



Office of the Inspector General
United States Department of Justice

Statement of
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Justice

*before
the*

U.S. Senate
Committee on Homeland Security and
Governmental Affairs

concerning

"Oversight of the Bureau of Prisons: First-Hand Accounts of Challenges
Facing the Federal Prison System"

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(Revised February 2016)

Mr. Chairman, Senator Carper, and Members of the Committee:

Thank you for inviting me to testify today about the persisting crises in the federal prison system. The Department of Justice (Department) continues to face two interrelated challenges in managing the federal prison system. Despite a slight decrease in the total number of federal inmates in fiscal year (FY) 2014, the Department projects that the costs of the federal prison system will further increase in the years ahead, continuing to consume a large share of the Department's budget. In addition, federal prisons remain significantly overcrowded and therefore face a number of important safety and security issues.

Since 2004, the Office of the Inspector General (OIG) has consistently included both the rising costs of the federal prison system and the safety and security of staff and inmates in federal facilities in its annual report of the Top Management and Performance Challenges facing the Department of Justice. The OIG is committed to continuing to conduct effective oversight of the Department's Federal Bureau of Prisons (BOP) in order to improve BOP operations while deterring waste, fraud, abuse, mismanagement, and misconduct. However, one of the most significant challenges we face to accomplishing our oversight mission in certain instances is the absence of reliable data maintained by the BOP. Without such data, the Department and BOP cannot adequately evaluate the effectiveness of its programs, nor can it make the necessary improvements.

Rising Costs for Federal Prisons

In FY 2015, the budget for the BOP was \$6.9 billion, and in FY 2016, the Administration has requested a 6.1 percent increase in funding for BOP. The Department projects that the costs of the federal prison system will continue to increase in the years ahead, even as the total number of federal inmates has fallen slightly. Although the size of the federal prison population decreased from 219,298 inmates at the end of FY 2013 to 207,504 inmates at the end of last month, the downward trend has yet to result in a decrease in federal prison system costs.

For example, in FY 2000, the BOP's budget totaled \$3.8 billion and accounted for about 18 percent of the Department's discretionary budget. In comparison, in FY 2015, the BOP's enacted budget accounted for over 25 percent of the Department's discretionary budget. The BOP currently has the second largest budget of any Department component, trailing only the Federal Bureau of Investigation (FBI). The BOP also has more employees than any other Department component, including the FBI. The substantial

and growing costs continue to impact the Department's ability to make other public safety investments.

This challenge concerns the entire Department, because as the costs to operate and maintain the federal prison system continue to grow, less funding will be available for the Department's other critical law enforcement missions. The OIG has identified several areas where BOP programs and expenditures could be better managed.

Increased Health Care Costs and the Aging Inmate Population

A primary driver in the total costs associated with our federal prisons is health care: according to BOP data, providing health care services to inmates cost over \$1 billion in FY 2014, representing a 61 percent increase from FY 2006 figures. This sum, spent on inmate health care services alone, nearly equaled the entire budget of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), during the same period. The OIG is currently conducting a review of the BOP's spending on outside medical care.

The rapid increase in inmate health care costs can partly be attributed to the growth of the aging inmate population. In May 2015, the OIG released its report examining the impact of the federal inmate population age 50 and older on the BOP's inmate management. The OIG found that the number of aging inmates increased by 25 percent – from 24,857 in FY 2009 to 30,962 in FY 2013. By contrast, during the same period, the population of inmates 49 and younger decreased approximately 1 percent, including an even larger decrease of 16 percent in the youngest inmates (age 29 and younger).¹

This shift is notable because we found that aging inmates on average cost 8 percent more per inmate to incarcerate. BOP institutions with the highest percentages of aging inmates in their population spent five times more per inmate on medical care (\$10,114) than institutions with the lowest percentage of aging inmates (\$1,916). Similarly, BOP institutions with the highest percentages of aging inmates also spent 14 times more per inmate on medication (\$684) than institutions with the lowest percentage (\$49). Based on BOP cost data, we estimate that the BOP spent approximately \$881 million, or 19 percent of its total budget, to incarcerate aging inmates in FY 2013.

¹ The percentage decrease in the youngest inmates (age 29 and younger) was listed incorrectly as 29 percent when this statement originally was issued in August 2015. We discovered the error and have revised the statement to correct it.

Our report also found that BOP institutions lack appropriate staffing levels and training to address the needs of an aging inmate population. Aging inmates often require assistance with activities of daily living, such as dressing and moving around within the institution. However, BOP institution staff is not responsible for ensuring inmates can accomplish these activities. We further found that the increasing population of aging inmates has resulted in a need for increased trips outside of institutions to address their medical needs but that institutions lack Correctional Officers to staff these trips and have limited medical staff within institutions. As a result, aging inmates experience delays receiving medical care. For example, using BOP data from one institution, we found that the average wait time for inmates, including aging inmates, to be seen by an outside medical specialist for cardiology, neurosurgery, pulmonology, and urology to be 114 days. In addition, we found that while Social Workers are uniquely qualified to address the release preparation needs of aging inmates, such as aftercare planning and ensuring continuity of medical care, the BOP, which employs over 39,000 people, has only 36 Social Workers nationwide for all of its institutions. Institution staff told us they themselves did not receive enough training to identify the signs of aging.

We further found that the physical infrastructure of BOP institutions cannot adequately house aging inmates. Aging inmates often require lower bunks or handicapped-accessible cells, but overcrowding throughout the BOP system limits these types of living spaces. Additionally, aging inmates with limited mobility encounter difficulties navigating institutions without elevators and with narrow sidewalks or uneven terrain. Yet, the BOP has not conducted a nationwide review of the accessibility of its institutions since 1996.

Additionally, we found that the BOP does not provide programming opportunities specifically addressing the needs of aging inmates. BOP programs, which often focus on education and job skills, do not address the needs of aging inmates, many of whom have already obtained an education or do not plan to seek further employment after release. Though BOP institutions can and do design programs, including release preparation programs, to meet the needs of their individual populations, even institutions with high percentages of aging inmates rarely have programs specifically for aging inmates.

Compassionate Release Policies

We found that aging inmates commit less misconduct while incarcerated and have a lower rate of re-arrest once released. Studies have concluded that post-release arrests decrease as an individual ages, although

BOP does not maintain such data. A sampling of data conducted by the OIG found that 15 percent of aging inmates were re-arrested for a new crime within 3 years of release. Based on our analysis, the rate of recidivism of aging inmates is significantly lower than the 41 percent re-arrest rate that the BOP's research has found for all federal inmates. We further found that most of the aging inmates who were re-arrested already had a documented history of recidivism.

As a result of this analysis, we found that aging inmates could be viable candidates for early release, a program that Congress has authorized, resulting in significant cost savings but that BOP policy strictly limits those who can be considered for release. In 2013, the Department concluded that aging inmates are generally less of a public safety threat and announced an expanded compassionate release policy to include them as part of the Attorney General's Smart on Crime initiative. However, the Department significantly limited the number of inmates eligible for this expanded release policy by imposing several eligibility requirements, including that inmates be at least age 65, and we found that in just over a year after the program was announced, only two inmates had been released.

These findings about the Department's aging compassionate release policy is similar to what we reported in our 2013 review of the BOP's Compassionate Release Program for all inmates. In that review, we found that an effectively managed program could assist the BOP with its prison capacity issues, which would result in cost savings for the BOP. However, at the time of that report, we found that the program had been poorly managed and was implemented inconsistently, likely resulting in eligible inmates not being considered for release and in terminally ill inmates dying before their requests were decided. We also considered the impact of the compassionate release program on public safety and found a recidivism rate of 3.5 percent for inmates released through the program. By comparison, the general recidivism rate for federal prisoners has been estimated to be as high as 41 percent. Following our review, the BOP expanded its Compassionate Release Program. In the 13 months since the most recent provisions went into effect in August 2013, we found that 2,621 inmates applied for compassionate release, that institutions approved 320 of those 2,621 requests, that the BOP Director approved 111 of the 320 requests, and that 85 inmates (including the two aging inmates identified above) were released.

Use of Treaty Transfer Authority

Nearly 25 percent of the federal prison population is comprised of non-U.S. nationals. In our 2011 review of the Department's International

Prisoner Transfer Program, which permits certain foreign national inmates from treaty nations to serve the remainder of their sentences in their home countries, the OIG found that of the over 40,000 inmates from treaty transfer nations in BOP custody in FY 2010, less than 1 percent of these inmates were ultimately transferred back to their home countries, and the Department rejected 97 percent of transfer requests by foreign national inmates. We concluded that the BOP had to improve its ability to effectively communicate with foreign national inmates, continue to make inmates aware of the program, and ensure it accurately determined whether inmates are eligible for the program.

We are currently completing a follow up review of the treaty transfer program. In this follow up review, we have found that, while the number of foreign inmates requesting transfer has increased significantly, the number of foreign inmates ultimately transferred to their home countries has remained largely stagnant. While we have also found that some progress has been made in addressing the issues identified in our 2011 report, and that there are some factors largely outside the control of the Department, we intend to outline in the upcoming report the areas where we believe the Department can do more to improve the effectiveness of the treaty transfer program.

BOP Contract Prisons

The growth of BOP costs for private contract prisons has also increased substantially. The BOP's FY 2015 enacted budget for contract confinement was over \$1.05 billion – a 68 percent increase since FY 2005. Moreover, the proportion of federal inmates housed in BOP contract facilities has increased substantially, from 2 percent of the federal prison population in 1980 to 19.5 percent in 2013.

In April 2015, the OIG issued an audit of a BOP contract to house federal inmates in two Reeves County, Texas detention facilities. The contract was valued at an estimated \$493 million and it is the second largest contract at the Department since 2014. Reeves County subcontracted with the GEO Group to manage the two detention center compounds, and subcontracted with Correct Care Solutions to provide healthcare services to the inmates at these compounds. We identified several significant concerns relating to compliance with the contract's requirements, including the provision of health care services, the BOP's approach to minimum staffing requirements, and the policies and procedures governing the operations of a "modified monitoring unit" at the facility used to isolate inmates from the rest of the compound's population. For example, we found that, from December 2010 through December 2013, a period spanning 37 months, the

facility failed to meet the 85 percent staffing threshold for its health services unit, as provided for in the contract, in 34 of the 37 months. Our audit also identified almost \$3 million that we either questioned as unallowable or unsupported, or that we believe should have been put to better use. The OIG has related ongoing work examining how the BOP monitors its private contract prisons; whether contractor performance meets certain inmate safety and security requirements; and how contract prisons and similar BOP institutions compare in an analysis of certain inmate safety and security data. The OIG is currently auditing a BOP contract with the Corrections Corporation of America to operate the Adams County, Mississippi Correctional Center, which houses about 2,300 criminal aliens. We are assessing compliance with the terms, conditions, laws, and regulations applicable to the contract as well as contract performance. Further, the OIG is reviewing the United States Marshals Service's (USMS) and contractor's administration and compliance with a contract awarded to operate the Leavenworth Detention Center located in Leavenworth, Kansas. Assuming all options are exercised, this contract has a potential value of over \$800 million.

In sum, while there are many factors contributing to the financial burden of the federal prison system, the OIG has found that more effective implementation of existing programs cannot only reduce operating costs but also ease some of the challenges posed by the magnitude of the inmate population.

Safety and Security in Federal Prisons

The Department must also continue its efforts to ensure the safety and security of staff and inmates in federal prison and detention facilities.

Prison overcrowding presents the most significant threat to the safety and security of BOP staff and inmates. As of October 2014, federal prisons operated at 30 percent over capacity, 52 percent overcrowding at high security institutions, and 39 percent at medium security institutions. In its FY 2014 Agency Financial Report, the Department identified prison overcrowding as a programmatic material weakness, as it has done in every such report since FY 2006. Overcrowding in the federal prison system has meant the BOP cannot reduce its inmate-to-Correctional Officer ratio, which has remained at approximately 10-to-1 for more than a decade, according to the Congressional Research Service. Moreover, safety and security concerns regarding the incarceration of federal inmates apply not only to BOP-managed facilities, but also to privately-managed BOP contract facilities. This has been demonstrated by a February 2015 riot at the contractor-run Willacy County Correction Center and riots in two privately-managed BOP

contract facilities, one in Texas in 2009 and the other in Mississippi in 2012. The incidents in 2009 and 2012 resulted in the death of a Correctional Officer, severe injuries to prisoners and employees, and over \$60 million in property damage.

In addition, the introduction of contraband – such as weapons, drugs, cell phones, and tobacco – into correctional facilities also presents a considerable threat to safety and security. The unauthorized use of cell phones in prisons and detention facilities has proven to be a significant danger, and presents an increasing threat to the safety of the public as well as BOP staff and inmates. According to a 2011 Government Accountability Office report, the 3,684 cell phones BOP confiscated at federal prisons in 2010 more than doubled in comparison to 2008. BOP officials reported that contraband cell phone use can threaten the security of prisons and expand criminal activity both inside and outside of prisons. The OIG is currently reviewing current and planned security procedures employed by the BOP to detect and prevent contraband from entering BOP-operated institutions, to include searching staff, visitors, and inmates; cell phone detection and signal interruption technologies; and physical security measures.

The use of segregated housing in BOP institutions and private contract facilities also raises inmate safety and security concerns. Recently, the BOP received an independent assessment conducted on its use of segregated housing. The OIG is currently examining the BOP's use of restrictive housing for inmates with mental illness. The review is examining trends in the use of restrictive housing and the screening, treatment, and monitoring of inmates with mental illness who are housed in restrictive housing units.

Sexual abuse in prison also remains a serious safety and security issue for the Department. In May 2014, the Department cited research that estimated that 4 percent of federal and state prison inmates reported experiencing one or more incidents of sexual victimization by a staff member or another inmate within the previous 12 months. In October 2014, the OIG completed a review of the Department's efforts to implement and comply with the Prison Rape Elimination Act of 2003 (PREA). The OIG found that while the Department has made progress complying with these standards during the early period of implementation, significant work remains. The OIG will continue its longstanding efforts to investigate allegations of sexual abuse by institution staff at federal prisons and detention facilities – work that has resulted in numerous criminal convictions and administrative actions by the BOP and the U.S. Marshals Service.

Complementing the OIG's expansive oversight of the BOP through our audits and reviews are the OIG's investigations of criminal and

administrative allegations involving BOP staff and contractors. From FY 2010 to FY 2014, the OIG's Investigations Division opened more than 1,000 cases involving BOP staff or contractors, made more than 250 arrests, had more than 240 convictions and pre-trial diversions, and investigated allegations that resulted in nearly 700 administrative actions. Through these efforts, the OIG enhances the safety and security of the over 30,000 BOP staff who perform their jobs with great skill and who help keep their institutions and the community safe.

Need for Reliable Data on Federal Prisons and BOP Programs

In addition, a significant management challenge for the Department is ensuring, through performance-based management, that its programs are achieving their intended purposes. An essential building block to achieving performance-based management is having reliable data, an issue that has proven to be a challenge for the Department and the BOP. Multiple OIG audits and reviews have identified problems with inaccurate or unreliable performance data regarding Department programs.

Department leadership has acknowledged that the Department needs to embrace data in its evaluation of program performance, such as through advanced data analytics. Adopting a data-driven, analytical approach will be especially important for assessing the implementation of the Attorney General's Smart on Crime initiative. Much of the Smart on Crime initiative promotes the increased use of prevention and reentry programs, such as the expanded use of pre-trial diversion and drug court programs as alternatives to incarceration. A comprehensive approach to the collection and analysis of data on how well these programs are reducing incarceration costs, deterring crime, and improving public safety will help the Department to focus its resources and make strategic investments.

The OIG is currently reviewing pre-trial diversion and drug court programs as alternatives to incarceration that enable prosecutors, judges, and correctional officials to divert certain offenders from traditional criminal justice proceedings into programs designed to address the underlying cause for criminal behavior. This OIG audit will evaluate the design and implementation of the programs, variances in the usage of the programs among the U.S. Attorneys' Offices, and costs savings associated with successful program participation.

Further, analyzing recidivism rates in federal facilities may assist in evaluating the BOP's programs, such as inmate training programs, pre-release programs, residential reentry centers (halfway houses), and contract prisons. During the course of several of our reviews, however, we were not

able to obtain recidivism data from the BOP for federal inmates. Despite this obstacle, the OIG developed its own methodologies to undertake its own recidivism analysis during the course of our reviews of the Department's International Prisoner Transfer Program, the BOP's Compassionate Release Program, and review of the impact of an aging inmate population on the BOP's inmate management. While we were eventually able to identify and analyze recidivism rates during these reviews, we believe the Department should continue to improve its methods to collect and retain reliable data to provide crucial information for assessing the effectiveness of BOP programs.

Thank you again for the Committee's continued support for our mission, which allows the OIG to conduct aggressive and thorough oversight. I look forward to working closely with the Committee on these issues.