

PREPARED STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY
AND INVESTIGATIONS
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

ON

OVERSIGHT OF THE FEDERAL BUREAU OF PRISONS

SEPTEMBER 19, 2013

Chairman Sensenbrenner, Ranking Member Scott, and Subcommittee Members –

My name is Eric Young. I am the recently elected President of the Council of Prison Locals, American Federation of Government Employees (AFGE), AFL-CIO. On behalf of the more than 37,000 federal correctional workers who work at the 119 Federal Bureau of Prisons (BOP) correctional institutions, I want to thank you for the opportunity to submit our prepared statement for the hearing record on the important subject “Oversight of the Federal Bureau of Prisons.”

Among other things, we are concerned about the following issues:

1. Serious correctional worker understaffing and prison inmate overcrowding are causing a significant increase in dangerous inmate-on-worker assaults.

The BOP is continuing to experience serious correctional worker understaffing and prison inmate overcrowding problems – a situation that is resulting in a significant increase in inmate assaults upon correctional workers.

More than 219,000 prison inmates are incarcerated in BOP correctional institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. About 81% - or 176,655 – of the inmate population are confined in BOP-operated institutions while 19% - or 42,350 – are managed in private prisons and residential reentry centers. It is expected that by the end of FY 2014 there will be 229,268 prison inmates incarcerated in BOP correctional institutions.

This explosion in the federal prison inmate populations is the direct result of Congress approving stricter anti-drug enforcement laws involving mandatory minimum sentences in the 1980s, as documented in the *History of Mandatory Minimums*, a study produced by the Families Against Mandatory Minimums (FAMM).

The number of federal correctional workers who work in BOP-operated prisons, however, is failing to keep pace with this tremendous growth in the prison inmate population. As of December 31, 2011, the BOP-operated institutions were staffed at an 88% level (36,172 of 41,104 authorized positions filled), as contrasted with the 95% staffing levels in the mid-1990s. This 88% staffing level is *below* the 90% staffing level that BOP believes to be the minimum level for maintaining the safety and security of BOP prisons.

In addition, while the number of prison inmates in the 119 BOP-operated institutions has grown from 125,560 in FY 2000 to 176,655 prison inmates now, the number of BOP correctional workers has only increased from 30,382 in FY 2000 to 36,172 now. As a

result, the BOP inmate-to-worker ratio has increased from 4.13 to 1 in FY 2000 to 4.96 to 1 now. This significant increase in the inmate-to-worker ratio adversely impacts BOP's ability to effectively supervise prison inmates and provide inmate programs.

At the same time, prison inmate overcrowding is an increasing problem at BOP institutions despite the activation of new prisons over the past few years. BOP-operated institutions at the end of FY 2011 were operating at 39% above rated capacity, with 55% overcrowding at high security prisons and 51% at medium security prisons. By the end of FY 2013, it is estimated the BOP system will be overcrowded by 43%.

These serious correctional worker understaffing and prison inmate overcrowding problems are resulting in significant increases in prison inmate assaults against correctional workers. Hundreds of inmate-on-worker assaults have occurred at various BOP prisons over the past several years. The brutal stabbing murder of Correctional Officer Eric Williams on February 25, 2013, by a prison inmate at USP Canaan (Pennsylvania) and the shooting and killing of Lieutenant Osvaldo Albarati on February 26, 2013, while driving home from the Metropolitan Detention Center in Guaynabo, Puerto Rico illustrate that painful reality.

The AFGE Council of Prison Locals believes these understaffing and overcrowding problems are the result of years of congressional underfunding of BOP. We are aware, of course, that the Crime Subcommittee, an authorizing panel, is not responsible for appropriating funding for BOP. However, we strongly urge the Subcommittee to use its oversight powers to illuminate for the Congress and the American public the very real fact that BOP is an increasingly dangerous place to work because of serious correctional worker understaffing and prison inmate overcrowding.

2. BOP correctional officers should be allowed to routinely carry pepper spray in highly dangerous areas of all federal prisons.

For several years, the AFGE Council of Prison Locals has been urging BOP to institute a new pepper spray policy that would allow federal correctional officers who work in highly dangerous areas of BOP prisons to routinely carry oleoresin capsicum spray – commonly known as pepper spray – in case situations arise where they must defend themselves if physically attacked by dangerously violent inmates.

That is why we were pleased when BOP announced that the agency had decided to conduct a one-year pilot program at seven U.S. penitentiaries to determine if allowing correctional officers to routinely carry pepper while on duty would improve the safety of correctional workers, prison inmates, and others. The seven penitentiaries are: USP

Coleman I (FL), USP Coleman II (FL), USP Florence (CO), USP Lee County (VA), USP Lewisburg (PA), USP Pollock (LA), and USP Atwater (CA).

On February 28, 2013 - three days after the savage murder of Correctional Officer Eric Williams by a prison inmate at USP Canaan (PA) – BOP announced that as a part of a Partnership Council Initiative with the AFGE Council of Prison Locals, the agency was expanding this pilot to include all high security institutions. The implementation of this expanded pilot occurred in two phases. Phase one included USP Allenwood (PA), USP Big Sandy (KY), USP Canaan (PA), ADX Florence (CO), USP Hazelton (WV), and USP McCreary (KY), and phase two included USP Beaumont (TX), USP Terre Haute (IN), USP Tucson (AZ), and USP Victorville (CA).

BOP is currently expanding the pepper spray pilot program to include all administrative facilities. Administrative facilities are institutions with special missions, such as the detention of pretrial offenders; the treatment of inmates with serious or chronic medical problems; or the containment of extremely dangerous, violent, or escape-prone inmates. They are mostly located in metropolitan areas and are capable of holding inmates in all security categories.

The AFGE Council of Prison Locals is now working to expand the pepper spray pilot project to include correctional officers who work in highly dangerous areas *in all BOP prisons* – allowing them to routinely carry pepper spray in case situations arise where they must protect themselves if physically attacked by violent prison inmates.

We applaud BOP for conducting the one-year pilot program on pepper spray. But we remained puzzled as to why BOP has been so reluctant over the years to institute a new pepper spray policy. A new pepper spray policy is vitally necessary because BOP prisons are significantly more violent than a few years ago because of serious correctional officer understaffing and prison inmate overcrowding – and because correctional officers are being forced to control more aggressively dangerous offenders, including more gang-affiliated inmates.

Under current BOP policy, federal correctional officers are not allowed to routinely carry pepper spray in BOP prisons. Instead, prison wardens (or designated officials) must authorize pepper spray utilization before correctional officers can use it to quell an emergency situation. Pepper spray is stored in specific locations throughout the prisons, such as in secure control rooms, watchtowers in the prisons' yards, or in the prisons' armories outside the secure perimeter.

The problem, however, is that in situations where aggressively dangerous inmates, who often have home-made lethal weapons, are physically attacking correctional officers, there is little or no time for the warden to authorize the use of pepper spray and get it to

the endangered officers so they can protect themselves. The correctional officers are left to defend themselves with the two things they are authorized to carry: keys and a walkie-talkie radio.

BOP management has relied on four arguments to disallow correctional officers from routinely carrying pepper spray while on duty – arguments with which the AFGE Council of Prison Locals strongly disagree:

(1) Cultural argument: BOP officials have argued that correctional officers should not carry pepper spray or other equipment because BOP believes in the importance of officers communicating with inmates to ensure officer safety. BOP believes that carrying pepper spray would impede officers' communication with inmates – and increase the level of prison violence - because (a) the officers would be more likely to use the pepper spray to prevent an inmate from engaging in dangerous misconduct than talk with the inmate, or (b) the inmate would perceive correctional officers carrying pepper spray as more threatening and therefore would be less willing to engage in communication with officers.

The AFGE Council of Prison Locals, however, believes this “officer-inmate communication” policy totally ignores the current reality at BOP institutions. The level of violence inside BOP institutions is already increasing – and not because correctional officers are not attempting to communicate with prison inmates. The violence level is increasing because of the serious correctional officer understaffing and prison inmate overcrowding problems – and because correctional officers are being asked to control offenders who are deliberately non-communicative, more aggressively violent, and often gang-affiliated.

In addition, the AFGE Council of Prison Locals believes this “officer-inmate communication” policy ignores the information in a BOP Executive Staff Paper, dated March 7, 2003. According to that paper, the Colorado, Illinois, and Texas State Departments of Corrections - three of the many states that allow their prison staff to routinely carry pepper spray - reported to BOP in 2003 that the ability of their staff to immediately use pepper spray decreased the need for physical restraint techniques, enhanced inmate compliance to staff warnings and commands, and resulted in an overall and significant reduction in injuries to both staff and inmates.

(2) “Used against officer” argument: BOP has argued that correctional officers should not routinely carry pepper spray because it could be taken from the officer by an inmate and then used against him or her by that inmate.

The AFGE Council of Prison Locals believes this “used against officer” argument ignores one of the reasons why the BOP Executive Staff Paper (March 7, 2003)

recommended providing correctional officers with pepper spray rather than expandable batons. One of the advantages of pepper spray use that was detailed in that paper was: "If an inmate gains control of the [pepper spray] and uses it on staff, there is no permanent harm to the staff member." By contrast, "if an inmate gains control of the expandable baton and uses it on staff, there could be serious permanent physical harm to the staff member."

(3) Regulatory argument: BOP has argued that 28 CFR 552.25 - *Use of chemical agents or non-lethal weapons* is the reason why the agency cannot allow correctional officers to carry pepper spray. Here is that CFR section:

TITLE 28--JUDICIAL ADMINISTRATION

CHAPTER V--BUREAU OF PRISONS, DEPARTMENT OF JUSTICE

PART 552_CUSTODY--Table of Contents

Subpart C_Use of Force and Application of Restraints on Inmates

Sec. 552.25 Use of chemical agents or non-lethal weapons.

The Warden may authorize the use of chemical agents or non-lethal weapons only when the situation is such that the inmate:

- (a) Is armed and/or barricaded; or
 - (b) Cannot be approached without danger to self or others; and
 - (c) It is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate or others, or would result in a major disturbance or serious property damage.
- [54 FR 21394, May 17, 1989. Redesignated and amended at 59 FR 30469, 30470, June 13, 1994] **[Emphasis added]**

The AFGE Council of Prison Locals contends that 28 CFR 552.25 does not support the BOP position regarding correctional officers carrying pepper spray. The important key is the word "use" in the first sentence. 28 CFR 552.25 restricts the active "use" of pepper spray - that is, the "putting into action" of pepper spray - to situations where an inmate is armed and/or barricaded or cannot be approached without danger to the correctional officer, and when a delay in restoring order would result in a major disturbance or serious property damage. In other words, this regulation's intent is to prevent correctional officers from actively spraying an inmate with pepper spray in less-than-dangerous situations - that is, in situations where the inmate is not armed or can be approached without any danger to the correctional officer, and when a delay in restoring order would not result in a major disturbance or serious property damage.

However, 28 CFR 552.25 says absolutely nothing about the passive carrying of pepper spray. Thus, contrary to BOP's position, this section does not preclude BOP from authorizing correctional officers to routinely carry pepper spray. And it certainly does not

preclude BOP from authorizing a correctional officer to routinely carry pepper spray in highly dangerous prison areas - just in case the correctional officer must actively “use” pepper spray in situations where an armed inmate is physically attacking the correctional officer, and when a delay in restoring order would result in a major disturbance or serious property damage.

(4) Cost argument: BOP has argued that the agency cannot afford the cost of supplying pepper spray to its correctional officers because the Congress has failed for years to provide BOP with sufficient funding. As a result, BOP is experiencing serious correctional worker understaffing, prison inmate overcrowding, and a significant increase in inmate-on-worker assaults.

The AFGE Council of Prison Locals is totally cognizant of the BOP’s funding problems, and has been actively lobbying the Congress to substantially increase funding for BOP. However, we think the argument that BOP cannot afford the cost of supplying pepper spray to its correctional officers is a bit overdone.

Frankly, pepper spray costs seem to be relatively minimal. A brief perusal of the Internet reveals that a two ounce pepper spray device costs from \$12.95 to \$17.95, and a four ounce pepper spray device costs from \$15.95 to \$20.95. Thus, the cost of providing pepper spray to each and every one of its approximately 16,000 correctional officers would be in the range of only \$207,200 to \$335,200. In addition, the total number of pepper spray devices that must be purchased – and the attendant costs - would be greatly reduced by the number of such devices already stored today in BOP prisons’ armories.

3. Support needed for the Federal Prison Industries Prison Inmate Work Program.

The increasingly violent and dangerous environment in which BOP correctional officers and staff work is the primary reason why the AFGE Council of Prison Locals strongly supports the Federal Prison Industries (FPI) prison inmate work program.

The FPI prison inmate work program is an important management tool that federal correctional officers and staff use to deal with the huge increase in the BOP prison inmate population. It helps keep thousands of prison inmates productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good

behavior and must have completed high school or be making steady progress toward a General Education Degree (GED).

In addition, the FPI prison inmate work program is an important rehabilitation tool that provides federal inmates an opportunity to develop job skills and values that will allow them to reenter – and remain in – our communities as productive, law-abiding citizens. The Post-Release Employment Project (PREP), a multi-year study of the FPI prison inmate work program carried out and reported upon in 1996 by William Saylor and Gerald Gaes, found that the FPI prison inmate work program had a strongly positive effect on post-release employment and recidivism. Specifically, the study results demonstrated that:

- In the short run (i.e., one year after release from a BOP institution), federal prison inmates who had participated in the FPI work program (and related vocational training programs) were: (1) 35% less likely to recidivate than those who had not participated, and (2) 14% more likely to be employed than those who had not participated.
- In the long run (i.e., up to 12 years after release from a BOP institution), federal prison inmates who participated in the FPI work program were 24% less likely to recidivate than those who had not participated in the FPI work program. (*PREP: Training Inmates Through Industrial Work Participation, and Vocational and Apprenticeship Instruction*, by William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 24, 1996.)

Unfortunately, over the past several years, the FPI prison inmate work program has experienced a significant decline in its ability to remain financially self-sustaining while providing “employment for the greatest number of inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible.” (18 U.S.C. 4122) For example, FPI has experienced a:

- Significant decline in FPI sales revenues: While FPI in FY 2009 had sales revenues of \$889,355,000 in FY 2009, it only had revenues of \$745,423,000 in FY 2011 – a decline of \$143,932,000 or 16% over three years.
- Significant closing and downsizing of FPI factories: On July 15, 2009, FPI closed factory operations at 14 BOP prisons and downsized operations at four other BOP prisons. The next year on July 13, 2010, FPI closed 12 more factories and downsized three. And on September 7, 2011, FPI announced that it would

close and downsize 12 additional factories at 10 different BOP prisons. According to then-FPI Chief Operating Office Paul Laird, these closings and downsizings were cost control actions taken to bring production capacity and expenses in line with FPI's level of business.

- Significant decline in the number of prison inmates employed by FPI: While the FPI program employed 18,972 inmates in FY 2009, it employed only 14,200 at the end of FY 2011 and 13,466 in April 2012.

These significant declines are the result of the various limitations imposed by Congress and the FPI Board of Directors on FPI's mandatory source authority relating to DoD's and federal civilian agencies' purchases from FPI. But of the many imposed limitations, Section 827 in the National Defense Authorization Act for FY 2008 (P.L. 110-181) – which is statutorily 10 U.S.C. 2410n - is probably the most significant impediment to the FPI prison inmate program.

The FPI Board of Directors in 2003 administratively ended the application of mandatory source authority for those FPI-made products where FPI had a share of the Federal market that was greater than 20%. But Section 827 took a much more stringent approach, ending the application of the mandatory source authority with regard to DoD purchases of FPI-made products where FPI's share of the DoD market for those products was greater than 5%.

As can be seen, FPI is in desperate need of new inmate work program authorities. That is why the AFGE Council of Prison Locals was pleased when Congress included Section 221 in the FY 2011 Commerce-Justice-Science Appropriations bill (P.L. 112-55). This section extended – for the first time - the Prison Industry Enhancement (PIE) inmate employment program to the federal BOP system. The PIE program was created by Congress in 1979 to encourage state prison systems to establish employment opportunities for inmates that approximate private-sector work opportunities. The program is designed to place inmates in a realistic work environment, pay them the prevailing local wage for similar work, and enable them to acquire marketable skills to increase their potential for successful rehabilitation and meaningful employment upon release.

The AFGE Council of Prison Locals also was pleased that Section 221 authorized FPI to carry out pilot “off-shore repatriation” projects to produce items not currently produced in the United States. FPI, if allowed to enter into partnerships with private businesses, could bring lost production back into the United States while providing BOP prison inmates with opportunities to learn skills that will be marketable after their release.

4. Supporting legislation to help relieve prison inmate overcrowding in BOP prisons.

The AFGE Council of Prison Locals has endorsed the Smarter Sentencing Act of 2013 (S. 1410), which was introduced July 31, 2013, by Senators Richard Durbin (D-IL), Mike Lee (R-UT) and Patrick Leahy (D-VT). This bill would modernize federal drug sentencing policies by giving federal judges more discretion in sentencing those convicted of non-violent offenses.

We believe S. 1410 if enacted would help stem the explosive growth in the BOP prison inmate populations, thereby mitigating what is referred to as the “unsustainable” growing budget of BOP. This would allow BOP to make better use of its resources and focus more attention on incarcerated violent offenders.

5. One final thing.

While the wars abroad are winding down, our war continues daily behind the BOP prison walls in this country. In the past 20 years, we have lost several of our colleagues at the hands of inmates. They did not know when they arrived to work that their very lives would be taken from them before their shifts ended. They never made it back home to their loved ones after protecting our communities from the most heinous criminals society has produced.

Correctional Officer Eric Williams was stabbed over 100 times by an inmate who was to be transferred to Arizona to serve a life sentence for murder. Lieutenant Osvaldo Albarati was assassinated by narco-terrorists while traveling home from work. These two are the most recent BOP correctional workers to be slain in the line of duty. These brave men died protecting you, me, and other members of the American community.

We respectfully ask each of you as authorizers to exhaust every available alternative to help ensure that BOP correctional workers are able to work in a safe and secure environment. We also hope you will reach out to House and Senate appropriators to see that the BOP is appropriately funded. Everything must be done so the brave men and women who work at BOP prisons are able to make it back home safely each day to the people who love them the most – their families.

This concludes my written statement. I thank you for including it in the record of today’s hearing.

