repairs to maintain safe, secure, and functioning correctional institutions. The current backlog of priority Modernization & Repair (M&R) major projects is approximately \$2 billion. Faced with \$2 billion in major projects, the Bureau received an average appropriation of \$95 million each year over the last 10 years to maintain its M&R program, which must cover major repairs, security, equipment, and telecommunication replacement projects, salaries, travel, training, A&E services, and additional funding for emergencies such as disaster-related projects. The most common M&R projects for systems needing replacement or upgrades throughout the agency include Water/Sewer Distribution, Electrical Distribution, Roof Replacement, Boiler Replacement, Fire Detection, and Fence Replacement.

USP Atlanta was established in 1902. A Federal Prison Camp for minimum security offenders was added in 1984 and a Federal Detention Center for detainees awaiting trial, sentencing, or institution designation was added in 1993. Due to the age of the facility, several critical infrastructure needs have been identified, including corrective measures identified in a 2020 security assessment. In 2021, a project was created and funded to perform repairs and upgrades to inmate housing units. To date, repairs to three housing units have been completed, and these units are once again housing offenders. In addition to housing units, renovations are ongoing or scheduled for multiple areas of the institution.

REDUCING THE RISK OF SUICIDE WITHIN OUR INMATE POPULATION

It is the responsibility of all Bureau staff to prevent suicide by individuals in their custody. Formal agency guidance is provided through Program Statement 5324.08, Suicide Prevention Program. The policy is found at https://www.bop.gov/policy/progstat/5324_008.pdf. The Bureau's suicide prevention program seeks to reduce the risk of suicide for individuals in its custody via universal precautions throughout agency operations. Some elements of these strategies include mandatory suicide prevention training for all agency staff at least annually, housing and operational precautions, inmate education, provision of medical treatment, robust mental health screening and treatment services, and offender crisis intervention.

An additional component of the Bureau's suicide prevention program is to conduct psychological reconstructions after any individual in its custody dies as a result of suicide. During the psychological reconstruction process, Central Office psychologists lead a multidisciplinary team that is deployed to the facility for a comprehensive review of the death and surrounding circumstances, including staff interviews, inmate interviews, documentation review, and video review. Additional risk factors identified through the psychological reconstruction process result in refined suicide prevention guidance, not only at the institution where the incident occurred but throughout the Bureau.

From January 2012 through December 2021, 13 individuals at USP Atlanta died by suicide. Following each of these tragic deaths, the Bureau followed its standard process for creating psychological reconstructions. These psychological reconstructions underscored many of the significant issues at USP Atlanta and also identified critical recommendations for corrective actions to address these risk factors. The Bureau has taken meaningful steps to reduce the likelihood of inmate suicides at USP Atlanta including, among other actions, providing supplemental suicide prevention training for the USP Atlanta Psychology Services department; offering annual training to all agency psychologists regarding recent trends in inmate suicides; creating a Single Celling Taskforce with actionable recommendations to reduce the use of single cells; enhancing Reconstruction Follow-up procedures; and the development of a new Suicide Prevention policy, which is pending negotiation with the Union. There have been no reported suicides at USP Atlanta in 2022.

INVESTIGATING AND REDUCING CRIMINAL ACTIVITY WITHIN OUR AGENCY

The Bureau is committed to eradicating all criminal activity and unethical behavior in the agency. With regard to illegal activities, Bureau policy is clear: all staff are subject to discipline, up to and including removal, for failing to follow operational policy guidance and the ethical guidance provided in the Standards of Employee Conduct (Standards or Standards of Conduct). The policy is found at: https://www.bop.gov/policy/progstat/3420_011.pdf. The Standards of Employee Conduct provide that employees must obey not only the letter, but the spirit, of the law when engaged in personal or official activities. The Standards explicitly state that "it does not and cannot specify every incident that would violate the Standards of Conduct. In general, the Bureau expects its employees to conduct themselves in such a manner that their activities both on and off duty do not discredit the agency." Among the specific prohibitions

provided are: illegal drugs; inappropriate use of alcohol; emotional, physical, sexual, or financial involvement with inmates; providing an inmate or inmate's associate anything not authorized in the performance of staff duties; the use of force beyond that reasonably necessary to subdue an inmate; and any behavior that would be demeaning to inmates, fellow employees, or others. The Program Statement also discusses prohibitions on the introduction of contraband, the requirement to participate fully in an authorized investigation, and a general prohibition of illegal activities, among other matters.

All allegations of misconduct are referred for investigation, pursuant to policy. (*See* https://www.bop.gov/policy/progstat/1210_024.pdf). The Office of Internal Affairs (OIA) reports allegations of violations of staff misconduct, including allegations of criminal conduct, to the U.S. Department of Justice, Office of the Inspector General (OIG).

Reporting Misconduct

Pursuant to the Standards of Employee Conduct, staff members are required to report allegations of misconduct. Failure to report allegations of misconduct is itself misconduct. Misconduct allegations are also received from other sources including the Union, inmates, the public, OIG, and other law enforcement agencies, and if uncovered during review processes described above. There is no limitation to who may submit allegations. Because allegations can and do come from varied sources, many allegations are reported more than once. The vast majority of investigations conducted by DOJ OIG of Bureau staff misconduct result from referrals from the Bureau.

The nature and complexity of the allegations, among other factors, will determine which office will investigate an allegation, but criminal allegations are investigated by the OIG, and sometimes the FBI. In some criminal cases, OIG will work with the local U.S. Attorney's Office for criminal prosecution, or refer the case back to the Bureau for administrative action. Employees who are prosecuted may also be subject to agency disciplinary action. Administrative investigations, including those involving Wardens, are investigated by the Bureau's Office of Internal Affairs (OIA). In some instances, a Warden may determine that a matter may be better addressed as performance issues in the first instance (e.g., when the matter addressed could be resolved through additional training).

The Bureau has a robust infrastructure to educate and train staff as to prohibited actions and to advise all persons (staff, inmates and the public) as to how to report misconduct. All Bureau staff receive formal training in this area at least annually. The agency emphasizes accountability and cooperation with the DOJ OIG.

The Bureau is committed to cooperating with all OIG investigations and any subsequent criminal prosecutions. We believe that investigation and prosecution are key elements of our goal of rooting out criminal activity within the Bureau. As the Deputy Attorney General has made clear, "the Department of Justice is committed to holding Bureau personnel accountable, including through criminal charges, when they fail to uphold their responsibility. Staff misconduct, at any level, will not be tolerated, and [the Department's] efforts to root it out are far from over."

Inmate Misconduct – Contraband Interdiction

The Bureau, like most correctional systems, continues to combat the threat of contraband introduction into our prisons, including drugs, weapons, and unauthorized communication devices. As parties continue to develop new methods to introduce contraband into facilities, the Bureau is consistently using emerging practices and technologies to protect our inmates, staff, and communities from threats posed by contraband introduction.

One recent method of contraband introduction is via use of Unmanned Aircraft Systems (UAS). In calendar year 2021, there were 106 documented UAS sightings and 8 UAS recovered by Bureau staff. Thus far in 2022, there have been 83 documented UAS sightings and 10 drones recovered. The security threat of UAS to Federal prisons remains high and expanding. Some of the most recent UAS security breaches introduced dangerous contraband including large amounts of drugs, cellphones, and, in one instance, escape paraphernalia. The Bureau has leveraged available mitigation strategies to address this threat. In Fall 2020, the Bureau conducted a comprehensive test of UAS detection and Counter-Unmanned Aircraft Systems (CUAS) technology in collaboration with several DOJ components, other federal law enforcement partners, and elements of the Department of Defense and the intelligence community. The Bureau plans to deploy UAS detection technology based on the results of those tests and appreciates the continued support of Congress to protect federal prisons.

Among primary practices to address contraband introduction are the use of physical barriers and entrance screening procedures for all inmates, visitors, volunteers, contractors, and staff. Examples of physical barriers include fences, walls, and perimeter security staff. For entrance procedures, examples include background checks, x-ray/body imaging scans, and searches. The Bureau is currently utilizing next generation full body scanners at 10 institutions, with plans to add 10 more next generation body scanners this year.

We continue to take steps to reduce unauthorized cell phones in Bureau institutions. The Bureau is conducting assessments to determine the extent of contraband cell phone use at more than 20 facilities across the agency. Managed Access Systems that disrupt contraband cell phone calls are being installed at FCI Miami, FCI Edgefield, and USP Coleman 1. Micro-jamming systems that block phone signals are being installed at USP Atlanta, USP Coleman 2, FCI Coleman, LSCI Coleman, and ADX Florence.

We have taken several actions to address the issue of contraband at USP Atlanta. As mentioned, we have installed cell phone micro-jamming. We have taken other steps, including security upgrades to institution infrastructure, supplemental staff training, and both formal and informal assessments to identify areas for potential improvement. USP Atlanta is currently upgrading the security system, has increased placement of x-ray machines within the institution, implemented security updates to the front entrance screening area, and upgraded the perimeter fence alarm system, in addition to the aforementioned infrastructure repairs. The Bureau has provided and continues to provide additional training to USP Atlanta staff, with a focus on security awareness and inmate accountability. Training has occurred both formally and through more informal daily training sessions by Correctional Services supervisors.

CONCLUSION

Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee, I am honored to speak on behalf of the Bureau, its staff in our institutions, and our administrative offices nationwide. Our mission is extremely challenging, but critical to the security of our facilities, as well as the safety of the public, our staff, and the inmates in our custody. I thank you for the opportunity to speak with you today and to expand on our efforts to root out criminal activity at USP Atlanta and beyond, as well as for your support as the agency continues to move forward.

United States Senate
WASHINGTON, DC 20510

July 25, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
Department of Justice

The Honorable Christopher Wray
Director
Federal Bureau of Investigation

Dear Attorney General Garland and Director Wray:

On May 31, 2022, I wrote to you regarding likely violations of Federal laws, regulations and Federal Bureau of Investigation (“FBI”) guidelines by Assistant Special Agent in Charge (“ASAC”) Timothy Thibault of the Washington Field Office (“WFO”) based on a pattern of active public partisanship in his then public social media content. In that letter, I noted that Congress has a constitutional responsibility to ensure that the Executive Branch executes the law and uses taxpayer money appropriated to it in accordance with congressional intent. In furtherance of that constitutional responsibility, Congress has an obligation to investigate the Executive Branch for fraud, waste, abuse and gross mismanagement – acts which undermine faith in the American people’s governmental institutions. Those constitutional and legislative responsibilities apply to this letter to you. My letter also invited individuals, including current and former government employees, to contact me and my office to confidentially report allegations of fraud, waste, abuse and gross mismanagement by FBI and Justice Department (“Department”) officials including, but not limited to, ASAC Thibault. In response, my office has received a significant number of protected communications from highly credible whistleblowers.

The information provided to my office involves concerns about the FBI’s receipt and use of derogatory information relating to Hunter Biden, and the FBI’s false portrayal of acquired evidence as disinformation. The volume and consistency of these allegations substantiate their credibility and necessitate this letter.

First, it’s been alleged that the FBI developed information in 2020 about Hunter Biden’s criminal financial and related activity. It is further alleged that in August 2020, FBI Supervisory Intelligence Analyst Brian Auten opened an assessment which was used by a FBI Headquarters (“FBI HQ”) team to improperly discredit negative Hunter Biden information as disinformation and caused investigative activity to cease. Based on allegations, verified and verifiable derogatory information on Hunter Biden was falsely labeled as disinformation.

The basis for how the FBI HQ team selected the specific information for inclusion in Auten's assessment is unknown, but in more than one instance the focus of the FBI HQ team's attention involved derogatory information about Hunter Biden. Accordingly, the allegations provided to my office appear to indicate that there was a scheme in place among certain FBI officials to undermine derogatory information connected to Hunter Biden by falsely suggesting it was disinformation.

Importantly, it's been alleged to my office that Auten's assessment was opened in August 2020, which is the same month that Senator Johnson and I received an unsolicited and unnecessary briefing from the FBI that purportedly related to our Biden investigation and a briefing for which the contents were later leaked in order paint the investigation in a false light.

As Senator Johnson and I have publicly noted, on July 13, 2020, then-Minority Leader Chuck Schumer, Senator Mark Warner, Speaker Nancy Pelosi and Representative Adam Schiff sent a letter, with a classified attachment, to the FBI to express a purported belief that Congress was the subject of a foreign disinformation campaign.¹ The July 13, 2020, letter included unclassified elements that, among other things, unsuccessfully attempted to tie our investigative work to foreign disinformation. Those unclassified elements were later leaked to the press to try and smear our Biden investigation as unrelated foreign disinformation. Then, on July 16, 2020, then-Ranking Member Peters and then-Ranking Member Wyden requested a briefing on matters related to my and Senator Johnson's Biden investigation from the very same FBI HQ team that discredited the derogatory Hunter Biden information.² The concurrent opening of Auten's assessment, the efforts by the FBI HQ team and the efforts by the FBI to provide an unnecessary briefing to me and Senator Johnson that provided our Democratic colleagues fodder to falsely accuse us of advancing foreign disinformation draws serious concern.

Second, it has been alleged that in September 2020, investigators from the same FBI HQ team were in communication with FBI agents responsible for the Hunter Biden information targeted by Auten's assessment. The FBI HQ team's investigators placed their findings with respect to whether reporting was disinformation in a restricted access sub-file reviewable only by the particular agents responsible for uncovering the specific information. This is problematic because it does not allow for proper oversight and opens the door to improper influence.

¹ Letter from Minority Leader Charles Schumer, Vice Chairman Mark Warner, S. Select Comm. on Intelligence, Speaker Nancy Pelosi, and Chairman Adam Schiff, H. Select Comm. on Intelligence, to Fed. Bureau of Investigation (July 13, 2020), https://intelligence.house.gov/uploadedfiles/20200713_big_4_letter_to_fbi_director_wray_-_defensive_briefing_signed.pdf, see also Press Release, Nancy Pelosi Speaker of the House, Pelosi, Schumer, Schiff, Warner Send Letter to FBI Director Requesting Defensive Counterintelligence Briefing for All Members (July 20, 2020), <https://www.speaker.gov/newsroom/72020-2>.

² Letter from Ranking Member Ron Wyden, S. Comm. on Fin., and Ranking Member Gary Peters, S. Comm. on HSGAC., to Chairman Chuck Grassley, S. Comm. on Fin., and Chairman Ron Johnson, S. Comm. on HSGAC. (July 16, 2020), https://www.hsgac.senate.gov/imo/media/doc/200716_Letter_PetersWyden_IntelligenceBriefingRequest.pdf.

Third, in October 2020, an avenue of additional derogatory Hunter Biden reporting was ordered closed at the direction of ASAC Thibault. My office has been made aware that FBI agents responsible for this information were interviewed by the FBI HQ team in furtherance of Auten's assessment. It's been alleged that the FBI HQ team suggested to the FBI agents that the information was at risk of disinformation; however, according to allegations, all of the reporting was either verified or verifiable via criminal search warrants. In addition, ASAC Thibault allegedly ordered the matter closed without providing a valid reason as required by FBI guidelines. Despite the matter being closed in such a way that the investigative avenue might be opened later, it's alleged that FBI officials, including ASAC Thibault, subsequently attempted to improperly mark the matter in FBI systems so that it could not be opened in the future.

The aforementioned allegations put a finer point on concerns that I have raised for many years about political considerations infecting the decision-making process at the Justice Department and FBI. If these allegations are true and accurate, the Justice Department and FBI are – and have been – institutionally corrupted to their very core to the point in which the United States Congress and the American people will have no confidence in the equal application of the law. Attorney General Garland and Director Wray, simply put, based on the allegations that I've received from numerous whistleblowers, you have systemic and existential problems within your agencies. You have an obligation to the country to take these allegations seriously, immediately investigate and take steps to institute fixes to these and other matters before you.

In light of the serious allegations and my ongoing investigation into Justice Department and FBI misconduct, I expect you to provide the following no later than August 8, 2022, as a preliminary matter so that Congress can perform an objective and independent review of the alleged misconduct:

1. The case file for the Auten assessment.
2. All records³ derived from reporting on derogatory information linked to Hunter Biden, James Biden, and their foreign business relationships that was overseen under the approval, guidance and purview of ASAC Thibault from January 1, 2020, to the present.
3. All records related to derogatory information on Hunter Biden, James Biden, and their foreign business relationships.
4. All leads sent to the WFO that were under the purview of ASAC Thibault that were ordered closed by ASAC Thibault and/or denied for opening by the Justice Department's Public Integrity Section.

³ "Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (e-mails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether or not they resulted in final documents).

5. All opened and closed cases initiated by the WFO that were under the purview of ASAC Thibault that were ordered closed by ASAC Thibault and/or denied for opening by the Justice Department's Public Integrity Section.
6. With respect to the August 2020 FBI briefing given to Senator Johnson and me:
 - a. A copy of the FBI 302 for the briefing;
 - b. All intelligence reporting, products, and analysis that formed the basis of the briefing;
 - c. The name(s) of the person(s) who recommended that Senator Johnson and I be briefed;
 - d. A description of the process for deciding to brief us; and
 - e. All records, including emails, relating to the briefing.

Sincerely,

A handwritten signature in black ink that reads "Chuck Grassley". The signature is written in a cursive, slightly slanted style.

Charles E. Grassley
Ranking Member
Committee on the Judiciary

GARY C. PETERS, MICHIGAN, CHAIRMAN

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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

July 26, 2022

The Honorable Merrick Garland
Attorney General
Department of Justice

The Honorable Avril Haines
Director of National Intelligence

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation

The Honorable Michael E. Horowitz
Inspector General
Department of Justice

Dear Attorney General Garland, Directors Haines and Wray, and Inspector General Horowitz:

Yesterday, Senator Grassley sent a letter to the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) revealing information that may confirm what I have suspected for years: “[T]here was a scheme in place among certain FBI officials to undermine derogatory information connected to Hunter Biden by falsely suggesting it was disinformation.”¹

Based on whistleblower information, Senator Grassley wrote that, “in August 2020, FBI Supervisory Intelligence Analyst Brian Auten opened an assessment which was used by a FBI Headquarters team to improperly discredit negative Hunter Biden information as disinformation and caused investigative activity to cease.”² That same month, on August 6, 2020, Senator Grassley and I received a briefing from the FBI which we always assumed was a set up to intentionally discredit our ongoing work into Hunter Biden’s extensive foreign financial entanglements. Indeed, months after that briefing—which was not specific and unconnected to our investigation—it was leaked to the *Washington Post* who reported on it and tied it to “an

¹ Letter from Sen. Charles E. Grassley, Ranking Member, Committee on the Judiciary, to Merrick Garland, Attorney General, Dep’t of Justice, and Christopher Wray, Director, Federal Bureau of Investigation, July 25, 2022, https://www.grassley.senate.gov/imo/media/doc/grassley_to_justice_deptfbipoliticalbiasfollowup.pdf.

² *Id.*

July 26, 2022
Page 2

extensive effort by the [FBI] to alert members of Congress . . . that they faced a risk of being used to further Russia's attempt to influence the election's outcome[.]”³

If these recent whistleblower revelations are true, it would strongly suggest that the FBI's August 6, 2020 briefing was indeed a targeted effort to intentionally undermine a Congressional investigation. The FBI being weaponized against two sitting chairmen of U.S. Senate committees with constitutional oversight responsibilities would be one of the greatest episodes of Executive Branch corruption in American history.

For nearly two years I have sought to get information from the FBI and the Office of the Director of National Intelligence (ODNI) about the purpose of, and who ordered, this briefing. On May 3, 2021, Senator Grassley and I reiterated these requests in a letter to Directors Wray and Haines.⁴ Both failed to provide complete responses.⁵

The inability of FBI and ODNI to be transparent with Congress on this matter and other matters relating to Hunter Biden is deeply concerning. Once again, the FBI's integrity has been called into question. If these whistleblower allegations are accurate, how can your agency, Director Wray, be capable of investigating the president's son? Unfortunately, the FBI can no longer be trusted to investigate Hunter Biden with integrity and the equal application of law.

Attorney General Garland, you have failed to provide Senator Grassley and me with assurances that any DOJ investigation into Hunter Biden's potential criminal activity will be free of conflicts of interest. The American people should not have to tolerate your silence any longer.

Inspector General Horowitz, on July 20, 2021, Senator Grassley and I requested you “begin an immediate review and investigation relating to the Justice Department's and FBI's process and procedure to prepare for and provide defensive and counterintelligence briefings **with particular emphasis on the August 6, 2020, briefing[.]**”⁶ Has your office requested records and materials from the FBI and DOJ relating to the August 6, 2020 briefing? If not why not? If so, when did DOJ and FBI produce records, and when will you report your findings to us?

³ Ellen Nakashima, Shane Harris and Tom Hamburger, *FBI was aware prominent Americans, including Giuliani, were targeted by Russian influence operation*, Wash. Post, May 1, 2021, https://www.washingtonpost.com/national-security/rudy-giuliani-fbi-warning-russia/2021/04/29/5db90f96-a84e-11eb-bca5-048b2759a489_story.html.

⁴ Letter from Sen. Ron Johnson, Ranking Member, Permanent Subcommittee on Investigations, and Sen. Charles E. Grassley, Ranking Member, Committee on the Judiciary, to Christopher Wray, Director, Federal Bureau of Investigation, and Avril Haines, Director, Office of the Director of National Intelligence, May 3, 2021.

⁵ The FBI responded on June 11, 2021 refusing to provide the materials requested in Sens. Johnson and Grassley's May 3, 2021 letter.

⁶ Letter from Sen. Ron Johnson, Ranking Member, Permanent Subcommittee on Investigations, and Sen. Charles E. Grassley, Ranking Member, Committee on the Judiciary, to Michael Horowitz, Inspector General, Dep't of Justice, July 20, 2021 (emphasis added).

July 26, 2022
Page 3

The Office of the Inspector General (OIG) may be able to provide an objective review of this matter, but it has not been forthcoming to Senator Grassley or me. If the OIG is unwilling or unable to conduct an investigation into the potential political targeting of U.S. Senators by federal law enforcement entities, then the appointment of a Special Counsel would be fully justified and long overdue.

Sincerely,



Ron Johnson
Ranking Member
Permanent Subcommittee on Investigations

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
2142 UNITED STATES COURTHOUSE
75 TED TURNER DRIVE, S.W.
ATLANTA, GEORGIA 30303
404-215-1420

CHAMBERS OF
TIMOTHY C. BATTEN, SR.
CHIEF UNITED STATES DISTRICT JUDGE

January 14, 2022

NEWMAN CHAMBERS:
UNITED STATES COURTHOUSE
18 GREENVILLE STREET, ROOM 314
NEWNAN, GA 30264

Mr. Sylvester Jenkins
Warden, USP Atlanta
615 McDonough Blvd
Atlanta, GA 30315

Via email to S1Jenkins@bop.gov

Re: Conditions at USP Atlanta

Dear Warden Jenkins:

I am writing to express the Court's concerns about conditions for prisoners—particularly pretrial detainees—at USP Atlanta.

You will recall that on October 18 Judge May and I visited you and some of your staff members to address our concerns. Judge May and I left the meeting feeling that our concerns had been well-received and that changes would be forthcoming.

Unfortunately, however, our Court has continued to receive credible complaints from defense counsel about persisting problems at the prison. Specifically, the problems include the following:

- (1) Rats in the building;
- (2) Roaches in the food;
- (3) Poor nutrition and emaciation;
- (4) Lack of access to hygiene products;

Mr. Sylvester Jenkins
January 14, 2022

- (5) Lack of access to medication (including prescriptions), medical professionals, or counseling;
- (6) Lack of access to mail (including legal papers) or possessions;
- (7) Limited access (only once per week) to toothbrush and toothpaste;
- (8) No change of clothes for several weeks;
- (9) A month of twenty-four-hour solitary confinement with only a Bible for entertainment or reading;
- (10) A week with only a paper jumpsuit and paper blankets for inmate on suicide watch without mental health treatment or medication;
- (11) Only being permitted fifteen minutes out of the cell every other day to bathe, make phone calls, and use the library;
- (12) Blockage of written and other communications between attorney and client;
- (13) Difficulty arranging interview between inmate and psychologist;
- (14) Serious challenges for attorneys in meeting and talking with inmates about pending proceedings and discovery, including canceled and delayed visits; and
- (15) Such difficulty in arranging a meeting between expert and pretrial detainee that the meeting was never able to be coordinated.

The attorneys who have reported these concerns to our judges have practiced federal criminal law for decades and are highly respected by our Court.

In addition, the onerous impediments that USP Atlanta has placed on counsel's efforts to communicate by phone or in person with their clients at times necessitates that the Court solicit the assistance of

Mr. Sylvester Jenkins
January 14, 2022


the U.S. Marshals in transporting detainees to facilitate in-person meetings. The marshals have repeatedly indicated that they lack the manpower to provide this service and that it is not their job to do so.

I would appreciate it if you would let me know what steps the prison intends to take—and when—to eliminate these problems.

Finally, it is my understanding that USP Atlanta has indicated that it cannot hold Zoom or other remote hearings at this time. Given the current state of COVID and the problems with access to defendants, and given our frequent use of remote hearings at other facilities, I would ask that the prison make pretrial detainees available for Zoom hearings.

I look forward to hearing from you soon.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy C. Batten, Sr.", written over a horizontal line.

Timothy C. Batten, Sr.

cc: J. Latease Bailey-Close, Esq.
All District Judges
All Magistrate Judges
Stephanie Kearns, Esq.
Kurt Erskine, Esq.
Marshal Michael Yeager

**Post-Hearing Questions for the Record
Submitted to Michael Carvajal
Director
Federal Bureau of Prisons
From Chair Jon Ossoff**

**“Corruption, Abuse, and Misconduct at U.S. Penitentiary Atlanta”
Permanent Subcommittee on Investigations
Senate Homeland Security and Governmental Affairs Committee
July 26, 2022**

Questions For the Record to Michael Carvajal, Director, Federal Bureau of Prisons (“BOP”).
Please provide responses to the questions listed below:

1. The number of staff currently employed at U.S. Penitentiary Atlanta (“USPA”).

Response: As of December 1, 2022, the number of staff currently employed at U.S. Penitentiary Atlanta is 400.

2. The current number of pending investigations into USPA staff by BOP Office of Internal Affairs (“OIA”).

Response: As of December 1, 2022, the BOP’s Office of Internal Affairs had a total of 290 open investigations relating to current or former USPA staff. Given the number of open investigations, the BOP is currently in the process of increasing and reorganizing investigative staff to better equip the OIA team to conduct timely, thorough, and unbiased investigations of staff misconduct. As a result of that reorganization, the BOP is adding more than 40 additional staff to the OIA team. Additionally, local Special Investigative Agents will now be supervised by the OIA in BOP headquarters, instead of by local management.

3. The number of inmate non-natural deaths by BOP institution by year from FY 2014 to FY 2021, broken down by total number of deaths and cause of death.

Response: The following charts reflect the total number of deaths that occurred at BOP facilities during the fiscal years 2014 – 2021 that were attributable to accidents (e.g., aspiration, drug overdoses, motor vehicle accidents, or other accidents), homicides, suicides, or executions, as well as deaths where the BOP’s records reflect the cause being unknown. For purposes of these counts, we have included certain causes of death based on our common understanding of the term “non-natural deaths,” which is not a defined term in the BOP’s record-keeping. Please note that the totals reflected in the charts below do not include natural deaths identified with a number of other causes, such as cardiac arrest, liver failure, and cancer.

Non-natural Deaths by Facility Management Type				
Fiscal Year	Contract Facilities (e.g., RRCs, home confinement)	BOP Facilities	Private Facilities	Total
2014	11	39	0	50
2015	8	35	1	44
2016	23	30	1	54
2017	15	34	1	50
2018	26	53	1	80
2019	19	53	1	73
2020	38	59	0	97
2021	48	63	1	112
Total	188	366	6	560

Among BOP facilities, the following 10 facilities recorded the highest total number of non-natural deaths during the fiscal years 2014 – 2021.

BOP Facilities with Most Non-natural Deaths (Excluding Contract Facilities and Private Facilities)			
Fiscal Year 2014			
	Facility	Frequency	Population 30NOV2022
1	VICTORVILLE USP	5	987
2	HAZELTON USP	3	1587
3	POLLOCK USP	2	1309
4	LEAVENWORTH USP	2	1398
5	MCCREARY USP	2	1830
6	TALLADEGA FCI	2	1550
7	SEATAC FDC	2	894
8	GUAYNABO MDC	2	1032
9	TUCSON USP	2	1060
10	SPRINGFIELD USMCFP	2	1274
11	TERRE HAUTE USP	2	1260

Fiscal Year 2015			
	Facility	Frequency	Population 30NOV2022
1	HAZELTON USP	2	1274
2	BEAUMONT USP	2	1398
3	TUCSON USP	2	1587
4	POLLOCK USP	2	1484
5	FLORENCE FCI	2	1592

Fiscal Year 2015			
	Facility	Frequency	Population 30NOV2022
6	LEWISBURG USP	2	1263
7	SHERIDAN FCI	2	1067
8	OAKDALE I FCI	1	334
9	LEAVENWORTH USP	1	1623
10	POLLOCK MED FCI	1	1550
11	PHOENIX FCI	1	3449
12	ATWATER USP	1	1649
13	BENNETTSVILLE FCI	1	1752
14	TERMINAL ISLAND FCI	1	1679
15	FORT DIX FCI	1	1219
16	HONOLULU FDC	1	1830
17	COLEMAN I USP	1	1226
18	PETERSBURG MED FCI	1	1204
19	CIBOLA COUNTY CI	1	807
20	FORT WORTH ADMINISTRATIVE FMC	1	1347
21	MARIANNA FCI	1	1144
22	MCCREARY USP	1	713
23	BEAUMONT MED FCI	1	1012
24	ALLENWOOD USP	1	561
25	BUTNER MED II FCI	1	1083
26	ATLANTA USP	1	1482
27	PETERSBURG FCI	1	1652
28	FORREST CITY MED FCI	1	1660
29	CHICAGO MCC	1	928

Fiscal Year 2016			
	Facility	Frequency	Population 30NOV2022
1	TERRE HAUTE USP	3	1260
2	SPRINGFIELD USMCFP	2	977
3	LEWISBURG USP	2	1541
4	DEVENS FMC	2	1067
5	BROOKLYN MDC	2	1032
6	TUCSON USP	2	1398
7	BENNETTSVILLE FCI	1	1274
8	MCDOWELL FCI	1	894
9	SANDSTONE FCI	1	903
10	BUTNER LOW FCI	1	326

Fiscal Year 2016			
	Facility	Frequency	Population 30NOV2022
11	GUAYNABO MDC	1	561
12	BUTNER FMC	1	1309
13	FLORENCE ADMAX USP	1	1679
14	SEATAC FDC	1	1823
15	ATLANTA USP	1	1459
16	BEAUMONT USP	1	1301
17	MARION USP	1	1152
18	HAZELTON USP	1	868
19	VICTORVILLE MED I FCI	1	1210
20	POLLOCK USP	1	1484
21	COLEMAN II USP	1	994
22	CHICAGO MCC	1	1587
23	VICTORVILLE MED II FCI	1	1204

Fiscal Year 2017			
	Facility	Frequency	Population 30NOV2022
1	POLLOCK USP	3	1274
2	BUTNER FMC	2	1204
3	FLORENCE HIGH USP	2	608
4	ATLANTA USP	2	868
5	HAZELTON USP	2	1587
6	GREENVILLE FCI	2	1325
7	SPRINGFIELD USMCFP	1	903
8	BEAUMONT MED FCI	1	1603
9	BUTNER LOW FCI	1	786
10	ESTILL FCI	1	1289
11	EL RENO FCI	1	1120
12	MIAMI FDC	1	79
13	SAN DIEGO MCC	1	1230
14	ENGLEWOOD FCI	1	1083
15	MCCREARY USP	1	1072
16	DEVENS FMC	1	1550
17	LORETTO FCI	1	977
18	LEXINGTON FMC	1	1032
19	LEAVENWORTH USP	1	1830
20	LEE USP	1	1330
21	BUTNER MED I FCI	1	1001
22	TERRE HAUTE USP	1	1473

Fiscal Year 2017			
	Facility	Frequency	Population 30NOV2022
23	PEKIN FCI	1	853
24	YAZOO CITY USP	1	1660
25	CANAAN USP	1	1292
26	LA TUNA FCI	1	1260
27	ATWATER USP	1	754

Fiscal Year 2018			
	Facility	Frequency	Population 30NOV2022
1	HAZELTON USP	4	1587
2	FLORENCE ADMAX USP	3	326
3	OKLAHOMA CITY FTC	3	1244
4	ATLANTA USP	3	987
5	VICTORVILLE USP	3	1204
6	SEAGOVILLE FCI	2	1834
7	TERMINAL ISLAND FCI	2	868
8	MCCREARY USP	2	1550
9	LEAVENWORTH USP	2	1830
10	LEXINGTON FMC	2	1330
11	BUTNER FMC	2	1012
12	ATWATER USP	2	1083

Fiscal Year 2019			
	Facility	Frequency	Population 30NOV2022
1	FLORENCE HIGH USP	4	608
2	COLEMAN I USP	3	1347
3	FORT WORTH ADMINISTRATIVE FMC	3	1652
4	SPRINGFIELD USMCFP	2	1032
5	BUTNER FMC	2	868
6	CANAAN USP	2	1274
7	POLLOCK USP	2	1204
8	MIAMI FDC	2	1120
9	TERRE HAUTE FCI	2	1830
10	LEAVENWORTH USP	2	1484
11	BEAUMONT USP	2	1260
12	ATLANTA USP	2	1411
13	TERRE HAUTE USP	2	1292
14	BUTNER MED I FCI	2	754

Fiscal Year 2020			
	Facility	Frequency	Population 30NOV2022
1	TERRE HAUTE USP	9	1260
2	BUTNER FMC	4	1204
3	ATLANTA USP	4	868
4	POLLOCK USP	2	1274
5	PETERSBURG FCI	2	807
6	ENGLEWOOD FCI	2	1072
7	EDGEFIELD FCI	2	1929
8	JESUP FCI	2	1554
9	CHICAGO MCC	2	561
10	TERRE HAUTE FCI	2	1411

Fiscal Year 2021			
	Facility	Frequency	Population 30NOV2022
1	TERRE HAUTE USP	8	1260
2	ATLANTA USP	4	1204
3	THOMSON ADMIN USP	4	871
4	POLLOCK MED FCI	2	1649
5	FLORENCE FCI	2	1263
6	OKLAHOMA CITY FTC	2	1244
7	MIAMI FDC	2	1120
8	BEAUMONT USP	2	1484
9	COLEMAN II USP	2	1210
10	VICTORVILLE MED II FCI	2	994

COMBINED Fiscal Years 2014 to 2021			
	Facility	Frequency	Population 30NOV2022
1	TERRE HAUTE USP	26	1260
2	ATLANTA USP	18	1204
3	HAZELTON USP	14	1587
4	POLLOCK USP	12	1274
5	BUTNER FMC	11	868
6	BEAUMONT USP	10	1484
7	LEAVENWORTH USP	8	1830
8	SPRINGFIELD USMCFP	8	1032
9	VICTORVILLE USP	8	987
10	FLORENCE HIGH USP	7	608
11	MCCREARY USP	7	1550
12	OKLAHOMA CITY FTC	7	1244

13	TUCSON USP	7	1398
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4. In 2021, the Department of Justice (“DOJ”) paid approximately \$1.5 million to settle claims against the Bureau of Prisons (“BOP”) in a civil rights case, *Beaubrun et al. v. United States*, 5-19-CV-615 (M.D. Fla.), brought by a group of female inmates alleging that they suffered sexual abuses by BOP employees at the Federal Correctional Complex in Coleman, Florida (“FCC-Coleman”). Prior to that settlement, DOJ and BOP filed an Answer in *Beaubrun* in which they acknowledged that seven former BOP employees had admitted to sexually abusing female inmates by engaging in sexual conduct with them while they were incarcerated at FCC-Coleman and that none of those employees were prosecuted criminally.

At the hearing, you were asked about the allegation that one of the female inmates at FCC-Coleman, Lauren Reynolds, was sexually abused by a BOP employee on a weekly basis for six months. You responded by asserting that you were not familiar with those facts. In light of the substantial settlement in *Beaubrun*, the admissions in BOP’s Answer in that civil case, and your inability to answer the Subcommittee’s questions at the hearing, please:

- (A) State the number of current and former BOP employees that have signed affidavits or other statements in which they admitted or acknowledged to having engaged in sexual conduct with female inmates at FCC-Coleman between January 2012 and present; and –

Response: After a diligent search, BOP has been able to identify seven former employees of FCC Coleman who signed affidavits since 2012 that included these types of statements.

- (B) State how many current and former BOP employees signed non-prosecution or deferred prosecution agreements related to their having engaged in sexual conduct with female inmates at FCC-Coleman between January 2012 and present.

Response: After a diligent search, BOP is not aware of any non-prosecution or deferred prosecution agreements with former BOP staff relating to sexual misconduct at FCC Coleman since January 2012.

5. Since last year, at least five BOP employees at the all-female Federal Correctional Facility in Dublin, California (“FCI-Dublin”) – including former Warden Ray Garcia – have been charged criminally with sexually abusing female inmates. In Warden Garcia’s case, for example, the FBI allegedly found nude photographs of a female inmate whom Garcia allegedly sexually abused on his laptop. In news reports, inmates and BOP employees described FCI-Dublin being known as a “rape club” and the presence of a “rape culture” among BOP staff at that facility.

At the hearing, you were asked about the news reports about FCI-Dublin and its reputation for being a “rape club.” In light of the seriousness of the allegations in the criminal cases from FCI-Dublin and news reports about a culture of sexual misconduct at that facility, please:

(A) State the number of current and former BOP employees that have been found to have taken nude or sexualized photographs or recorded videos of such nature at FCI-Dublin since January 2012; -

Response: After a diligent search, BOP has not identified any additional closed, substantiated cases involving these types of findings.

(B) State how many current and former BOP employees signed non-prosecution or deferred prosecution agreements since January 2012 related to their having engaged in sexual conduct with female inmates at FCI-Dublin; and

Response: After a diligent search, BOP is not aware of any non-prosecution or deferred prosecution agreements with former BOP staff relating to sexual misconduct at FCI Dublin since January 2012.

(C) State the number of current and former BOP employees that have signed affidavits or other statements in which they admitted or acknowledged to having engaged in sexual conduct with female inmates at FCI-Dublin between January 2012 and present. –

Response: After a diligent search, BOP has not been able to identify any current or former employees of FCI Dublin who signed affidavits since 2012 that included these types of statements. Please keep in mind that BOP’s practice is to defer its administrative investigation work (during which such affidavits might be obtained) until after any criminal investigation and prosecution has been completed. Should a criminal investigation and prosecution result in conviction, BOP’s administrative investigators generally would rely on the factual findings from the criminal investigation.

6. Provide the total number of incident referrals to OIA for staff-initiated sexual assault or sexual harassment of other staff and inmates from January 2012 to present by BOP facility, year and number of complaints that were substantiated.

Response: We appreciated the opportunity to coordinate with your staff to provide this sensitive data in response to the Subcommittee’s separate letter sent to the Department on April 27, 2022. The following chart reflects a summary of the data the Department has already provided on this topic.

Total number of referrals:	6,221		
Staff/Inmate:	5,415	Sustained:	584

Staff/Staff

806

Sustained: 240

7. Provide a list of all BOP employees and/or BOP contractors who have been charged or convicted of sexual abuse of female inmates between January 2012 and present and, for each individual charged or convicted, indicate the BOP facility where the abuse occurred, the year when the criminal charges were filed, and the disposition of the criminal case.

Response: Please note that the BOP does not act in a prosecutorial role, meaning that we do not bring criminal charges against employees or contractors. We refer matters to the OIG or FBI for review and further action. Decision-making as to prosecution is made by the relevant U.S. Attorney's Office or Civil Rights Division.

Following a diligent search of BOP's records, however, BOP is aware of the following individuals who have been convicted or entered a guilty plea in recent years. Additional information may be available in publicly available court dockets and pleadings to identify the information that you are seeking related to any specific case.

Fiscal Year Case Was Opened At BOP	Individual	Facility	Disposition/Discipline (Based on reports provided to BOP)
2012	CORLIS RANEW	Tallahassee (FCI)	Resignation, Prosecution - 36 months Probation with first 6 months Home Confinement, Sex Offender Registration
2013	ANGEL SANTIAGO	Tallahassee (FCI)	Resignation, Prosecution - 5 months Incarceration, 5 months Home Confinement w/electronic monitoring, 5 years SRT, Sex Offender Registration
2013	JESSIE TENNYSON	Houston (CCM)	Termination, Prosecution - 24 months Probation, 72 hours Community Serv., \$1,000 fine
2013	BRADY GREEN	Carswell (FMC)	Resignation, Prosecution - 3 months Incarceration, 1 year SRT, \$100 fine
2013	JANSING SCROGGINS	Bryan (FPC)	Resignation, Prosecution - 3 months Incarceration, 7 months Home Confinement, 5 years SRT

Fiscal Year Case Was Opened At BOP	Individual	Facility	Disposition/Discipline (Based on reports provided to BOP)
2013	JEFFREY WALTON	Alderson (FPC)	Resignation, Prosecution - 10 months Incarceration, 1 year SRT, Sex Offender Registration
2014	ERIC TRUJILLO	San Antonio (CCM)	Termination. Prosecution - 100 months Incarceration, \$587 fine
2014	RICHARD CANTERBURY	Alderson (FPC)	Resignation. Prosecution - 14 months Incarceration
2014	MARSHALL THOMAS	Bryan (FPC)	Resignation. Prosecution - 18 months Incarceration, 10 years SRT, \$100 fine
2015	JAMES GRAVES	Bryan (FPC)	Resignation. Prosecution - 21 months Incarceration, 10 years SRT
2015	KENDRICK BROOKS	Bryan (FPC)	Resignation. Prosecution - 6 months Incarceration, 5 years SRT, Sex Offender Registration
2015	RUDELL CLARK MULLINGS	New York (MCC)	Resignation. Prosecution - 84 months Incarceration, 5 years SRT, \$100 fine, Sex Offender Registration
2015	YVONNE MARRUFO	Carswell (FMC)	Resignation, Prosecution - 3 years probation, \$100 fine
2015	JAMES TOADVINE JR	Phoenix (FCI)	Resignation, Prosecution - 12 months and 1 day Incarceration, 5 years SRT, Sex Offender Registration

Fiscal Year Case Was Opened At BOP	Individual	Facility	Disposition/Discipline (Based on reports provided to BOP)
2015	EDWARD MENDOZA	Phoenix (FCI)	Resignation, Prosecution - 16 months Incarceration, 5 years SRT, Sex Offender Registration
2016	SAMUEL HAWKINS	Houston (FDC)	Resignation, Prosecution - 5 months Incarceration, 5 months Home Confinement, Sex Offender Registration
2016	JESSE BAILEY	Aliceville (FCI)	Resignation, Prosecution - 18 months Incarceration, 5 years SRT, Sex Offender Registration
2016	EUGENIO PEREZ	Brooklyn (MDC)	Resignation, Prosecution - 300 months Incarceration, 10 years SRT
2017	MATTHEW MCGAUGH	Carswell (FMC)	Resignation, Prosecution - 12 months Incarceration, 24 months SRT
2017	DARRELL MCCOY	Phoenix (FCI)	Resignation, Prosecution - 60 months Probation, 6 months Home Confinement, \$200 assess., Sex Offender Registration
2017	APOLONIO GAMEZ	Victorville (FCC)	Resignation, Prosecution - 24 months Incarceration, 7 years SRT, \$5,000 fine, Sex Offender Registration
2018	JOSE CARRASQUILLO	Carswell (FMC)	Resignation, Prosecution - 5 years Probation
2018	CARLOS MARTINEZ	Brooklyn (MDC)	Resignation, Prosecution - 120 mo. Incarceration, 5 years SRT

Fiscal Year Case Was Opened At BOP	Individual	Facility	Disposition/Discipline (Based on reports provided to BOP)
2018	ADRIAN STARGELL	Aliceville (FCI)	Resignation, Prosecution - 42 months Incarceration. 3 years SRT, \$150 assess
2018	CARLOS SANCHEZ	Danbury (FCI)	Resignation, Prosecution - 10 months Incarceration, 5 years SRT
2019	COLIN AKPARANTA	New York (MCC)	Resignation, Prosecution - 40 months Incarceration, 24 months SRT, \$5,200 assess.
2019	SCOTT BORN	Hazelton (FCC)	Resignation, Prosecution - 3 months Incarceration, 2 months Home Confinement, 3 years SRT, \$100 assess.
2020	PHILLIP GOLIGHTLY	Tallahassee (FCI)	Resignation, Prosecution - 24 months Incarceration, 5 years SRT, \$200 assess.
2020	HOSEA LEE JR	Lexington (FMC)	Resignation, Prosecution - 80 months Incarceration, \$56,625.60, \$5,500 Special Assess., 10 years SRT