June 21, 2019

The Honorable William Barr  
United States Attorney General  
Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

David B. Muhlhausen, Ph.D.  
Director  
National Institute of Justice  
810 Seventh Street, NW  
Washington, DC 20531

Dear Attorney General Barr and Director Muhlhausen:

We write again concerning implementation of the First Step Act. On April 8, 2019, prior to the announcement of the National Institute of Justice’s (NIJ) selection of the organization to host the Independent Review Committee (IRC), we wrote to the Attorney General concerning First Step Act implementation, and we specifically inquired about the creation of the IRC required under the law.\(^1\) On June 7, 2019, we received a limited response. Our staff has also been briefed by, and had multiple communications with, the Department of Justice (DOJ) and NIJ, but most of our questions remain unanswered.

As we have previously expressed, we are troubled that NIJ has announced the selection of the Hudson Institute to host the IRC. We are concerned that this selection, and the IRC members chosen by the Hudson Institute, do not appear to comport with the mandates of the First Step Act. We write today to further inquire about this selection.

The First Step Act requires establishment of an IRC to exercise independent and unbiased oversight of the law’s implementation, and to ensure that reforms are conducted in a bipartisan and evidence-based manner. The law requires that NIJ “select a nonpartisan and nonprofit organization with expertise in the study and development of risk and needs assessment tools.”\(^2\) The Hudson Institute appears to have little or no expertise in the study and development of risk and needs assessment tools. Further, the Hudson Institute and its leadership have consistently opposed criminal justice reform, and the Hudson Institute published an article in 2016 entitled “Why Trump Should Oppose ‘Criminal Justice Reform,’”\(^3\) clearly outlining the organization’s position as adverse to criminal justice reform. The selection of an organization to oversee

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2. *Id.* at § 107(b) (emphasis added).
reforms, when it has explicitly opposed similar reforms, and when it appears to lack the expertise required by law, is highly troubling.

The First Step Act additionally mandates that the host organization select “not fewer than 6 members” to comprise the IRC. These members must include two individuals who have published peer-reviewed scholarship about risk and needs assessments in both corrections and community settings; two corrections practitioners who have developed and implemented a risk assessment tool in a corrections system or in a community supervision setting, including one with prior experience working within the Bureau of Prisons (BOP); and one individual with expertise in assessing risk assessment implementation. On the same day the Hudson Institute was selected, it announced its appointment of six IRC members. We further write to inquire how these members were selected, and whether they have the requisite expertise mandated under the law.

As we continue the oversight of First Step Act implementation, we ask that you provide answers to the following additional questions concerning the IRC.

Selection of the Hudson Institute

1. How many organizations did DOJ and NIJ consult as potential organizations to host the IRC? Please name all organizations consulted.

2. Did DOJ and NIJ request offers, bids, applications or proposals from all potential host organizations consulted? Please provide all offers, bids, applications or proposals made by potential host organizations.

3. Please provide any and all communications between DOJ and NIJ with potential host organizations.

4. In your June 7 letter, you state that, “...the Department engaged with those organizations deemed the most qualified to serve in this administrative role, including the Hudson Institute. At the end of that process, Hudson was selected as the most qualified organization.” What process was implemented to determine which organization was most qualified to host the IRC? Which specific organizations were “deemed” qualified, but were not ultimately selected?

5. In a May 17, 2019 posting on the NIJ website, NIJ suggests that the Hudson award was a noncompetitive award. Please confirm whether or not this is accurate.

6. Did DOJ and NIJ solicit or receive any contractor proposals or statements of work from the Hudson Institute? If so, please provide a copy of all contractor proposals and statements of work received.

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4 First Step Act at § 107(c).
5 Id. at § 107(d).
7. Please explain the legal basis, including citations to applicable laws, which permitted NIJ to make a non-competitive award to the Hudson Institute.

8. Please provide any statement of the NIJ Director describing the circumstances that permitted NIJ to make a non-competitive award to the Hudson Institute.

9. On what date did DOJ and NIJ first communicate with the Hudson Institute regarding the potential to serve as an IRC host organization? Please provide that communication.

10. Who ultimately approved the selection of the Hudson Institute? On what date was this approval decision made, and on what date was the approval communicated to the Hudson Institute? Please provide this communication.

11. Did the Hudson Institute solicit funding in the amount of $1,500,000 for the award? How did NIJ determine this amount of funding was necessary for the award to the organization to host the IRC?

12. Please provide all communications of DOJ and NIJ to or from the Hudson Institute, pertaining to the IRC, that occurred from December 21, 2018 until the award announcement.

13. Please detail the reasons why DOJ and NIJ selected the Hudson Institute as “the most qualified organization” to host the IRC.

14. Has the Hudson Institute ever studied a risk and needs assessment tool? If so, please provide any such study, including the date or dates it was carried out, the method of any study conducted, and the results of any such study.

15. Other than the risk and needs assessment tool required under the First Step Act, has the Hudson Institute ever developed a risk and needs assessment tool? If so, please describe the risk and needs assessment tool developed, and provide documentation that describes the work performed by the Hudson Institute in such development and where and when the risk and needs assessment tool was implemented.

**Appointment of Independent Review Committee Members**

16. On what date were the IRC members selected?

17. Of the six members selected as members of the IRC, which **two or more members**, if any, have published peer-reviewed scholarship about risk and needs assessments in both corrections and community settings? Please name each member, and provide copies of each members’ peer-reviewed scholarship.

18. Of the six members selected as members of the IRC, which **two or more members**, if any, have developed and implemented a risk assessment tool in a corrections system or in a community supervision setting? Please name such members and describe such
implementation, including a description of the risk assessment tool, how it was developed, and the setting in which it was implemented.

19. Of the six members selected as members of the IRC, which members, if any, have developed and implemented a risk assessment tool in a corrections system or in a community supervision setting, and in addition have prior experience working within BOP? Please name such members, describe the risk assessment tool developed and implemented by the members, and the members’ experience working within BOP.

20. Of the six members selected as members of the IRC, please name which member, if any, has expertise in assessing risk assessment implementation. Please describe that member’s expertise, including what risk assessment implementation he or she assessed, when such assessment took place, the process used for such assessment, and the results of his or her assessment of such risk assessment tool and its implementation.

21. Under the Federal Advisory Committee Act (FACA), the IRC must comply with certain policies and requirements relating to meetings. Has the IRC held any meetings, to date?

   a. If so, what were the dates of every meeting of the IRC, to date?

   b. Which of the IRC’s meetings, to date, were open to the public?

   c. Please provide any notice of IRC meetings that were made available or sent to the public.

   d. For any IRC meetings, to date, were the meeting minutes, and any other meeting documents available to the public? If so, please indicate where such documents have been made publicly available.

22. We have not received a copy of the IRC’s charter, which, under FACA, was required to be furnished to the Judiciary Committee before the IRC meets or takes any action. Please provide a copy of the IRC’s charter, if it exists.

**Reporting Role of the IRC**

The First Step Act mandates that certain duties be performed by the IRC independently, and that other consultative duties be performed by the IRC in collaboration with the Attorney General. The IRC is mandated to issue a Report, which is a duty expressly delegated to the IRC alone. This Report is to be prepared by the IRC independently from the Attorney General.

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8 See id. at § 9.
9 See First Step Act at § 107(g).
10 See id. at § 107(e) (For example, in creation of the risk and needs assessment, the law provides that the Attorney General “shall consult with an Independent Review Committee.”).
11 See id.
The purpose of the IRC Report is to provide an independent review of the DOJ’s First Step Act implementation, and to make unbiased recommendations to cure any implementation problems. The Report must be provided to Congress not later than two years after the date of enactment, it must include data on the demographics of persons affected by certain provisions in the bill, and it must include “any recommendations for modifications” to those excluded from earning time credits, and “any other recommendations regarding recidivism reduction.”

However, in your June 7 letter, in noting the IRC’s Report mandate, you state that you “plan to support the IRC in its work on its review of the exclusions list and all of its responsibilities and will carefully review its report to Congress.” This representation is concerning and appears to indicate that IRC’s reporting to Congress will be screened by DOJ and will not be independent.

23. Will you commit to ensure the independence of the IRC in its reporting mandate?

24. How will you maintain this independence? Please describe in detail how DOJ and NIJ intend to be involved, if at all, in the IRC’s independent reporting mandate under Section 107 (g) of the First Step Act.

Our goal is to ensure that the First Step Act is implemented as intended by Congress, and we appreciate your attention to these questions. We request a written and comprehensive response to these questions no later than August 1, 2019.

Sincerely,

Jerrold Nadler
Chairman
House Committee on the Judiciary

Karen Bass
Chair
Subcommittee on Crime, Terrorism & Homeland Security

Hakeem Jeffries
Chairman
House Democratic Caucus

Sheila Jackson Lee
Member
Subcommittee on Crime, Terrorism & Homeland Security

Cedric L. Richmond
Member
Subcommittee on Crime, Terrorism & Homeland Security

CC: Doug Collins, Ranking Member, House Committee on the Judiciary
    John Ratcliff, Ranking Member, Subcommittee on Crime, Terrorism & Homeland Security