



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
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before the

United States Sentencing Commission

hearing on

"Compassionate Release and the Conditions of Supervision"

February 17, 2016

Distinguished Commissioners:

Thank you for the opportunity to testify before you today regarding the oversight that the Office of the Inspector General (OIG) for the Department of Justice (Department) has conducted of the Federal Bureau of Prisons (BOP) and its compassionate release program. It is an honor to once again contribute to the important work of the Commission, especially as you weigh a potential amendment to the Commission's Policy Statement on this issue.

For the past several years, my Office has identified overcrowding in federal prison facilities as a critical concern in our annual reports of the Top Management and Performance Challenges (TMPC) facing the Department of Justice. Continued high rates of overcrowding negatively impact the safety and security of staff and inmates, and drive costs upward. BOP facilities were 20 percent above rated capacity as of December 2015, and the BOP has acknowledged that its inmate-to-correctional officer ratio remains undesirably high and that at times it has had to rely on non-custody staff to assist in covering security posts. In addition, the BOP has the largest budget of any Justice Department component other than the Federal Bureau of Investigation, accounting for 26 percent of the Department's discretionary budget in fiscal year (FY) 2016, and employing approximately 37 percent of the Department's staff.

Inmate medical costs are a major factor in BOP's overall rising costs. In FY 2014, the BOP spent \$1.1 billion on inmate medical care, an increase of almost 30 percent in 5 years. One factor that has significantly contributed to the increase in medical costs is the sustained growth of an aging inmate population. According to BOP data, inmates age 50 and older have been the fastest growing segment of its population, increasing 27 percent from 24,857 in FY 2009 to 31,688 in FY 2014. By contrast, during the same period, the population of inmates 49 and younger decreased by approximately 3 percent.

As these statistics demonstrate, the Department must pursue a comprehensive approach to managing its federal inmate population, in order to find an appropriate balance that addresses the safety of the public, staff, and inmates in the federal prison system while holding costs to manageable levels. To help address the burden of overcrowding, we have found in our reviews that the Department should more effectively utilize existing programs such as compassionate release.

The OIG has issued two reports recently that examined elements of the compassionate release program. In 2013, we released a report entitled *The Federal Bureau of Prisons' Compassionate Release Program* that assessed the BOP's facilitation of the program from calendar years 2006 through 2011, including whether it provided cost savings or other benefits to the BOP. This report can be found on the OIG's website at the following link: <https://oig.justice.gov/reports/2013/e1306.pdf>.

In May 2015, the OIG issued a report on the *Impact of an Aging Inmate Population on the Federal Bureau of Prisons* that reviewed inmate populations, cost data, and programs from FY 2009 through FY 2013 and assessed the new provisions to the BOP's compassionate release program statement that expanded compassionate release eligibility for inmates who are at least 65 years old. This report can be found on the OIG's website at the following link: <https://oig.justice.gov/reports/2015/e1505.pdf>.

In both reviews, we found serious issues with how the Department was running this program and concluded that an efficiently-run compassionate release program combined with modifications to the program's eligibility criteria could expand the pool of eligible candidates, reduce overcrowding in the federal prison system, and result in cost savings for the BOP.

OIG Reviews of the BOP's Compassionate Release Program

In the Sentencing Reform Act of 1984, Congress authorized the Director of the BOP to request that a federal judge reduce an inmate's sentence for "extraordinary and compelling" circumstances. In connection with this authority, the BOP has promulgated regulations and issued a Program Statement; however, these documents do not define "compassionate release" or what constitutes "extraordinary and compelling" circumstances.

In the OIG review from 2013, we found that the BOP's compassionate release program had been poorly managed and implemented inconsistently, likely resulting in eligible inmates not being aware of the program and not being considered for release, and terminally ill inmates dying before their requests were decided. Specifically, we found that the BOP did not have clear standards as to when compassionate release is warranted and whether particular medical or non-medical circumstances qualify for consideration. BOP staff therefore had varied and inconsistent understandings of the circumstances that warrant consideration for compassionate release. As a result, on average, only 24 inmates were released each year through the BOP's then-existing compassionate release program.

Our review also found that the BOP and the Department had not evaluated the recidivism rates for those inmates who had been granted compassionate release. The OIG therefore undertook such an evaluation and found that a small percentage of inmates were rearrested after being released under the compassionate release program. Specifically, we 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. As we noted in our report, the OIG recognizes that approving and releasing more eligible inmates through the compassionate release program could result in some increase in the number of inmates who are rearrested. But we also noted that the recidivism data we found demonstrated that a carefully and effectively managed program could minimize that risk if careful consideration were given to an inmate's potential risk to the community as part of the assessment process.

On the same day we released this report in April 2013, the BOP rescinded its May 1998 compassionate release program statement and issued a new compassionate release program statement that sought to address issues identified in our report.

In our review from May 2015 on aging inmates, the OIG assessed the Department's modification of its compassionate release program statement to expand the number of elderly inmates eligible to apply. That program statement was released by the BOP on August 12, 2013, the same day the Attorney General announced the Smart on Crime initiative, and provides that inmates age 65 and older who have served significant portions of their sentences can apply for compassionate release.¹ We subsequently found that under this revised program statement 83 inmates had been granted compassionate release during the 13 - month period from August 2013 to September 2014.

One of the provisions introduced in August 2013 requires inmates to be 65 or older, suffer from chronic or serious medical conditions related to the aging process, and have served at least 50 percent of their sentence. According to BOP data, as of September 2013, there were 2,204 inmates age 65 and older who had served at least 50 percent of their sentence, but we could not determine how many of these inmates also suffered from chronic or serious medical conditions. A second eligibility provision adopted in August 2013 states that inmates age 65 and older without medical conditions can apply if they have served the greater of 10 years or 75 percent of their sentence to be eligible for compassionate release. However, we learned during our review that the BOP interpreted the provision to mean an inmate must serve both a minimum of 10 years and 75 percent of the sentence. According to BOP data, as of September 2013, there were 529 inmates age 65 and older who had served the greater of 10 years or 75 percent of their sentence. Thus, we found that no more than half of the 4,384 inmates age 65 and over in BOP custody as of September 2013 were eligible to apply under the new provisions.

In the first 13 months after the BOP expanded the compassionate release program in August 2013 to include inmates age 65 and older, we found that only two inmates were released under the new eligibility provisions. Specifically, we found that 93 elderly inmates applied under the non-medical provision, resulting in 2 releases, while none of the 203 elderly inmates who applied under the medical provision had been approved for release. Based on the results of these reviews, the OIG found that the BOP could do more to improve its compassionate release program.

¹ A third provision creates eligibility for inmates age 70 and older who have served at least 30 years of their sentence for an offense that occurred on or after November 1, 1987. Given the 30 year requirement, no inmate will be eligible for consideration under this provision until at least November 1, 2017. We determined that just 18 inmates would likely be eligible for consideration under this provision in the first year after November 1, 2017.

Our report made a number of recommendations that the Department and the BOP should consider, including lowering the age requirement from 65 to 50 and eliminating the minimum 10 years served requirement. Multiple studies, including one published by the BOP's own National Institute of Corrections (NIC), recommend that inmates be considered "aging" beginning at age 50. According to these studies, an inmate's physiological age averages ten to fifteen years older than his or her chronological age due to the combination of stresses associated with incarceration and the conditions an inmate may have been exposed to prior to incarceration. The NIC also found that seven state correctional systems (Alaska, Florida, Idaho, New Mexico, North Carolina, Ohio, and West Virginia) and Canada define aging inmates as those inmates who are age 50 and above. In addition, we found that lowering the eligibility provision to age 50 and older could assist the BOP in addressing its overcrowding issues, particularly in its minimum- and low-security institutions where inmates age 50 and older represented 24 percent (17,482 inmates) of the population in FY 2013.

Reducing the eligibility age also would result in cost savings for the BOP. We found that aging inmates as a group are more expensive to incarcerate due to their increased medical needs. 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. We found that lowering the threshold age from age 65 to age 50 in the revised compassionate release program, coupled with a modest 5 percent release rate for only those aging inmates in minimum- or low-security institutions could reduce incarceration costs by approximately \$21 million per year. Further, if 5 percent of aging inmates housed in the BOP's medical centers were released, the BOP could potentially save an additional \$7 million in 1 year.

We also recommended that BOP consider whether to eliminate the 10-year minimum time served requirement so that all of the BOP's aging inmates could be eligible for compassionate release consideration once they had served 75 percent of their sentences. We found this provision excludes almost half of the BOP's aging inmate population because many sentences are too short for the inmate to be eligible for compassionate release. We were particularly concerned about this 10-year provision because Department leadership has stated that the compassionate release policy was designed to address prison overcrowding by providing for early release of aging inmates who did not commit violent crimes and who posed no threat to public safety. Yet the policy as currently written prohibits early release consideration for any aging inmates who did not receive at least a 10-year prison sentence, despite the fact that those aging inmates are likely to be the best candidates for early release consideration precisely because their crimes were less serious, and therefore present less danger to the public. Taking both of these steps – reducing the eligibility age from age 65 to 50 and eliminating the minimum 10 years served requirement – would increase more than sevenfold the number of aging inmates eligible for compassionate release consideration, from 4,384 inmates age 65 and older to 30,962 inmates age 50 and older, based on FY 2013 population data.

We recognize that not all inmates age 50 and older will be appropriate candidates for compassionate release, and that the evaluation necessarily includes many factors, such as the nature and circumstances of the inmate's offense and criminal history, the inmate's conduct in prison, the inmate's release plans, and whether release would undermine the deterrent effect of the punishment. Nonetheless, as we noted in our prior reports, the BOP has already determined that aging inmates are a low public safety risk. For that reason, we found that reevaluating the compassionate release eligibility provisions for aging inmates could substantially increase the pool of eligible inmates. Within that larger pool of eligible aging inmates, we believe the BOP could further identify more aging inmates whose offenses, criminal histories, conduct in prison, and release plans make them suitable candidates for compassionate release, resulting in reduced overcrowding and cost savings to the Justice Department and the BOP.

The OIG appreciates the efforts of the Commission to consider issues regarding compassionate release. We will continue to conduct vigorous oversight of the BOP and its programs to address the budgetary and safety challenges facing the Justice Department due to a significantly overcrowded federal prison system, including its use of the compassionate release program. This concludes my prepared statement, and I am pleased to answer any questions the Commission may have.