

United States Senate

WASHINGTON, DC 20510

February 27, 2024

The Honorable Merrick Garland
Attorney General
United States Department of
Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Colette Peters
Director
Federal Bureau of Prisons
320 First St NW
Washington, D.C. 20534

Dear Attorney General Garland and Director Peters:

We write to express deep concern with the Bureau of Prison's (BOP) reliance on the American Correctional Association (ACA) for accreditation and re-accreditation services. The ACA's accreditation system has proven to be little more than a rubber stamp, and the BOP's contract with the ACA has been a waste of taxpayer dollars. We urge the BOP not to renew its ACA accreditation contract when it expires next month.

The ACA is the country's largest trade association for the corrections industry.¹ It develops standards for the operation of prisons and jails and accredits facilities that voluntarily comply with those standards.² The ACA began accrediting BOP facilities in 1980³ and now accredits all of the BOP's 122 federal prisons.⁴ Under their existing contract, the BOP pays the ACA \$2.75 million for its accreditation services.⁵ That contract, formed in 2018, is set to expire in

¹ Office of Senator Elizabeth Warren, "The Accreditation Con: A Broken Prison and Detention Facility Accreditation System That Puts Profits Over People," December 2020, p. 6, <https://www.warren.senate.gov/imo/media/doc/The%20Accreditation%20Con%20-%20December%202020.pdf>; American Correctional Association, "To Lead and to Serve: Guidelines for effective leadership in the American Correctional Association," revised February 2017, p. 6, https://aca.org/Common/Uploaded%20files/Home%20Page/about%20us/ToLeadandtoServe_FINAL_NewLogo.pdf.

² ACA standards cover topics such as health care, food services, sanitation, and the use of solitary confinement. American Correctional Association, "Manual of Accreditation Policy and Procedure," August 2020, pp. 11, 71, <https://aca.org/common/Uploaded%20files/Standards/Accreditation%20Manual%20-%20Aug%202020%20Final.pdf>.

³ Department of Justice, Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Contract Awarded to the American Correctional Association," November 2023, p. 1, <https://oig.justice.gov/sites/default/files/reports/24-009.pdf>.

⁴ Forbes, "Report: Bureau Of Prisons Not Getting Value From Accreditation Agency," Walter Pavlo, November 16, 2023, <https://www.forbes.com/sites/walterpavlo/2023/11/16/report-bureau-of-prisons-not-getting-value-from-accreditation-agency/?sh=538851b55654>.

⁵ Department of Justice, Office of the Inspector General, "Audit of the Federal Bureau of Prisons' Contract Awarded to the American Correctional Association," November 2023, p. 1, <https://oig.justice.gov/sites/default/files/reports/24-009.pdf>.

March 2024.⁶ In December 2023, the BOP issued a Request for Information (RFI) to explore possible alternative vendors to provide auditing services.⁷

For decades, the ACA has come under fire for maintaining an accreditation system that is largely toothless and is marred by conflicts of interest.⁸ A 2020 congressional investigation by Senator Elizabeth Warren concluded:

[T]he ACA’s private prison accreditation system is riddled with conflicts of interest, lacks transparency, and is subject to zero accountability even though millions in taxpayer dollars . . . flow to the ACA and private prison companies. These problems put the health and wellbeing of incarcerated and detained individuals, the staff and employees who work in those facilities, and our communities at risk.⁹

While the ACA claims that “[a]ccreditation is awarded to the ‘best of the best’ in the corrections field,”¹⁰ in practice, ACA accreditation is awarded to virtually every facility that pays the accreditation fee.¹¹ The ACA structures its audit process such that it is almost impossible to fail: when an in-person audit is conducted, the ACA helps facilities prepare by giving them three months’ notice before an audit, providing checklists and audit evaluation forms, and offering opportunities for “mock audits.”¹² In essence, the ACA “provid[es] the answers to the test in advance.”¹³ Furthermore, facilities can be accredited even if they fail

⁶ *Id.*

⁷ SAM.gov, “Request for Information (RFI) - Audit of Policy, Procedure, and Industry Standard Compliance,” December 7, 2023, <https://sam.gov/opp/8e22eab61bc746cea36caa369ff7c66c/view>.

⁸ New York Times, “JUDGE QUILTS PANEL ON PRISON RATINGS,” Wendell Rawls Jr., August 8, 1982, <https://www.nytimes.com/1982/08/08/us/judge-quits-panel-on-prison-ratings.html>; The Appeal, “TARGETING A GROUP THAT ‘LENDs LEGITIMACY’ TO HUMAN CAGING,” Vaidya Gullapalli, August 7, 2019, <https://theappeal.org/targeting-a-group-that-lends-legitimacy-to-human-caging/>.

⁹ Office of Senator Elizabeth Warren, “The Accreditation Con: A Broken Prison and Detention Facility Accreditation System That Puts Profits Over People,” December 2020, p. 1, <https://www.warren.senate.gov/imo/media/doc/The%20Accreditation%20Con%20-%20December%202020.pdf>.

¹⁰ American Correctional Association, “Seeking Accreditation,” https://www.aca.org/ACA_Member/ACA/ACA_Member/Standards_and_Accreditation/Seeking_Accreditation_Home.aspx.

¹¹ Mother Jones, “Exclusive: Read Elizabeth Warren’s Scathing Report on “Corrupt” Prison Audits,” Madison Pauly, December 14, 2020, <https://www.motherjones.com/criminal-justice/2020/12/exclusive-elizabeth-warren-private-prison-accreditation/>; Office of Senator Elizabeth Warren, “The Accreditation Con: A Broken Prison and Detention Facility Accreditation System That Puts Profits Over People,” December 2020, p. 10, <https://www.warren.senate.gov/imo/media/doc/The%20Accreditation%20Con%20-%20December%202020.pdf>.

¹² Office of Senator Elizabeth Warren, “The Accreditation Con: A Broken Prison and Detention Facility Accreditation System That Puts Profits Over People,” December 2020, p. 10, <https://www.warren.senate.gov/imo/media/doc/The%20Accreditation%20Con%20-%20December%202020.pdf>.

¹³ *Id.*

the audit, and being accredited by the ACA seems to have little correlation with actual facility conditions or practices.¹⁴

Additionally, the ACA maintains deep conflicts of interest that further call into question the legitimacy of its accreditation process. As Senator Warren’s investigation explained, the ACA depends on the facilities it accredits for its revenue: almost half of its revenue comes from fees and payments for an accreditation process that facilities enter voluntarily.¹⁵ Another quarter of its revenue comes from private prison companies’ sponsorships of and ticket purchases for the ACA’s conferences.¹⁶ The ACA also receives grant dollars from the Department of Justice (DOJ) to conduct corrections-related research, at the same time that it accredits the DOJ’s BOP facilities.¹⁷ Furthermore, the ACA is not only financially reliant on the facilities it accredits; it also formally represents their interests as a trade association that lobbies on their behalf before Congress.¹⁸ These competing roles make it impossible for the ACA to retain credibility as a third party charged with ensuring appropriate conditions in prisons and jails.

In the case of the ACA’s oversight of BOP facilities, the ACA’s independence has been further eroded by an arrangement the BOP currently has with the association. According to a DOJ Office of the Inspector General (OIG) report published in November 2023, the BOP and ACA agreed — apparently informally¹⁹ — that the ACA would altogether eliminate its “independent assessment of the facilit[ies].”²⁰ Instead of conducting its own review of the BOP’s facilities or documentation, the ACA would renew accreditations simply based on the BOP’s self-assessment. Thus, the BOP “is, in effect, paying for ACA to adopt as its own the BOP’s findings.”²¹ The OIG concluded that the “BOP does not appear to be receiving value from the ACA reaccreditation process as implemented.”²² This arrangement is an appalling waste of taxpayer dollars.

Meanwhile, many of those BOP facilities are experiencing rampant problems that require meaningful oversight. In 2019, Senator Warren wrote with concerns to the BOP that, “despite having received the ACA stamp of approval, [many BOP facilities] allow inmates to live amid unsafe conditions, and are rife with violence, health and safety hazards and other

¹⁴ *Id.* at 10, 12-16.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 8.

¹⁷ Department of Justice, Office of the Inspector General, “Audit of the Federal Bureau of Prisons’ Contract Awarded to the American Correctional Association,” November 2023, p. 11, <https://oig.justice.gov/sites/default/files/reports/24-009.pdf>.

¹⁸ Office of Senator Elizabeth Warren, “The Accreditation Con: A Broken Prison and Detention Facility Accreditation System That Puts Profits Over People,” December 2020, p. 7-8, <https://www.warren.senate.gov/imo/media/doc/The%20Accreditation%20Con%20-%20December%202020.pdf>.

¹⁹ The OIG report explains that the agreement was never committed to writing as part of a contract. *See* Department of Justice, Office of the Inspector General, “Audit of the Federal Bureau of Prisons’ Contract Awarded to the American Correctional Association,” November 2023, p. i, 8-9, <https://oig.justice.gov/sites/default/files/reports/24-009.pdf>.

²⁰ *Id.* at 3.

²¹ *Id.* at 11.

²² *Id.* at i.

systemic problems.”²³ Those problems persist. For example, last year the OIG released reports about poor conditions at two BOP facilities: FCI Waseca, which houses many incarcerated individuals in the basement next to leaky pipes,²⁴ and FCI Tallahassee, which served spoiled, insect- and rodent-infested food and failed to repair broken toilets.²⁵

Given the critical need for meaningful oversight of BOP facilities and the ACA’s complete failure to provide it, the BOP should not renew its ACA contract after it ends in March 2024. The ACA’s accreditation system is ineffective at best, and at worst misleads the public to believe that a failing facility’s operations are adequate. We urge you to identify alternative means of oversight that involve genuinely independent, rigorous audits of each BOP facility.

To help the public understand the DOJ’s current engagement with the ACA and the BOP’s efforts to ensure independent third-party oversight of its facilities, we request your responses to the following questions no later than March 13, 2024:

1. Please list all current contracts that the ACA has with the DOJ and all grants or other payments that the ACA has received from the DOJ in the past five years.
2. Of the BOP’s 122 prisons that the ACA accredits, for how many did the ACA conduct an in-person visit to the facility during the most recent re-accreditation process?
 - a. For each in-person visit made to BOP prisons during their most recent re-accreditation process, how many auditors visited the facility?
 - b. How long did auditors stay at the facility to conduct the in-person audit?
3. How many BOP prisons have been audited by the ACA during the course of the current contract? In how many cases have these prisons failed to be accredited or re-accredited during an audit?
4. How many times has a staff member with the DOJ been a speaker at the ACA conference in the past five years?
 - a. On average, how many DOJ staff attend the ACA conference annually?
5. Please provide a detailed accounting of all cases where BOP facilities have requested and been granted waivers from ACA standards, and for what reason?
6. Please provide a detailed accounting of all cases where BOP facilities have been accredited or re-accredited based on a Plan of Action to remedy an area of non-compliance, and for what reason?
 - a. In how many cases were these Plans of Action later verified by ACA to have been sufficiently executed?
7. What other methods of third-party oversight of BOP facilities has the BOP explored, as an alternative to the ACA?

23 Letter from Senator Elizabeth Warren to BOP Acting Director Hugh Hurwitz, May 31, 2019, p. 5, <https://www.warren.senate.gov/imo/media/doc/2019-05-30%20Letter%20to%20BOP%20on%20Accreditation.pdf>.

24 Department of Justice, Office of the Inspector General, “Inspection of the Federal Bureau of Prisons’ Federal Correctional Institution Waseca,” May 2023, pp. 9, 33, <https://oig.justice.gov/sites/default/files/reports/23-068.pdf>.

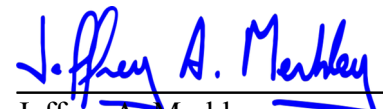
25 Department of Justice, Office of the Inspector General, “Inspection of the Federal Bureau of Prisons’ Federal Correctional Institution Tallahassee,” November 2023, pp. 4, 6, 16, 38, <https://oig.justice.gov/sites/default/files/reports/24-005.pdf>.

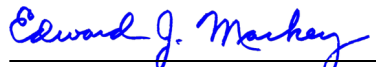
- a. Through the RFI process, has the BOP identified alternative auditors that do not depend on revenue from the facilities they audit?
8. If the BOP does renew its accreditation contract with the ACA, what measures will it put in place to maintain the ACA's independence as a third-party auditor?

Thank you for your attention to this important matter.

Sincerely,


Elizabeth Warren
United States Senator


Jeffrey A. Merkley
United States Senator


Edward J. Markey
United States Senator