



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

PANDEMIC RESPONSE REPORT

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NOVEMBER 2020

Remote Inspection of Metropolitan Detention Center Brooklyn

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 (RRC). In total, these facilities house approximately 155,000 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 congregant environments, “heighten[s] the potential for COVID-19 to spread once introduced” into a facility. According to BOP data, as of October 13, 2020, 15,715 inmates and 1,954 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, the percentage of inmates testing positive has been substantial. At the time of our fieldwork, Metropolitan Detention Center (MDC) Brooklyn was not conducting widespread inmate testing for COVID-19.

Between April 30 and June 10, 2020, the DOJ OIG conducted a remote inspection of MDC Brooklyn, located in Brooklyn, New York, to understand how the COVID-19 pandemic affected the institution and to assess the steps MDC Brooklyn officials took to prepare for, prevent, and manage COVID-19 transmission (see [Appendix 1](#) for the scope and methodology of the inspection). As part of that effort, we considered whether MDC Brooklyn’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 MDC Brooklyn, BOP Northeast Regional Office, and other BOP 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 MDC Brooklyn specific results from a BOP-wide employee survey regarding COVID-19 issues that the OIG conducted in late April, and consideration of 16 complaints submitted to the OIG Hotline and from an inmate’s attorney (see [Appendix 1](#) for a summary of the complaints and [Appendix 2](#) for a summary

¹ This estimate does 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 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 MDC Brooklyn’s adherence to these BOP directives.

of survey results from MDC Brooklyn respondents).³ We also reviewed court filings and other documents related to several ongoing litigation matters involving MDC Brooklyn and listened to hearings in the matter of *Chunn et al. v. Warden Derek Edge* held from May 12 to May 14. Additionally, we spoke to attorneys from the Federal Defenders, including Federal Defenders of New York, regarding concerns about MDC Brooklyn’s management of COVID-19, including inmates’ access to counsel and medical care.

Summary of Inspection Results

Our inspection of MDC Brooklyn found that:

- MDC Brooklyn followed BOP directives regarding testing symptomatic inmates for COVID-19; however, limited testing supplies inhibited the institution’s ability to test other inmates to measure the true number of COVID-19 cases in April and May. As of May 1, the institution told us that it had received only 30 test kits due to a national shortage of test kits at that time. On May 14, it received a rapid COVID-19 test machine with approximately 175 test kits and, since then, received an additional 100–250 rapid test kits per week through October 19.⁴ CDC guidelines did not prioritize testing asymptomatic inmates and MDC Brooklyn healthcare staff did not test all inmates.
- The institution’s self-contained, tiered housing units with closed cells on separate floors limits contact and potential cross-contamination among inmates in different units, and we believe that this housing arrangement likely contributed to the institution’s low number of overall cases. MDC Brooklyn’s implementation of BOP social distancing directives further limited interpersonal contact among inmates.
- The shortage of medical staff at MDC Brooklyn was among the biggest challenges in appropriately screening inmates and staff members for COVID-19 symptoms. This shortage continued through September 2020 and resulted in MDC Brooklyn struggling to meet the medical needs of non-COVID-19 inmates. According to a review team sent by the BOP Central Office, 125 inmate sick call requests from March had not been scheduled or seen as of May 1. MDC Brooklyn Health Services staff indicated that sick call wait times increased significantly due to COVID-19, as the institution faced a much higher volume of sick calls compared to the year prior.
- Although MDC Brooklyn officials complied with initial and subsequent BOP directives implementing CDC guidance on the use of face coverings, we found that in April and May some Health Services providers were unable to obtain the necessary personal protective equipment

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

⁴ According to the BOP’s website, the primary role of the rapid testing machine is “rapid testing of newly symptomatic cases to confirm the diagnosis quickly.” The Regional Health Services Administrator told us that the BOP sent rapid test machines to all BOP detention centers, jail units, and quarantine sites. According to BOP officials, swab tests are generally more accurate than the rapid tests but it takes approximately 2 days to process swab test results.

(PPE), including N95 respirators and gowns, to evaluate inmates with COVID-19 symptoms and treat them in medical isolation.

- According to results from the late April OIG survey, MDC Brooklyn staff respondents were far more likely than BOP-wide staff respondents to report an immediate need for additional PPE, staff, or cleaning supplies. Specifically, 90 percent of MDC Brooklyn respondents reported an immediate need for more PPE for staff, compared to 68 percent of BOP-wide respondents; 71 percent reported an immediate need for additional staff to cover posts, compared to 39 percent of BOP-wide respondents; and 61 percent reported an immediate need for more cleaning supplies, compared to 34 percent of BOP-wide respondents.

We describe these findings in greater detail, and other observations we made during our inspection, in the [Inspection Results](#) section of this report.

COVID-19 at MDC Brooklyn

MDC Brooklyn is the largest federal Metropolitan Detention Center in the country. It houses approximately 1,400 male inmates in 18 housing units on 6 floors in its West Building and approximately 30 female inmates in 1 housing unit on 1 floor of its East Building; the two buildings are connected by an underground tunnel, which staff call the “link.” As a Care Level 2 institution, MDC Brooklyn’s population includes inmates with chronic care needs.⁵ As an administrative security facility, MDC Brooklyn houses inmates at all security levels, including unsentenced pretrial detainees and sentenced inmates. The OIG’s ODA estimates that, on average, between April and June 2020, 52 percent of MDC Brooklyn’s population consisted of sentenced inmates. MDC Brooklyn has approximately 450 federal staff members.

As of May 5, MDC Brooklyn reported that a total of 6 inmates and 36 staff members had tested positive for COVID-19, though the number of active cases had decreased as inmates and staff recovered. As of October 18, MDC Brooklyn reported no active cases among its approximately 1,400 inmates and no active cases among its approximately 460 federal staff. We noted, however, that inmate testing at MDC Brooklyn was extremely limited, with only 79 inmates having been tested as of June 9. BOP data indicated that, as of June 25, MDC Brooklyn had three active inmate cases and six active staff cases. By contrast, New York City experienced a significant COVID-19 outbreak, with a steadily increasing number of positive COVID-19 cases from late March through June, when the number of new cases began to decline. As of November 1, New York City had a total of 264,155 confirmed cases.

⁵ 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 2 institution is capable of treating inmates with conditions requiring clinical contact every 3 months.

MDC Brooklyn COVID-19 Data

Inmate Population as of November 1, 2020^a

 **1,376**

Active Inmate Cases as of November 1, 2020^b

 **3**

Inmate COVID-19 Deaths as of November 1, 2020

 **0**

DOJ Federal Staff as of October 18, 2020

 **464**

Active Staff Cases as of November 1, 2020

 **3**

Staff COVID-19 Deaths as of November 1, 2020

 **0**

Active Inmate COVID-19 Cases Over Time, March 31–November 1, 2020^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.

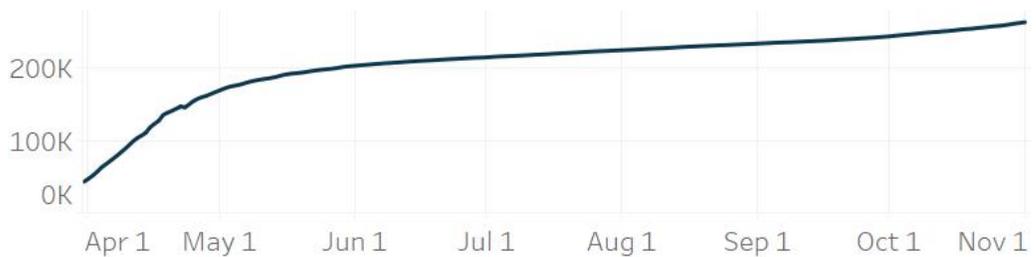
Data Source: BOP

Active Staff COVID-19 Cases Over Time, March 31–November 1, 2020



Data Source: National Finance Center

Total Confirmed New York City COVID-19 Cases Over Time, March 31–November 1, 2020^a



^a Total confirmed cases are cumulative positive COVID-19 cases.

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

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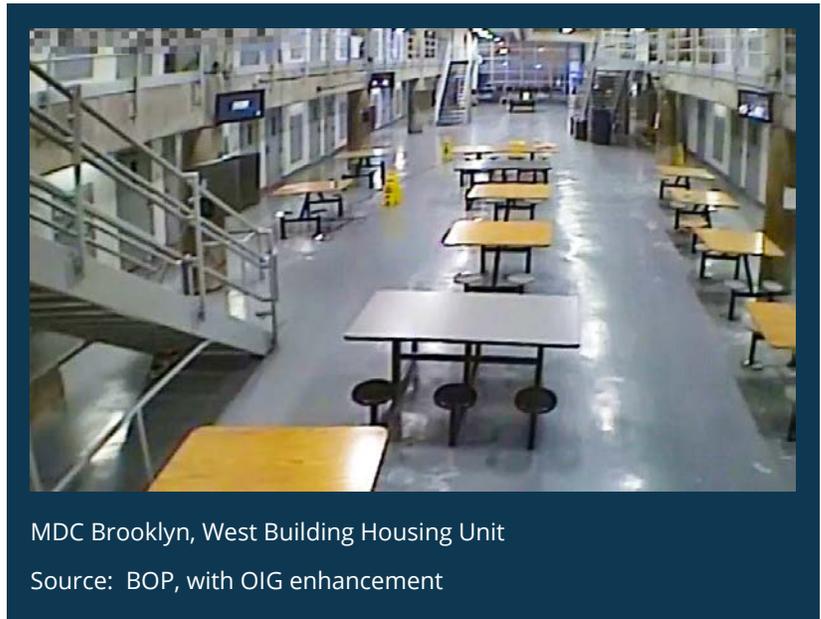
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INSPECTION RESULTS

Social Distancing and Quarantine Measures

We found that MDC Brooklyn’s self-contained, tiered housing units with closed cells, each housing two inmates, limited contact and potential cross-contamination among units and may have contributed to the institution’s low number of overall cases. We also found that MDC Brooklyn’s implementation of BOP social distancing directives further limited interpersonal contact among inmates.

Several staff members told us that the physical layout of MDC Brooklyn acts as a “natural quarantine.” MDC Brooklyn houses the vast majority of its inmates in its West Building, which consists of self-contained housing units and closed cells (see the photograph). MDC Brooklyn’s layout differs from another high-rise detention center we remotely inspected, Metropolitan Correctional Center Chicago, which has dormitory style, open housing. MDC Brooklyn’s Health Services Administrator (HSA) told us that under normal operations inmates from different units do not make contact, and the Warden agreed with the HSA that this helped MDC Brooklyn control a potential COVID-19 outbreak among inmates.⁶



On March 13, the BOP directed Wardens to immediately “implement modified operations to maximize social distancing in [BOP] facilities” to the extent practicable.⁷ We found that, in

⁶ An expert witness, retained by the U.S. Attorney’s Office for the Eastern District of New York in connection with its defense of the BOP in *Chunn et al. v. Warden Derek Edge*, toured the facility and filed a written report with the court. The report concluded that the West Building’s physical layout would allow staff to better quarantine and medically isolate groups of inmates should an outbreak occur on any specific unit.

⁷ See BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Phase Two Action Plan, March 13, 2020, 3.

Social distancing, also called “physical distancing,” means keeping at least 6 feet between yourself and other people and not gathering in groups. In a correctional setting, the CDC recommends implementing a host of social distancing strategies to increase the physical space between incarcerated people (ideally 6 feet between all individuals, regardless of the presence of symptoms), noting that not all strategies will be feasible in all facilities and strategies will need to be

(Cont’d.)

accordance with this guidance, on March 13 MDC Brooklyn began modified operations with social distancing measures and enacted a “Stay in Shelter” on April 1 (extended until further notice on November 1 in accordance with the BOP’s Extension to the Phase Nine Action Plan).⁸ MDC Brooklyn complied with BOP directives by quarantining and medically isolating inmates to mitigate COVID-19 transmission.⁹ During our fieldwork, inmates remained in their cells and were allowed out in small groups at designated times for 1 hour per day, 3 days per week, to access showers, phones, and TRULINCS terminals.¹⁰ The initial decision was to allow inmates 30 minutes of out-of-cell time, but the Warden told us that he realized this was not enough and extended it to 60 minutes. According to the HSA, inmates also had access to medical care during their out-of-cell time, as Health Services staff visited each housing unit twice per day.

tailored to the individual space in 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,”](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html) March 23, 2020 (updated October 21, 2020), www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (accessed November 2, 2020).

⁸ 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.”

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 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.

⁹ 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 recommends, ideally, quarantining individuals in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the person should be placed in medical isolation and evaluated for COVID-19. See CDC, “Interim Guidance.”

Isolation is used to separate people who (1) are infected with the virus (those who are sick with COVID-19 and those with no symptoms), (2) are awaiting test results, or (3) have COVID-19 symptoms from people who are not infected. In a correctional setting, the CDC recommends using the term “medical isolation” to distinguish it from punitive action. See CDC, “Interim Guidance.”

¹⁰ 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).

MDC Brooklyn staff designated the institution's regular intake unit on the fourth floor of the West Building as the quarantine unit for new arrivals and inmates departing the institution. The Infectious Disease Nurse told us that all new arrivals and departing inmates were quarantined for 14 days. MDC Brooklyn staff designated a housing unit on the eighth floor of the West Building as its medical isolation unit (see the photograph). The MDC Brooklyn Captain told us that during March the institution was fortunate to have a vacant unit (K-84) available, which staff quickly converted for use as the medical isolation unit.



Many MDC Brooklyn staff members we interviewed told us that the institution was effective at medically isolating symptomatic inmates from the general population and quarantining their entire units. In our survey, 66 percent of MDC Brooklyn staff respondents agreed with the statement "Symptomatic inmates are placed in medical isolation." This is slightly higher than the 64 percent of BOP-wide respondents who agreed with this statement. Additionally, one complaint that BOP staff submitted to the OIG alleged a failure to fully implement modified operations. In addition, two inmate complaints submitted to the OIG presented risk of COVID-19 exposure concerns, including one complaint about frequent changing of inmate cell placements. Another inmate complainant described a COVID-19 outbreak that allegedly infected the vast majority of inmates in one housing unit; the OIG found that, 4 days after it received this complaint, the BOP reported 6 total inmate COVID-19 cases at MDC Brooklyn, indicating that it was not likely that an outbreak affecting a majority of inmates had occurred.

Shortage of Medical Staff

We found that during the scope of our inspection a shortage of medical staff may have negatively affected MDC Brooklyn's ability to screen inmates for COVID-19 symptoms while also providing medical care to the institution's approximately 1,600 inmates. We conducted an independent analysis of healthcare staffing levels at MDC Brooklyn from March 15 through May 9 and found that many positions were vacant during each pay period.¹¹ These vacancies were caused by extended absences from the institution due to a variety of reasons, including military leave, temporary duty (TDY) assignments to other institutions, and extended sick leave. Overall, MDC Brooklyn staffed only between 20 and 22 of its 30 authorized Health Services positions from March 15 to May 9. We found that MDC Brooklyn experienced critical shortages in available

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

Physicians and Mid-Level Providers throughout this period. Specifically, only one of MDC Brooklyn's three authorized Physicians and four of its six authorized Mid-Level Providers were working at the institution after the COVID-19 pandemic began and the number of Mid-Level Providers decreased to three by April 12. This medical staff shortage continued through September.

MDC Brooklyn staff also expressed concern about the staffing shortages. Several staff in the Health Services Department told us that the institution had severe staffing shortages resulting in negative outcomes, including increased workload, challenges in responding to sick call requests, and mandatory overtime.¹² Further, 71 percent of MDC Brooklyn survey respondents (50 of 70) selected "Additional staff to cover posts" as an immediate need. MDC Brooklyn respondents were more likely than other BOP-wide respondents to select this response.¹³

On April 15, the BOP designated two TDY medical staff to MDC Brooklyn, which increased the institution's medical staffing by approximately 10 percent (from 20 to 22). These providers helped conduct physicals, attend to inmate sick call, and respond to emergent medical situations. However, even with these two additional providers, MDC Brooklyn remained over 25 percent below its authorized medical staffing level of 30.

This staffing shortage resulted in MDC Brooklyn struggling to meet the medical needs of non-COVID-19 inmates. According to a review team from the BOP's Central Office, 125 inmate sick call requests, the oldest of which had been submitted in March 2020, had not been scheduled or seen as of May 1.¹⁴ According to an MDC Brooklyn official, this condition continued through September, as a total of 160 sick call requests dating to early July had not been scheduled or seen as of September 23. MDC Brooklyn Health Services staff told us that both the number of sick call requests and sick call wait times increased significantly due to COVID-19. Between March 2 and September 23, the Health Services team completed 2,160 sick call requests as compared to 1,649 such requests during the same period in the previous year.¹⁵ The COVID-19 pandemic also

¹² Sick call refers to the process by which inmates seek and receive routine or preventive medical care from Health Services providers.

¹³ We were told that COVID-19 related staff absences had increased the demand for Custody staff and MDC Brooklyn hired 10 additional Correctional Officers in April and received sufficient TDY staff to fill vacancies in the Custody and other departments. Additionally, staffing reports indicated that the Custody Department was approximately 86 percent filled from mid-March through mid-May.

¹⁴ On May 1, the BOP Central Office sent a team to assess conditions at the facility. This team consisted of the Health Services Division Assistant Director, the Acting Assistant Director of the Correctional Programs Division, the BOP's Associate General Counsel, and a nurse on the BOP's Medical Asset Support Team. The team inspected the facility on May 2 and subsequently issued its report on the COVID-19 response at MDC Brooklyn.

¹⁵ On March 30, the BOP issued a "National Waiver to Health Services Policy," which remained in effect through October 1. Among other measures, the waiver extended the length of time permitted between BOP medical visits with certain inmates requiring chronic care. Additionally, the waiver extended the length of time certain chronic care prescription medications were valid. According to the MDC Brooklyn HSA, this waiver allowed MDC Brooklyn to

(Cont'd.)

necessitated a transition on April 1 from electronic sick call requests to predominantly paper sick call requests due to inmates not having regular access to TRULINCS.¹⁶ The BOP review team reported that correctional staff retrieving paper sick call forms from inmates and placing them in medical treatment rooms made it difficult for Health Services staff to triage medical issues. Finally, Health Services staff told us that, in addition to medical staffing shortages, the requirement for healthcare providers to visit inmates in the housing units also lengthened the time it took for providers to evaluate and treat patients.

Personal Protective Equipment

Although MDC Brooklyn officials complied with initial and subsequent BOP directives implementing the CDC's guidance regarding the use of face coverings in correctional settings, institution staff in our survey reported a need for more PPE.

Between January 31 and April 6, the BOP issued seven policy directives intended to help its institutions implement evolving CDC guidance concerning the use of PPE and face coverings in various scenarios.¹⁷ The BOP's March 18 directive required all BOP employees performing staff screenings to "wear appropriate personal protective equipment," defined as a "surgical mask, face shield/goggles, gloves and a gown."¹⁸ On April 6, in response to revised CDC guidance on April 3 advising that face coverings be worn in public settings where social distancing measures are difficult to maintain, the BOP directed institutions to "[issue] surgical masks as an interim measure to immediately implement CDC guidance, given the close contact environment of correctional institutions."¹⁹ According to personnel at the institution, MDC Brooklyn complied with this directive and first issued surgical masks to all staff on April 6 and to all inmates on April 7.

Although MDC Brooklyn officials maintained that the institution had sufficient levels of PPE at the time of our inspection, 90 percent of MDC Brooklyn staff who responded to our survey (63 of 70) indicated that more PPE for staff was an immediate need and 47 percent (33 of 70) reported that

continue to administer medication to treat inmates with chronic conditions and to limit prescription expirations. The HSA further stated that MDC Brooklyn continued to meet the chronic care needs of inmates.

¹⁶ MDC Brooklyn inmates continued to submit electronic sick call requests via TRULINCS at designated times based on the 1 hour per day, 3 days per week, that inmates were allowed out of their cells in small groups, as discussed above.

¹⁷ 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.

¹⁸ BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Phase Two Action Plan Update Number One, March 18, 2020, 3. Initially, on March 13, the BOP issued guidance that employees screening staff for COVID-19 wear an N95 respirator. For more information, see BOP, memorandum for All Chief Executive Officers, March 13, 2020, 3.

¹⁹ BOP, memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Update—Use of Face Masks, April 6, 2020, 1–2. 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, www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html (accessed November 2, 2020).

inmates needed more PPE. Further, at the time of our inspection, some MDC Brooklyn Health Services staff we interviewed told us that they were unable to obtain the PPE necessary to perform their duties. They said that they believed that the institution had sufficient supplies of PPE but did not give healthcare providers the necessary PPE, such as N95 respirators or gowns, even when they evaluated inmates with COVID-19 symptoms or those with confirmed cases in the medical isolation unit. Additionally, one complaint submitted to the OIG alleged a lack of available PPE for MDC Brooklyn staff.

COVID-19 Testing and Screening

On March 13, the BOP issued guidance to institutions regarding the testing of inmates.²⁰ The memorandum did not address staff testing. For inmates, the guidance provided that symptomatic inmates with exposure risk factors for COVID-19 were to be “isolated and tested” consistent with local health authority protocols.

Testing Inmates

We found that MDC Brooklyn tested symptomatic inmates for COVID-19 in accordance with BOP directives. MDC Brooklyn officials told us that on March 16 Health Services staff started testing inmates for COVID-19 if they exhibited symptoms. The first inmate tested positive on March 19. According to BOP data through June 9, MDC Brooklyn tested 79 inmates, 9 of whom tested positive.

MDC Brooklyn officials told us that between mid-March and May 1 the institution received 30 total test kits and only 17 test kits remained as of May 1. According to the HSA, the test kit supply at MDC Brooklyn was limited due to a national shortage at that time. Shortly thereafter, MDC Brooklyn obtained additional testing supplies. Specifically, we learned that MDC Brooklyn received a rapid COVID-19 test machine with approximately 175 test kits on May 14 and subsequently received an additional 100–250 rapid test kits per week. At the time of our inspection, CDC guidelines did not prioritize testing asymptomatic inmates and MDC Brooklyn staff did not plan to conduct universal testing of all inmates. Rather, MDC Brooklyn’s HSA said that the institution planned to use the rapid test machine to continue testing symptomatic inmates and that it would test all new inmates twice: once when they arrived at the facility and again at the end of their 14-day initial quarantine. Additionally, according to the BOP’s Northeast Regional Office, the BOP signed a new contract to provide MDC Brooklyn with more swab test kits because the previous vendor was unable to supply them in large quantities. A new vendor sent additional swab test kits to MDC Brooklyn on May 18, and the institution had about 150 swab test kits available as of June 5.

Two MDC Brooklyn healthcare providers described the quantity of test kits as limited, and the HSA explained that the institution tried to conserve its test kits to prepare for future outbreaks. One

²⁰ BOP, memorandum for All Chief Executive Officers, March 13, 2020, 3.

healthcare provider told us that the limited supply of test kits made it difficult to know whether there were more positive asymptomatic cases than the institution reported. Another healthcare provider told us that MDC Brooklyn would benefit from additional test kits. While we recognize that MDC Brooklyn obtained additional test kits in early June, we believe that limited testing supplies earlier in the pandemic could have inhibited MDC Brooklyn's ability to measure the true number of COVID-19 cases at the institution and potentially impacted the institution's ability to promptly learn of a COVID-19 outbreak.

The HSA stated that, in addition to the six inmates who tested positive, there were five inmates whom the institution "presumed positive" but did not test. The HSA explained that MDC Brooklyn generally tested only symptomatic inmates housed in units without a confirmed case. The HSA further stated that the institution presumed that all untested symptomatic inmates were positive and placed them in medical isolation. The decision to test an inmate was a clinical decision made among providers, staff told us. According to an MDC Brooklyn Health Services employee, to warrant testing an inmate had to either exhibit at least four of the COVID-19 symptoms listed by the CDC or have a fever. However, the HSA told us that this was never the criteria for testing inmates at MDC Brooklyn. MDC Brooklyn employees we interviewed said that they believed the institution had done an adequate job testing inmates.

Three inmate complaints submitted to the OIG during our review scope related to testing. Specifically, one inmate complainant alleged that MDC Brooklyn staff did not conduct COVID-19 testing, isolated ill inmates for 2 days and told them they did not have COVID-19, and ended a housing unit's quarantine after 2 days. One inmate complaint reported a lack of testing at MDC Brooklyn, and another included an inmate's request related to COVID-19 testing.

Testing Staff

At the time of our inspection, neither BOP nor CDC guidance required institutions to test staff for COVID-19. MDC Brooklyn officials told us that the institution does not test staff members and that they must obtain testing from their healthcare provider. An MDC Brooklyn employee told us that it would be preferable for the institution to have tests available for staff, as it can be difficult for staff to consult outside healthcare providers for testing. As of May 5, BOP data showed that 36 MDC Brooklyn staff had tested positive. A May 11 snapshot of the BOP's website showed 17 active staff cases. MDC Brooklyn staff we interviewed told us that staff reported their test results to Human Resources and the institution proactively notified employees any time a staff member had tested positive.

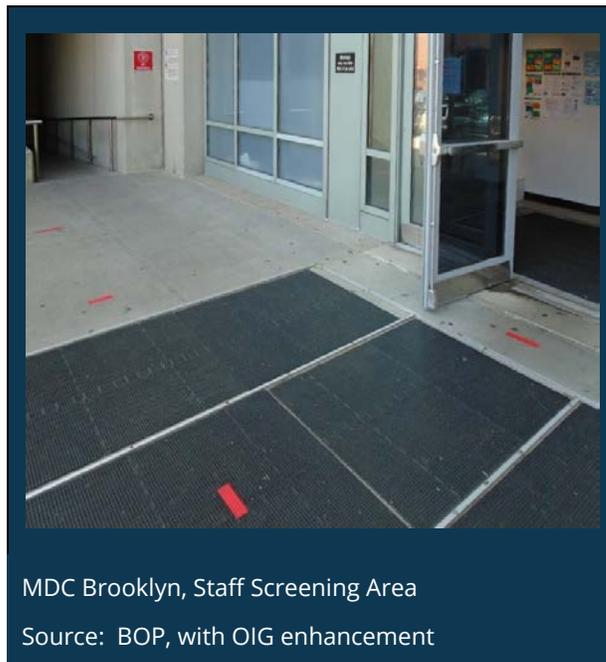
Screening Inmates

On March 13, MDC Brooklyn staff began conducting daily initial screenings of new inmates admitted to the institution and implemented a policy of testing inmates with COVID-19 symptoms and moving those who tested positive to Unit K-84 for medical isolation. Staff medically isolated inmates who tested positive and screened them twice daily for a minimum of 7 days or until they were no longer

symptomatic. Staff also “presumed positive” the cellmates of COVID-19 positive inmates and medically isolated them. Staff quarantined for 14 days the symptomatic inmate’s entire housing unit and conducted temperature checks and symptom screens on every inmate in that unit twice daily. As of May 19, MDC Brooklyn had no inmates in quarantine or in the medical isolation unit.

Screening Staff

On January 31, the BOP’s Health Services Division issued a memorandum to all institutions informing them of possible COVID-19 symptoms, including fever, cough, headaches, and diarrhea.²¹ On February 29, the BOP directed institutions to screen staff with potential COVID-19 risk factors, including staff members who had been in close contact with individuals diagnosed with COVID-19 or staff who had traveled within the previous 14 days through or from locations identified by the CDC as having increasing epidemiological risk.²² On March 13, the BOP further directed institutions in areas with “sustained community transmission,” which included MDC Brooklyn, to implement enhanced health screening of all staff.²³ The memorandum provided that enhanced screening included “self-reporting and temperature checks.”



We determined that MDC Brooklyn officials initiated enhanced health screenings of all staff on March 13, in accordance with BOP policy. We based this determination on policy communication emails sent by MDC Brooklyn management, interviews of staff members, as well as OIG survey results showing that 97 percent of MDC Brooklyn respondents reported that staff screenings occurred daily. However, MDC Brooklyn healthcare providers told us that some of the staff screenings were conducted by non-healthcare provider correctional staff after they had received training provided by the BOP that the healthcare providers considered inadequate. We also were told by MDC Brooklyn healthcare providers that equipment malfunctions had unnecessarily lengthened the screening process. For example, Health Services staff told us that infrared thermometers used for staff screening were especially sensitive to colder temperatures and that

²¹ BOP, memorandum for All Clinical Directors, Health Services Administrators, Quality Improvement/Infection Prevention Coordinators, Guidance on 2019 Novel Coronavirus Infection for Screening and Management, January 31, 2020, 2.

²² 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, 2.

²³ BOP, memorandum for All Chief Executive Officers, March 13, 2020, 3.

the use of this equipment resulted in false temperature readings and longer screening times as staff entered the facility during the winter months.²⁴

Conditions of Confinement, Sanitation, and Visitation

Conditions of Confinement

Under the Stay in Shelter, MDC Brooklyn inmates had access to showers, TRULINCS email, and telephones for 1 hour per day, 3 days per week. According to OIG survey results, 81 percent of MDC Brooklyn staff respondents agreed or strongly agreed that inmates had ample opportunities to shower at least three times per week. At the beginning of the pandemic, and pursuant to guidance from the BOP Central Office's Phase Two Action Plan (issued March 13), inmates received an increase, from 300 to 500 minutes, of telephone time per month. Additionally, inmates had continued access to laundry and could make commissary purchases through requests to their Unit Team. The institution had continued meal delivery cell by cell, and staff wore PPE while delivering inmate meals to the quarantine and medical isolation units.

According to MDC Brooklyn staff we interviewed, inmates had sufficient access to free soap and could purchase additional cleaning products from the commissary. However, according to the results of our survey, only 33 percent of MDC Brooklyn respondents reported that inmates were provided a sufficient supply of soap, compared to 58 percent of BOP-wide respondents. During interviews, two MDC Brooklyn correctional staff members told us that COVID-19 related absences of commissary and Unit Team staff could have briefly disrupted soap delivery to inmates during March; but they reported no other disruptions to soap delivery to inmates. Additionally, though MDC Brooklyn management provided documentation showing that hand sanitizer had been placed throughout the facility on March 30, one healthcare provider reported having never seen hand sanitizer for staff use during multiple trips to the medical isolation unit.

An expert witness retained on behalf of MDC Brooklyn inmates inspected the facility in connection with the inmates' lawsuit against the institution. The expert witness highlighted what the expert witness believed were many deficiencies, several of which the court also found (see the text box below).²⁵

²⁴ The BOP released several versions of a staff screening tool between January and March 2020. We noted that each version specifically assessed different COVID-19 symptoms to remain consistent with emerging guidance about COVID-19 exposure risk.

²⁵ An expert witness retained by the plaintiff in *Chunn et al. v. Warden Derek Edge* inspected the facility and filed a written report with the court on April 30, 2020.

Chunn et al. v. Warden Derek Edge

On March 27, 2020, inmates incarcerated at MDC Brooklyn filed a federal lawsuit requesting that the court immediately release medically vulnerable inmates at the facility, among other relief. As part of this litigation, the plaintiffs arranged an expert review of MDC Brooklyn that identified many alleged deficiencies in the conditions of confinement. Alleged deficiencies included COVID-19 testing; inadequate infection control measures; and an inadequate, paper-based sick call system adopted by MDC Brooklyn during the pandemic. In June, the court ruled that the plaintiffs were not entitled to immediate release but noted that MDC Brooklyn had been deficient in implementing CDC guidelines. Specifically, the court found that MDC Brooklyn appeared not to isolate inmates who reported COVID-19 symptoms, took too long to respond to inmate sick call requests, and conducted staff entry screenings that were somewhat less stringent than those recommended by the CDC. The claimants withdrew their lawsuit in August.

Source: *Facility Evaluation: Metropolitan Detention Center COVID-19 Response*, Case No: 1:20-CV-01590-RPK-RLM April 30, 2020

Sanitation

MDC Brooklyn staff told us that they cleaned and sanitized the facility thoroughly and on a regular basis. An Associate Warden told us that the institution had sufficient cleaning supplies and used disinfectant to clean phones, showers, and computers after inmates used them during their out-of-cell time. The Associate Warden explained that MDC Brooklyn was able to obtain additional supplies from other institutions if needed and stated that teams of 4–5 inmate orderlies, including inmate orderlies in the quarantine unit, cleaned their own units (they did not cross units or departments) on a daily basis.

Though multiple staff members told us that the facility was being cleaned adequately, only 47 percent of MDC Brooklyn survey respondents agreed or strongly agreed that toilets, sinks, and showers were regularly cleaned and sanitized, compared to 63 percent of BOP-wide survey respondents who agreed with this statement.

Visitation and Legal Access

MDC Brooklyn suspended inmate legal and social visits on March 13.²⁶ MDC Brooklyn staff told us that they ensured that inmates were able to make legal calls by telephone or video teleconference. In a letter to the U.S. District Court for the Eastern District of New York, MDC Brooklyn's Warden reported that Unit Team staff escorted inmates from their cells to facilitate

²⁶ On March 13, the BOP directed institutions to suspend all legal and social visits for 30 days, which was subsequently extended until October 31 and, on November 1, until further notice. BOP, memorandum for All Chief Executive Officers, March 13, 2020, 1; memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Phase Nine Action Plan, August 5, 2020, 1–3; memorandum for All Chief Executive Officers, Coronavirus (COVID-19) Extension to Phase Nine Action Plan, November 1, 2020.

phone calls to their attorneys.²⁷ An MDC Brooklyn Unit Manager described the accommodation of inmate legal calls as Unit Teams' greatest challenge during COVID-19, as Unit Team staff had to monitor emails multiple times per day to ensure that inmates had access to counsel. An MDC Brooklyn Staff Attorney told us that there was a large volume of legal call requests, stating that the Federal Defenders of New York provided MDC Brooklyn with daily schedules of their clients' required legal calls. The Staff Attorney stated that MDC Brooklyn procured about 12 video teleconference units and located them in Unit Team offices and in the East Building, primarily for use in court proceedings. Our survey results found that MDC Brooklyn staff respondents were more likely than BOP-wide institution staff respondents to report that inmates spoke to their attorneys through institution telephones and video teleconference. (See the text box for a discussion of litigation resulting from legal visitation issues at MDC Brooklyn.)

Federal Defenders of New York, Inc., v. Federal Bureau of Prisons and Warden Herman Quay

On March 24, a federal judge of the U.S. District Court for the Eastern District of New York appointed former Attorney General Loretta Lynch as mediator in a lawsuit against the BOP regarding attorney access at MDC Brooklyn. The court sought to ensure attorneys' continued access to their incarcerated clients. On May 7, Lynch provided to the court a status report finding that MDC Brooklyn had completed 121 of 139 legal call requests during the first week of May and had largely completed the backlog of legal call requests. The report noted privacy concerns about certain legal calls for inmates in the Special Housing Unit but also noted that MDC Brooklyn had already taken steps to address the issue.

Source: Case No. 1:19-cv-00660-MKB-SMG (E.D.N.Y., filed Feb. 4, 2019)

On September 10, MDC Brooklyn resumed in-person legal visits. We were told that these visits were conducted by appointment, in order to promote social distancing, with 30-minute breaks scheduled between visits to allow for sanitation of the visiting rooms. According to an MDC Brooklyn Staff Attorney, most inmate legal visits continued to be conducted remotely, either by telephone or video teleconference, even after the resumption of in-person legal visiting. Although MDC Brooklyn previously had TDY staff dedicated to helping coordinate the scheduling of inmate legal calls, we learned that the institution stopped receiving this TDY assistance approximately in July, despite the continued high volume of daily legal call requests.

One complaint submitted to the OIG by an inmate's attorney stated that it was challenging to coordinate the scheduling of inmate legal calls. Additionally, two of the inmate complaints submitted to the OIG alleged that MDC Brooklyn had not provided them with access to legal materials, including legal mail.

²⁷ On April 2, the U.S. District Court Judge for the Eastern District of New York issued Administrative Order 2020-14, requiring the MDC Brooklyn Warden to provide biweekly status updates on the institution's response to COVID-19 to the court and the Executive Director of the Federal Defenders of New York, in addition to the U.S. Marshals Service and U.S. Attorney's Offices for the Southern and Eastern Districts of New York. The Judge issued the order so that Judges and relevant parties would have current, accurate information about conditions at the facility in response to detainees' applications for release as a result of COVID-19.

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.²⁸ 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.”²⁹ 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 sentenced 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 sentenced 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 Central Office guidance criteria and to seek approval from the Central Office to transfer those inmates to home confinement.

Because this use of home confinement authorities applied only to sentenced inmates, the vast majority of MDC Brooklyn’s roughly 1,600 inmates were not eligible for transfer consideration. Indeed, as of April 12, only 293 inmates at MDC Brooklyn were sentenced inmates who qualified for home confinement placement. During the period from March 28 through May 5, the BOP Central Office sent MDC Brooklyn 6 rosters identifying a total of 76 sentenced inmates who were potentially eligible for transfer to home confinement. MDC Brooklyn 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 3–4 weeks between the time the Central Office identified an inmate for transfer consideration to the date the inmate was actually transferred to home confinement. As of June 1, MDC Brooklyn had transferred 14 inmates to home confinement in accordance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) authorities and BOP guidance.

²⁸ Home confinement, also known as home detention, is a custody option whereby inmates serve a portion of their sentence at home while being monitored.

²⁹ William P. Barr, Attorney General, memorandum for Director of Bureau of Prisons, [Increasing Use of Home Confinement at Institutions Most Affected by COVID-19](#) April 3, 2020, www.justice.gov/file/1266661/download (accessed November 2, 2020), 1.

Attorney General and BOP Memoranda Regarding the Use of Home Confinement

On March 26, 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 non-violent and pose minimal likelihood of recidivism.”³⁰ 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 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.³¹ 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;³²
- whether the inmate had a verifiable reentry plan “that will prevent recidivism and maximize public safety”; and
- the inmate’s crime of conviction.

³⁰ 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 November 2, 2020)

³¹ 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.

³² 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 calculates inmates’ recidivism risk using a point system that classifies inmates into either 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 November 2, 2020).

The memorandum further required an assessment by the BOP Medical Director, or designee, of the inmate's risk factors for severe COVID-19 illness, 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 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]."³³ The following week, on April 3, the Attorney General issued a memorandum that found, as provided for in the CARES Act, "that emergency conditions are materially affecting the functioning of the [BOP]."³⁴ 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 facilities "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 policy 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]."³⁵ 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.³⁶ The April 3 memorandum also stated

³³ Pub. L. No. 116-136.

³⁴ Barr, memorandum for Director of Bureau of Prisons, April 3, 2020.

³⁵ The criteria in the BOP's Elderly Home 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.

³⁶ 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 increases with age. CDC, "[People at Increased Risk](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html?CDC_AA_)" www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html?CDC_AA_

(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.³⁷ 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 3 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 May 8, was generally consistent with its April 22 memorandum, with one specific difference.³⁸ The May 8 memorandum permitted inmates to be considered for transfer to home confinement despite having committed certain misconduct in prison during 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 inmates at such institutions “with a suitable confinement plan will generally be appropriate candidates for home confinement rather than continued detention.”

refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fpeople-at-increased-risk.html (accessed November 2, 2020).

³⁷ The BOP’s April 22 memorandum rescinded its April 3 memorandum.

³⁸ The BOP’s May 8 memorandum rescinded its April 22 memorandum.

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

The above-referenced policies and guidelines applied to sentenced inmates who qualified for home confinement placement, which, as of April 12, accounted for 293 of MDC Brooklyn's inmates.³⁹ The vast majority of the remaining inmates were awaiting trial or sentencing and therefore were not eligible for transfer to home confinement under the above-identified authorities. As a general matter, inmates awaiting trial or sentencing were under court-ordered bail restrictions that prevented them from being transferred to home confinement, which inmates could seek to modify by petitioning the court.

In order to independently assess the number of MDC Brooklyn 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 sentenced MDC Brooklyn 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 minimum or 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 into home confinement to no more than 10 percent of the inmate's sentence.⁴⁰ 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.⁴¹

³⁹ Generally, sentenced inmates can be considered for home confinement placement. However, inmates serving a current sentence who have new charges filed against them, including those inmates undergoing a competency study or sentenced inmates who are being held for another agency (e.g., the U.S. Marshals Service or Immigration and Customs Enforcement), are not eligible for placement in home confinement.

⁴⁰ 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."

⁴¹ 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.

Only certain sentenced inmates were eligible for home confinement consideration, as noted above. Based on the available data, the ODA estimated that, as of April 12, 93 of MDC Brooklyn's 293 sentenced inmates were potentially eligible for home confinement placement and had met the criteria for consideration under existing authorities and BOP guidance.⁴² By comparison, MDC Brooklyn considered a total of 210 inmates potentially eligible for home confinement as of June 1 (76 inmates on Central and Northeast Regional Office rosters plus an additional 134 the institution considered).⁴³ The table below details the ODA's estimated number of inmates eligible for transfer by available authority or BOP guidance factor.

Table
OIG Estimate of the Number of MDC Brooklyn Inmates Eligible for Transfer to Home Confinement Based on BOP Guidance and Available Authorities

Authority	18 U.S.C. § 3624(c)(2) 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 high risk according to the CDC (e.g., at least 65 years of age)	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 sentence or at least 25 percent with 18 months or less remaining
Number of Inmates as of April 12, 2020	30	1	3	59

Notes: Some inmates may have been eligible for release 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 or she 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

⁴² 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. As of April 12, the ODA estimated that 825 of MDC Brooklyn's 1,748 inmates were sentenced, 293 of whom were potentially eligible for home confinement.

⁴³ 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 MDC Brooklyn 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.

MDC Brooklyn'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. MDC Brooklyn received 6 different rosters from the BOP Central Office and Northeast Regional Office identifying approximately 76 inmates potentially eligible for home confinement. In addition to the rosters provided by the BOP Central Office and Northeast Regional Office, MDC Brooklyn staff considered another 134 inmates not on the rosters, for a total of 210 inmates considered potentially eligible. BOP officials provided multiple rosters to MDC Brooklyn because additional inmates became potentially eligible each time the BOP expanded eligibility criteria. MDC Brooklyn officials told us that they received rosters of potentially eligible inmates from the Central Office and reviewed each listed inmate's file to confirm eligibility. 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 the BOP's memoranda (discussed above), including the risk to public safety. As of June 1, MDC Brooklyn reported that, of the 76 inmates on the rosters and the 134 additional inmates it had considered:

- 14 inmates had been transferred to home confinement and
- 196 inmates were denied home confinement because they were deemed ineligible for the following reasons:
 - 139 were not medically at risk;
 - 12 had not served at least 50 percent of their sentence;
 - 9 were classified at a security level greater than low; and
 - 36 did not meet one of the other criteria outlined in the memoranda, including:
 - 9 already had traditional RRC dates;
 - 6 were violent offenders;
 - 5 had a medium or high PATTERN score;
 - 5 were referred and denied by a Residential Reentry Manager;
 - 4 had a 100 or 200 Level prison incident within the prior 12 months;⁴⁴
 - 2 were sex offenders;
 - 2 were released via compassionate release or a reduction in sentence by the court;
 - 1 had served less than 25 percent of his or her sentence, with 18 months or less remaining;

⁴⁴ Per BOP policy governing inmate discipline, the BOP categorizes prohibited acts committed by inmates by the Greatest severity (100 Level), High severity (200 Level), Moderate severity (300 Level), and Low severity (400 Level). BOP Program Statement 5270.09, Inmate Discipline Program, August 1, 2011.

- 1 was not yet sentenced; and
- 1 was reconsidered for eligibility and referred to the BOP Central Office's Home Confinement Committee for consideration.

Of the 196 inmates deemed ineligible for home confinement, MDC Brooklyn reported that:

- 12 were under age 65 and had served at least 50 percent of their sentence or at least 25 percent with 18 months or less remaining;
- 6 were within 6 months of release;
- 1 was at least 65 years old; and
- 0 were at least 60 years old and had served at least two-thirds of their sentence.

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).⁴⁵ 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 allow the BOP approve inmates for release 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.⁴⁶ Thus,

⁴⁵ 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.oversight.gov/sites/default/files/oig-reports/e1306.pdf.

⁴⁶ Executive Office for United States Attorneys, "Compassionate Release Litigation Guidance," May 18, 2020.

COVID-19 would not cause the BOP to support a petition for compassionate release that it would not have supported otherwise.

MDC Brooklyn officials reported that, as a result of the COVID-19 pandemic, since March 1 the institution had processed a large increase in compassionate release applications from inmates. Applications increased from 4 applications during the period of December 1, 2019, through February 29, 2020, to 266 applications from March 1 through June 1, 2020. All of these requests were denied by the BOP. However, BOP records indicate that courts granted 18 MDC Brooklyn inmates compassionate release during that same time period. On April 3, an MDC Brooklyn inmate who was a plaintiff in the *Chunn et al. v. Warden Derek Edge* lawsuit, discussed above, filed a motion for compassionate release based on his concerns related to being exposed to COVID-19.⁴⁷ The court rejected the initial compassionate release request because the inmate had not exhausted his administrative remedies. The motion thereafter became moot when the inmate was transferred to an RRC on his originally scheduled RRC placement date of May 19, which was unrelated to COVID-19 and the home confinement authorities described above.

Four of the inmate complaints submitted to the OIG concerned early release, including requests for home confinement and compassionate release, due to health concerns; one inmate alleged that he or she had not received a response to a compassionate release petition he or she had filed with the institution weeks prior.

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.

⁴⁷ *United States v. Rabadj*, Case No. 7:13-cr-00353-KMK-1. The inmate's filing contained a complaint from the union that represents MDC Brooklyn correctional staff, which alleged that two inmates who tested positive for COVID-19 were returned to their respective general population housing units in less than 7 days. The union representative further alleged that the two housing units were not quarantined and that staff working on those units were not provided appropriate PPE. The OIG was not able to confirm or deny these allegations.

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. The inspection included telephone interviews with MDC Brooklyn officials, review of documents produced by the BOP related to the BOP's and MDC Brooklyn'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 16 complaints we received from MDC Brooklyn inmates, MDC Brooklyn staff, and an inmate's attorney that were submitted between February 27 and June 4. The inspection team did not substantiate or assess the validity of the complaints received through the OIG Hotline, but we describe them below. Twelve of the 16 complaints we considered were submitted by inmates and consisted of concerns about early release, inmate access to legal materials and counsel, testing, quarantine, and risk of COVID-19 exposure.

Four of the inmate complaints concerned early release, including requests for home confinement and compassionate release, due to health concerns; one inmate stated that he or she had not received a response to a compassionate release petition he or she had filed with the institution weeks prior. Two of the inmate complainants alleged that MDC Brooklyn had not provided them with access to legal materials, including legal mail. Three inmate complaints related to testing. Specifically, one inmate complainant alleged that MDC Brooklyn staff did not conduct COVID-19 testing, isolated ill inmates for 2 days and told them they did not have COVID-19, and ended a housing unit's quarantine after 2 days. One inmate complaint reported a lack of testing at MDC Brooklyn, and another included an inmate's request related to COVID-19 testing. Three inmate complaints presented risk of COVID-19 exposure concerns, including one complaint about frequent changing of inmate cell placements. One inmate complainant described a COVID-19 outbreak that allegedly infected the vast majority of inmates in one housing unit; the OIG found that, 4 days after it received this complaint, the BOP reported 6 total inmate COVID-19 cases at MDC Brooklyn, indicating that an outbreak affecting a majority of inmates had not occurred. Additionally, one inmate complainant alleged that staff destroyed personal items in his or her cell during a search.

The remaining four complaints were submitted by BOP staff, an inmate attorney, and an unknown source and alleged a failure to implement modified operations, insufficient PPE, challenges coordinating inmate legal calls, and risk of COVID-19 exposure.

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 38,716 total employees to take the survey and received 10,735 responses, a 28 percent response rate. Institution staff represented 9,932 of the 10,735 responses (93 percent). We received 86 survey responses from the approximately 446 MDC Brooklyn staff, representing about 19 percent of staff assigned to the institution. The photographs included in

the report were taken by MDC Brooklyn officials, at our request, to illustrate the housing units we describe in the report.

We conducted telephone interviews with the following MDC Brooklyn staff: a Physician, the HSA, a Physician's Assistant, a Nurse Practitioner, a Health Systems Specialist, a Case Manager, the Emergency Preparedness Officer, a Unit Manager, a Lieutenant, a Captain, and the Chief Psychologist. We also conducted a telephone interview with the Regional Health Services Administrator. We held a group teleconference with MDC Brooklyn management, including the Warden, two Associate Wardens, the HSA, the Human Resources Manager, a Staff Attorney, the Executive Assistant, and a Captain. We also listened to hearings in the matter of *Chunn et al. v. Warden Derek Edge* held from May 12 through May 14, 2020, and interviewed attorneys from the Federal Defenders, including the Federal Defenders of New York, regarding concerns about MDC Brooklyn's management of COVID-19 pertaining to inmates' access to counsel and medical care.

The main issues we assessed through our interviews and data requests were the institution's compliance with BOP directives and CDC guidance related to PPE; COVID-19 testing; medical response and capacity; social distancing, quarantine, sanitation, supplies, and cleaning procedures; and conditions of confinement. We also assessed actions taken to reduce the inmate population through implementation of relevant authorities.

We reviewed CDC guidelines and BOP-wide guidance and procedures, as well as the information and guidance provided to MDC Brooklyn staff and inmates, including emails from MDC Brooklyn management, PPE and cleaning supplies inventory documents, staff respiratory program fit test results, documentation of staff COVID-19 screening, documentation of inmate COVID-19 screening in quarantine, and MDC Brooklyn staffing reports.

OIG SURVEY RESULTS FOR MDC BROOKLYN

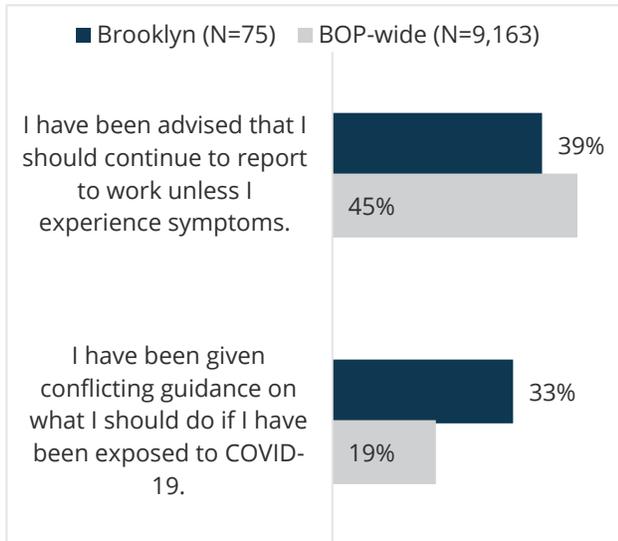
Open Period	Invitations Sent to BOP Institution Staff	Overall Responses	Brooklyn Responses
April 21-29, 2020	38,651	10,735 (of 38,651)	86 (of 446)
Brooklyn Responses: Departments 75 (of 86 responses):			
Correctional Services: 33% Health Services: 16% Receiving and Discharge: 12% All Other Departments: 39%			

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. Use of administrative leave is defined as COVID-19 related absences.

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.

	Brooklyn Rating	BOP-wide Rating
The guidance was timely.	2.18	3.18
The guidance was clear.	2.06	2.97
The guidance was comprehensive.	2.15	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)

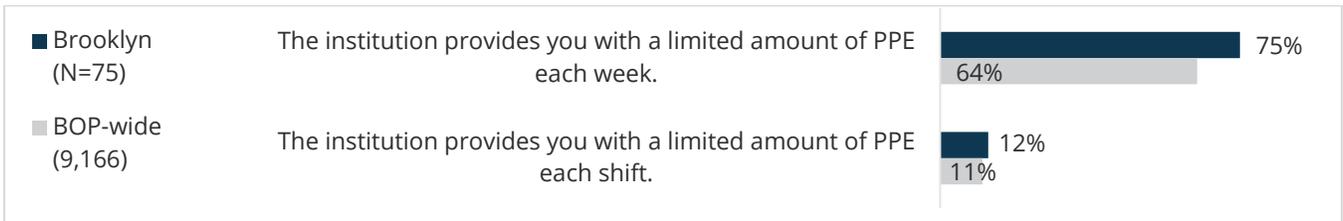
Respondents rated each item on a 5-point scale, with "strongly disagree" worth 1 point and "strongly agree" worth 5 points. "Don't know" responses are excluded.

	Brooklyn Rating (N=70)	BOP-wide Rating (N=8,978)
Three Practices Rated Highest:		
Inmates have ample opportunity to shower at least three times a week.	4.27	4.27
Toilets, sinks, and showers are in proper working order.	3.89	3.93
Inmates diagnosed with, or showing symptoms of, COVID-19 are being sufficiently segregated from other inmates to mitigate the virus spreading.	3.76	3.94
Three Practices Rated Lowest:		
Shared staff equipment such as radios and keys is regularly cleaned and sanitized.	2.48	3.15
Staff are provided a sufficient supply of hand sanitizer.	2.44	3.18
Staff are provided a sufficient supply of masks.	2.29	3.13

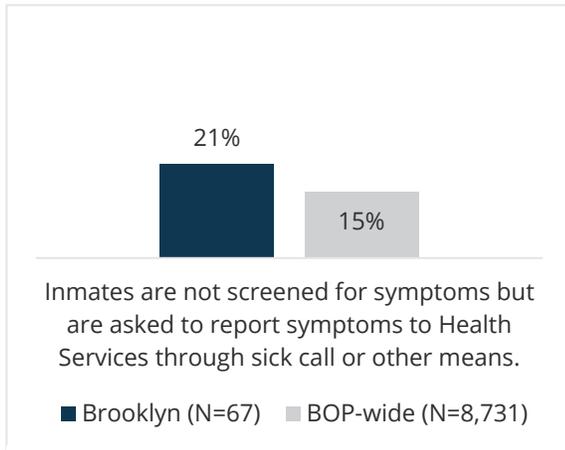
Please identify which, if any, of the following social distancing measures your institution is currently employing to increase the amount of space between staff and inmates. (Top 5 Responses)

	Brooklyn Percent of Respondents (N=65)	BOP-wide Percent of Respondents (N=8,435)
The number of inmates released, including those transferred to halfway houses or placed on home confinement, has increased.	43%	26%
The amount of time that inmates are required to remain in their housing units each day has been increased.	42%	59%
The number of inmates participating in a program or activity at one time has been reduced.	38%	42%
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).	29%	44%
The number of inmates released, including those transferred to halfway houses or placed on home confinement, has increased.	43%	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)

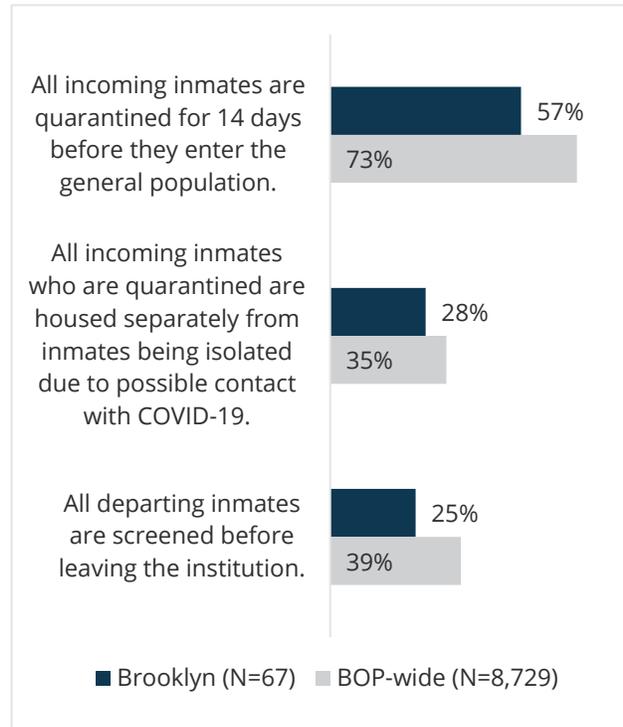


Which of the following statements best describes the current approach to COVID-19 screening of existing inmates (temperature check, questioning about other symptoms) at your institution? (Top Response)

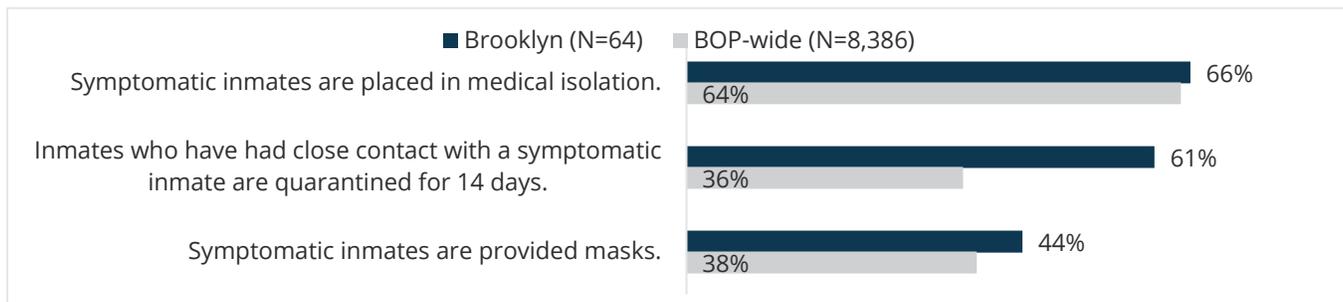


Note: Forty-nine percent of respondents chose "I don't know." The remaining chose categories amounting to less than 13 percent each.

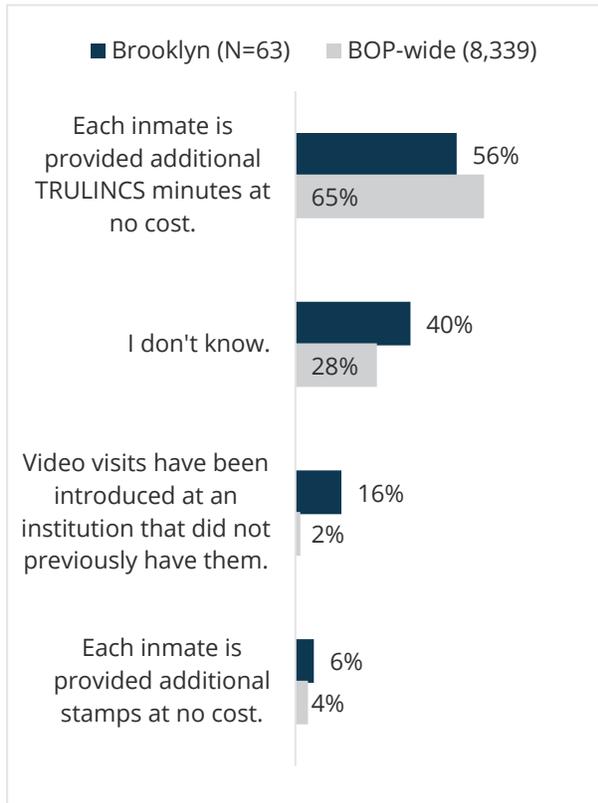
Please identify which, if any, of the following COVID-19 measures for screening incoming and departing inmates (temperature check, questioning about other symptoms) your institution is currently taking. (Top 3 Responses)



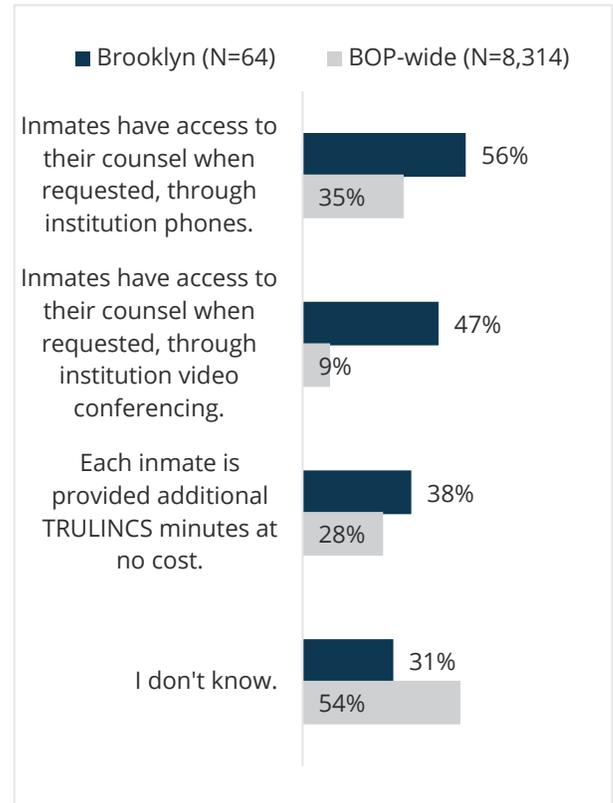
Please identify which, if any, of the following measures your institution is currently employing to manage inmates with COVID-19 symptoms. (Top 3 Responses)



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.⁴⁸ (Top 4 Responses)



Please identify which, if any, of the following strategies your institution is currently employing to facilitate inmates' ability to communicate with legal counsel.⁴⁹ (Top 4 Responses)



⁴⁸ 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.

⁴⁹ 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
	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
February	9	The BOP issued screening and leave guidance for staff.
	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.
March		

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
October	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
November		

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

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

FROM:

Gene Beasley
 Gene Beasley
 Deputy Director

SUBJECT:

Response to the Office of Inspector General's (OIG)
 Draft Audit Report: Remote Inspection of
 Metropolitan Detention Center Brooklyn During the
 COVID-19 Pandemic (A-2020-006-C)

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", "MDC Brooklyn followed BOP directives regarding testing symptomatic inmates for COVID-19; however, limited testing supplies inhibited the institution's ability to test other inmates to measure the true number of COVID-19 cases in April and May. As of May 1, the institution told us that they had received only 30 test kits due to a national shortage of test kits at that time. On May 14, it received a rapid COVID-19 test machine with approximately 175 test kits and has since received an additional 120-250 rapid test kits per week through October 19. CDC Guidelines did not prioritize testing asymptomatic inmates and MDC Brooklyn healthcare staff did not test all inmates."

BOP's Response: For the testing period in question between mid-March and May 1, 2020, the ability for national management of testing supplies was not yet developed and implemented. The basis for this delay in national COVID testing management mirrored the community needs for testing during this timeframe wherein commercial laboratory supplies were overrun with demand,

thereby affecting supply availability and turnaround time for results. Testing supplies remained in high global demand throughout the proceeding months, but the BOP was able to obtain and implement a nationwide testing strategy beginning on May 9, 2020, after connecting with the Department of Health and Human Services (HHS) for Abbot ID NOW testing supplies. Prior to this time, BOP relied on local availability of commercial testing supplies and processing at each of our affected institutions. As the health care system has caught up with the demand within the testing arena, the BOP continues to utilize a two-pronged approach for COVID testing, utilizing the Abbott ID NOW systems in concert with a national contract for commercial laboratory testing currently awarded to Quest Diagnostics.

Draft Report: Page ii, 3rd bullet under the heading "Summary of Inspection Results", "The shortage of medical staff at MDC Brooklyn was among the biggest challenges in appropriately screening inmates and staff members for COVID-19 symptoms. This shortage continued through September 2020 and resulted in MDC Brooklyn struggling to meet the medical needs of non-COVID-19 inmates. According to a review team sent by BOP Central Office, 125 inmate sick call requests from March had not been scheduled or seen as of May 1. MDC Brooklyn Health Services staff indicated that sick call wait times increased significantly due to COVID-19, as the institution faced a much higher volume sick calls compared to the year prior."

BOP's Response: MDC Brooklyn had received a significant increase in sick call requests during this time, almost 400 more requests than in the previous year. Healthcare providers triaged paper and electronic requests daily and attended to cases as clinically indicated per triage guidelines.

Draft Report: Page ii, 4th bullet under the heading "Summary of Inspection Results", "Although MDC Brooklyn officials complied with initial and subsequent BOP directives implementing CDC guidance on the use of face coverings, we found that in April and May some Health Services providers were unable to obtain the necessary personal protective equipment (PPE), including N95 respirators and gowns, to evaluate inmates with COVID-19 symptoms and treat them in medical isolation.

Page iii, 5th bullet under the heading "Summary of Inspection Results", According to results from the late April OIG survey, MDC Brooklyn staff respondents were far more likely than BOP-wide staff respondents to report an immediate need for additional PPE, staff, or cleaning supplies. Specifically, 90

percent of MDC Brooklyn respondents reported an immediate need for more PPE for staff, compared to the 68 percent of BOP-wide respondents; 71 percent reported an immediate need for additional staff to cover posts, compared to 39 percent of BOP-wide respondents; and 61 percent reported an immediate need for more cleaning supplies, compared to 34 percent of BOP-wide respondents."

BOP's Response: On April 6, 2020, staff began to be issued two surgical masks weekly. On April 7, 2020, inmates began to be issued one surgical mask weekly. Masks made by Federal Prison Industries were provided to staff and inmates on April 29, 2020. MDC Brooklyn was well stocked with PPE, in quantities that were more than adequate for immediate needs. Although in most areas PPE was reported to be delivered by mobile cart on a known schedule, there was a stationary cart with PPE (Tyvek suits, gloves and N95 masks) at the sallyport to the isolation unit, along with instructions not to remove the cart and a garbage can for doffing PPE upon exiting the unit. Overall, staff access to, and use of, PPE was in line with CDC guidance and agency direction.

Draft Report: Page 18, Table, Row 1, Column 3: "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)".

BOP's Response: The AG's March 26th guidance (https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf) states that the discretionary factors BOP should consider for home confinement placement include the "age and vulnerability of the inmate." The April 3rd guidance (https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement_april3.pdf) directed BOP to review all inmates with COVID risk factors, particularly those at locations with significant incidence of disease. The BOP's initial examination of cases thus involved inmates who had COVID-19 risk factors, one of which is age. Thus, the column description should be revised to say "Inmates with a security level of minimum or low and at high risk according to the CDC (e.g. at least 65 years of age)."

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 four issues in its response to a draft of this report. First, the BOP stated that as the national management of COVID-19 testing supplies had not yet been developed between mid-March and May 1, 2020, the BOP relied on local availability of commercial testing supplies, which were overrun with demand. The BOP has since implemented a nationwide testing strategy and a two-pronged testing approach utilizing rapid COVID-19 test machines in concert with commercial laboratory testing. Second, the BOP stated that MDC Brooklyn received a significant increase in sick call requests compared to the same time period during the previous year and that healthcare providers triaged requests daily and attended to cases as clinically indicated in triage guidelines. Third, the BOP stated that staff access to, and use of, PPE was in line with CDC guidance and agency direction and that MDC Brooklyn was well stocked with PPE in quantities that were more than adequate for immediate needs. The BOP asserted that on April 6 staff began to be issued two surgical masks weekly, on April 7 inmates began to be issued one surgical mask weekly, and on April 29 staff and inmates were provided masks (face coverings) made by Federal Prison Industries. Lastly, the BOP requested that we adjust language regarding estimated MDC Brooklyn inmates eligible for home confinement, noting that the BOP followed the Attorney General's April 3 guidance to examine cases involving inmates with COVID-19 risk factors, one of which is age.

OIG Analysis

Our report acknowledges that MDC Brooklyn's limited testing supply during the above timeframe was due to a national shortage of test kits; that the institution received a rapid COVID-19 test machine in May; and that the BOP signed a new contract for commercial laboratory testing the same month, which increased the number of swab test kits available at MDC Brooklyn. We maintain that MDC Brooklyn's testing supply during the period of our fieldwork was limited. Regarding sick call requests, our report recognizes that there was a significant increase in sick call requests compared to the same time period during the previous year. While we highlight the BOP Central Office review team's findings regarding sick calls, we did not assess MDC Brooklyn healthcare providers' clinical responses or whether they followed triage guidelines. Regarding PPE, we noted in the report the BOP's issuance to staff and inmates of surgical masks and face coverings made by Federal Prison industries. At the time of our fieldwork, however, Health Services staff told us that they were unable to obtain the necessary PPE. In addition, MDC Brooklyn survey respondents indicated an immediate need for more PPE supplies compared to BOP-wide survey respondents on average. Lastly, the BOP is correct in its summary of the April 3 Attorney General guidance regarding inmates with COVID-19 risk factors; we adjusted the language in the Table on page 18 accordingly.