



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

July 20, 2023

MEMORANDUM FOR HEADS OF AFFECTED COMPONENTS
ALL UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL *C. Monaco*

SUBJECT: Immediate Actions Following the Review of Access to Counsel at BOP Pretrial Facilities

The right to counsel is fundamental to protecting the fairness and accuracy of our criminal justice system, and the Federal Bureau of Prisons (BOP) plays a critical role in safeguarding this bedrock right. In March 2023, I directed a comprehensive review of current practices and policies related to access to counsel at BOP pretrial facilities.¹ I asked the BOP and the Office for Access to Justice (“ATJ”) to lead this review, in consultation with the Office of the Deputy Attorney General (“ODAG”), and together they convened a group of officials from across the Department (the “Advisory Group”). Consistent with my directive, the Advisory Group conducted the review on an expedited basis, engaging extensively with internal and external stakeholders, including formerly incarcerated individuals and defense counsel who represent clients at each of these facilities, as well as a wide range of BOP personnel.

Based on its review, the Advisory Group has now submitted a comprehensive report (the “Report”) with accompanying recommendations. In the Report, the Advisory Group identifies areas of strength at each of BOP’s pretrial facilities, as well as areas that warrant immediate attention. The Report provides more than 30 recommendations, including recommendations to enhance: (1) communication of and compliance with relevant policies; (2) legal visits; (3) legal calls; (4) legal correspondence; (5) access to discovery and records; (6) access to counsel during emergent situations; and (7) legal access for specific populations with distinct needs.

I am grateful to the Advisory Group for the time and expertise that it dedicated to this work, as well as to the BOP and ATJ Directors for committing the resources necessary to complete this thorough review. I embrace the Report’s recommendations, as does BOP Director Colette Peters. I also appreciate the Advisory Group’s—as well as the BOP’s—immediate response to concerns that surfaced during the review, including taking active steps to ensure that all facilities returned to normal legal visiting hours following emergency-based changes in response to the COVID-19 pandemic.

¹ The review focused on BOP’s ten standalone pretrial facilities: Metropolitan Correction Center (“MCC”) Chicago; MCC San Diego; Metropolitan Detention Center (“MDC”) Brooklyn; MDC Guaynabo; MDC Los Angeles; Federal Detention Center (“FDC”) Honolulu; FDC Houston; FDC Miami; FDC Philadelphia; and FDC SeaTac.

Today, I am directing several actions to implement the Advisory Group's recommendations.

First, I am directing the BOP Director to take the following immediate steps:

- Distribute the report to executive staff, including all Regional Directors, Wardens, and Chief Executive Officers (CEOs) of all BOP facilities (including, but not limited to, pretrial facilities), and issue a message underscoring the importance of promoting access to counsel for detained and incarcerated individuals.
- Partner with ATJ to designate a Legal Access Advisor within BOP's Central Office, who will serve as the Bureau's central point of contact for issues related to access to counsel.
- Establish a cadence of regularly scheduled meetings and reviews to surface challenges related to legal access, including regular meetings at each pretrial facility with the local legal community, semi-annual reviews by BOP Central Office of legal access at each facility, and annual meetings at each facility that include representatives from the facility's leadership, BOP Central Office, relevant Federal Defender Offices, other members of the defense bar, U.S. Attorney's Offices, the judiciary, and other pertinent stakeholders.
- Issue immediate guidance to enhance detainees' access to legal visits, including by directing all pretrial facilities to standardize the rules for legal visits by non-attorney legal staff and to require training for officials involved in facilitating these visits. The BOP Director should also establish on a pilot basis at a pretrial facility a calendaring system that would allow attorneys to schedule in advance legal visits with their clients and, if successful, expand the pilot system to all pretrial facilities.

Further, I am directing the BOP Director to enhance access to discovery, including electronic discovery ("e-discovery"), in BOP pretrial facilities. As a priority matter, the BOP Director shall issue detailed guidance to all pretrial facilities to promote the use of attorney laptops during legal visits, including by authorizing such laptop use whenever it is essential to facilitate the attorney-client relationship and consistent with maintaining facility security. In keeping with the Advisory Group's recommendations, the guidance should underscore the essential role that attorney laptops play in allowing a client to review discovery that is otherwise inaccessible on the facility's computers, limit the number of officials who may deny use of such laptops, and specify the process that officials must follow before any such denial, including by requiring consultation with the Regional Office.

In addition, I am instructing the Executive Office for U.S. Attorneys ("EOUSA") and the Justice Management Division ("JMD") to partner with the Advisory Group, and other litigating components and stakeholders as appropriate, to further review access to e-discovery at BOP's pretrial facilities. In particular, EOUSA and JMD should identify the appropriate official(s) to partner with the Advisory Group in its efforts to ensure that common e-discovery formats produced by U.S. Attorney's Offices can be safely and efficiently reviewed on discovery computers within BOP's pretrial facilities. The group will provide a progress update to ODAG within 60 days on

these efforts and provide a report with additional recommendations within 120 days from the date of this memorandum.

In order to expeditiously implement the report's recommendations, I am directing the BOP Director to develop a detailed workplan, which shall be shared with ODAG within 45 days of this memorandum. I am also directing the Advisory Group to continue its efforts to promote access to counsel at BOP facilities, including by reviewing that workplan and monitoring implementation. Likewise, the Advisory Group should also review and assess access to counsel at BOP facilities not within the scope of this expedited review, including additional facilities that house pretrial detainees, as well as facilities that house individuals post-conviction. The Advisory Group shall report to ODAG every 90 days on the progress of this review.

Thank you for your attention to this important work and for your ongoing efforts to promote access to counsel for individuals in custody.

Attachments

- Distribution List
- Report and Recommendations Concerning Access to Counsel at BOP Pretrial Facilities

Distribution List

Assistant Attorney General, Antitrust Division

Principle Deputy Assistant Attorney General, Civil Division

Assistant Attorney General, Civil Rights Division

Assistant Attorney General, Criminal Division

Assistant Attorney General, Environment and Natural Resources Division

Acting Assistant Attorney General for Administration, Justice Management Division

Assistant Attorney General, National Security Division

Director, Federal Bureau of Prisons

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Director, Executive Office for United States Attorneys

Director, Office for Access to Justice

All United States Attorneys