



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

PANDEMIC RESPONSE REPORT

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Remote Inspection of Federal Correctional
Institution Terminal Island

EVALUATION AND INSPECTIONS DIVISION

INTRODUCTION



OIG COVID-19 Inspection Efforts

In response to the coronavirus disease 2019 (COVID-19) pandemic, the U.S. Department of Justice (Department, DOJ) Office of the Inspector General (OIG) initiated a series of remote inspections of Federal Bureau of Prisons (BOP) facilities, including BOP-managed institutions, contract prisons, and Residential Reentry Centers. In total, these facilities house approximately 152,000 federal inmates. The OIG inspections sought to determine whether these institutions were complying with guidance related to the pandemic, including Centers for Disease Control and Prevention (CDC) guidelines, DOJ policy and guidance, and BOP policy. While the OIG was unable to meet with staff or inmates as part of these remote inspections, the OIG incorporated staff, inmate, and other stakeholder input into each inspection. The OIG issued a survey to over 40,000 staff working at facilities housing BOP inmates. The OIG also established a COVID-19 specific hotline through which we received complaints from inmates, staff, and other parties.

[DOJ COVID-19 Complaint](#)

[Whistleblower Rights and Protections](#)

The CDC has noted that the confined nature of correctional facilities, combined with their congregate environments, “heighten[s] the potential for COVID-19 to spread once introduced” into a facility. According to BOP data, as of January 4, 2021, 40,086 inmates and 4,666 BOP staff in BOP-managed institutions and community-based facilities had tested positive for COVID-19.¹ In those institutions where widespread inmate testing has been conducted, including at Federal Correctional Institution (FCI) Terminal Island, the percentage of inmates testing positive has been substantial. As of January 4, 2021, 557 Terminal Island inmates and 35 staff members had tested positive for COVID-19; 10 Terminal Island inmates had died.

Between May 6 and June 25, 2020, the DOJ OIG conducted a remote inspection of the BOP’s FCI Terminal Island to understand how the COVID-19 pandemic affected the institution and to assess the steps that Terminal Island officials took to prepare for, prevent, and manage COVID-19 transmission within the facility (see [Appendix 1](#) for the scope and methodology of the inspection). As part of that effort, we considered whether FCI Terminal Island’s policies and practices complied with BOP directives implementing CDC guidance, as well as DOJ policy and guidance.² We conducted this inspection through telephone interviews with FCI Terminal Island officials, review of documents, assessment of inmate demographic data and staff and inmate COVID-19 case data by the OIG’s Office of Data Analytics (ODA), analysis of FCI Terminal Island-specific results from a BOP-wide employee survey regarding COVID-19 issues that the OIG conducted in late April, and consideration of 28 complaints submitted to the OIG Hotline and other sources from inmates, their attorneys and family members, and Terminal

¹ This estimate and the Terminal Island-specific estimate below it do not include inmates who tested positive, recovered, and were released by the BOP.

² Starting in January 2020, the BOP began issuing to its institutions policy directives detailing requirements for managing a range of activities intended to control the transmission of COVID-19 (see [Appendix 3](#) for a timeline of the BOP’s guidance to (Cont’d.)

Island staff, 16 of which we discuss in the report.³ Seventy-four of approximately 267 Terminal Island staff members responded to the survey, for a response rate of about 28 percent (see [Appendix 1](#) for a summary of the complaints and [Appendix 2](#) for a summary of survey results from FCI Terminal Island).

Summary of Inspection Results

The OIG's remote inspection of FCI Terminal Island found that:

- In April, the institution tested its entire inmate population for COVID-19; but, by the time testing was completed, nearly half of the inmate population was already infected. Institution officials told us that this universal testing was crucial to being able to move COVID-19 negative and positive inmates into distinct housing units, some newly erected or converted, to manage the COVID-19 outbreak. However, our analysis showed that 107 negative inmates in 2 housing units remained housed with 129 positive inmates in those units for between 4 and 5 days after the institution received their test results.
- While FCI Terminal Island complied with BOP guidance on inmate testing, 5 of the 10 Terminal Island inmates who died after contracting COVID-19 did not receive a COVID-19 test until after staff sent them to the hospital. Terminal Island staff told us that three of these five inmates did not initially show COVID-19 symptoms at the institution and that staff sent the other two inmates to the hospital the same day that staff identified their symptoms.
- Terminal Island staff did not comply with BOP policy to notify the families of inmates with serious illness in one instance, in which an inmate who ultimately died was on a ventilator in the hospital for 6 days due to COVID-19. Officials from the BOP's Central Office and Western Regional Office told us that the institution's lack of notification was an oversight. However, institution staff told us that they never informed that inmate's and one additional inmate's family that the inmate had been infected with COVID-19 because they did not deem it relevant.
- Beginning in May, FCI Terminal Island complied with BOP guidance to maximize social distancing in the institution but experienced challenges in enforcing social distancing among inmates in open dormitory housing areas.
- The OIG's April survey of FCI Terminal Island staff indicated that institution staff may not have been quarantining inmates according to BOP guidance prior to the movement of inmates to alternative housing. Our analysis of institution documentation showed that one of the alternative housing areas the institution added to accommodate the need for quarantining did not meet BOP standards for housing on several occasions.

its institutions). Several of these directives were aligned with CDC guidance and were intended to assist BOP institutions in implementing CDC guidelines. Our focus was assessing FCI Terminal Island's adherence to these BOP directives.

³ The inspection team did not seek to assess the validity of these individual complaints as part of the remote inspection but rather considered them as we assessed the overall situation at the facility during the period of our review.

- FCI Terminal Island complied with BOP guidance regarding the use of personal protective equipment (PPE) in correctional settings. While Terminal Island officials we interviewed told us that staff had consistent access to adequate PPE, staff survey responses and one staff interview indicated that having adequate PPE was a challenge for staff and inmates. Further, although the BOP mandated on March 31 that all staff be fit tested for N95 respirators, our analysis of fit test documentation showed that temporary duty (TDY) staff at FCI Terminal Island were not fit tested until an average of nearly 6 days after their arrival, after Terminal Island discovered that the institution from which they came had not fit tested them, and about 36 percent of TDY staff (28 out of 77) were fit tested a week or more after arrival.

COVID-19 at FCI Terminal Island

As of April 12, FCI Terminal Island employed 267 BOP federal staff members and housed 1,091 low security male inmates in San Pedro, California. As a Care Level 3 institution, Terminal Island's population includes inmates with chronic care needs and inmates requiring specialized medical or mental health care.⁴ As of March 28, nearly 15 percent of its inmates were age 60 or older, which was about 8 percentage points higher than the BOP-wide average of nearly 7 percent.

FCI Terminal Island's first staff member tested positive for COVID-19 on April 5, and its first inmate tested positive on April 10. On April 13, the institution reported its first inmate death related to COVID-19. From April 20 through June 21, another 9 inmates died after contracting COVID-19, for a total of 10 inmate deaths, the third highest number among BOP facilities as of November 17. As of the same date, there had been no staff deaths at Terminal Island due to COVID-19. Between March 31 and May 21, in the surrounding community of Los Angeles County, positive cases increased 1,292 percent, from 3,019 to 42,037. From April 23 through April 27, the institution worked with the Los Angeles County Department of Public Health to test the entire inmate population for COVID-19. An April 28 BOP media release stated that Terminal Island had tested over 1,000 inmates, which resulted in the identification of 443 positive cases, approximately 42 percent of the institution's inmate population; 90 percent of those who tested positive were not reporting symptoms prior to testing. By May 9, the number of inmates with active COVID-19 cases had increased to 693. As of June 25, following a period of retesting, 6 inmates and 3 staff members had tested positive and 675 inmates and 15 staff had recovered. By January 6, 2021, no inmates were positive. Eleven staff members had tested positive and 543 inmates and 26 staff members had recovered. As of the same date, FCI Terminal Island's inmate population was 705.

⁴ BOP officials assign each inmate a care level based on the inmate's individual medical needs. Care levels range from Care Level 1 for the healthiest inmates to Care Level 4 for inmates with the most serious medical conditions. The BOP also assigns each institution a care level from 1 to 4, based on the institution's level of medical staffing and resources. The goal of the care level system is to match inmate medical needs with institutions that can meet those needs. A Care Level 3 institution is capable of treating inmates with conditions requiring daily to monthly clinical contact.

Terminal Island COVID-19 Data

Inmate Population as of April 12, 2020^a

 **1,091**

Active Inmate Cases as of January 3, 2021^b

 **6**

Inmate COVID-19 Deaths as of January 3, 2021

 **10**

Active Inmate COVID-19 Cases Over Time, March 31, 2020–January 3, 2021^b



^a Population totals may differ from BOP statistics due to categories of inmates (e.g., juveniles) excluded from the data received by the OIG.

^b The BOP defines “active cases” as open and confirmed cases of COVID-19. Once someone has recovered or died, he or she is no longer considered an active case.

On May 5, 6, 18, 21, and 26, Terminal Island staff retested inmates who had previously tested negative during universal testing.

Data Source: BOP

DOJ Federal Staff as of January 3, 2021

 **264**

Active Staff Cases as of January 3, 2021

 **9**

Staff COVID-19 Deaths as of January 3, 2021

 **0**

Active Staff COVID-19 Cases Over Time, March 31, 2020–January 3, 2021



Data Source: BOP, National Finance Center

Total Confirmed Los Angeles County COVID-19 Cases Over Time, March 31, 2020–January 3, 2021^a



^a Total confirmed cases are cumulative positive COVID-19 cases in Los Angeles County.

Data Source: COVID-19 Data Repository by the Center for Systems Science and Engineering at Johns Hopkins University

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INSPECTION RESULTS

COVID-19 Testing and Screening

Inmate Testing

We found that FCI Terminal Island complied with BOP guidance on testing inmates. We also found that, while the institution's testing initiative helped it manage social distancing and quarantining during the COVID-19 outbreak, the institution did not immediately separate positive and negative inmates and, by the time universal testing was complete, nearly 49 percent of the inmate population was already infected.

On March 13, the BOP issued guidance stating that institutions should test and isolate symptomatic inmates with exposure risk factors for COVID-19 consistent with local health authority protocols.⁵ On April 24, the BOP issued a news release announcing that it would expand rapid testing to asymptomatic inmates to slow transmission at select facilities that had a high number of at-risk inmates and were experiencing widespread transmission. On May 19, the BOP issued to all institutions expanded testing indications and priorities, stating that, while tests of symptomatic inmates were still a high priority, testing of asymptomatic inmates meeting a number of conditions would also be considered high priority.⁶

Terminal Island officials told us that all inmates who displayed COVID-19 symptoms received a COVID-19 test and that the first test occurred on April 7, which was 2 days after the first staff member tested positive in the community. Institution officials also told us that throughout May they retested the approximately 500 inmates who had previously tested negative during universal testing and that Terminal Island staff were working with the Los Angeles County Department of Public Health on continued testing for COVID-19 negative inmates. As of June 25, 691 inmates had tested positive, 675 of whom had recovered.⁷

While 5 of the 10 Terminal Island inmates who died did not receive a COVID-19 test until the institution sent them to a community hospital, staff told us that these inmates either were not

⁵ BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Phase Two Action Plan, March 13, 2020.

⁶ BOP, COVID-19 Testing: Indications for Testing of Inmates in the Federal Bureau of Prisons, May 19, 2020. The BOP suggested prioritizing testing as high, intermediate, or low. High priority testing included asymptomatic inmates "with close or direct contact with a confirmed or suspect COVID-19 case," "new to the BOP admissions/intakes," "prior to release from quarantine," and "in open housing." Intermediate priority testing included asymptomatic inmates "departing a BOP facility for home confinement, regional reentry center, or full term/good conduct release." The low priority suggested testing of "all inmates at the institution without any known COVID-19 cases as part of an institution-wide surveillance program."

⁷ According to documentation that FCI Terminal Island provided to the OIG, the Los Angeles County Department of Public Health conducted an on-site, nonroutine inspection of FCI Terminal Island on April 24 to assess conditions there and provide recommendations as needed related to the institution's COVID-19 response.

displaying COVID-19 symptoms initially or that the institution transported them to the hospital the same day that staff identified their symptoms, which we describe further below:

- Terminal Island staff told us that the institution did not test three of those inmates at the institution because they were not exhibiting COVID-19 symptoms there. The Terminal Island Clinical Director told us that the institution’s priority was to treat their symptoms and send the inmates to the hospital, where they received testing. A Nurse Practitioner also told us that, since the institution did not yet have rapid testing capabilities, the medical staff’s priority was to transport the inmates to the hospital for treatment rather than wait for non-rapid testing results (see the text box for more information on rapid testing).⁸
- Terminal Island staff initially told us that they tested all inmates who showed COVID-19 related symptoms; however, in the case of two inmate deaths, institution staff later told us that they decided not to test those two inmates at the institution because testing would have unnecessarily delayed their transport to the hospital. Staff told us that, in both instances, testing the inmates at the institution would not have made a difference in the treatment they received since the institution sent them to the hospital the same day that staff identified their symptoms.⁹ We further discuss inmates’ deaths in the Notification of Deceased Inmates’ Families section below.

COVID-19 Rapid Test False Negatives

The FCI Terminal Island Clinical Director told us that rapid tests have a 25 percent false negative rate. On May 14, the Food and Drug Administration issued a public alert stating that the rapid tests may result in false negatives. The BOP Medical Director told us that the BOP is aware of the potential false negatives and that it is a concern. To mitigate the potential for misdiagnosing an inmate, he said that the BOP’s strategy has been to assume that positive rapid test results are true positives and to retest inmates with negative rapid test results by sending a nasal swab to a commercial laboratory or local health department for non-rapid testing. According to the CDC, non-rapid laboratory tests can take 1–2 days to process. The BOP Medical Director told us that, in doing this, the BOP has already identified some false negatives. FCI Terminal Island staff told us that they were using non-rapid testing to retest all inmates who tested negative using rapid testing.

Source: BOP interviews, Food and Drug Administration, and CDC

⁸ See Food and Drug Administration, “Coronavirus (COVID-19) Update: FDA Authorizes First Antigen Test to Help in the Rapid Detection of the Virus that Causes COVID-19 in Patients,” May 9, 2020, www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-first-antigen-test-help-rapid-detection-virus-causes (accessed January 8, 2021).

According to the BOP’s website, the primary role of the rapid test machine is “rapid testing of newly symptomatic cases to confirm the diagnosis quickly.” According to BOP officials, commercial laboratory tests are generally more accurate than the rapid tests, but it takes approximately 2 days to process commercial laboratory test results.

⁹ In January, the BOP’s Health Services Division issued a memorandum to all BOP institutions informing them of possible COVID-19 symptoms. BOP, memorandum for All Clinical Directors, Health Services Administrators, Quality

(Cont’d.)

Universal Inmate Testing

We found that universal testing helped FCI Terminal Island manage social distancing and quarantining during its COVID-19 outbreak but that institution staff did not immediately separate positive and negative inmates and, by the time universal testing was complete and the institution started separating inmates into negative and positive housing units, nearly 49 percent of the inmate population was already infected. Terminal Island staff told us that, about 2 weeks after the first positive inmate case and following two inmate deaths, from April 23 through April 27, the institution worked with the Los Angeles County Department of Public Health to test its entire inmate population for COVID-19.¹⁰ An April 20 media statement from the BOP stated that FCI Terminal Island began universal testing “to detect asymptomatic or pre-symptomatic virus carriers who may not yet be exhibiting symptoms, enabling staff to isolate and monitor these individuals proactively.” Institution staff told us that, prior to conducting universal testing, FCI Terminal Island had tested all inmates who presented COVID-19 symptoms, which was 82 inmates out of its population of over 1,070 inmates. The Warden told us that Terminal Island had a long-standing partnership with the county, and the Regional Health Systems Administrator told us that the county recommended testing every inmate.¹¹

An April 28 BOP media statement stated that FCI Terminal Island had tested over 1,000 inmates through universal testing, which resulted in the identification of 443 positive cases, approximately 42 percent of the institution’s inmate population. Although the media statement said that 90 percent of those who tested positive were asymptomatic, staff told us that after they interviewed inmates who had received positive test results many inmates stated that they had been experiencing symptoms and, as a result, the asymptomatic positive rate decreased to 44 percent.¹²

Institution staff told us that universal testing of the inmate population was crucial in managing the COVID-19 outbreak. For example, the Warden told us that universal testing allowed the institution

Improvement/Infection Prevention Coordinators, Guidance on 2019 Novel Coronavirus Infection for Inmate Screening and Management, January 31, 2020.

¹⁰ The Warden told us that, on April 10, the institution received a rapid COVID-19 test machine, which allowed it to begin testing inmates on site. The BOP Medical Director told us that the BOP issued a limited number of rapid test machines, first to institutions with active transmission and then to BOP Medical Referral Centers and some regional quarantine sites. On April 24, the BOP announced the deployment of rapid test machines “based on facility need to contain widespread transmission and the need for early, aggressive interventions required to slow transmission at facilities with a high number of at-risk inmates such as medical referral centers.” BOP, “[BOP Expands COVID-19 Testing](#),” April 24, 2020, www.bop.gov/resources/news/20200424_expanded_testing.jsp (accessed January 8, 2021).

¹¹ FCI Terminal Island staff told us that, as of May 13, Los Angeles County provided the institution a total of 1,454 tests at no cost to the BOP and that the BOP had procured 134 tests. BOP staff administered the tests to inmates at the institution.

¹² Institution staff told us that the reason the 10 percent of inmates who were symptomatic prior to universal testing had not received tests was because they had not reported their symptoms. When staff interviewed them after giving them their positive test results, they stated that they had been experiencing mild symptoms.

to determine the exact number of negative and positive inmates and to separate them accordingly. Staff also told us that they moved the negative inmates primarily to alternative housing units that could accommodate 6 feet of distance between inmates and that positive inmates were housed predominantly in the open dormitory housing units where social distancing is more difficult.¹³ In addition, a Nurse Practitioner told us that universal testing “changed everything,” allowing the institution to provide care for all inmates who needed it. In a media statement issued on April 28, the BOP stated that universal testing would also allow FCI Terminal Island to shorten the overall period of inmate quarantine during the COVID-19 pandemic.

However, institution officials told us that, after starting universal testing on April 23, they did not begin moving inmates who had tested positive until 7 days later, on April 30, which was 3 days after universal testing had concluded.¹⁴ Our analysis of the institution’s movement plan showed that 107 negative inmates in two housing units remained housed with 129 positive inmates in those units for between 4 and 5 days. Out of the 59 positive inmates who moved following universal testing, 53 inmates were moved 4 days after testing positive and 6 inmates were moved 5 days after testing positive. Some positive inmates, namely those already in designated positive housing units, stayed in place, according to institution staff. Institution officials told us that the Health Services Division staff needed to review the test results, which took between 2 and 4 days for the institution to receive and arrived in batches; ensure that an entire housing unit’s results had been received; and develop a movement plan before moving the inmates so that there was sufficient space to place the inmates.¹⁵ Institution officials told us that staff carefully carried out the move to regain stability in the institution while also ensuring that essential functions, including healthcare, food distribution, laundry, delivery of commissary items, and trash removal, were performed. We believe that, although separating the positive inmates from the negative inmates was a significant undertaking, the period in which known positive and negative inmates remained housed together increased the risk of COVID-19 transmission within the institution. We received a complaint from an FCI Terminal Island TDY staff member, who was conducting temperature checks, stating that institution staff sometimes waited 3–4 days after receiving inmates’ positive test results before telling inmates that they were positive. Institution officials told us that, for safety and security reasons, staff waited to notify inmates of their test results until after they were

¹³ Social distancing, also called “physical distancing,” means keeping at least 6 feet between people and avoiding group gatherings. In a correctional setting, the CDC recommended implementing a host of strategies to increase the physical space between inmates (ideally 6 feet between all individuals, regardless of symptoms), noting that not all strategies will be feasible in all facilities and that strategies will need to be tailored to individual spaces within the facility and the needs of the population and staff. See CDC, “[Interim Guidance on Management of Coronavirus Disease 2019 \(COVID-19\) in Correctional and Detention Facilities](#),” March 23, 2020 (updated December 3, 2020), www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (accessed January 8, 2021).

¹⁴ Staff told us that, while a large portion of the inmates moved on April 30, the movement happened on a rolling basis as test results became available.

¹⁵ Separately, institution officials told us that any delays in moving inmates were caused by the amount of time it took for the Health Services Division to identify positive inmates and move them and their belongings.

moved. We also received a complaint from an inmate's family member stating that the inmate was housed with COVID-19 positive inmates despite having testing negative.

Additionally, while the institution's universal testing initiative was a proactive measure that most BOP institutions were not taking at the time, we believe that its usefulness in controlling the spread of COVID-19 was limited to helping address an already widespread outbreak. Had the institution had access to enough tests earlier in April, when the first positive cases were identified, universal testing may have helped prevent the outbreak from ultimately reaching most of the institution's population by allowing the institution to separate positive cases sooner or showing that it need to take other preventive measures.¹⁶

Staff Testing

During our inspection, FCI Terminal Island did not test staff for COVID-19, and, at no time between March and December 3, did BOP policy require institutions to test staff for COVID-19.¹⁷ In June, the BOP Medical Director told us that staff are the primary vulnerability for introduction of COVID-19 into institutions and that testing staff could help mitigate the spread of the disease in institutions. However, he noted that the BOP cannot mandate staff COVID-19 testing as a condition of employment and that the BOP's ability to test staff is limited by resources because testing all staff would be labor intensive. Therefore, in lieu of requirements and in line with CDC recommendations, the BOP encourages the development of community partnerships through which staff can choose to be tested.¹⁸ The BOP's Phase Seven Action Plan, issued on May 18, encouraged Wardens to identify and publish possible testing sites in the community where interested staff may be tested. In September, BOP officials informed the OIG that in July the BOP awarded a contract with an outside provider to offer testing to federal staff. The contract, which

¹⁶ The BOP Medical Director told us that the BOP was not able to test inmates rapidly enough. He said that, if an inmate tested positive at an institution, the BOP could test other inmates at that institution only if the local health department offered testing.

¹⁷ At the time of our inspection, neither BOP nor CDC guidance required institutions to test staff for COVID-19. The CDC recommended that correctional and detention facilities determine, in collaboration with state and local health officials, whether and how to implement testing strategies. The CDC further recommended that implementation of testing strategies "should be guided by what is feasible, practical, and acceptable, and should be tailored to the needs of each facility." The CDC recommended that correctional facilities consider broader testing of staff, beyond testing only close contacts of confirmed COVID-19 cases, when "contact tracing is not practicable, or if there is concern for widespread transmission following identification of new-onset COVID-19 infection among [inmates] or staff." See CDC, "Interim Considerations for SARS-CoV-2 Testing in Correctional and Detention Facilities," December 3, 2020, www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html (accessed January 8, 2021).

¹⁸ The first Terminal Island staff member tested positive for COVID-19 on April 5. As of June 25, 3 Terminal Island staff members had tested positive and 15 staff had recovered.

See CDC, "Interim Considerations."

ended September 30 and was followed by another contract awarded on October 1, is intended to supplement the community testing resources, especially where those resources are limited.

The Regional Health Systems Administrator told us that the institution advised its staff to seek testing from their primary care provider. She told us that Terminal Island management notified staff that the Western Regional Office would assist them in getting tested through the county if they had trouble obtaining a test from their primary care provider. The Terminal Island Clinical Director told us that he did not know whether he could test staff because the BOP did not provide him with any guidance on staff testing and he believed that doing so could cause ethical concerns. In response to our survey, 4 of the 61 FCI Terminal Island staff who answered the question cited staff testing as an immediate need during the COVID-19 pandemic.

Staff and Inmate Screening

Staff Screening

We found that FCI Terminal Island complied with BOP directives regarding staff screening. On February 29, the BOP directed institutions to screen staff with potential COVID-19 risk factors, including those who had been in close contact with individuals diagnosed with COVID-19 or who had traveled within the previous 14 days through or from locations identified by the CDC as having increasing epidemiological risk.¹⁹ Terminal Island staff told us that they implemented the February 29 directive by asking staff to self-report symptoms and international travel to specific locations. On March 13, the BOP directed institutions in areas with “sustained community transmission,” which included FCI Terminal Island, to implement enhanced screening of staff. Our interviews with Terminal Island staff and review of the Warden’s emails to staff indicate that FCI Terminal Island complied with BOP screening protocols by screening all staff for COVID-19 symptoms at the beginning of their shifts, starting the day that the BOP issued its directive. Staff we interviewed told us that they were screened for symptoms and had their temperatures checked when entering the facility and that those with a temperature over 100.4 degrees Fahrenheit were not allowed to work until medically cleared. In contrast, 57 percent of FCI Terminal Island survey respondents (35 out of 61 respondents), about 37 percentage points higher than respondents from all BOP institutions, reported that more frequent staff screening was an immediate need for the institution. One Terminal Island survey respondent questioned whether the institution had considered screening staff more than once per day since it moved to 12-hour shifts; however, two institution medical providers that we interviewed told us that they believed that one screening was sufficient.

¹⁹ BOP, memorandum for All Clinical Directors, Health Services Administrators, Quality Improvement/Infection Prevention Coordinators, Guidance Update for Coronavirus Disease 2019 (COVID-19), February 29, 2020.

Inmate Screening

We found that FCI Terminal Island complied with BOP guidance regarding inmate screening. On March 31, the BOP issued its Phase Five Action Plan, which directed institutions to screen inmates through the use of broad screening initiatives.²⁰ Terminal Island staff told us that on April 7 they began screening inmates for COVID-19 symptoms and checking their temperatures twice per day. Terminal Island staff we surveyed were more likely than all BOP institution staff (62 percent of Terminal Island staff, compared to 19 percent of all institution staff) to report that inmates were temperature screened at least once per day. The institution started screening not only negative inmates to determine whether they may have contracted the disease, but also positive inmates to track their illness's progression. A Nurse Practitioner told us that staff identified many cases of COVID-19 during screenings and could often predict based on symptoms that an inmate was going to test positive before the results came back.²¹



Notification of Deceased Inmates' Families

On April 13, 2020, FCI Terminal Island reported its first inmate death related to COVID-19. Over the next 2 and a half months, there were 9 more inmate deaths related to COVID-19, for a total of 10 deaths, the third highest number among BOP institutions as of November 17.²² According to BOP press releases, eight of the inmates had long-term, preexisting medical conditions such as diabetes or heart disease, which the CDC identifies as risk factors for serious illness from COVID-19. As of July 30, the CDC reported that 8 out of 10 COVID-19 related deaths reported in the United States were of individuals age 65 or older. Six of the 10 Terminal Island inmates who died were in this age group.

BOP policy on patient care requires institutions to “promptly” notify the family of any inmate with a serious illness given that it is of “immediate concern” to the family. In the case of a death, the BOP requires institutions to notify the family of the deceased in the same manner as a serious

²⁰ BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Phase Five Action Plan, March 31, 2020.

²¹ The BOP Central Office Infection Prevention and Control Coordinator told us that FCI Terminal Island conducted contact tracing after the first positive staff case but that it was futile once COVID-19 became widespread in the institution.

²² FCI Terminal Island reported that the other inmate deaths occurred on April 13, 19, 29 (two deaths), and 30; May 4, 9, 13, and 24; and June 21.

illness notification.²³ The BOP's policy on death notifications also states that the Warden or designee must call a deceased inmate's emergency contact immediately to inform him or her of the circumstances surrounding the death.²⁴ Supplemental FCI Terminal Island policy specifies that, in the event of an inmate's death, the Chaplain will notify the inmate's family by telephone. However, we found that Terminal Island staff did not notify the family of two inmates who ultimately died that they had been hospitalized due to a serious illness, the Chaplain did not contact their families to advise them of the inmates' deaths, and institution staff never told the families that the inmates had been infected with COVID-19.²⁵

The BOP's press releases indicate that both inmates had preexisting, long-term conditions, which the CDC identifies as risk factors for developing more serious illness due to COVID-19.²⁶ Terminal Island staff told us that one of the inmates displayed no known COVID-19 symptoms while at the institution and died unexpectedly the day after arriving at the hospital. However, the BOP press release regarding the second inmate's death states that that inmate was on a ventilator in the hospital for 6 days prior to his death.²⁷ Terminal Island staff told us:

- They sent the first inmate to the community hospital with symptoms that they identified as being unrelated to COVID-19. He died unexpectedly the next day, and Terminal Island received his positive test result 2 days later. Institution documentation indicates that the Warden sent a family member written notification of his death the day that he died; it does not mention the inmate having had COVID-19.
- They admitted the other inmate to the institution's Short Stay Unit, at which point they gave him a COVID-19 test. The institution received his positive result 4 days later, the day after staff sent him to the hospital. The BOP's press release indicates that his condition declined while he was at the hospital and that the hospital placed him on a ventilator; he died 6 days later, and the BOP issued the press release the same day. Documentation from the

²³ BOP Program Statement 6031.04, Patient Care, June 3, 2014, www.bop.gov/policy/progstat/6031_004.pdf (accessed January 8, 2021).

²⁴ BOP Program Statement 5553.08, Escapes/Deaths Notifications, January 4, 2017, www.bop.gov/policy/progstat/5553.08.pdf (accessed January 8, 2021).

²⁵ A Terminal Island staffing report shows that there was one vacant Chaplain position at the time and that one Supervisory Chaplain was on board.

²⁶ For eight of the reported inmate deaths, the BOP issued a public press release within a day of the death. The first inmate who died and one additional inmate were found to be positive 2 days after they died, and the BOP issued a press release on the day that each of them died.

²⁷ In addition, a media outlet reported that the family of an inmate at Federal Medical Center Fort Worth was not notified that the inmate was sick and on a ventilator until after his death. A BOP press release states that he was placed on a ventilator 7 days before his death.

institution indicates that, the following day, the Warden sent a family member written notification of his death, which did not indicate that he had been infected with COVID-19.²⁸

Further, a BOP press release also indicated that Terminal Island staff sent a third inmate, who ultimately died, to the hospital and that he was placed on a ventilator 2 days later; but documentation from Terminal Island shows that staff did not attempt to reach out to his family until 6 days later and did not successfully contact the family until 11 days after that.

Institution staff told us that FCI Terminal Island has no record of contacting the families of the first two inmates who died regarding their illnesses. Staff said that there was not enough time to contact the family of the first inmate, who died about 22 hours after he entered the hospital. Regarding the second inmate, staff told us that, at the time the inmate was admitted to the hospital and placed on a ventilator, the institution was not notifying families about such actions. Institution officials told us that, after time went on and they gained more experience, on April 24 FCI Terminal Island began notifying families when an inmate required hospitalization and tested positive for COVID-19.²⁹ Terminal Island staff further stated that notifying families regarding inmate hospitalizations presents immediate security concerns for the public, BOP staff, hospital staff, and the inmate because it informs the public when and where an inmate will be, thereby increasing the risk of him escaping, and that notifying them is not routine. They told us that, prior to the COVID-19 outbreak, the institution had an average of 12 inmates hospitalized and 20 emergency medical trips per month. They also said that, along with the 2 inmates who died, they sent to the hospital 45 other inmates with similar symptoms, 40 of whom recovered and went back to the institution.

We found that the BOP's patient care policy, as well as supplemental FCI Terminal Island policy, states that families should be promptly notified of an inmate's serious illness, which the institution defines separately from a critical illness. The institution's supplemental policy defines a "critical" illness as one for which death is considered imminent—within days at most—and a serious illness as one that threatens an inmate's life but could persist for weeks or months. However, institution staff initially told us that they did not consider an inmate placed on a ventilator to be in "critical" condition and that this was the standard for initiating a notification pursuant to the BOP's patient care policy. The FCI Terminal Island supplemental policy also states that a physician will make the determination regarding the seriousness of the illness, but Terminal Island staff told us that no such determination was made for either inmate.

²⁸ An April 30 Associated Press article reported that the inmate's family learned from news reporting that the inmate had COVID-19.

²⁹ Institution staff told us that they did not notify family members when an inmate had tested positive for COVID-19—but was not hospitalized—because they treat that information as confidential.

A Western Regional Office official who was involved in coordinating the BOP's response to a media inquiry regarding the death of the inmate who was on a ventilator for 6 days told us that the lack of notification was a "horrible oversight" and that a medical staffing shortage at FCI Terminal Island may have been a contributing factor. We analyzed medical staff vacancies, leave, and overtime during the pay period in which the death occurred. Of the 22 medical staff working at FCI Terminal Island at the time, 5 took 1 day or more of leave during the pay period, for a total of 170 leave hours. Further, 17 staff members worked a total of 655 overtime hours.³⁰ There were also four medical staff vacancies at the time.

The Western Regional Office official also told us that, as a result of FCI Terminal Island's failure to notify the inmate's family of his illness, the Western Regional Office issued verbal guidance shortly after the inmate's death, followed by written guidance on May 4 to all institutions in the region stating that they should notify the families of positive inmates who become hospitalized. The BOP's National Health Systems Administrator confirmed that FCI Terminal Island's failure to notify the family was an oversight and told us that it was appropriate for the Western Regional Office to step in to address it. He was not aware of any plans for the BOP to issue national guidance regarding family notifications.

Regarding the inmates' deaths, while institution staff failed to call the family to notify them, as mentioned above, they provided us with copies of letters that the Warden sent to the two inmates' families. However, the letters do not mention the inmates having had COVID-19. Institution staff told us that, when they notified the families, both inmates' final cause of death was unknown and that they did not deem the inmates' COVID-19 infection status to be relevant information to share with the families. They further stated that they had not yet obtained a final cause of death for the inmates.

Social Distancing and Quarantine Measures

Social Distancing Measures

On March 13, the BOP directed Wardens to immediately "implement modified operations to maximize social distancing in [BOP] facilities" to the extent practicable.³¹ Terminal Island staff told

³⁰ Our analysis consisted of reviewing medical staff timesheets, which do not indicate whether staff were working on site at the institution or were on call.

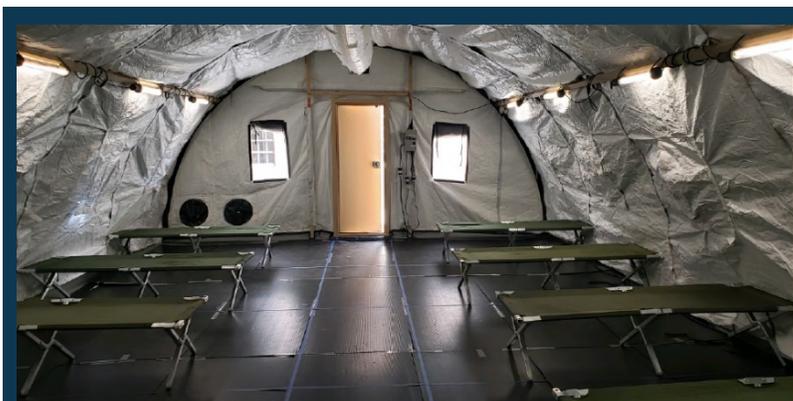
³¹ See BOP, memorandum for All Chief Executive Officers, March 13, 2020, 3.

The BOP's Extension to the Phase Nine Action Plan extended the restrictions through October 31 and provided new guidance on COVID-19 risk mitigation measures. Those measures included the suspension of nonessential staff travel and in-person training, increased accommodation of inmate access to counsel and legal materials, expansion of certain programming and resumption of outdoor recreation for general population inmates, and resumption of unannounced internal BOP compliance reviews. On August 31, the BOP issued a Modification to the Phase Nine Action Plan, which outlined measures to safely resume social visiting. Phase Nine also extended measures outlined in the Phase Eight Action plan, such as enhanced procedures for in-person court trips; inmate intake procedures, which required all

(Cont'd.)

us that the institution implemented social distancing in most areas of the prison on March 14. However, we found that a continual challenge for the institution has been enforcing social distancing among inmates in open dormitory housing areas. On March 21, the institution began providing meals to inmates in one housing unit at a time and limited the number of inmates in its laundry rooms. The outdoor weightlifting equipment was also restricted, and outdoor recreation was limited to one housing unit at a time. FCI Terminal Island did not modify the configuration of its computer lab to promote social distancing until May, but inmates using the computer lab had been housed together, according to institution staff.

Since FCI Terminal Island is a low security facility, its inmates can move more freely than those in higher security facilities. BOP officials, including Terminal Island's Warden, told us that this presented challenges with implementing social distancing measures and mitigating the spread of COVID-19. For example, the BOP Medical Director told us that "open housing units...are the biggest explanatory reason for some institutions having bigger problems than others" and that COVID-19 moved through them "like a wildfire." He emphasized the



Inside 1 of 10 Tents that FCI Terminal Island Received from the Coast Guard to Provide Additional Housing for Inmates

Source: BOP, with OIG enhancement

unique challenge that asymptomatic positive inmates posed for identifying positive cases and said that the BOP's national strategy for guidance to institutions was to focus on identifying symptomatic inmates, medically isolating them, and quarantining inmates who had been exposed. To alleviate these concerns, on April 21 FCI Terminal Island secured additional housing for inmates, obtaining 10 tents from the U.S. Coast Guard, converting the Visitor Room into a recovery area, and transforming the on-site UNICOR factory into a housing area. Terminal Island was able to add a total of 203 beds as a result of these measures.³²

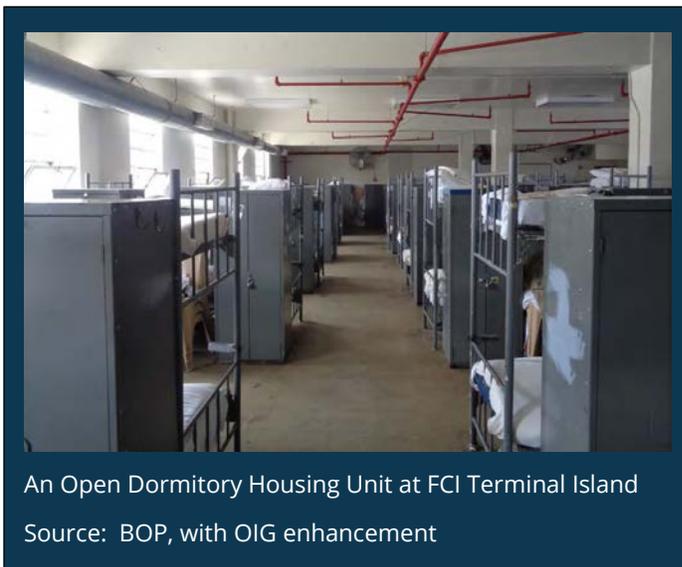
Staff told us that, after they tested all inmates for COVID-19 between April 23 and 27, they were able to separate negative and positive inmates into distinct housing units using the additional spaces. They told us that this separation helped them manage spacing issues resulting from the

inmates to be tested for COVID-19 on arrival at an institution; and inmate movement between BOP institutions. On November 1, the BOP extended Action Plan Phase Nine and its Modification until further notice.

³² The converted Visitor Room provided 35 additional beds, the UNICOR factory added 68, and the 10 Coast Guard tents added 100 beds total. Federal Prison Industries, called UNICOR, is a government corporation within the BOP that provides employment to staff and inmates at federal prisons throughout the United States.

quarantine and medical isolation procedures and adhere to guidelines for proper social distancing.³³ The Warden told us that the institution housed positive inmates, who did not need to practice social distancing, primarily in the open dormitory units, where it is more difficult to practice social distancing. The institution moved most of the negative inmates into the alternative housing areas, with cots 6 feet apart to ensure proper social distancing.

Staff also told us that the institution took several actions to implement social distancing, including having inmates sleep head to foot, which the CDC recommended for increasing distance between inmates' faces while they are in bunk beds, and placing empty bunks between occupied bunks. However, in an April 5 communication to staff, before inmates were separated into negative and positive housing units, the Warden stated that one housing unit, the J Unit, which contains an open dormitory housing area, could not practice social distancing. At the time of her communication, the institution had dedicated the J Unit to quarantining inmates who potentially had been exposed to COVID-19 by a staff member working in their unit.



An Open Dormitory Housing Unit at FCI Terminal Island
Source: BOP, with OIG enhancement

We believe that the J Unit's inability to properly socially distance was a major challenge because staff did not yet know which inmates there were positive or negative; social distancing would have been critical to ensuring that any potentially positive inmates did not infect others. Institution officials told us that the unit holds 162 inmates and that 38 inmates (23.5 percent) who were quarantined there later tested positive.³⁴ Contrary to the Warden's statement in her April 5 communication to staff indicating that the J Unit could not practice social distancing, institution officials later told us that all units were always able to practice social distancing. However, they stated that enforcement of social distancing in open dormitory housing units is problematic because inmates must regulate themselves and, should the inmates not comply with social distancing training or directives, staff have limited remedial options because they cannot secure

³³ According to the CDC, isolation is used to separate people who: (1) are infected with the virus (those who are sick with COVID-19 and those who are asymptomatic), (2) are awaiting test results, or (3) have COVID-19 symptoms from people who are not infected. BOP officials told us that staff are not isolating inmates who are awaiting test results unless they are symptomatic. In a correctional setting, the CDC recommended using the term "medical isolation" to distinguish the isolation from punitive action. See CDC, "Interim Guidance."

³⁴ After completing universal testing, the institution designated the J Unit, along with one additional housing unit (G Unit), the UNICOR factory, and 6 tents, as negative units. A staff member told us that the G Unit's layout is similar to the J Unit's open dormitory area, but that it has rows of cells with solid doors.

the inmates in individual cells. Over 40 percent of Terminal Island staff survey respondents (26 of 61)—prior to the separation of inmates by negative and positive status—indicated that there was a greater need for social distancing measures for both staff and inmates.

Further, one staff member told us that social distancing is impossible to enforce in the computer lab because the computers there are only 2 feet apart. On March 13, the institution began following a modified lockdown protocol in which inmates moved throughout the facility together as units, including for meals, recreation, and accessing computers. About 2 weeks later, on April 1, which was 4 days prior to the facility's first positive case, the institution limited inmate movement further by issuing a "Stay in Shelter" order for all inmates as part of Phase Five of the BOP's COVID-19 Action Plan (extended until further notice in accordance with the BOP's November 1 Extension to the Phase Nine Action Plan).³⁵ During this time, inmates in groups of 10 were still able to access the computer lab, located in a separate building.³⁶ Terminal Island officials told us that, because inmates in the open dormitory housing areas were not consistently social distancing because they were housed together, the officials did not believe that allowing groups of 10 inmates from the same housing unit to use the computer lab created any additional risk of COVID-19 transmission. The institution ultimately suspended all inmates' access to computers and telephones on April 17, briefly allowed access from May 25 until the BOP instituted a "national lockdown" on June 2, and then restored access again on June 15. Institution officials told us that since May 25, aside from the lockdown, inmates have been using alternating workstations in the computer lab to promote social distancing and that they are considering placing computers within the housing units to allow inmates access but limit cross-contamination. We further discuss access to the computer lab in the Computers, Telephones, and Legal Communication section of this report.

Limiting Staff Movement

Phase Five of the BOP's COVID-19 Action Plan, issued on March 31, less than 1 week before the first COVID-19 case at FCI Terminal Island, directed institutions to limit staff movement to their

³⁵ The BOP enacted a "14-day nationwide action to minimize movement to decrease the spread" of COVID-19 in its Phase Five Action Plan effective April 1 and extended this action in its Phase Six, Seven, Eight, and Nine Action Plans. Some institutions chose to describe this action as a "Shelter in Place," "Stay in Place," or "Stay in Shelter." In announcing this action, the BOP noted, "the BOP's actions are based on health concerns, not inmate destructive behavior." See Appendix 3 for a timeline of the BOP's guidance to its institutions.

³⁶ Terminal Island documentation indicates that the institution initially suspended TRULINCS access on April 5 only for inmates whom the institution had quarantined because of their potential exposure to COVID-19.

The Trust Fund Limited Inmate Computer System (TRULINCS) is a secure system used by inmates to initiate and track financial transactions, as well as to access pay-as-you-go services such as limited messaging (email).

BOP, memorandum for All Chief Executive Officers, March 31, 2020.

assigned posts when possible.³⁷ Terminal Island officials told us that the institution implemented steps to help prevent the spread of COVID-19 by limiting staff movement but that some movement was necessary.

FCI Terminal Island's Captain told us that, to mitigate the spread of COVID-19 within the institution, the institution stopped doing staff housing unit rotations that typically occur every quarter. A Nurse Practitioner told us that, in order to limit movement in and out of the prison, which includes both staff and inmates, the institution also restricted inmate medical trips to only those that could not be delayed.

Despite these efforts, institution officials told us that staff moved between positive and negative inmate housing units when necessary, such as when needing to cover an assignment or post when another staff member was absent. For example, the Captain told us that, although institution management was trying to avoid moving staff from negative to positive units, sometimes it was necessary to do so and that "at some point everyone has been exposed to a positive [inmate]." Moreover, a TDY staff member at FCI Terminal Island submitted a complaint to the OIG stating that staff sometimes received calls on their radios to report to different areas of the institution. The OIG received another complaint from a staff member that stated that the institution assigned a Correctional Officer to a positive unit, and then 1 hour later to a negative unit, and that this type of movement occurs often.

Quarantine Measures

According to FCI Terminal Island documentation and an interview with a Terminal Island official, the institution established quarantine and medical isolation procedures on March 13, the day that the BOP directed institutions to do so. Terminal Island staff told us that the institution used the Special Housing Unit (SHU) to quarantine incoming inmates and those transferring out of the facility to home confinement.³⁸ Additionally, according to FCI Terminal Island documentation we received, the institution converted one housing unit that could house up to 33 inmates into a medical isolation unit in April. A Terminal Island official told us that the institution also used the Visitor Room for medical isolation overflow before converting it to a recovery housing area. In addition, an official told us that the institution housed some positive inmates requiring close observation in a Short Stay Unit, which was constantly staffed by Registered Nurses. Officials also said that between April 20 and May 6 the institution used its Physical Therapy Room to quarantine or medically isolate three inmates with physical disabilities who could not be housed elsewhere.

³⁷ See BOP, memorandum for All Chief Executive Officers, March 31, 2020. In subsequent guidance, the BOP reinforced staff social distancing by mandating that staff would not change post assignments unless to fill a vacant post and by permitting changes in shift hours only if the location remained the same. See BOP, memorandum for All Chief Executive Officers, April 13, 2020.

³⁸ The BOP defines SHUs as "housing units in Bureau institutions where inmates are securely separated from the general inmate population, and may be housed either alone or with other inmates." See BOP Program Statement 5270.11, Special Housing Units, November 23, 2016, www.bop.gov/policy/progstat/5270.11.pdf (accessed January 8, 2021).

They told us that the institution routinely accommodates the physical challenges of its inmate population and that inmates placed in quarantine or medical isolation had consistent access to medical care.³⁹

Although institution staff established these various quarantine areas according to BOP guidance, Terminal Island staff survey responses indicated that the institution may not have been quarantining inmates according to BOP standards.⁴⁰ For example, almost half (29 out of 63) of the Terminal Island staff survey respondents stated that symptomatic or COVID-19 positive inmates had not been sufficiently segregated from other inmates and almost half (29 out of 61) also said that the institution needed more space to quarantine inmates.⁴¹ In addition, one staff survey response stated that the institution was moving sick inmates to units with healthy inmates and another said that it was not isolating inmates who had symptoms, including a fever. Further, those who responded to our survey were less likely than BOP-wide institution respondents to report that incoming inmates were quarantined separately from inmates who were exposed to COVID-19. We also noted that one of the alternative housing areas that the institution added to accommodate the need for quarantine did not meet BOP standards for housing on several occasions (for this discussion, see the [Complaints About the UNICOR Factory Alternative Housing Area](#) section below).

Institution staff also told us that the institution did not at any point move inmates who had not yet been tested for COVID-19 to a housing unit with inmates whose infection status was also unknown, suspected positive, or confirmed positive. However, the OIG received a complaint from an inmate stating that inmates from different housing units, who potentially had been exposed to COVID-19 by the staff member working in their units, were all placed in one quarantine area. The institution quarantined inmates who were exposed to the staff member prior to conducting universal testing (for a discussion of universal testing, see the [Universal Inmate Testing](#) section above). Institution officials told us that, because there was not enough space to house the exposed inmates individually, they housed them together, in accordance with CDC guidance.⁴²

³⁹ The OIG received several complaints from an inmate stating that the institution denied him medical care while he was in the SHU and, being physically disabled, he was unable to dress himself.

⁴⁰ Quarantine is used to keep someone who might have been exposed to COVID-19 away from others for 14 days to help prevent the spread of disease and determine whether the person develops symptoms. In a correctional setting, the CDC recommended, ideally, quarantining an inmate in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the inmate should be placed in medical isolation and evaluated for COVID-19. See CDC, "Interim Guidance."

⁴¹ The OIG survey period concluded prior to the institution's movement of inmates to alternative housing areas, and the movement may have alleviated some of these concerns.

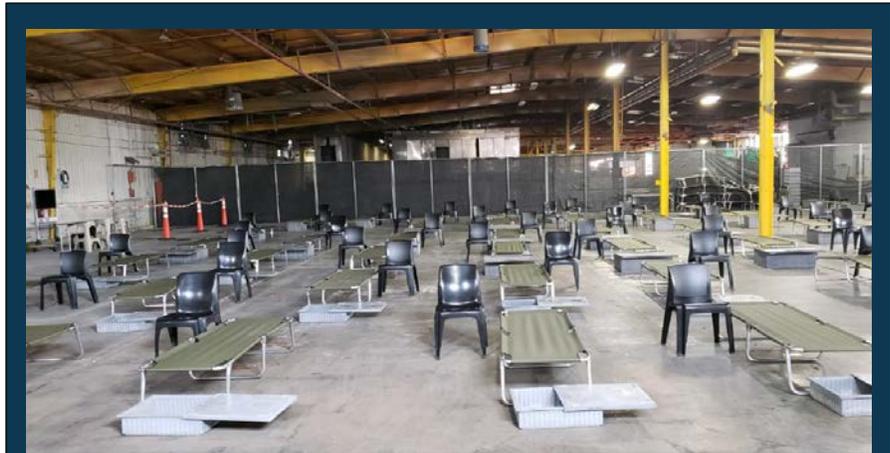
⁴² The CDC's "Interim Guidance" recommended that correctional facilities "make every possible effort to individually quarantine close contacts of individuals with confirmed or suspected COVID-19" and that, "if the ideal choice does not exist in a facility, use the next best alternative as a harm reduction approach." In such cases, the guidance provided for cohorting quarantined close contacts.

Conditions of Confinement

Complaints About the UNICOR Factory Alternative Housing Area

We received several complaints about one of the alternative housing areas and reviewed documentation, which FCI Terminal Island provided the OIG, indicating that it did not meet BOP standards for housing inmates:

- A survey response from a staff member, as well as one complaint to the OIG, reported that the UNICOR factory had no air conditioning or heating, and an additional complaint reported no heating. Terminal Island officials told us that on April 28 staff placed “swamp coolers,” which help cool the air, inside the UNICOR factory. Staff confirmed that the



FCI Terminal Island Converted UNICOR Factory

Source: BOP, with OIG enhancement

factory has no heating and provided us with documentation of temperature checks that staff conducted. Based on this documentation, we found that between April 21 and May 18 the temperature at the UNICOR factory fell below the BOP’s target heating season threshold (68 degrees) in 11 instances, the majority of which were during the first week that the factory housed inmates.⁴³ The coldest temperature was 58 degrees. Additionally, the temperature went above the BOP’s target cooling season threshold (76 degrees) in seven instances, with the warmest temperature reaching 84 degrees.⁴⁴

⁴³ BOP Program Statement 4200.12, BOP Facilities Operations Manual, Building Energy Management: Temperature Set Points During Seasons, July 18, 2017, 127–128, www.bop.gov/policy/progstat/4200.12.pdf (accessed January 8, 2021).

⁴⁴ Program Statement 4200.12 provides: “Temperature set points will be targeted to 76 degrees Fahrenheit in the cooling season and 68 degrees Fahrenheit in the heating season. All spaces will be maintained as close to the targeted set point as possible. However, due to issues such as the age of the cooling and heating systems and the inability to control temperatures in individual spaces, occupants may experience a range of temperatures in their space that is a few degrees on either side of the targeted set point.”

The federal Occupational Safety and Health Administration (OSHA) views temperature and humidity conditions generally as “a matter of human comfort rather than hazards that could cause death or serious physical harm.” However, similar to BOP standards, OSHA recommends that indoor workplace temperatures be in the range of 68–76 degrees. Richard E. Fairfax, Director, Directorate of Enforcement Programs, Occupational Safety and Health Administration, memorandum

(Cont’d.)

- In addition, two complaints that the OIG received stated that pigeons were flying inside the UNICOR factory and sullyng inmate cots. Terminal Island staff told us that they inspected the factory twice per day, as well as the tents, to ensure sanitary conditions and that they did find two pigeons, which the Safety Department ensured exited the factory.
- Three complaints also stated that the UNICOR factory was infested with rats, but staff told us that they had not seen evidence of rats. Staff told us that the institution had Correctional Officers in the alternative housing units 24 hours per day and that the officers relayed all concerns to the Safety Department.
- We received a complaint from an inmate alleging that the institution gave inmates housed in the converted UNICOR factory access to showers only twice per week for 5 minutes at a time. Under normal operating conditions, the BOP's Inmate Admission and Orientation Handbook guarantees inmates the right to shower "regularly." However, Phase Five of the BOP's COVID-19 Action Plan required institutions to afford access to showers only three times per week. Terminal Island officials told us that inmates in the UNICOR factory had access to showers 24 hours per day.

Finally, one complaint from an inmate regarding the tents stated that they lacked running water and that the conditions were less hygienic than in the regular housing units. Terminal Island officials told us that inmates in the alternative housing units always had access to running water, soap, showers, and toilets, though most inmates in the tents were permitted to shower only three times per week using portable showers.⁴⁵

for Regional Administrators State Plan Designees, OSHA Policy on Indoor Air Quality: Office Temperature/Humidity and Environmental Smoke, February 24, 2003.

⁴⁵ On June 25, an institution official told us that all inmates who were housed in the UNICOR factory, tents, and Visitor Room had returned to their housing units. The inmates who were COVID-19 positive at the time were being housed in either the Short Stay Unit or in the upstairs section of one of the regular housing units. Inmates who needed to quarantine before being released were being housed in the downstairs section of the housing unit.

See the text box below for information regarding a class action lawsuit that was filed on behalf of Terminal Island inmates.

Terminal Island Inmates v. Federal Bureau of Prisons Director and FCI Terminal Island Warden

On May 16, 2020, on behalf of inmates at FCI Terminal Island, the American Civil Liberties Union Foundation of Southern California, the Prison Law Office, and the law firm Bird Marella filed a class action lawsuit in the Central District of California, Western Division. Among other allegations, the lawsuit claimed that the institution was overcrowded even with the addition of alternative housing and, therefore, attempts to socially distance were inadequate; that it did not properly quarantine and isolate inmates who had been exposed to COVID-19; and that the UNICOR factory was infested with vermin and lacked potable water, hot water for showers, and heating. The lawsuit stated that these conditions amounted to a violation of the Eighth Amendment to the U.S. Constitution. The lawsuit asked for the release of Terminal Island inmates with certain medical conditions and, for all other inmates, that the institution ensure proper social distancing and quarantine, availability of hygiene and cleaning supplies and clean laundry, and adequate PPE and medical care.

On July 14, the court denied the request to have inmates released but made an initial finding that the overcrowding at the institution amounted to a constitutional violation. Before making a final ruling, the court ordered that an independent medical expert conduct a site visit and submit a report regarding the prison's conditions and its handling of COVID-19. The court-ordered independent medical expert submitted a report on August 24. In September, the parties entered into mediation. As of January 2021, the inmates had requested an additional site visit and testing of both Terminal Island inmates and staff. Mediation was unsuccessful and the parties each proposed a timeline going forward, including trial dates.

Source: *Wilson et al., Plaintiff-Petitioners v. Ponce, et al., Defendant-Respondents*, Case No: 2:20-cv-04451, May 16, 2020, www.prisonlaw.com/wp-content/uploads/2020/05/20.05.16-Doc-1-Terminal-Island-Complaint.pdf (accessed January 8, 2021), other court documents, and the American Civil Liberties Union Foundation of Southern California.

Computers, Telephones, and Legal Communication

On March 31, the BOP issued a memorandum instructing institutions to afford, "to the extent practicable," limited group gatherings for inmates to access telephones and TRULINCS and that regular cleaning of high-touch surfaces should be emphasized to the inmate population. Terminal Island officials told us that on April 1 staff started cleaning keyboards and mice after each computer use until the institution suspended access on April 17, as discussed below.

On April 5, the Warden announced in a communication to staff that the institution was suspending TRULINCS access for inmates whom the institution had quarantined because of their potential exposure to a staff member who had tested positive for COVID-19. On April 17, Terminal Island officials suspended all inmates' access to computers and telephones.⁴⁶ Terminal Island officials told us that they first posted a public notice regarding the suspension of inmates' telephone and email usage to the institution's webpage on April 22. We received several complaints from

⁴⁶ One staff member told us that the institution was unable to properly sanitize computer and telephone equipment to prevent the spread of COVID-19 prior to access being suspended on April 17.

inmates' family members concerning their lack of communication with inmates and institution staff. Staff told us that the institution encouraged inmates to communicate using U.S. Postal Service mail to offset the restrictions placed on telephone and email communications.

A Terminal Island official provided the following reasons why the institution suspended TRULINCS access facility-wide on April 17:

- In the 3 areas where computers are located, which we separately learned contain 10, 14, and 15 computers, respectively, the computers are 2 feet apart and social distancing is impossible to enforce.
- Because these areas are in a different building than the housing units, institution staff would have to move inmates across the facility and thereby risk inmates' unnecessary potential exposure to COVID-19.
- Staff was concerned that improperly sanitized computer equipment could transmit COVID-19. The institution was unable to sanitize the computer equipment properly or after each inmate use, and institution staff believed that the cleaning solution would damage the keyboards.⁴⁷

One Terminal Island survey respondent raised a concern about the computer lab, stating that allowing inmates from all housing units to share the same computers contributed to the spread of COVID-19 in the institution.

Another official told us that the institution also restricted inmate access to telephones beginning April 17 due to similar concerns about damaging their high-touch surfaces when cleaning them and the institution's inability to properly sanitize them after each inmate use. Institution staff told us that on May 9, nearly 3 weeks after inmates were last allowed to make telephone calls, the institution restored telephone access to the entire inmate population consistent with CDC guidance and after FCI Terminal Island declared many of the inmates who had been infected with COVID-19 to be recovered. They said that staff ensured that telephones were cleaned between each use and that they developed a schedule that allowed inmates to make calls every other day.

On March 13, the BOP directed institutions to suspend all legal visits for 30 days, which was subsequently extended until October 31 and, on November 1, until further notice.⁴⁸ During our

⁴⁷ On April 6, the BOP issued to all staff a memorandum that included an outline of the steps necessary to disinfect a high-touch surface.

⁴⁸ The BOP guidance permitted institutions to accommodate case-by-case requests for legal visits. Further, the guidance stated that institutions should offer video teleconferencing as an alternative to in-person legal visits. BOP, memoranda for All Chief Executive Officers, March 13, 2020; Coronavirus (COVID-19) Phase Nine Action Plan, August 5, 2020; Coronavirus (COVID-19) Extension to Phase Nine Action Plan, November 1, 2020.

(Cont'd.)

inspection, Terminal Island staff told us that the institution complied with this directive. They also said that the institution facilitated inmates' legal communication to the extent possible, but one staff member told us that legal communication was limited. Officials told us that the institution has always been able to accommodate legal calls, although during the pandemic they were not as easily conducted as during normal operations, as well as legal proceedings. However, one staff member told us that legal communication was limited due to the aforementioned concerns about properly sanitizing communication devices and concerns about ensuring the space necessary for social distancing. A complaint that an attorney representing several inmates submitted to the OIG on April 20 also stated that the institution was unable to grant requests from inmates for legal calls for a period of 3 weeks.

Hygiene and Cleaning Supplies

At the end of March, the Warden notified staff and inmates that the institution had an ample supply of cleaning and sanitation supplies. Institution officials and one regional official also told us during interviews that the institution had a sufficient supply of cleaning and sanitation supplies. FCI Terminal Island officials told us that they: (1) purchased several different types of hand sanitizers and provided them to all housing units daily; (2) walked around and issued hand sanitizers to staff and offered via email to provide additional supplies; and (3) made hand sanitizer bottles available to staff, upon entering the facility, for use at their work sites. However, respondents to our survey expressed concerns about hygiene and cleaning supplies, as follows:

- Fifty-one percent of FCI Terminal Island staff survey respondents (31 out of 61) identified additional hygiene supplies for staff as an immediate need.
- Forty-one percent of staff (26 out of 63) disagreed when asked whether staff were provided a sufficient supply of hand sanitizer.
- Thirty-four percent (21 out of 61) said that more hygiene supplies were needed for inmates.
- Thirty-three percent (20 out of 61) also cited more cleaning supplies as an immediate need for the institution.

Further, an April 5 communication to staff from the Warden indicated that the institution had not yet begun sanitizing shared staff equipment such as radios and keys. Nearly half of Terminal Island survey respondents disagreed that the institution was regularly cleaning and sanitizing shared staff equipment such as radios and keys; however, Terminal Island officials told us in May that staff did so daily.

The Action Plans specified that legal visits could be approved on a case-by-case basis and that inmate telephone minutes would be increased to compensate for the temporary prohibition on in-person visits. While these initial restrictions were to last 30 days, subsequent guidance extended them until further notice. BOP, memoranda for All Chief Executive Officers, March 13, 2020; May 18, 2020; and November 1, 2020.

Personal Protective Equipment

Between January 31 and April 6, the BOP issued seven policy directives and guidance documents intended to help its institutions implement evolving CDC guidance concerning the use of PPE and face coverings in various scenarios.⁴⁹ On March 26, the BOP began requiring all non-bargaining unit staff to be fit tested for N95 respirators, and, on March 31, the BOP mandated that all staff be fit tested.⁵⁰ On April 6, in response to revised CDC guidance on April 3 advising that face coverings should be worn in public settings where social distancing measures are difficult to maintain, the BOP said that it would “[issue] surgical masks as an interim measure to immediately implement CDC guidance, given the close contact environment of correctional institutions.”⁵¹

We found that FCI Terminal Island complied with initial and subsequent BOP directives implementing the CDC’s guidance regarding the use of PPE in correctional settings, although a complaint from a TDY staff member, survey responses from Terminal Island staff, and one staff interview indicated that having adequate PPE was a challenge for staff and inmates. The OIG received a complaint from a TDY staff member, which led us to explore N95 respirator fit testing and to request fit test records. Terminal Island records from April 20 indicate that the institution fit tested all staff for N95 respirators.⁵² Terminal Island officials also told us that they issued PPE to TDY staff on their initial date of assignment at the institution. However, our analysis of the fit test documentation showed that TDY staff were not fit tested until nearly 6 days after their arrival, on average, after Terminal Island discovered that the institution from which they came had not fit tested them. Documentation also showed that one staff member, a medical employee on TDY at the institution who, staff told us, was there for 2 days, was never fit tested. In addition, about 36 percent of TDY staff (28 out of 77) were fit tested a week or more after arrival, including a Clinical Director who was not fit tested for 2 weeks. Twelve medical staff in total, including three who were fit tested a week or more later and one staff member responsible for conducting temperature checks, were fit tested 2 days or more after arrival. Only 22 percent of TDY staff

⁴⁹ The CDC defines PPE as “a variety of barriers used alone or in combination to protect mucous membranes, skin, and clothing from contact with infectious agents.” Depending on the situation, PPE may include gloves, surgical masks, N95 respirators, goggles, face shields, and gowns. Cloth face coverings are intended to keep the wearer from spreading respiratory secretions when talking, sneezing, or coughing. The CDC does not consider cloth face coverings to be PPE.

⁵⁰ A commonly used respirator in healthcare settings is a filtering facepiece respirator (commonly referred to as an N95 respirator), which is a disposable half facepiece respirator that filters out particles. N95 fit testing ensures that the respirator has a tight seal on the wearer’s face in order to protect the wearer from airborne pathogens.

⁵¹ BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Update–Use of Face Masks, April 6, 2020, 3. For more information, see CDC, “[Considerations for Wearing Masks](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html),” April 3, 2020 (updated December 18, 2020), www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html (accessed January 8, 2021). The CDC recommended the use of “simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others.”

⁵² Terminal Island officials stated that the institution also provided N95 respirators to staff in medical isolation units and that medical staff had access to foot coverings. Terminal Island officials also told us that all staff received PPE training and that they were knowledgeable about procedures for using PPE.

(17 out of 77) were fit tested either the day that they arrived at FCI Terminal Island or at another institution prior to their arrival at Terminal Island.

Documentation from FCI Terminal Island reflected that on April 6, the date of the BOP memorandum, the institution started issuing surgical masks to all staff and inmates on a weekly basis and stopped issuing them to inmates on April 27, when they received cloth masks.

The Warden and other Terminal Island officials we interviewed told us that institution staff had consistent access to adequate PPE, including gloves, surgical masks, gowns, and face shields.⁵³ However, in response to the OIG survey in late April, 60 percent of Terminal Island survey respondents (38 out of 63) disagreed when asked whether the institution had provided a sufficient supply of masks to staff. Further, nearly 84 percent (51 out of 61 respondents) cited additional PPE as an immediate need for staff; this was 16 percentage points higher than respondents from all BOP institutions. Nine Terminal Island survey respondents and one Terminal Island interviewee also stated that the institution did not allow staff to wear personally owned masks prior to the institution issuing surgical masks to them after the April 6 BOP memorandum.⁵⁴ In contrast, FCI Terminal Island officials and one staff member we interviewed told us that staff were allowed to wear personally owned masks.

Terminal Island officials told us that the institution initially issued two face coverings to inmates and continuously replaced them as needed and that gloves were available for inmate orderlies to use when cleaning. However, survey responses by Terminal Island staff indicated that inmate PPE had been insufficient. Nearly 51 percent of Terminal Island survey respondents (32 out of 63) disagreed when asked whether the institution provided a sufficient supply of masks to inmates, and 57 percent (35 out of 61) cited additional PPE for inmates as an immediate need; this was 18 percentage points higher than respondents from all BOP institutions.

⁵³ A Nurse Practitioner told us that Terminal Island initially issued kits containing a gown, gloves, a surgical mask, and later an N95 respirator to staff assigned to the community hospital. In response to the OIG survey, one Terminal Island staff member told us that, at first, staff working at the hospital received no PPE despite there being active COVID-19 cases at the hospital and that, when they did receive a mask, it was the incorrect type.

⁵⁴ One Terminal Island staff survey response stated that Terminal Island management denied staff's request to wear personally owned masks because it "would scare the inmates."

The Department's guidance directed the wearing of cloth face masks or coverings within common area DOJ facilities and workspaces. This guidance stated that staff "who have not been issued or do not have their own PPE should fashion face coverings from common materials, such as clean t-shirts or bandanas." Deputy Attorney General, U.S. Department of Justice, memorandum for Department of Justice Employees, Use of Face Coverings in Department of Justice Workplaces, April 14, 2020.

Medical Capacity and Response

As of March 11, FCI Terminal Island had 32 staff vacancies out of 314 total authorized positions (10 percent).⁵⁵ Its Health Services Division had 5 of those vacancies, out of 24 total authorized positions, for a vacancy rate of nearly 21 percent. These vacant positions included a Nurse, Mid-Level Practitioner, Psychiatrist, Paramedic, and Health Services Assistant. In early April, in the days after the first Terminal Island staff and inmate cases, the total number of vacancies remained the same but the institution filled the previously vacant Nurse position and a Financial Management position became vacant. According to Terminal Island records, between April 13 and May 19, the institution received 20 TDY medical staff. We were advised by the Regional Health Systems Administrator that some new hiring at FCI Terminal Island improved the institution's ability to provide inmate care. For example, she told us that the daily COVID-19 screenings were time-consuming and that the regional office helped FCI Terminal Island hire contract nurses to assist in this task.⁵⁶

Terminal Island medical staff told us that they were able to ensure proper patient care despite being initially understaffed due to preexisting vacancies and staff being on leave.⁵⁷ A Nurse Practitioner told us that staffing had been the biggest challenge in the Health Services Division during the COVID-19 outbreak but that the arrival of TDY medical staff, which the Clinical Director told us included a Medical Asset Support Team, was helpful in managing inmate health needs.⁵⁸ The Nurse Practitioner said that, for the 2 weeks prior to the Medical Asset Support Team's arrival, providers in the clinic were working 12- or 16-hour days due to short staffing.

In late April, 70 percent of respondents (43 out of 61) of the OIG's staff survey indicated that the institution was in immediate need of additional staff to cover posts, which is nearly 32 percentage points higher than respondents from all BOP institutions. We noted that, during that time period, only 36 percent of the TDY staff who would ultimately assist the institution had arrived at the facility.

⁵⁵ The World Health Organization declared COVID-19 a pandemic on March 11.

⁵⁶ The Regional Health Systems Administrator also told us that, when an institution has vacancies that it cannot fill, the regional office seeks contractors. A 2016 OIG report found that, faced with continuous understaffing, the BOP used TDY assignments and contracted medical providers to ensure that it could continue to provide inmates with necessary medical care. However, both of these options come with additional costs. See DOJ OIG, *Review of the Federal Bureau of Prisons' Medical Staffing Challenges*, Evaluation and Inspections Report 16-02 (March 2016), www.oig.justice.gov/press/2016/2016-03-28.pdf.

⁵⁷ The Terminal Island Clinical Director told us that the BOP hiring process is a challenge because of the amount of time that it can take, which the National Health Systems Administrator also told us. The Clinical Director said that he hoped to staff one or two additional Paramedic positions and one or two Mid-Level Provider positions in the future. The Warden told us that the institution was in the process of hiring an additional provider and five Nurses.

⁵⁸ The Nurse Practitioner told us that TDY health staff at Terminal Island included Health Services Administrators, Physicians, a Paramedic, a Regional Infectious Control Nurse, Nurse Practitioners, and Nurses.

Medical staff told us that inmates who tested positive for COVID-19 received adequate medical care. The Warden told us that TDY medical staff assistance allowed the institution to quickly meet the needs of the COVID-19 infected inmates. According to institution officials, as of May 13, FCI Terminal Island had treated 660 inmates for COVID-19 while a community hospital had treated 41 inmates. The Terminal Island Clinical Director told us that the institution has a good relationship with the community hospital and experienced no issues since sending COVID-19 positive inmates there for treatment.

Staff also told us that the institution was managing inmate mental health well and ensuring continuity of care for its chronic care inmates during the outbreak. For example, when the institution began medically isolating inmates, we were told that psychology staff would visit and evaluate them in medical isolation. However, one survey respondent stated that, given the institution's Care Level 3 mission to house inmates with medical and mental health conditions and its two Residential Drug Abuse Programs, inmates needed better and more frequent access to mental health services and alternative activities during the COVID-19 pandemic. A Nurse Practitioner told us that, while the institution had been able to ensure continuity of care for its many chronic care inmates, doing so had been challenging during the COVID-19 outbreak. For example, the Nurse Practitioner stated that the clinic had to sanitize surfaces between inmate visits and ensure proper social distancing among inmates, especially among those who were positive and those who were negative, while the four medical providers each could have 8 to 12 inmates in their offices per day.

We also learned that the pandemic created a staffing challenge for the institution with regard to security at the community hospital for hospitalized inmates. A Terminal Island Lieutenant told us that the institution used members of a Disturbance Control Team composed of TDY staff that the institution requested from the BOP to secure inmates at the hospital due to COVID-19. Terminal Island documentation shows that the institution received 34 TDY custody staff for that effort. The Lieutenant told us that, prior to the team's arrival, the hospital security requirements created an urgent need for more staff, and the Warden stated that 16-hour shifts had become standard during that time whenever the incoming shift was shorthanded. Institution documentation from the first week of March indicated that there were 5 vacancies out of 119 authorized custody positions. The Lieutenant also said that the creation of a dedicated hospital wing, which we learned the institution used from April 20 to May 16, reduced the need for additional staff at the hospital.

Use of Home Confinement and Compassionate Release Authorities

In response to the COVID-19 pandemic, the Attorney General authorized the BOP, consistent with pandemic-related legislation enacted in late March 2020, to reduce the federal prison population

by transferring sentenced inmates from prison to home confinement.⁵⁹ In an April 3 memorandum, the Attorney General also directed the BOP to “immediately maximize appropriate transfers to home confinement of all appropriate inmates” at those prisons “where COVID-19 is materially affecting operations.”⁶⁰ The BOP assigned to its Central Office the responsibility for developing guidance implementing the Attorney General’s directives and initially identifying sentenced inmates who would be considered for possible transfer to home confinement.

Over the next 5 weeks, the BOP Central Office issued three guidance memoranda and sought to assist institutions in identifying eligible inmates by providing them with rosters of inmates that the Central Office determined might be eligible for transfer pursuant to the BOP’s guidance. The Central Office’s initial policy guidance in early April was focused on transferring to home confinement those inmates who faced the greatest risks from COVID-19 infection, including elderly inmates. In late April, the BOP began to expand its use of home confinement to cover inmates other than those who were elderly or at high risk for serious illness due to COVID-19, as determined by CDC guidance. In addition, the BOP allowed institution Wardens to identify inmates otherwise ineligible for home confinement under BOP Central Office guidance criteria and to seek approval from the Central Office to transfer those inmates to home confinement.

During the period from April 4 to May 29, the BOP Western Regional and Central Offices sent FCI Terminal Island 11 rosters identifying 91 inmates who were potentially eligible for transfer to home confinement. Terminal Island staff reviewed the inmates on the rosters to determine whether each inmate met the criteria for home confinement and had a viable home release plan. This review process, coupled with the 14-day prerelease quarantine period the BOP required to ensure that inmates placed into a community did not have COVID-19, resulted in at least 3 to 4 weeks between the time the Central Office identified an inmate for transfer consideration to the date the inmate was actually transferred to home confinement. Terminal Island staff also decided to review the institution’s entire inmate population—not just the 91 inmates on the rosters they received from the Western Regional and Central Offices—for home confinement consideration and initially determined that 275 inmates in total were eligible. By June 1, 8 weeks after receiving the initial roster from the Central Office, FCI Terminal Island had transferred 23 inmates to home confinement.

Attorney General and BOP Memoranda Regarding the Use of Home Confinement

On March 26, 2020, the Attorney General directed the BOP to prioritize the use of home confinement as a tool to combat the dangers that COVID-19 posed to “at-risk inmates who are

⁵⁹ Home confinement, also known as home detention, is a custody option whereby inmates serve a portion of their sentence at home while being monitored.

⁶⁰ William P. Barr, Attorney General, memorandum for Director of Bureau of Prisons, [Increasing Use of Home Confinement at Institutions Most Affected by COVID-19](https://www.justice.gov/file/1266661/download), April 3, 2020, www.justice.gov/file/1266661/download (accessed January 8, 2021), 1.

non-violent and pose minimal likelihood of recidivism.”⁶¹ At the time, the BOP had the authority to transfer an inmate to home confinement for the final months of his or her sentence, subject to the following statutory limitations: (1) for any inmate, the shorter of 10 percent of the term of his or her imprisonment or 6 months; (2) for an inmate age 60 or older, up to one-third of his or her sentence, if he or she met certain additional criteria; and (3) for a terminally ill inmate, any period of time, if he or she met certain additional criteria.⁶² The Attorney General’s memorandum identified a “non-exhaustive” list of factors that the BOP should consider in determining whether to transfer an inmate to home confinement. Those factors included:

- the age and vulnerability of the inmate to COVID-19, based on CDC guidelines;
- the security level of the institution where the inmate was currently housed, with priority given to those in minimum and low security facilities;
- the inmate’s disciplinary history, with inmates who engaged in violent or gang-related activity in prison or incurred a BOP violation during the prior 12 months not receiving priority treatment;
- the inmate’s Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) score, with inmates exceeding a minimum score not receiving priority treatment;⁶³
- whether the inmate had a verifiable reentry plan “that will prevent recidivism and maximize public safety”; and
- the inmate’s crime of conviction.

⁶¹ William P. Barr, Attorney General, memorandum for Director of Bureau of Prisons, Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic, March 26, 2020, www.justice.gov/file/1262731/download (accessed January 8, 2021).

⁶² 18 U.S.C. § 3624(c)(2) and 34 U.S.C. § 60541(g)(5)(A). Additionally, federal law allows the BOP Director to seek court approval to modify an inmate’s sentence of imprisonment for “extraordinary and compelling reasons,” which is commonly referred to as “compassionate release” (18 U.S.C. § 3582(c)). As we describe below, following the issuance of the Attorney General’s April 3 memorandum the BOP Director did not need to seek judicial approval under § 3582(c) if he determined that an inmate should be transferred to home confinement.

⁶³ To assess inmates’ recidivism risk, the BOP uses the PATTERN system, which the Department developed in response to the FIRST STEP Act of 2018. The FIRST STEP Act directed the Department to complete its initial risk and needs assessment for each federal inmate by January 15, 2020. Among other things, the assessment calculated inmates’ recidivism risk using a point system that classifies inmates into minimum, low, medium, or high risk categories based on: (1) infraction convictions during current incarceration, (2) number of programs completed, (3) work programming, (4) drug treatment while incarcerated, (5) noncompliance with financial responsibility, (6) history of violence, (7) history of escape, (8) education score, (9) age at time of the assessment, (10) instant violent offense, (11) history of sex offense, and (12) criminal history score. For more information, see Office of the Attorney General, The First Step Act of 2018: Risk and Needs Assessment System—Update (January 2020), www.nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf (accessed January 8, 2021).

The memorandum further required an assessment by the BOP Medical Director, or designee, of the inmate's risk factors for severe COVID-19 illness, the risks of COVID-19 infection at the inmate's prison facility, and the risks of COVID-19 infection at the planned home confinement location.

The following day, on March 27, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which authorized the BOP Director to lengthen the maximum amount of time that an inmate may be placed in home confinement "if the Attorney General finds that emergency conditions will materially affect the functioning of the [BOP]."⁶⁴ The following week, on April 3, the Attorney General issued a memorandum entitled "Increasing Use of Home Confinement at Institutions Most Affected by COVID-19," which found, as provided for in the CARES Act, "that emergency conditions are materially affecting the functioning of the [BOP]."⁶⁵ As a result of that finding, the BOP Director was authorized by the CARES Act to increase the amount of time that inmates could be placed in home confinement. The memorandum instructed the BOP to "immediately maximize appropriate transfers to home confinement of all appropriate inmates" at those prisons "where COVID-19 is materially affecting operations." In assessing inmates for transfer to home confinement, the memorandum stated that the BOP should be "guided by the factors in my March 26 Memorandum, understanding, though, that inmates with a suitable confinement plan will generally be appropriate candidates for home confinement rather than continued detention at institutions in which COVID-19 is materially affecting their operations."

In response to the Attorney General's memoranda, the BOP issued three memoranda, on April 3, April 22, and May 8, 2020. The BOP's April 3 memorandum provided institutions with "sample rosters...to aid in the identification of inmates who may be eligible for home confinement" and stated that eligible inmates "must be reviewed utilizing [the BOP's] Elderly Offender Home Confinement Program criteria and the discretionary factors listed in the [Attorney General's March 26 memorandum]."⁶⁶ As mentioned above, among the discretionary factors were an inmate's vulnerability to COVID-19 and age, based on CDC guidelines, which included people with underlying medical conditions and, during our inspection, included people age 65 years and older and people of all ages with underlying medical conditions.⁶⁷ The April 3 memorandum also stated

⁶⁴ Pub. L. No. 116-136.

⁶⁵ Barr, memorandum for Director of Bureau of Prisons, April 3, 2020.

⁶⁶ The criteria in the BOP's Elderly Offender Home Confinement Program generally mirror those found in § 603 of the FIRST STEP Act, 34 U.S.C. § 60541, and require an inmate to, among other things, be at least 60 years old, have served at least two-thirds of his or her prison sentence, and not have been convicted of a crime of violence or sex offense.

⁶⁷ The CDC states that people with chronic lung disease, moderate to severe asthma, serious heart conditions, severe obesity, diabetes, chronic kidney disease, and liver disease, particularly if not well controlled, are at high risk for severe illness from COVID-19. The CDC's guideline also identifies people who are immunocompromised as being at risk. The guideline states that many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications. While the CDC previously stated that individuals age 65 years and older were more at risk for serious illness, it later modified this guidance to state that risk steadily

(Cont'd.)

that inmates were required to have “maintained clear conduct for the past 12 months to be eligible.” It further provided that pregnant inmates should be considered for placement in home confinement or an available community program.

The BOP’s April 22 memorandum expanded the number of inmates who were eligible for consideration for transfer to home confinement, as authorized by the Attorney General’s April 3 finding pursuant to the CARES Act.⁶⁸ Specifically, the memorandum stated that the BOP was prioritizing for home confinement consideration those inmates who either (1) had served 50 percent or more of their sentence or (2) had 18 months or less remaining on their sentence and had served 25 percent or more. In assessing whether inmates who met the expanded prioritization criteria were candidates for home confinement, the memorandum continued to apply the criteria from the Attorney General’s March 26 memorandum. Additionally, the BOP’s April 22 memorandum continued to provide that pregnant inmates should be considered for placement in home confinement or an available community program. Finally, the BOP’s memorandum allowed a Warden to seek approval from the BOP Central Office to transfer to home confinement an inmate who did not meet the memorandum’s criteria if the Warden determined that transfer was necessary “due to [COVID-19] risk factors, or as a population management strategy during the pandemic.” We note, however, that the April 22 memorandum did not specifically address the instruction in the Attorney General’s April 3 memorandum that the BOP “immediately maximize appropriate transfers to home confinement” at those institutions “where COVID-19 is materially affecting operations” and “that inmates with a suitable confinement plan will generally be appropriate candidates for home confinement rather than continued detention at institutions in which COVID-19 is materially affecting their operations.”

The BOP’s third memorandum, issued on May 8, was generally consistent with its April 22 memorandum, with one specific difference.⁶⁹ The May 8 memorandum permitted inmates to be considered for transfer to home confinement despite having committed certain misconduct in prison in the prior 12 months if in the Warden’s judgment home confinement “does not create an undue risk to the community.” The May 8 memorandum, like the April 22 memorandum, did not specifically address the Attorney General’s instruction that the BOP “immediately maximize appropriate transfers to home confinement” at institutions most affected by COVID-19 or that

increases with age. CDC, “[People at Increased Risk](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html),” updated November 30, 2020, www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html (accessed January 8, 2021).

On November 2, the CDC updated its guidance to distinguish between individuals with certain conditions who are at an increased risk of severe illness and those who might be at an increased risk. CDC “[People with Certain Medical Conditions](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html),” updated December 29, 2020, www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html (accessed January 8, 2021).

⁶⁸ The BOP’s April 22 memorandum rescinded its April 3 memorandum.

⁶⁹ The BOP’s May 8 memorandum rescinded its April 22 memorandum.

inmates at such institutions “with a suitable confinement plan will generally be appropriate candidates for home confinement rather than continued detention.”

OIG Estimate of Terminal Island Inmates Potentially Eligible for Home Confinement Consideration Based on BOP Guidance and Available Authorities

In order to independently assess the number of FCI Terminal Island inmates potentially eligible for transfer to home confinement applying the authorities described above and the BOP guidance criteria, the OIG’s ODA used data from the BOP’s inmate management system, SENTRY. This information did not allow the ODA to replicate every criterion used by the BOP to determine home confinement eligibility and, as a result, in some instances, the ODA used certain proxies. For example, in applying the public safety criteria in the BOP guidance, the ODA considered all inmates in a minimum or low security facility as potentially eligible for home confinement, whereas the BOP considered certain additional public safety factors that may have limited the eligibility of some of those inmates for home confinement consideration. Separately, in estimating the number of inmates who were eligible for transfer to home confinement under 18 U.S.C. § 3624(c)(2) prior to enactment of the CARES Act, the ODA included only those inmates in low security facilities with a remaining sentence of 6 months or less, although the statute applies to all inmates regardless of the security level of the institution where they are incarcerated but limits placement in home confinement to no more than 10 percent of the inmate’s sentence.⁷⁰ Further, in determining the number of inmates who were at high risk of severe illness from COVID-19 and therefore eligible for home confinement consideration under BOP guidance, the ODA included inmates age 65 or older only. Determinations about whether inmates’ specific underlying medical conditions placed them in a high risk category or made them appropriate for transfer were made by the institution based on a case file review, which the OIG did not undertake in connection with our remote inspection.⁷¹

Based on the available data, the ODA estimated that, as of April 12, approximately 585 FCI Terminal Island inmates were potentially eligible for home confinement placement and had met the criteria for consideration under existing authorities and BOP guidance.⁷² By comparison, between April 4 and May 29, the BOP Western Regional and Central Offices identified 91 inmates for home confinement consideration. Terminal Island staff conducted a separate review of the

⁷⁰ The text of 18 U.S.C. § 3624(c)(2) states that “the authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. The [BOP] shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.”

⁷¹ Moreover, according to the BOP’s Administrator of Reentry Services, different institutions may have different interpretations of how severe a medical condition deemed by the CDC as high risk must be for the inmate to be considered eligible for home confinement.

⁷² In addition to the general eligibility criteria described above, BOP officials applied a series of additional criteria, such as presence of an adequate release plan and conduct in the institution, to determine actual eligibility.

institution's entire inmate population and determined, as of June 1, that 275 total inmates met the criteria for home confinement.⁷³ The table below details the ODA's estimated number of inmates eligible for transfer by available authority or BOP guidance factor.

Table

Estimated Number of FCI Terminal Island Inmates Eligible for Transfer to Home Confinement Based on BOP Guidance and Available Authorities

Authority	18 U.S.C. § 3624 Prior to the CARES Act	FIRST STEP Act: Pilot Program for Elderly, Nonviolent Offenders	Post-CARES Act and the Attorney General's April 3 Finding: BOP Implementing Guidance	
Inmate Population	Inmates with a security level of minimum or low with a remaining sentence of 6 months or less	Inmates with a security level of minimum or low who were at least 60 years of age and had served at least two-thirds of their sentence	Inmates with a security level of minimum or low and at least 65 years of age (i.e., at high risk according to the CDC)	Inmates with a security level of minimum or low with COVID-19 risk factor(s) (e.g., at least 65 years of age) and who had served at least 50 percent of their sentence or at least 25 percent with 18 months or less remaining
Number of Inmates as of April 12, 2020	46	50	59	430

Notes: Some inmates may have been eligible for transfer under multiple authorities, but the table counts each inmate only once. If eligible under multiple authorities, the inmate would be counted under the first authority for which he was eligible, moving from left to right.

Our estimate of inmates with a minimum or low security level includes inmates who had a minimum or low individual security level and those who were assigned to a minimum or low security unit within a facility with multiple security levels.

Sources: 18 U.S.C. § 3624(c)(2); 34 U.S.C. § 60541(g); CARES Act, Pub. L. No. 116-136; and OIG data analysis

FCI Terminal Island's Use of Home Confinement

To facilitate institutions' implementation of the Attorney General's directives, the BOP Central Office created and disseminated to institutions a series of rosters applying the factors identified in the criteria from the BOP memoranda. Together, the BOP Western Regional and Central Offices provided FCI Terminal Island with 11 rosters identifying 91 inmates as potentially eligible for transfer to home confinement. However, Terminal Island officials told us that staff reviewed all inmates—not just the 91 previously identified—to determine whether they met the criteria set

⁷³ As we noted above, the OIG's ODA used data from the BOP's inmate management system, SENTRY, to assess the universe of potentially eligible Terminal Island inmates. The ODA did not have data to replicate all of the criteria that the BOP used to determine home confinement eligibility, which included the BOP's PATTERN risk data.

forth in the Attorney General's guidance. As of June 1, only 23 Terminal Island inmates had been transferred to home confinement.

In determining an inmate's eligibility for home confinement, BOP officials were required to consider the list of factors stipulated in the Attorney General's and BOP's memoranda (discussed above), including the risk to public safety. As of June 1, FCI Terminal Island reported that staff had identified 275 inmates as initially meeting the criteria outlined in guidance they received from the Central Office and 7 additional inmates had been approved by the Residential Reentry Management (RRM) field office for transfer.⁷⁴ Of the 275, as of June 1:

- Sixty-three inmates were referred for home confinement, though only 23 of them had been transferred into home confinement by that date; 5 were quarantining in preparation for placement in home confinement; and 35 were referred to the Central Office Home Confinement Review Committee and/or RRM field office for further review and approval because their cases did not meet all criteria for home confinement referral under the CARES Act.⁷⁵
- One hundred thirty-six inmates were deemed ineligible for transfer due to a current violent crime and/or sex offense conviction.
- Seventy-six inmates were denied home confinement due to absence of COVID-19 risk factors, lack of a residence, U.S. Probation Office denial of a supervision plan, or the RRM field office's denial of the inmate's case after reviewing it.

Further, one inmate who had been approved for home confinement declined to be transferred.

FCI Terminal Island also reported that, of the 136 inmates who staff found were ineligible for home confinement, 4 inmates had 6 months or less of their sentence remaining and 41 were age 65 or older. Further, of the 76 inmates who were denied home confinement, 4 inmates had 6 months or less of their sentence remaining and 7 were age 65 or older. The ODA found that, as of June 14, 17 of the 46 inmates whom it identified as having 6 months or less of their sentence remaining were still incarcerated at FCI Terminal Island.

⁷⁴ Terminal Island officials told us that the institution's review process incorporated an inmate's primary offense, recidivism risk score, and PATTERN score. The OIG's ODA estimation did not consider these factors, which may account for the difference in the two totals.

⁷⁵ The Attorney General directed the BOP to place eligible inmates in a mandatory 14-day quarantine before discharge from a BOP facility to home confinement. Barr, memorandum for Director of Bureau of Prisons, March 26, 2020.

Compassionate Release

Another means by which inmates can be moved from prison to home is through a reduction to their sentence pursuant to the compassionate release statute, 18 U.S.C. § 3582(c)(1)A(i).⁷⁶ Under the statute, either the BOP or an inmate may request that a federal judge reduce the inmate's sentence for "extraordinary and compelling reasons," such as age, terminal illness, other physical or medical conditions, or family circumstances. An inmate must first submit a compassionate release request to the BOP; but the inmate is permitted to file a motion directly with the court if the BOP denies the petition, or 30 days after the inmate files the petition with the BOP, whichever occurs first.

We were told that the BOP prioritized using the home confinement authorities described above to respond to the COVID-19 pandemic because those authorities allowed the BOP to approve inmates for transfer whereas compassionate release requires the approval of a federal judge. Officials in the BOP's Office of General Counsel told us that the COVID-19 pandemic has not changed the BOP's eligibility requirements for compassionate release. Additionally, the Department has taken the position, in legal guidance when responding to compassionate release motions filed by inmates with courts, that the risk of COVID-19 by itself is not an "extraordinary and compelling" circumstance that should result in the grant of a compassionate release request.⁷⁷ Thus, COVID-19 would not cause the BOP to support a petition for compassionate release that it would not have supported otherwise.

Between March 1 and June 1, FCI Terminal Island received 244 compassionate release requests, compared to only 14 between December 1, 2019, and February 29, 2020. As of March 1, the Warden recommended that five requests be approved: the BOP Director denied two of them, was still considering one of them, and had approved and forwarded the remaining two to a U.S. Attorney to seek a modification to the inmates' sentences. Altogether, during the period from March 1 to June 1, courts granted 13 inmate petitions for compassionate release.

To provide more insight into these issues, the OIG is reviewing and will report separately on the Department's and the BOP's use of early release authorities, especially home confinement, to manage the spread of COVID-19 within BOP facilities.

⁷⁶ For more information about how the BOP manages its compassionate release program, see BOP Program Statement 5050.50, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)*, January 17, 2019. In 2013, the OIG issued a report examining the BOP's compassionate release program. The OIG found, at that time, that the program had been poorly managed and inconsistently implemented. See DOJ OIG, *The Federal Bureau of Prisons' Compassionate Release Program*, Evaluation and Inspections Report I-2013-006 (April 2013), www.oig.justice.gov/reports/2013/e1306.pdf.

⁷⁷ Executive Office for United States Attorneys, "Compassionate Release Litigation Guidance," May 18, 2020.

SCOPE AND METHODOLOGY OF THE INSPECTION

The OIG conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (January 2012). We conducted this inspection remotely because of CDC guidelines and DOJ policy on social distancing. This inspection included telephone interviews with FCI Terminal Island, Western Regional, and Central Office officials, review of documents produced by the BOP related to the BOP's and FCI Terminal Island's management of the COVID-19 pandemic, the results of an OIG survey issued to all BOP staff, and analysis of BOP and COVID-19 data.

We also considered 28 complaints we received from inmates at FCI Terminal Island, their attorneys and family members, and Terminal Island staff that were submitted between February 27 and June 4. The inspection team did not substantiate or assess the validity of the specific complaints; however, we generally inquired with FCI Terminal Island about them. We discuss certain complaints, along with the institution's response to our inquiries about them, throughout the report. Other complaints pertained to concerns about home confinement; compassionate release; inmate medical care; alleged staff misconduct; inmate nutrition; and inmate access to legal resources, administrative remedy requests, and sick call requests.

While some of these concerns were outside the scope of our inspection or beyond the control of the institution, we did inquire about those that were relevant to our review. Terminal Island officials told us that inmates received three nutritionally balanced meals daily throughout the pandemic. The officials also denied placing any restrictions on inmates' ability to make administrative remedy or sick call requests. They provided data indicating that there was a significant increase in administrative remedy requests from June through September, compared to March and April. The data also showed, when compared to March, a decrease in sick call requests in April and May, followed by an increase in June and July and a decline in August and September.

To understand staff concerns, impacts, and immediate needs related to COVID-19, we issued an anonymous, electronic survey to all BOP government employees from April 21 through April 29, 2020. We invited 43,034 total employees to take the survey and received 10,735 responses, a 25 percent response rate. FCI Terminal Island staff represented 74 of the total 10,735 BOP staff responses (0.69 percent) and about 28 percent of the approximately 267 staff assigned to the institution.

We conducted telephone interviews with the Regional Health Systems Administrator, Clinical Director, Captain, a Lieutenant, a Nurse Practitioner, a Unit Manager, a Counselor, and the BOP Central Office's Infection Prevention and Control Coordinator. We also conducted a group teleconference with FCI Terminal Island management, including the Warden, Associate Warden, Associate Warden of Operations, Associate Warden of Programs, acting Health Services

Administrators, Assistant Health Services Administrator, and Clinical Director, as well as with the Central Office Infection Prevention and Control Coordinator, a Regional Quality Improvement/Infection Control Coordinator, the Regional Health Systems Administrator, and an FCI Terminal Island Nurse Practitioner and Social Worker.

The main issues we assessed through our interviews and data requests were the institution's compliance with BOP directives and CDC guidance related to testing and screening, social distancing and quarantine measures, PPE, conditions of confinement, and medical response. We also assessed the institution's compliance with BOP directives on notifying families of inmates who became seriously ill or died after contracting COVID-19; the BOP's capacity to respond to the COVID-19 pandemic, including staffing; and actions taken to reduce the inmate population through implementation of relevant authorities.

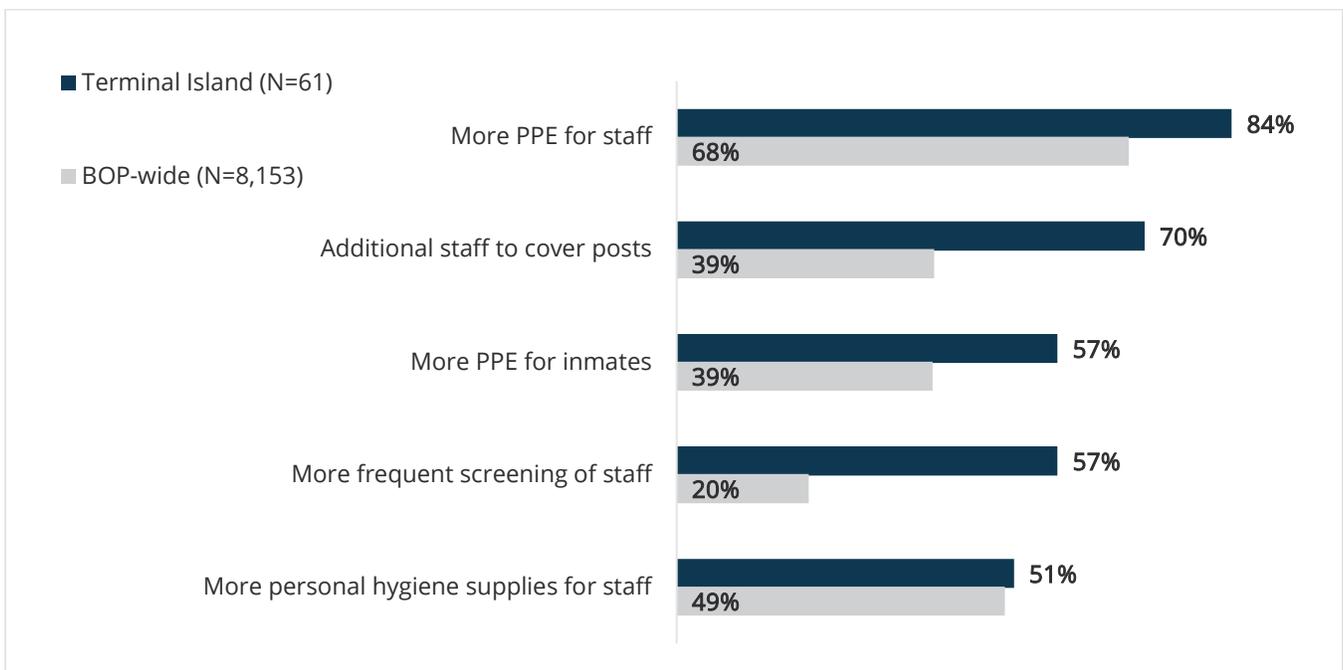
We reviewed CDC guidelines and BOP-wide guidance and procedures; media statements; press releases; documentation of the BOP's notification of families of inmates regarding their illness and/or death; staffing and N95 respirator fit testing reports; temperature check logs; and the information and guidance provided to FCI Terminal Island staff and inmates, including emails from Terminal Island management. The photographs included in the report were taken by Terminal Island officials, at our request, to illustrate the housing units we describe in the report.

OIG COVID-19 SURVEY RESULTS FOR FCI TERMINAL ISLAND

Open Period	Invitations Sent to BOP Institution Staff	Overall Responses ⁷⁸	Terminal Island Responses
April 21–29, 2020	38,651	10,735 (of 38,651)	74 (of 267)

Terminal Island Responses: **Departments–68 (of 74 responses):**
 Correctional Services: 46% | Health Services: 10% | Financial Management: 10% | All Other Departments: 34%

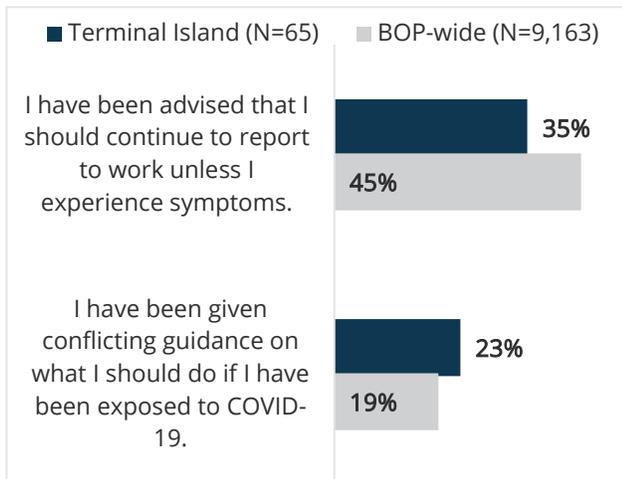
Which of the following are immediate needs for your institution during the COVID-19 pandemic? (Top 5 Responses)



Note: Personal hygiene supplies are defined as soap and hand sanitizer.

⁷⁸ The OIG survey collected staff perceptions on a range of topics pertaining to the way the BOP and individual institutions were managing the COVID-19 pandemic. The views expressed in the staff responses may not necessarily reflect actual circumstances.

Which of the following statements best describes the current guidance you have received from facility leadership about what you should do if you have been exposed to COVID-19? (Top 2 Responses)



How strongly do you agree with the following statements about the adequacy of the guidance you have received about what you should do if you have been exposed to COVID-19? (All Responses)

Respondents rated each item on a 5-point scale, with "strongly disagree" worth 1 point and "strongly agree" worth 5 points. "Don't know" responses are excluded.

	Terminal Island Rating	BOP-wide Rating
The guidance was timely.	2.17	3.18
The guidance was clear.	2.19	2.97
The guidance was comprehensive.	2.35	3.03

How strongly do you agree with the following statements about the adequacy of the practices your institution is taking to mitigate the risk of spreading COVID-19? (Top 3 and Bottom 3 Responses)

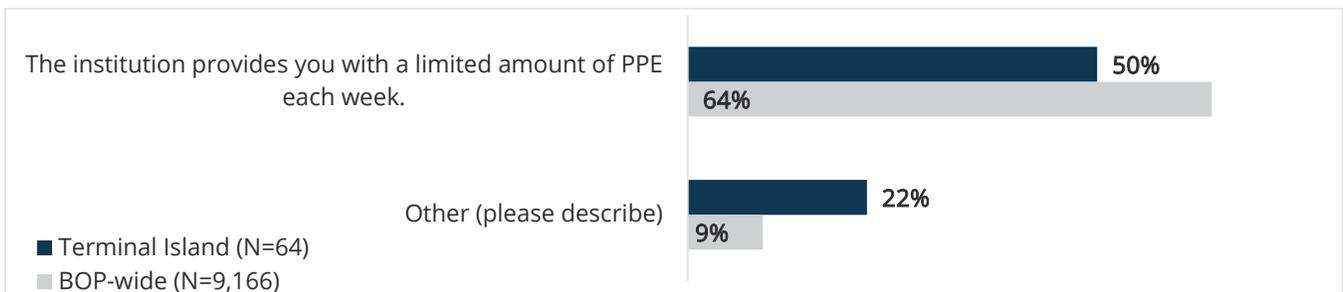
Respondents rated each item on a 5-point scale, with "strongly disagree" worth 1 point and "strongly agree" worth 5 points. "Don't know" responses are excluded.

	Terminal Island Rating (N=63)	BOP-wide Rating (N=8,978)
Three Practices Rated Highest:		
Staff are provided a sufficient supply of soap.	3.76	3.90
Inmates have ample opportunity to shower at least three times a week.	3.60	4.27
Inmates are provided a sufficient supply of soap.	3.51	3.77
Three Practices Rated Lowest:		
Shared staff equipment such as radios and keys is regularly cleaned and sanitized.	2.49	3.15
Inmates are provided with a sufficient supply of masks.	2.47	3.44
Staff are provided a sufficient supply of masks.	2.29	3.13

Please identify which, if any, of the following social distancing measures your institution is currently employing to increase the amount of space between staff and inmates. (Top 5 Responses)

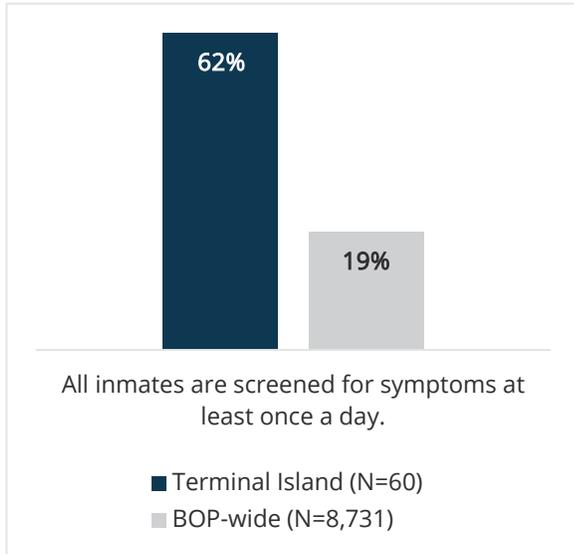
	Terminal Island Percent of Respondents (N=58)	BOP-wide Percent of Respondents (N=8,435)
The amount of time that inmates are required to remain in their housing units each day has been increased.	43%	59%
I don't know.	24%	15%
Daily schedules are adjusted so that only one housing unit at a time is allowed to enter common space (such as the inmate cafeteria, Health Services clinic, library, classrooms, chapel, work space, or recreation space).	22%	44%
The number of inmates participating in a program or activity at one time has been reduced.	22%	42%
The number of inmates released, including those transferred to halfway houses or placed on home confinement, has increased.	21%	26%

Which of the following statements best describes the current guidance you have received from facility leadership about your use of personal protective equipment (PPE)? (Top 2 Responses)



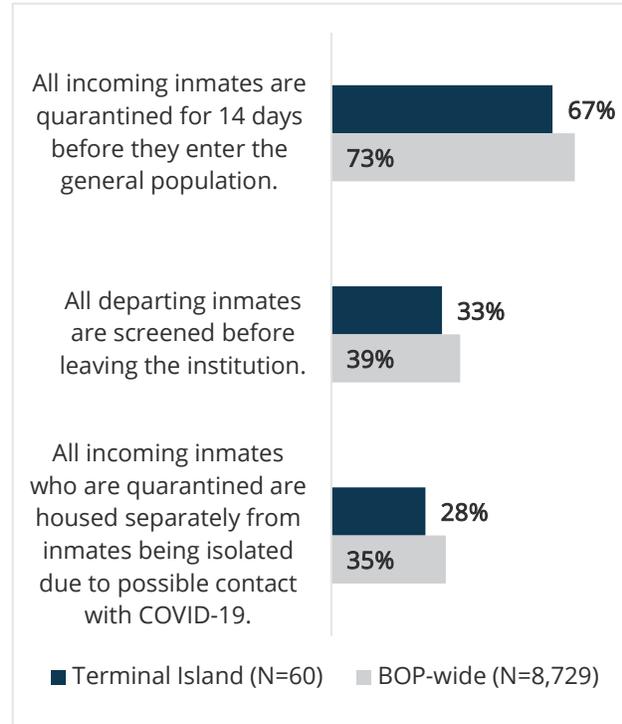
Note: Most Terminal Island respondents who answered "Other" reported that the institution was late to allow staff to wear PPE or to distribute PPE to staff.

Which of the following statements best describes the current approach to COVID-19 screening of existing inmates (temperature check, questioning about other symptoms) at your institution?⁷⁹ (Top Response)

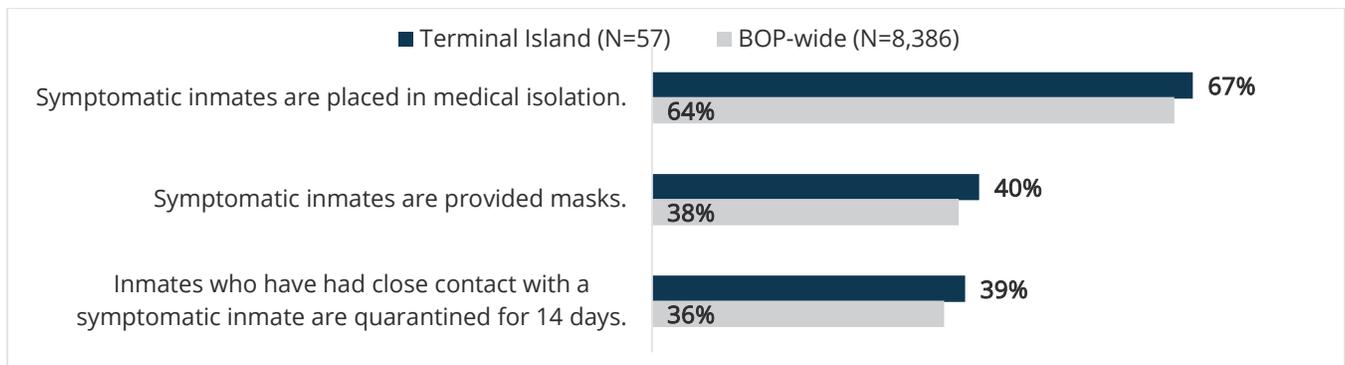


Note: Twenty-two percent of respondents chose "I don't know." The remaining chose categories amounting to less than 5 percent each.

Please identify which, if any, of the following COVID-19 measures for screening incoming and departing inmates (temperature check, questioning about other symptoms) your institution is currently taking. (Top 3 Responses)

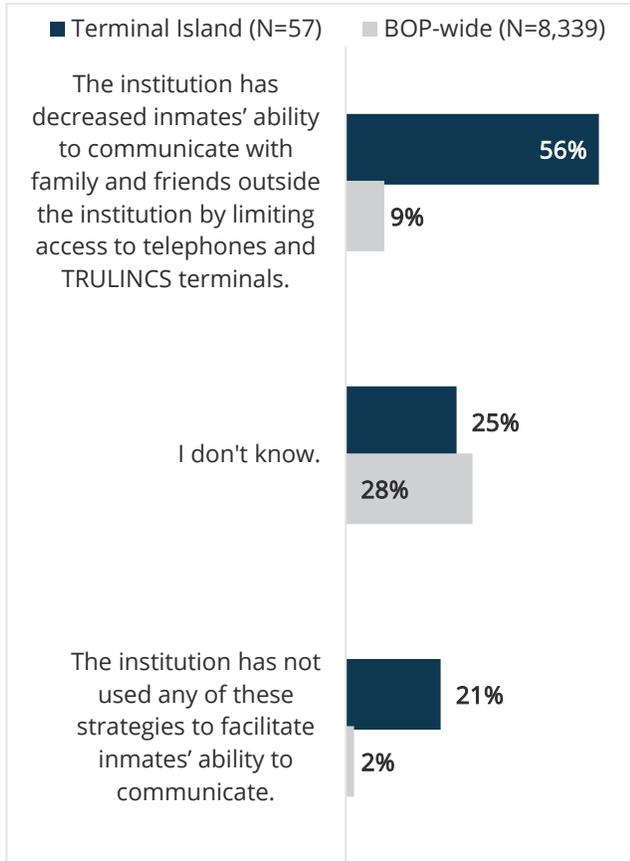


Please identify which, if any, of the following measures your institution is currently employing to manage inmates with COVID-19 symptoms. (Top 3 Responses)

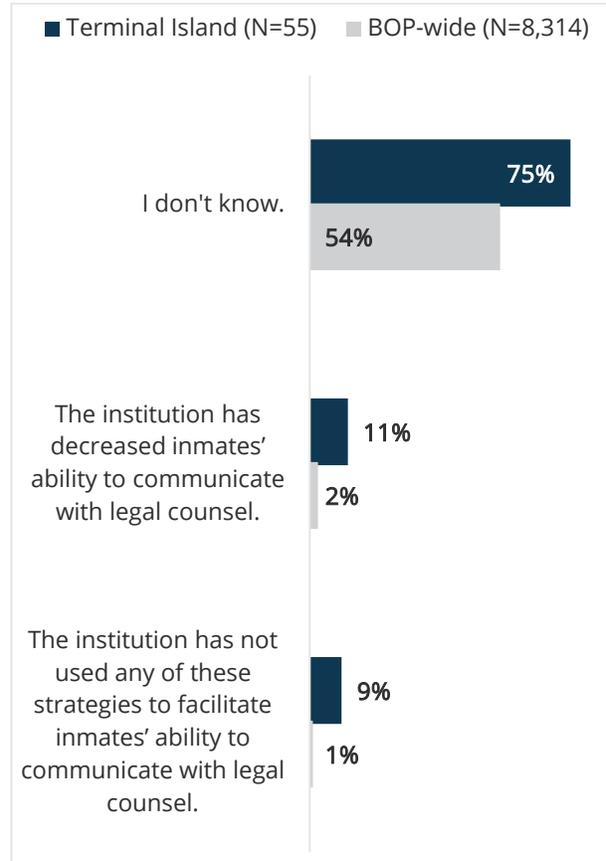


⁷⁹ Although BOP policy does not require the screening of every inmate, the BOP's Phase Five Action Plan, issued on March 31, 2020, emphasized the importance of practices for identifying symptomatic inmates as early as possible. In addition to the required intake screening and exit screening, the action plan mentioned broader screening initiatives such as daily screening or enhanced surveillance at institutions affected by COVID-19, in consultation with the Regional Quality Improvement/Infection Prevention and Control Consultant.

Please identify which, if any, of the following strategies your institution is currently employing to facilitate inmates' ability to communicate with family and friends outside the institution with whom they would normally interact.⁸⁰ (Top 3 Responses)



Please identify which, if any, of the following strategies your institution is currently employing to facilitate inmates' ability to communicate with legal counsel.⁸¹ (Top 3 Responses)



⁸⁰ The BOP provides inmates both telephone and messaging options. Inmates received an increase, from 300 to 500 minutes, of monthly telephone time pursuant to the BOP's Phase Two Action Plan in March 2020. Per BOP policy governing TRULINCS, the BOP "provides a messaging option for inmates to supplement postal mail correspondence to maintain family and community ties." The policy provides time parameters for inmate use of this messaging option but does not set a limit on the number of minutes inmates may use it per month. Additionally, the policy states that inmates are charged a per-minute fee to use this messaging option. BOP Program Statement 4500.12, Trust Fund/Deposit Fund Manual, March 14, 2018.

⁸¹ Per BOP policy governing TRULINCS, "inmates may place attorneys, 'special mail' recipients, or other legal representatives on their public email contact list, with the acknowledgment that public emails exchanged with such individuals will not be treated as privileged communications and will be subject to monitoring." BOP Program Statement 4500.12.

TIMELINE OF BOP GUIDANCE

January	31	<p>The BOP Issued Action Plan Phase One:</p> <ul style="list-style-type: none"> Identified the potential risk of exposure within BOP facilities and informed recipients about risk factors, symptoms to look for, and preventive measures Recommended screening all new inmate arrivals to the BOP for COVID-19 risk factors and symptoms using a provided screening questionnaire Recommended use of PPE for those in close contact with individuals who are suspected of being infected or individuals who have been diagnosed with COVID-19
February	29	<p>The BOP Issued Updated Guidance for COVID-19 to BOP Medical Staff:</p> <ul style="list-style-type: none"> Recommended screening staff with potential risk factors and all new inmate arrivals using a screening questionnaire Recommended conducting fit testing for N95 respirators, disseminating information about proper PPE use, and establishing baseline supplies of PPE Recommended establishing communication with local public health authorities, identifying possible quarantine areas, and alerting visitors that people with illnesses will not be allowed to visit
	9	The BOP issued screening and leave guidance for staff.
March	11	The World Health Organization declared COVID-19 a pandemic.
	13	<p>The BOP Issued Action Plan Phase Two:</p> <ul style="list-style-type: none"> Suspended internal inmate movements for 30 days (exceptions for medical treatment and other exigencies) and legal visits (exceptions on a case-by-case basis), social visits, and volunteer visits Canceled staff travel and training Instructed institutions to assess inventories of food, medicine, cleaning supplies, and sanitation supplies Required screening of staff (by self-reporting and temperature checks) “in areas with sustained community transmission” and all new BOP inmates and quarantining inmates where appropriate (those with exposure risk factors or symptoms) Required Wardens to modify operations to maximize social distancing, such as staggering meal and recreation times, for 30 days
		The BOP issued a memorandum to Chief Executive Officers outlining necessary inmate mental health treatment and services during social distancing.
	18	<p>The BOP Issued an Update to Action Plan Phase Two:</p> <ul style="list-style-type: none"> Stated that additional accommodations could be made for staff in high risk categories
		<p>The BOP Issued Action Plan Phase Three:</p> <ul style="list-style-type: none"> Provided guidance for non-institutional locations that perform administrative services
	19	The first two BOP staff were presumed positive for COVID-19.
20	The BOP issued guidance reprioritizing outside medical and dental trips.	
21	The first BOP inmate tested positive for COVID-19.	
23	The CDC issued Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities.	

26

The BOP Issued Action Plan Phase Four:

- Required all new inmates to be screened using a screening questionnaire and temperature check. If asymptomatic, inmates were to be quarantined for at least 14 days or until cleared by medical staff. If symptomatic, inmates were to remain in isolation until they tested negative for COVID-19 and were medically cleared.
- Required all inmates to be screened upon exiting the facility. Any symptomatic inmates were to be placed in isolation.
- Required all staff/contractors/other visitors to be screened upon entering the facility using a screening questionnaire and temperature check
- Required institutions to develop alternatives to in-person court appearances
- Required all non-bargaining unit positions to comply with and participate in the respiratory protection program, including completing medical clearance, training, and fit testing for N95 respirators

28

The BOP Issued an Update to Action Plan Phase Four:

- Required inmates transferring within the BOP, in addition to new inmates, to be screened upon arrival

31

The BOP Issued Action Plan Phase Five:

- Enacted a 14-day nationwide action, effective April 1, to minimize movement within BOP facilities
- Emphasized continued and ongoing screening of all inmates to identify asymptomatic cases and encourage early reporting of symptoms by inmates
- Required prompt and thorough contact tracing investigations for symptomatic cases, quarantining close contacts of suspected or confirmed COVID-19 cases, and isolating any inmates with symptoms similar to COVID-19
- Emphasized good hygiene and cleaning practices
- Required institutions to limit staff movements to the areas to which they were assigned
- Limited inmate movements to prevent group gatherings and maximize social distancing, directed work details to continue with appropriate screening
- Worked with the U.S. Marshals Service to limit inmate movements between institutions
- Required all staff to be fit tested for N95 respirators (included shaving all facial hair)
- Announced that UNICOR had initiated the manufacturing of face masks for inmates

3

The BOP issued a memorandum directing Chief Executive Officers to: (1) establish a point of contact with local public health officials and local hospitals, if not already established and (2) be responsive and transparent with outside stakeholders to demonstrate that the BOP is taking aggressive action to mitigate the spread of COVID-19.

The CDC issued new guidance recommending the use of cloth face coverings in addition to social distancing.

6

The BOP issued a memorandum to Chief Executive Officers indicating that it was working to issue face masks to all staff and inmates to lessen the spread of COVID-19 by asymptomatic or pre-symptomatic individuals.

7

The BOP issued a memorandum to Chief Executive Officers establishing that all inmates being released or transferred from a BOP facility into the community be placed in quarantine for 14 days prior to release.

13

The BOP Issued Action Plan Phase Six:

- Extended guidance issued in Phase Five through May 18

24

The BOP expanded COVID-19 testing to include asymptomatic inmates following the acquisition of rapid ribonucleic acid testing equipment at select BOP facilities.

18

The BOP Issued Action Plan Phase Seven:

- Extended guidance issued in Phase Six through June 30

June	30	<p>The BOP Issued Action Plan Phase Eight:</p> <ul style="list-style-type: none"> Extended guidance issued in Phase Seven through July 31 Established new procedures for in-person court trips and inmate movement between BOP institutions Required COVID-19 testing of all incoming inmates
	5	<p>The BOP Issued Action Plan Phase Nine:</p> <ul style="list-style-type: none"> Extended guidance issued in Phase Eight through August 31 Provided guidance for virtual and in-person legal visits Instructed the resumption of inmate programming, including residential programs and Evidence-based Recidivism Reduction Programs and Productive Activities, with social distancing modifications Instructed the resumption of outdoor recreation time, not including group sports or use of gym equipment Instructed Wardens to develop safety plans to restore UNICOR operations to 80 percent capacity by September 1 and to 100 percent by October 1
August	31	<p>The BOP Issued Modification of Action Plan Phase Nine:</p> <ul style="list-style-type: none"> Extended guidance issued in Phase Nine through September 30 Provided guidance for safely resuming social visits
	2	<p>The BOP Issued Extension to Action Plan Phase Nine:</p> <ul style="list-style-type: none"> Extended guidance issued in Phase Nine through October 31
September		
October		
November	1	<p>The BOP Issued Extension to Action Plan Phase Nine:</p> <ul style="list-style-type: none"> Extended guidance issued in Phase Nine and the Modification to Phase Nine until further notice

Source: OIG analysis of documents provided by the BOP

THE BOP'S RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

December 21, 2020

MEMORANDUM FOR RENÉ ROCQUE LEE
ACTING ASSISTANT INSPECTOR GENERAL
EVALUATION AND INSPECTIONS

FROM:


Gene Beasley
Deputy Director

SUBJECT: Response to the Office of Inspector General's (OIG) Draft Audit Report: Remote Inspection of Federal Correctional Institution Terminal Island During the COVID-19 Pandemic (A-2020-006-F)

The Bureau of Prisons (BOP) appreciates the opportunity to provide a response to the Office of the Inspector General's above referenced report. The BOP would like to address the following areas in the draft report.

Draft Report: Page ii, 1st bullet under the heading "Summary of Inspection Results", "In April, the institution tested its entire inmate population for COVID-19; but, by the time testing was completed, nearly half of the inmate population was already infected. Institution officials told us that this universal testing was crucial to being able to move COVID-19 negative and positive inmates into distinct housing units, some newly erected or converted, to manage the COVID-19 outbreak. However, our analysis showed that 107 negative inmates in 2 housing units remained housed with 129 positive inmates in those units for between 4 and 5 days after the institution received their test results."

BOP's Response: FCI Terminal Island was one of the first institutions in the country to mass test an entire inmate population. For the two housing units mentioned, COVID-19 test results were received from the lab in batches. The results for the entire housing units were needed prior to moving a large

number of inmates to maintain institution stability. Intelligence had been received which indicated inmates who tested positive for the virus were subject to possible assaults; therefore, for security reasons, inmates were moved and grouped together according to their test results and then notified if they were positive or negative.

Draft Report: Page ii, 2nd bullet under the heading "Summary of Inspection Results", "While FCI Terminal Island complied with BOP guidance on inmate testing, 5 of the 10 Terminal Island inmates who died after contracting COVID-19 did not receive a COVID-19 test until after staff sent them to the hospital. Terminal Island staff told us that three of these five inmates did not initially show COVID-19 symptoms at the institution and that staff sent the other two inmates to the hospital the same day that staff identified their symptoms."

BOP's Response: FCI Terminal Island medical staff made prudent medical decisions in an attempt to save lives. There were a number of case-specific reasons these inmates were not tested at the institution. At the time of these incidents, two inmates did not have symptoms consistent with the CDC list of typical COVID-19 symptoms at that point in the pandemic. One inmate had been tested, but results were not received until after being transported to the local hospital. The other two inmates had other medical conditions which impacted the decision to test them.

Draft Report: Page ii, 3rd bullet under the heading "Summary of Inspection Results", "Terminal Island staff did not comply with BOP policy to notify the families of inmates with serious illness in one instance, in which an inmate who ultimately died was on a ventilator in the hospital for 6 days due to COVID-19. Officials from the BOP's Central Office and Western Regional Office told us that the institution's lack of a notification was an oversight. However, institution staff told us that they never informed that inmate's and one additional inmate's families that the inmates had been infected with COVID-19 because they did not deem it relevant."

BOP's Response: We object to the characterization that BOP staff do not believe communicating with inmate family members in an inmate's time of need is irrelevant. Rather, the focus of notification to families was as to the inmate's hospitalization status versus the reasons for such hospitalization. When communication with families occur for hospitalized inmates, it is the hospital administration or medical personnel who discuss

diagnosis and treatment, not BOP staff. As the facility's experience with the COVID-19 pandemic expanded, the decision was made to contact every emergency contact for any inmate hospitalized for COVID-19 related issues. Additionally, inmates who are hospitalized are granted a monitored phone call to their emergency contact, in most cases, on a weekly basis.

Draft Report: Page ii, 4th bullet under the heading "Summary of Inspection Results", "Beginning in May, FCI Terminal Island complied with BOP guidance to maximize social distancing in the institution but experienced challenges in enforcing social distancing among inmates in open dormitory housing areas and did not modify the computer lab configuration to promote social distancing for over a month."

BOP's Response: Beginning on March 21, 2020, FCI Terminal Island modified its operation and complied with BOP guidance to allow for social distancing when inmates moved from the housing units to other areas such as Food Service, Recreation, and Laundry. Areas such as the TRULINCs and computer labs were utilized by the same cohort of inmates. As a cohort, these individuals had a shared exposure and were not at increased risk by accessing the computer lab together.

Draft Report: Page ii, 5th bullet under the heading "Summary of Inspection Results", "The OIG's April survey of FCI Terminal Island staff indicated that institution staff may not have been quarantining inmates according to BOP guidance prior to the movement of inmates to alternative housing, and one of the alternative housing areas the institution added to accommodate the need for quarantining did not meet BOP standards for housing on several occasions.

BOP's Response: Alternate housing meet BOP standards for housing. Inmates were temporarily housed in the UNICOR warehouse to create social distancing and to separate positive inmates from negative inmates. The inmates housed in this alternative housing area had access to all commensurate services including a shower area constructed specifically to accommodate the alternate housing, accessible 24 hours per day.

Draft Report: Page iii, 6th bullet under the heading "Summary of Inspection Results", "FCI Terminal Island complied with BOP guidance regarding the use of personal protective equipment (PPE) in correctional settings, but staff survey responses and one staff interview indicated that having adequate PPE was a challenge for staff and inmates. Further, although the BOP

mandated on March 31 that all staff be fit tested for N95 respirators, our analysis of fit test documentation showed that temporary duty (TDY) staff at FCI Terminal Island were not fit tested until an average of nearly 6 days after their arrival and about 36 percent of TDY staff (28 out of 77) were fit tested a week or more after arrival."

BOP's Response: FCI Terminal Island had a more than adequate inventory of PPE at all times throughout the pandemic. All staff were issued surgical masks as well as gloves, gowns and face shields in quarantine units and N95 masks in isolation units. Health Services staff were issued foot covering in addition to the above mentioned PPE. Beginning on April 6, 2020, all staff were issued two surgical masks weekly, and additional masks were available if needed. Federal Prison Industries' washable masks were made available to staff and inmates. On April 21, 2020, all staff were issued one reusable face shield and sanitized eye protection was placed in each officer's station with sanitation instructions. Staff were also permitted to wear their own mask of choice. Bi-weekly PPE inventory documents beginning April 6, 2020 were supplied for review.

In addition, TDY staff should have been fit tested at their parent institution prior to reporting to FCI Terminal Island. Secondary Law Enforcement staff were fit tested immediately once it was discovered they had not been fit tested. FCI Terminal Island staff were all re-fit tested beginning on April 28, 2020.

Draft Report: Page nine, line nine, "However, we found that Terminal Island staff did not notify the family of two inmates who ultimately died that they had been hospitalized due to a serious illness, the Chaplain did not contact their families to advise them of the inmates' deaths, and institution staff never told the families that the inmates had been infected with COVID-19."

BOP Response: All families of the deceased were notified by either by a Unit Manager or by the Public Information Officer.

OIG ANALYSIS OF THE BOP'S RESPONSE

The OIG provided a draft of this report to the BOP for its comment. The BOP's response is included in [Appendix 4](#) to this report. Below is the OIG's analysis of the BOP's response.

Highlights of the BOP's Response

The BOP raised eight issues (in seven comments) in its response to the draft of this report. First, the BOP stated that, to maintain institution stability and security, FCI Terminal Island staff moved and grouped together inmates according to their results from the universal inmate testing initiative and then notified the inmates whether they were positive or negative. Staff received test results from the laboratory in batches and needed results for entire housing units prior to moving large numbers of inmates. Second, the BOP stated that, of the five inmates whom institution staff did not test for COVID-19: two did not have symptoms that the CDC identified at the time as being typical of COVID-19; one was, in fact, tested at the institution, but results were not received until after the inmate was transported to the hospital; and two had medical conditions that impacted the BOP's decision not to test them prior to their departure for the hospital. Third, the BOP stated that the institution's focus in notifying the families of inmates hospitalized with COVID-19 related issues was to inform them of the inmate's hospitalization, rather than the reason, and that hospital staff, not BOP staff, discuss diagnoses and treatment with inmates' families. The BOP further indicated that institution staff now contact every emergency contact of all inmates hospitalized due to COVID-19 and that inmates are granted phone calls to their emergency contact, usually weekly.

Fourth, the BOP stated that, on March 21, FCI Terminal Island modified its operations to comply with BOP guidance regarding social distancing when inmates moved from their housing units to areas such as Food Service, Recreation, and Laundry. The BOP also stated that inmates using TRULINCS and the computer lab were not at an increased risk of contracting COVID-19 because they had been placed in specific groups together. Fifth, the BOP stated that Terminal Island alternative housing areas met BOP standards and that the inmates in them had access to services—such as a shower area that was available 24 hours per day—that were commensurate with those in regular housing units. Sixth, the BOP stated that FCI Terminal Island had a more than adequate inventory of PPE throughout the pandemic; staff in quarantine units were issued surgical masks, gloves, gowns, and face shields; staff in isolation units were given N95 respirators; and Health Services staff also received foot coverings. The BOP stated that, beginning on April 6, all staff were issued two surgical masks each week; on April 21, all staff were issued a reusable face shield and eye protection; and staff could wear their own masks. The BOP also indicated that TDY staff should have been fit tested for N95 respirators by their parent institution and that, once FCI Terminal Island discovered that some staff had not previously been fit tested, it immediately fit tested them. Finally, the BOP stated that either an FCI Terminal Island Unit Manager or the

institution's Public Information Officer notified the families of all inmates who died after becoming infected with COVID-19.

OIG Analysis

With regard to COVID-19 testing, we recognize the BOP's statement that FCI Terminal Island was one of the first institutions in the country to mass test an entire inmate population for COVID-19. We modified our final report to reflect that institution staff did not immediately separate positive and negative inmates in order to mitigate security concerns related to inmates who tested positive and that staff received inmates' test results from the laboratory in batches and needed to receive results for an entire housing unit prior to moving inmates. Nevertheless, we maintain that this delay increased the risk of COVID-19 spreading in the institution. Our report acknowledges that two of the inmates whom FCI Terminal Island did not test for COVID-19 prior to their deaths did not have symptoms consistent with the CDC's list of identified COVID-19 symptoms at the time. We appreciate the additional information from the BOP indicating that one inmate was, in fact, tested at the institution. Our report recognizes that the institution did not test two of the five inmates because staff told us that doing so would have unnecessarily delayed their transport to the hospital. We also recognize the BOP's statement that FCI Terminal Island medical staff made prudent medical decisions in an attempt to save lives.

There are two distinct BOP policies that are relevant to family notifications. BOP policy requires institutions to notify the families of inmates who die regarding the *circumstances* surrounding their deaths. As stated in our report, Terminal Island officials told us that they did not consider the two inmates' COVID-19 infections to be relevant information to share with the families regarding those inmates' deaths. This finding in our report focuses specifically on the BOP's death notification policy. However, the BOP's response relates to its serious illness notification policy. As stated in our report, BOP policy requires institutions—not hospital staff—to notify the families of inmates with serious illness of their illness. We acknowledge that, at the time of the two inmates' deaths, the Western Regional Office had not yet issued the memorandum we describe in our report, which states that hospitalization due to COVID-19 constitutes a serious illness. Additionally, as our report states, we found that the institution's Chaplain did not notify the families of the two inmates who died, as required by policy. We appreciate the additional information the BOP provided that either a Unit Manager or the Public Information Officer contacted those inmates' families.

Regarding FCI Terminal Island's social distancing practices, the BOP noted in response to our draft report that inmates who used the computer lab, which we found the institution did not configure to promote social distancing until May, were grouped by housing unit. The BOP provided additional information following its formal response indicating that, because the inmates were already not consistently social distancing in their housing units, allowing them to use the computer lab without social distancing did not pose an increased risk for COVID-19 transmission. We modified our final report to reflect this information.

Regarding the BOP's statement about the alternative housing areas, we maintain that temperatures in one of the alternative housing areas did not meet BOP standards on several occasions. We modified our final report to indicate that, according to Terminal Island officials, inmates in the UNICOR factory had 24-hour access to showers.

Finally, with regard to PPE, we modified our report, in the Summary of Inspection Results, to indicate that Terminal Island officials told us that staff had consistent access to adequate PPE. Our report also notes that staff input—including survey responses, which our report acknowledges convey perceptions and may not necessarily reflect actual circumstances—showed that access was a challenge. We also made a change in our final report to reflect that FCI Terminal Island discovered that some TDY staff had not been fit tested for N95 respirators at their parent institutions.