

May 23, 2024

Dr. Lester Martinez-Lopez
Assistant Secretary of Defense for Health Affairs
1200 Defense, Pentagon
Room 3E1070
Washington, DC 20301

Dear Assistant Secretary Martinez-Lopez:

I write to you today to request information on how the Department of Defense (DoD or “the Department”) is using its authority to treat civilians and veterans who are victims of acts of terror at military treatment facilities (MTFs).

Jessica Kensky and Patrick Downes were severely injured in the April 2013 Boston Marathon Bombing. While the care they received from Boston trauma centers was instrumental in their survival and initial recoveries, Jessica and Patrick realized that to ensure their recoveries continued to progress, they needed the medical expertise, experience, and practice that was available at military medical centers.¹ For two months, Patrick advocated on Jessica’s behalf for DoD to grant her Secretarial Designee status to receive care from Walter Reed National Military Medical Center.² After the Secretary of Defense approved her care, they moved to Walter Reed on their second wedding anniversary in August 2014.³ Two months later, the Pentagon approved treatment for Patrick at Walter Reed.⁴ Jessica and Patrick credited the highly specialized team at Walter Reed for enabling them to have a fuller recovery than they would have otherwise.⁵ Jessica explained that, “Walter Reed saved me...It gave me my life back.”⁶ Whereas “[c]ivilian hospitals discharge amputees once they can walk,” the therapists and wounded veterans at Walter Reed pushed Patrick to go further – and eventually back to running, where he completed the Boston Marathon again in 2016.⁷ In return, Jessica and Patrick wanted to ensure other victims of terror

¹ Office of Senator Elizabeth Warren, “The Jessica Kensky and Patrick Downes Act,” June 15, 2017, 1:01-1:31, <https://www.youtube.com/watch?v=1CcNIFMDQiM>.

² BC News, “And now,” Zachary Johnson, November 21, 2016, <https://www.bc.edu/bc-web/bcnews/campus-community/alumni/andnow.html>.

³ *Id.*

⁴ *Id.*

⁵ Office of Senator Elizabeth Warren, “Warren and Collins Introduce Bipartisan Legislation to Provide Military Health Care Treatment to Victims of Terrorism,” press release, June 15, 2017, <https://www.warren.senate.gov/newsroom/press-releases/warren-and-collins-introduce-bipartisan-legislation-to-provide-military-health-care-treatment-to-victims-of-terrorism>.

⁶ BC News, “And now,” Zachary Johnson, November 21, 2016, <https://www.bc.edu/bc-web/bcnews/campus-community/alumni/andnow.html>.

⁷ *Id.*

have access to appropriate care at military medical facilities.⁸ As Patrick explained, “When bombs go off, all of your resources are stressed. And we have to make sure that people can get care as readily as possible. And we want to take all the lessons that we’ve learned in figuring this process out to make sure that other people have a smoother road.”⁹

In 2016, I introduced the *Jessica Kensky and Patrick Downes Act* to make it easier for victims of terrorism attacks to receive care at MTFs.¹⁰ This bill was incorporated into Section 717 of the FY 2017 NDAA, as amended by Section 712 of the FY 2018 NDAA. Section 717 gives the Secretary of Defense the authority to waive prioritization requirements for covered beneficiaries at MTFs so that veterans and civilians who have been severely wounded or injured by acts of terror inside or outside the U.S. can receive treatment at these facilities.¹¹

One of the ways in which military medical personnel hone their skills is through treating civilians at MTFs. This supports the Military Health System’s mission “to enable the Department of Defense to provide medically ready and ready medical forces by improving the health of all those entrusted to our care.”¹² The Government Accountability Office found that treating civilian emergency patients “creates the opportunity for more encounters for medical personnel, including military surgeons” and “gives MTF personnel more trauma experience.”¹³ Treating civilian victims of terrorism also allows military medical personnel to work on more complex and diverse cases that better prepare them for battlefield injuries since they gain experience with “penetrating trauma cases—such as gunshot or stab wounds.”¹⁴

Civilian cases also support “[i]ncreased medical readiness training through team training” and increases in the volume of patients and complex cases “can assist MTFs in obtaining or sustaining trauma center designation.”¹⁵ For example, the Brooke Army Medical Center (BAMC) has found that “treating civilians is critical to maintaining accreditation for graduate medical education programs and supports research.”¹⁶ DoD has also recognized the importance of building relationships with nearby communities and that providing this “care to civilian patients is helpful to the community and fosters continued relationships.”¹⁷ In areas where the nearest trauma center is over ten miles away, facilities like the Mike O’Callaghan Military Medical Center can provide trauma care to civilians who otherwise would have difficulties obtaining access in this underserved area.¹⁸

⁸ Office of Senator Elizabeth Warren, “The Jessica Kensky and Patrick Downes Act,” June 15, 2017, <https://www.youtube.com/watch?v=1CcNIFMDQiM>.

⁹ *Id.*, 2:15-2:33.

¹⁰ Office of Senator Elizabeth Warren, “Warren and Collins Introduce Bipartisan Legislation to Provide Military Health Care Treatment to Victims of Terrorism,” press release, June 15, 2017, <https://www.warren.senate.gov/newsroom/press-releases/warren-and-collins-introduce-bipartisan-legislation-to-provide-military-health-care-treatment-to-victims-of-terrorism>.

¹¹ National Defense Authorization Act for Fiscal Year 2018, Public Law 115-91, Section 712.

¹² Military Health System, “Our Strategy,” January 22, 2024, <https://www.health.mil/About-MHS/Our-Strategy>.

¹³ Government Accountability Office, “Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care,” July 7, 2022, p. 17, <https://www.gao.gov/assets/gao-22-104770.pdf>.

¹⁴ *Id.*

¹⁵ *Id.*, pp. 18-19.

¹⁶ *Id.*, p. 19.

¹⁷ *Id.*

¹⁸ *Id.*

MTFs have also provided critical trauma care for civilians after mass shootings. In November 2017, BAMC treated eight victims of the Sutherland Springs shooting at First Baptist Church.¹⁹ Army Colonel (Dr.) Kurt Edwards described the horror of how “[i]t was disheartening to see that the injuries were not dissimilar to those in combat.”²⁰ After the reports of the shooting, “More than two dozen trauma surgeons heard the news and showed up to work, not to observe, but to assist. This was a number more than matched by nurses, medics, pharmacists and countless other staff members.”²¹ This is not the only time that medical personnel from BAMC have had to step up in the wake of a mass shooting. After the May 2022 mass shooting at Robb Elementary School in Uvalde, Texas, BAMC treated two victims.²² As then-Acting Assistant Secretary of Defense for Health Affairs Seileen Mullen highlighted, this case acts as “a reminder of the extraordinary care the military health system can provide when called upon.”²³

Experienced military medical personnel have also stepped up in response to mass shootings. Dr. James “Jim” Sebesta, a former Army trauma surgeon at Madigan Army Medical Center, assisted and evacuated victims of the Route 91 Harvest Festival mass shooting in Las Vegas in October 2017.²⁴ After seeing the horror unfolding around him, and “[k]nowing every second is crucial to a gunshot victim, Sebesta made the call to run toward danger instead of away from it.”²⁵ Cases like these show that how beneficial the expertise of military medical personnel has been in helping victims of mass shootings.

MTFs can provide life changing treatment for victims of acts of terror. I am proud of the critical provision I secured in the FY 2018 NDAA that provides the Secretary of Defense with authority to allow MTFs to treat veteran and civilian victims of terrorism. I urge the Department to fully utilize this authority and ensure that victims of terror are aware of their options to receive care at MTFs. In order to assess how DoD is using its authorities to treat civilian victims of terror, I request responses to the following questions no later than June 6, 2024:

1. How many civilians²⁶ have been treated at MTFs in each of the past ten years?
 - a. Please provide a breakdown in trauma-related and non-trauma related cases.
 - b. Please provide a breakdown by incidents, including specific mass shootings and acts of terror.

¹⁹ U.S. Department of Defense, “Trauma Chief Praises Medical Response to Sutherland Springs Shooting,” Elaine Sanchez, November 15, 2017, <https://www.defense.gov/News/News-Stories/Article/Article/1371639/trauma-chief-praises-medical-response-to-sutherland-springs-shooting/>.

²⁰ *Id.*

²¹ Air Force 37th Training Wing, “Commentary: In the wake of tragedy, acts of love triumph over hate,” November 15, 2017, <https://www.37trw.af.mil/News/Article-Display/Article/1373912/commentary-in-the-wake-of-tragedy-acts-of-love-triumph-over-hate/>.

²² Air Force Times, “Two victims of Texas school shooting being treated at military hospital,” Karen Jowers, May 25, 2022, <https://www.airforcetimes.com/news/your-military/2022/05/25/two-victims-of-texas-school-shooting-being-treated-at-military-hospital/>.

²³ *Id.*

²⁴ Defense Visual Information Distribution Service, “Former Madigan doctor ran toward danger,” Pamela Kulokas, October 6, 2017, <https://www.dvidshub.net/news/250909/former-madigan-doctor-ran-toward-danger>.

²⁵ *Id.*

²⁶ Excluding U.S. government civilian employees and contractor personnel seen in an MTF under 5 U.S.C. 7901 (e.g., occupational health services) or for space-available care as a result of an overseas assignment.

- c. Please provide a breakdown on the state or overseas location from which these civilians reside and the MTFs at which they were treated.
 - d. Please provide a breakdown on the types of injuries and corresponding incidents or events for which they were treated.
2. How many civilian and veteran victims of terror have been treated at MTFs under the authority granted to the Secretary by Section 717 of the FY 2017 NDAA, as amended by Section 712 of the FY 2018 NDAA?
 - a. Has the Secretary of Defense delegated this authority? If so, to whom?
 - b. Describe the process for requesting and providing care to a civilian under this authority.
 - c. Describe how DoD policies have been established to govern the use of these authority and how have these been promulgated.
3. How many victims of terror have requested care at MTFs?
 - a. Were any individuals who requested care at MTFs denied this care and under what grounds?
 - b. How long did it take for care to be approved for these victims of terror?
4. For the Sutherland Springs and Uvalde mass shootings, did the civilian victims request to receive care at an MTF?
 - a. Were any individuals denied care and under what grounds?
 - b. How long did it take for care to be approved?
5. Under which other authorities have MTFs treated civilians?
6. How has the Department and MTFs notified communities, hospitals, and civilians of the authorities and options for care, including for victims of acts of terror?
7. How many times has DoD used the Secretarial Designee authority, under 10 U.S.C. 1074(c)(1), to authorize the treatment of civilians?
 - a. Please include the number of those treated who were victims of acts of terror.
8. In cases where DoD waived the costs of treatment for civilians, how much of the costs did DoD cover and what was the total cost DoD waived for the victims?
 - a. Please provide a breakdown on how much of the cost that DoD collected was from third-party payers and how much of the cost that DoD collected was from the actual patient.
 - b. Please specify this information for veteran or civilian victims of acts of terror.
9. Under what authorities has DoD waived the costs of treatment for civilians?
 - a. Please specify the authorities used to treat veteran or civilian victims of acts of terror.
10. The Department has granted Military Treatment Facilities such as BAMC the authority to provide treatment to civilians through the Secretarial Designee authority under 10 U.S.C.

1074(c)(1).²⁷ Please provide a list of MTFs that DoD has partnered with on providing this authority, the related memorandum delegating this authority, and any annual reports²⁸ from the MTFs on their use of the Secretarial Designee program.

11. BAMC has an agreement with the Bexar County Hospital District for the MTF to be part of the Bexar County and surrounding area's trauma network. This enables civilians in need of emergency treatment for certain traumas to be transported to BAMC.²⁹ Which other military treatment facilities are part of trauma networks, and for how long have these agreements been in place?

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator

²⁷ Department of the Navy, Office of the Surgeon General, "MEMORANDUM FOR COMMANDERS, REGIONAL HEALTH COMMANDS: Delegation of Authority – Secretarial Designee Program," February 3, 2020, <https://tripler.tricare.mil/Portals/138/Department%20of%20the%20Army%20Secretarial%20Designee%20Program.pdf>.

²⁸ *Id.*, pp. 7-8.

²⁹ Government Accountability Office, "Defense Health Care: Actions Needed to Improve Billing and Collection of Debt for Civilian Emergency Care," July 7, 2022, pp. 16-19, <https://www.gao.gov/assets/gao-22-104770.pdf>.