



Department of Justice

STATEMENT OF

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DIRECTOR
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BEFORE THE

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

**FOR A HEARING ON
OVERSIGHT OF THE FEDERAL BUREAU OF PRISONS
AND THE U.S. MARSHALS SERVICE**

**PRESENTED
DECEMBER 2, 2020**

**Statement of Michael D. Carvajal
Director, Federal Bureau of Prisons
Before the Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
U.S. House of Representatives
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Good morning, Chairwoman Bass and Members of the Subcommittee. You have asked me to come before you today to discuss the Bureau of Prisons' (Bureau's) mission and operations. It is a privilege to speak today on behalf of the Bureau's over 37,000 staff – corrections professionals who support the agency's critical law enforcement mission. I am committed to ensuring that Bureau staff are guided by the values of respect, integrity, courage, and correctional excellence, and that we carry out our mission with the highest competencies as we serve our stakeholders: inmates, the public, and not to be forgotten, the crime victims whose voices are often unheard.

I was honored to be selected to lead the Bureau and to work alongside the finest corrections professionals in the world. I have spent 28 years in the Bureau, starting as a Correctional Officer, moving up through the ranks of Correctional Services to become a Warden, Regional Director, Assistant Director, and now Director. I was appointed to serve as the Bureau's eleventh Director on February 25, 2020, approximately four weeks before the Bureau's first inmate COVID-19 positive case.

It is impossible to fully discuss the Bureau's current mission and operations without recognizing the impact of the COVID-19 pandemic and the diligent work of the Bureau's professionals in response. In these past months, I have seen the Bureau's professionals work tirelessly and with dedication toward their mission to protect the health and safety of inmates, fellow staff, and the public. I am keenly aware of the personal sacrifices these law enforcement officers make in fulfilling our important public safety mission. The great work they do every day goes largely unseen by the general public. Yet this inherently dangerous work helps keep our communities safe.

OUR MISSION – A HISTORY OF PUBLIC SAFETY AND REENTRY

The Bureau confines over 154,000 inmates in 122 federal prisons, 11 private prisons, and nearly 200 community-based facilities nationwide. Incarceration is a valuable crime-reduction strategy and an important law enforcement tool that holds individuals responsible for their actions and deters others from committing similar crimes. But equally important, it provides a means for individuals to address their criminogenic risks (such as gang involvement and substance use). As the Subcommittee recognizes, it is imperative that we effectively reintegrate individuals back into the community following release from prison to reduce the likelihood of future criminal behavior and associated victimization. To that end, the mission of the Bureau is to confine offenders in prisons and community-based facilities that are safe, humane, cost-efficient, and secure, and to assist inmates in becoming productive, law-abiding citizens when they return to our communities.

The Bureau has had great success with respect to both parts of our mission: we have low rates of inmate on staff and inmate on inmate assaults, disturbances, and escapes, and our recidivism rate is lower than that found in most studies of state prisons using comparable definitions and methodologies.¹ These results are a testament to the hard work of our dedicated professional staff who support public safety and promote reentry.

OUR POPULATION

During the first five decades of the Bureau's existence, the number and type of inmates we housed remained fairly stable. Beginning in the 1980s, however, federal law enforcement efforts and legislative changes led to a significant increase in the federal prison population; the Bureau's inmate population doubled in the 1980s and doubled again in the 1990s. Between 1980 and 2013, the population grew by approximately 800%, topping out at nearly 220,000. This increase was a significant challenge, and our staff responded accordingly and continued to serve the public by maintaining safety, security, and providing reentry programming to our inmates. Over the past few years, the inmate population has decreased significantly, such that today our crowding and staffing levels are more manageable. Particularly in the wake of COVID-19, this recent decrease has given us important latitude to respond to the pandemic.

OUR PROGRAMS – REENTRY BEGINS ON DAY ONE

Reentry programming is a critical component of public safety; individuals are much less likely to return to a life of crime and victimization if they leave prison with an education, job training, treatment for mental illness and/or substance use when needed, and a general understanding of what it means to be a productive, law-abiding citizen. Inmates also need an opportunity to develop employable skills. It is imperative we work in conjunction with our criminal justice partners and community stakeholders to do everything possible to ensure the nearly 44,000 inmates who are released back into our communities each year do not reoffend.

Inmate programs in federal prisons include work, occupational and vocational training, education (including literacy), substance abuse disorder treatment, psychological services and counseling, observance of faith and religion, and other programs that impart essential life skills. These programs are a critical part of the Bureau's mission to keep our communities safe by improving an inmate's mental health and/or providing employable skills, and addressing critical criminogenic needs. The Residential Drug Abuse Program (RDAP), vocational and occupational training, education, and Federal Prison Industries (FPI) have been shown to reduce recidivism. In previous research studies, RDAP participants were 16 percent less likely to recidivate and 15 percent less likely to have a relapse in their substance use disorder within three years after release. Inmates who participate in vocational or occupational training were 33 percent less

¹ An estimated 68% of prisoners released from 30 state prisons were arrested within 3 years. Source: BJS, Office of Justice Programs "2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)" May 2019. The BOP's 2018 Second Chance Act study (of inmates released FY 2011-13) shows that approximately 45% were re-arrested or had their supervision revoked over a three-year period; *see also* U.S. Sentencing Commission, *Recidivism Among Federal Offenders: A Comprehensive Overview*, 16 (Mar. 2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf (finding that 33.7% of federal offenders recidivated within three years of release (Table 2)).

likely to recidivate, and inmates who participate in education programs were 16 percent less likely to recidivate

OUR GOAL – EFFECTIVE TRANSITION TO THE COMMUNITY

The Bureau relies on Residential Reentry Centers (RRCs; also known as halfway houses), and home confinement to assist inmates reintegrate into their communities prior to completing their prison terms. Typically, approximately 75% of inmates annually transfer to an RRC or home confinement prior to their release. RRCs provide inmates with a structured, supervised environment, and assistance in finding employment and housing; completing necessary programming (e.g., community-based treatment services); participating in counseling; and strengthening ties to family and friends.

COVID-19 Pandemic

The COVID-19 pandemic that is impacting our entire country, and indeed the world, has had a significant impact on our operations. The Bureau's response to and management of COVID has received a great deal of Congressional, media, and stakeholder interest and scrutiny. I appreciate the opportunity to discuss in person all that the Bureau has done, and continues to do, to reduce risks and mitigate the impacts of the pandemic, and to keep our staff, inmates, and communities safe.

The Bureau has a sound pandemic plan in place and a well-established history of managing and responding to various types of communicable disease outbreaks. We used this pandemic plan as a springboard for our COVID response planning beginning in January, when our medical leadership began consulting with relevant experts, including the Centers for Disease Control and Prevention (CDC), the U.S. Public Health Service, the Office of Personnel Management (OPM), and the Office of the Vice President. We leveraged and implemented guidance from these experts and used it to develop protocols for screening inmates and staff with potential COVID exposure risk factors. We have continued this strong collaboration throughout the pandemic, and have invited the CDC and public health officials into our facilities to evaluate our work. They have praised our planning and implementation in the wake of a vexing virus. To be transparent about our plans, operations, and statistics, the Bureau has published one of the most detailed and thorough COVID pandemic resource areas in the federal government on our public website at www.bop.gov/coronavirus. As a further commitment to transparency, the Bureau updates the statistics on this site daily.

Institution Operations

On March 13, 2020, in response to an increasing number of people with COVID-19 positive infections in various communities, the Bureau implemented a decisive and comprehensive action plan to protect the health of the inmates in our custody, the staff, and the public, to the greatest extent possible, consistent with sound medical and corrections principles. This plan included significantly limiting movement in and out of our federal prisons. Almost all internal inmate — or Bureau-controlled — movement was suspended. There was some very limited inmate movement that was required, including movements for forensic studies, writs,

Interstate Agreements on Detainers, necessary medical and mental health treatment, and transfer to RRCs or home confinement. Some new admissions to the Bureau from the United States Marshals Service (USMS) continued, as legally required. While we received criticism for that limited but continued movement, it is critical to note that the criminal justice system has not stopped processing criminal cases during the pandemic. Individuals in the community continue to commit crimes, arrests continue to be made, federal courts continue to adjudicate and sentence offenders, and thus detainees and sentenced inmates continue to enter our system. We are obligated to take these individuals from the courts, and cannot control who the courts place into our system. Working closely with the Department of Justice (Department) and the USMS, we attempted to slow the entrance of some of these new admissions until additional testing capability was acquired.

With the March 13, 2020 guidance, we implemented social distancing procedures, to the greatest extent appropriate within the prison environment. As is widely noted, prisons are not designed for social distancing. Nonetheless, we modified our operations to the extent we could to minimize co-mingling and group gatherings. We suspended social visiting, tours, and the admission of volunteers to decrease the flow of individuals from the community into the prison, particularly at the height of the pandemic. Understanding the importance of visitation to the inmate population, we significantly increased telephone minutes for the inmates from 300 to 500 minutes on March 13, 2020, and later, on April 8, 2020, in accordance with the CARES Act, we made telephone calls free for the inmate population. We also made video-visiting, also available at our female facilities, free of charge. The impact of this program has been great—telephone minutes use increased by nearly 50% the next day. This program is expected to continue over the course of the Presidentially-declared emergency.

On March 26, 2020, over eight months ago and early in the pandemic, we implemented enhanced daily monitoring, to include the cessation of movement for any inmate who screened positive for COVID-19, and established quarantine and medical isolation procedures for inmates. On March 31, 2020, enhanced modified operations were introduced to further limit movement within the institution such as eating meals in their rooms or cells, or in small groups within housing units, and limiting programmatic offerings to individualized or small group activities. Despite movement limitations, all critical services have continued, and Chaplains and Psychologists visit inmates in their housing areas when inmates cannot leave that space. In early April, to maintain the safety of inmates leaving our facilities and the public, we instituted requirements for all inmates releasing from the Bureau or transferring to a Residential Reentry Center (RRC) or Home Confinement to be placed on 14-day quarantine prior to their anticipated release or transfer.

The Bureau recognized early on that COVID testing for the inmate population was critical, but as was the case for the country as a whole, testing supplies were initially very limited. Working closely with the Department, the Bureau was able to obtain testing resources for all of our prisons and established a national contract with outside laboratories for COVID testing. With that availability, we have instituted a test-in/test-out and 14-day quarantine protocol for any necessary inmate movement.

Further, regardless of our diligent COVID-19 planning and protocol, emergencies have and will continue to arise that require us to adapt changes to our procedures. For example, in the midst of the diligent work Bureau staff were undertaking nationwide to counter the pandemic, on April 13, 2020, Federal Correctional Institution (FCI) Estill, South Carolina, was struck by a tornado causing extensive damage to both the medium and minimum security institutions. Over the ensuing four days, we were able to safely and securely move 842 inmates, relocating them to a prison in Pennsylvania that had available capacity. Subsequently, three facilities sustained significant damage from Hurricane Laura. The Bureau has plans in place to deal with situations such as these, and despite the complexities that the COVID-19 pandemic adds to the implementation of those plans, these experiences reflect just how well-trained and prepared our staff and leadership are to handle whatever the next challenge may be.

Home Confinement

As the pandemic grew more widespread, the Bureau began aggressively screening the inmate population for inmates who were appropriate for transfer to an RRC or Home Confinement for service of the remainder of their sentences. Additionally, the Bureau authorized the use of inmate furloughs to move qualified offenders out of the facilities, to reduce populations, and to increase ability for inmates to socially distance.

On March 26, 2020 and April 3, 2020, Attorney General Barr issued memoranda to the Bureau directing us to maximize the use of Home Confinement for vulnerable inmates, particularly at institutions that were markedly affected by COVID-19. The CARES Act, signed into law on March 27, 2020, further expanded our ability to place inmates on Home Confinement by lifting the statutory limitations contained in Title 18 U.S.C. § 3624(c)(2) during the course of the pandemic. I am pleased to report that since March 26, 2020, BOP has transferred 18,112 inmates to Home Confinement, and there are an additional 175 who are scheduled to transfer to Home Confinement in the coming weeks. These assessments remain ongoing and will continue for the duration of the pandemic.

It should go without saying that, while we are always dedicated to the protection of our inmates' health and safety, public safety must also be considered when evaluating community placements, and, as the Attorney General's guidance emphasized, it is not appropriate for inmates who present a risk to the public, because of their criminal acts or other factors, to be transferred to home confinement. Nor can we transfer inmates, who do not have safe housing for themselves or housing with appropriate safeguards, to home confinement. As home confinement is still, after all, a form of incarceration for persons convicted of crimes who are still serving a federal sentence, these public safety factors must be considered, and these decisions are made using sound correctional judgement and our many years of experience overseeing such transfers.

FIRST STEP ACT

Despite the challenges COVID brings, the Bureau continues to provide robust and effective programming, and it is diligently implementing the First Step Act (FSA).

Assessment of Inmates' Risk to Recidivate

As of January 15, 2020, which is the FSA statutory deadline, all sentenced inmates had received individual risk scores and identified need areas. Also in January, the approved catalog of more than 70 Evidence-based Recidivism Reducing Programs (EBRR) and Productive Activities (PA) was published on our public website. These EBRRs and PAs are recommended to inmates, to address their specific needs. When an inmate successfully completes a recommended program in an identified need area, he or she may be able to earn FSA time credit or other incentives.

FSA Programming

The Bureau has a variety of programs, the most robust of which are Cognitive Behavioral Therapy (CBT) interventions for mental health and substance use disorders, anger management, and criminal thinking elimination. Literacy and occupational training programs are also widely available, and reentry-focused programs, such as parenting, are offered at all sites. Because the agency has such a large menu of programs covering all need areas, the Bureau has put forth considerable effort to ensure adequate capacity in our existing programs, and has been able to give access to more inmates by hiring staff into the positions authorized by Congress under FSA. We have also worked toward program fidelity, standardizing service delivery so that every program comports with the evidence that supports its use. We identified gaps in services for women and were able to enhance our offerings. We also recently contracted for women's college programming. Although we have many strong programs, external vendors or program developers may submit established programs for initial review by an independent research organization engaged by the Bureau; this review analyzes and determines if the program satisfies the requirements of the FSA, and that determination is later reviewed by the Bureau. We also develop programs internally. As one of the largest employers of doctoral level psychologists—as well as an employer of chaplains, teachers, and medical professionals—the agency is well-suited to identify gaps in programming and create services grounded in evidence that fit federal population parameters.

Medication Assisted Treatment (MAT)

The Bureau's MAT program was established in 2018 and expanded as a result of the FSA. By May 2019, the Bureau was screening all inmates nearing transfer to community placement for MAT, in an effort to treat addiction and reduce the risk of overdose deaths among releasing offenders. Treatment options for newly-committed inmates, who entered Bureau custody with existing MAT treatment plans, were expanded to include all three Food and Drug Administration (FDA)-approved medications for MAT, using a combination of community providers and appropriately trained Bureau providers. The Substance Abuse and Mental Health Services Administration (SAMHSA), within the U.S. Department of Health and Human Services (HHS), provides the regulation and oversight of substance use disorder treatment. The Drug Enforcement Administration (DEA) and SAMHSA work together to provide the licensing and accreditation of Opioid Treatment Programs. The Bureau currently has one opioid treatment program at MCC New York and is working with the DEA and SAMSHA to stand up three more at Federal Medical Center (FMC) Butner, North Carolina; FMC Springfield, Illinois; and FMC

Carswell, Texas. These will enable the Bureau to internalize even more MAT services and expand our ability to treat all inmates in our custody who demonstrate a clinical need for MAT. The Bureau continues to work towards establishing an internal infrastructure for all MAT-related services and medications, with primary focus on consulting with external subject matter experts, training staff in all divisions, implementing clinical guidance for treatment standardization, and monitoring/tracking/reporting MAT utilization.

FSA Second Chance Act Provisions

The FSA also contains enhancements to the Second Chance Reauthorization Act of 2018, which, among other changes, reauthorized and modified a pilot program that allows the Bureau to place certain elderly and terminally ill inmates on home confinement, to serve the remainder of their sentences. The program was fully implemented in April 2019. To-date, approximately 534 inmates have been placed into home confinement pursuant to this five-year pilot program.

FSA Criminal Justice Provisions

The FSA includes a series of other criminal justice-related provisions. These provisions include a statutory prohibition on the use of restraints on pregnant inmates; a change to the way good conduct time credit is calculated (directing that inmates earn 54 days of good time credit for each year of imposed sentence, rather than for each year of time served); a requirement for the Bureau to provide a way for employees to safely store firearms on Bureau grounds; a requirement for the Bureau to try to place inmates within 500 driving miles of their primary residences; a prohibition against the use of solitary confinement for juvenile delinquents in federal custody; and an expanded requirement that the Bureau aid inmates with obtaining identification before they are released. In each of these areas, the Bureau either was already in compliance with the mandate when the FSA was enacted, or has since updated its policy or procedures to come into compliance with the new provisions.

CONCLUSION

I am honored to speak on behalf of the Bureau, its staff in our 122 institutions, and our administrative offices nationwide. Our mission is extremely challenging, but critical to the safety and security of the public, our staff, and the inmates we house. I thank the staff who, like first responders everywhere, are working long hours to prevent or mitigate the spread of COVID-19 in our facilities. The Bureau can be proud of this hard work, but we understand there is still more to do.

Chairwoman Bass and Members of the Subcommittee, this concludes my formal statement.