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**STATEMENT OF
SHANE FAUSEY
NATIONAL PRESIDENT
COUNCIL OF PRISON LOCALS**

BEFORE THE

**COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND
HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

**FOR A HEARING ENTITLED:
“Oversight of the Federal Bureau of Prisons and the U.S. Marshals
Service”**

**PRESENTED:
December 2, 2020**

**Statement of
Shane Fausey
National President
Council of Prison Locals
Committee on Judiciary
United States House of Representatives**

Good morning, Chairwoman Bass, Ranking Member Sensenbrenner, and Members of the Subcommittee. I am pleased to offer the following statement related to the Council of Prison Locals, the Federal Bureau of Prisons, and the staffing crisis and handling of the COVID-19 pandemic.

I am honored to represent and speak on behalf of the nearly 30,000 bargaining unit Bureau of Prisons (BOP) employees – professionals who go to work in America’s penitentiaries and prisons every day. In the face of adversity and some of the most violent ‘cities’ in the country, they keep us all safe from some of the world’s most dangerous human beings. Throughout this pandemic, the dedicated Federal Law Enforcement personnel have continued to work to provide institutions that are safe for the inmates, staff, and most importantly the communities surrounding these Federal Prisons.

UPDATE COVID-19 IN THE FEDERAL PRISON SYSTEM

It was our concern, at the beginning of this pandemic, that the Bureau of Prisons would not be prepared and most importantly be proactive when dealing with what could happen to the inmates, the staff, and communities associated with Federal Facilities.

The Federal Bureau of Prisons has been in the midst of a staffing crisis that did not just begin with the hiring freeze of January 2017. It began with the ‘mission critical’ cuts in 2005, which eliminated more than 10% of all Correctional Officer posts. For almost two decades we have warned of the ominous results of underfunding and staffing reductions. The initial mission critical cuts eliminated the second officer in most housing units across the agency. This elimination directly resulted in the isolation of both Officers Jose Rivera (2008 USP Atwater, CA) and Eric Williams (2013 USP Canaan, PA) in some of America’s most dangerous penitentiaries. This isolation and ‘budget’ cuts resulted in the murder of both Jose and Eric. The hiring freeze of January 2017 saw the elimination of more than 4,400 additional positions agency-wide, plummeting most Correctional Services compliments below 80% of the authorized positions at the time. In January 2016, authorized positions were 43,369. These arbitrary cuts eliminated whichever positions were vacant at the time. There was no thought analysis or prioritization of which positions were to be eliminated. In just three short months, the 80% became the new 100%. In essence, the new 100% is approximately 75% of the ‘mission critical’ levels the agency testified to be the minimum level of Officers to keep the Bureau of Prisons safe. As Correctional Officer numbers plummeted, the Office of the Inspector General

determined¹ that prison violence and homicides rapidly increased with the inmate suicide rate nearly doubling in a few short years. As of October of 2020, there are 37,096 positions filled. All of the parties, including the leadership of the Department of Justice and BOP, were well aware of the unpreparedness of the Bureau of Prisons even absent any 'major' occurrences such as the COVID-19 pandemic we are now facing.

The staffing crisis worsened the severity of this pandemic in our federal prisons and severely limited the agency's possible responses². The pre-pandemic hiring efforts by the agency were outpaced by our attrition rate and then stifled by the pandemic's restrictions. The limited employees available, coupled with the critical shortage of Correctional Officers nationwide, has exacerbated the misery of COVID-19. The devastating levels of mandatory double shifts and dependence on augmentation just to function has evolved into TDY (Temporary Duty Assignments) in which a 'National Augmentation' became necessary in institutions wracked by COVID-19. Understaffed facilities sent TDY employees to rapidly deteriorating facilities to put fingers in the cracking dam.

As of this time, the Bureau of Prisons has publicly acknowledged 143 inmates are dead due to COVID-19. The Bureau of Prisons has recognized only two employees have died due to COVID-19 and continues to deny the death of another staff member as COVID-19-related. On April 14, 2020, Robin Grubbs, 39, a veteran and a Case Manager at USP Atlanta was found dead in her home. She posthumously tested positive for COVID-19. She was screened on April 10, 2020, and was determined to be asymptomatic. Ms. Grubbs had an office located in the unit being used to house sick inmates or inmates who had been exposed to COVID-19. Staff working with Ms. Grubbs at USP Atlanta are among many who have stated they were not issued personal protective equipment to stay safe while working around COVID-19 areas. Even with specific guidance from the Department of Labor clarifying the presumptive causal connection of COVID-19 and a correctional worker / first responder, the BOP still denies Ms. Grubbs' death as being COVID-19-related. I fear the loss of human life is being viewed as an acceptable cost of budget restrictions and working in a prison. Throughout this pandemic, nearly 23,000 inmates and 3,100 staff have contracted COVID-19. The alarming rate that both inmates and staff continue to contract COVID-19 far exceeds the rate of the general public.

INMATE TRANSFERS DURING A GLOBAL PANDEMIC

COVID-19 outbreaks can be particularly devastating inside federal prisons due to the large number of people living and working in very close proximity to one another. And once an outbreak occurs inside a prison it puts the surrounding community at risk as the employees of the prison return home to their families and interact with others in their community.

¹ Top Management and Performance Challenges Facing the Department of Justice October 18, 2019 <https://www.oversight.gov/sites/default/files/oig-reports/2019.pdf>

² DOJ OIG Press Release dated July 23, 2020, <https://oig.justice.gov/reports/remote-inspection-federal-correctional-complex-tucson> ; <https://oig.justice.gov/reports/remote-inspection-federal-correctional-complex-lompoc>. It is pertinent to note this is the first of a series of investigations.

It is for this reason that we sounded the alarm early, and have done so repeatedly, since the pandemic took hold in March of this year. We urged the Director of the BOP and the Attorney General to halt the transfer of all prisoners into and between federal prisons to stem the spread of the novel coronavirus. They halted the internal movement of inmates for a brief time, however, as cases across the country were skyrocketing, BOP resumed inmate transfers. Even more troubling is the lack of testing and quarantine of inmates by the United States Marshals Service (USMS), which is responsible for the intake and transfer of federal prisoners before they are turned over to the BOP.

On August 8, 2020, the Council of Prison Locals filed a complaint with the Occupational Safety and Health Administration (OSHA) related to the BOP's handling of inmates infected with COVID-19. As the complaint states, the Federal Bureau of Prisons, under the direction of Michael Carvajal, has directed the continued and enhanced movement and acceptance of COVID-19-positive inmates throughout the Bureau of Prisons facilities across the country.

These inmates appear to originate primarily from the USMS. In May, the BOP reached an agreement with USMS to significantly decrease incoming movement of inmates and identified specific BOP sites that would house incoming inmate transfers where testing, quarantining and isolation could be done. All internal movement was suspended. However, just 42 days later, at the end of June as cases were spiking across the country, the BOP issued a new action plan stating that they would return to normalized movement to all institutions and open internal movement once again.

Upon doing so, the BOP experienced a significant spike in COVID-19-positive inmates and staff, nearly doubling the number from the period when the movement was decreased. On July 22, 2020, the BOP had the highest number of inmate cases at 4,247, more than double the 1,955 cases on May 18, 2020, just two months earlier. Staff numbers went from 286 on May 18, 2020 to 586 on August 11, 2020.

The original use of quarantine sites and a "shelter in place" theory should again be applied and all new inmates should stay in the immediate area they are accepted in until they can complete a full 14 day quarantine, consistent with CDC guidance and OSHA standards keeping the recognized hazards contained in specific locations. CDC guidelines recommend that where COVID-19 cases exist within a correctional institution, transfers of inmates should be suspended. Instead, the BOP has continued to authorize movement of infected inmates, inmates suspected of being infected, and inmates who have been in close contact or proximity to infected inmates, to areas of the country that do not have any rate of infections, or to Institutions that otherwise have not shown signs of any introduction of the virus, thus introducing the virus into an uninfected area.

By continuing to transfer inmates into and within the federal prison system without first testing and quarantining them, the BOP and USMS are putting the health and safety of tens of thousands of federal correctional workers, their families, and their communities at risk.

COVID-19 TESTING FOR STAFF

Given the frequent exposure of prison staff to infected inmates coupled with the prevalence of asymptomatic spread of the virus, BOP should offer voluntary coronavirus testing to staff at the prison facility where they work. However, the Bureau has repeatedly refused to do this. Instead, employees who believe they were exposed or might be infected with the coronavirus must get tested on their own time and in their own communities. This further puts strain on the already limited testing and healthcare resources in these communities, many of which are rural and severely under-resourced. This was the BOP's policy during the height of the pandemic in the spring and continues to this day as cases are again surging nationwide. The BOP should immediately change its policy and obtain adequate supplies and offer testing to employees on a voluntary basis at the facility where they work.

CONCLUSION

Chairwoman Bass, Ranking Member Sensenbrenner, and Members of the Subcommittee, I appreciate the opportunity to provide the Committee with our concerns.

As I have indicated, the staffing crisis in the Bureau of Prisons not only creates a clear and present danger to every employee, inmate, and the community at large, but it has made the response to the COVID-19 pandemic nearly impossible. This has been further exacerbated by the continued transfer of inmates into and within the federal prison system without proper testing and quarantining. The Bureau of Prisons' reactive response, coupled with the ineffective oversight of OSHA and the inconsistent and ambiguous guidance of the CDC, has led to an infection rate of our employees and incarcerated individuals only second to the pandemic's devastating effects on our nursing homes and elder care facilities.

The dedicated and loyal employees of the Federal Bureau of Prisons have long prided themselves on accomplishing the missions given to them. Throughout this pandemic, they have been pushed beyond the breaking point and deserve much-needed relief. They will continue to protect the American people as they always have done honorably. They only need the staffing resources, the budgetary support, and proper policies in place to safely protect the American public from the incarcerated individuals within the Federal Bureau of Prisons. I implore you to immediately intervene by expanding incentives and elevate the staffing levels across the Bureau of Prisons to a safe level. Short-term fixes to slow the attrition rate (or retention problem as acknowledged by OPM³ in their response to 47 United States Senators) can be as simple as offering the statutorily-limited 25% retention incentive to all employees in the agency that are eligible to retire. At this moment, over 3,500 Bureau of Prison's employees are eligible to retire. Couple that with the no-additional-cost option to 'carry-over' accrued annual leave an additional year as an incentive to stay with the agency. This unprecedented loss of experience will have lasting effects into the distant future. Maximizing incentives to statutory ceilings (25%) at difficult and/or hard to fill locations should be done immediately. The focus on safety requires an immediate, focused, and unprecedented effort to hire Correctional Officers. An additional

³ See attached document, "OPM Response to Senators re DHA_4.23.20"

long- and short-term incentive is to increase the Correctional Officer pay bands to a level more commensurate with their Federal Law Enforcement peers. The inability to compete with the elevated pay bands of other state and federal law enforcement agencies has created an additional drain on the valuable human capital within the Bureau of Prisons.

Thank you.