

Testimony Submitted for the Record
Senate Committee on the Judiciary
Hearing on Oversight of the Federal Bureau of Prisons
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Chairman Durbin, Ranking Member Graham, and members of the Senate Judiciary Committee, thank you for the opportunity to submit testimony regarding oversight of the Bureau of Prisons (BOP).

Citizens for Responsibility and Ethics in Washington (CREW) is a non-profit, non-partisan organization committed to promoting ethical, transparent and accountable governance. We firmly believe that Congress must fulfill its oversight duties in order to ensure the integrity of government institutions and sustain our democracy. This hearing marks a crucial stride towards enhancing the oversight of the BOP, an agency that is in urgent need of comprehensive reform to address its persistent operational challenges. According to its stated mission, the Bureau is “committed to providing a safe environment for both staff and inmates.” In recent years however, reporting and investigations have revealed that BOP has fallen short of this mission by failing to address or even willfully turning a blind eye to staff misconduct and dangerous conditions. We hope that this hearing will spur legislative action to address the urgent need for transparency, accountability and oversight within the BOP.

BOP’s internal operations have created a culture of widespread employee misconduct, the true scale of which is hidden from public view because of inadequate transparency measures.

This year, the Department of Justice’s Office of the Inspector General conducted an internal review of the BOP and identified significant concerns, including insufficient staffing, weaknesses in the internal audit functions and unsafe conditions due to poorly maintained infrastructure.¹ The report was issued in response to alarming conditions at two BOP facilities in 2021; first, at the U.S. Penitentiary in Atlanta where the BOP substantially reduced its activities due to concerns surrounding operational security, including the inability of staff to prevent drugs and other contraband from entering the institution, and at the Metropolitan Correctional Center in New York, where the BOP ceased operations due to deteriorating physical infrastructure and operational security challenges stemming from deficiencies in staff oversight.²

¹ *Limited-Scope Review of the Federal Bureau of Prisons’ Strategies to Identify, Communicate, and Remedy Operational Issues*, Dep’t of Justice Office of the Inspector General (May 2023), <https://oig.justice.gov/reports/limited-scope-review-federal-bureau-prisons-strategies-identify-communicate-and-remedy>.

² *Id.*

In addition to the unsafe physical conditions of the facilities, the findings in the DOJ report revealed that BOP is not effectively addressing employee misconduct cases, in part due to inadequate staffing levels and lack of transparent reporting. As of September 2022, the BOP had 60 Special Investigative Agents (SIAs) available to handle 7,893 pending employee misconduct cases requiring further investigation. Moreover, according to the report, the BOP had yet to institute disciplinary actions in 2,279 additional cases where investigations had substantiated allegations of misconduct and recommended disciplinary action.³ These statistics are staggering, particularly because BOP's case management system for investigating employee misconduct has significant limitations that impede its ability to provide accurate data regarding the average time required to conclude its investigations and impose disciplinary action.⁴

Sexual misconduct is one area where there have been significant complaints of employee misconduct. According to a bipartisan report issued last year by the Senate Permanent Subcommittee on Investigations, the BOP has failed to hold employees accountable for widespread sexual misconduct involving female inmates at federal prisons.⁵ The report details that long delays in investigating complaints have led to a backlog of approximately 8,000 cases of misconduct including at least hundreds of sexual abuse cases as of November 2022, and the BOP has failed to respond to this abuse or implement agency-wide reforms.⁶ Recent investigations have documented numerous allegations, from a culture of sexual abuse and cover up at a Tallahassee federal women's prison,⁷ to the indictment of a warden at a federal women's prison in Dublin, California on charges of inmate sexual abuse.⁸ In another instance, the DOJ opened an investigation into five juvenile facilities in Texas following allegations of physical and sexual abuse of juvenile detainees by staff, as well as excessive use of chemical restraints and isolation on juveniles.⁹

It is important to remember that this misconduct has a disproportionate effect on Black and brown Americans. Black Americans make up 38.6% of BOP inmates, despite being just 13.6%

³ *Id.*

⁴ *Id.*

⁵ Staff of S. Permanent Subcomm. on Investigations and Comm. on Homeland Sec. and Gov't Affairs, 117th Cong., Rep. on Sexual Abuse of Female Inmates in Federal Prisons (Comm. Print 2022), <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2022-12-13%20PSI%20Staff%20Report%20-%20Sexual%20Abuse%20of%20Female%20Inmates%20in%20Federal%20Prisons.pdf>.

⁶ *Id.*

⁷ Silja J.A. Talvi, *Sexual Abuse of Women at Florida Prison Draws Attention Amid Ghislaine Maxwell Trial*, The Appeal (Apr. 25, 2023), <https://theappeal.org/fci-tallahassee-sexual-abuse-women-prison-ghislaine-maxwell/>.

⁸ *Prisons Fail to Stop Sexual Abuse of California Female Inmates*, Associated Press (Sept. 30, 2021, 1:56 AM), <https://apnews.com/article/prisons-california-san-francisco-sexual-abuse-e9b0b3c8bf508bafc66399c95c02a1df>.

⁹ U.S. Dep't of Justice, *Press Release: Justice Department Announces Investigation Into Conditions at Five Juvenile Facilities in Texas*, Office of Public Affairs (Oct. 13, 2021), <https://www.justice.gov/opa/pr/justice-department-announces-investigation-conditions-five-juvenile-facilities-texas>.

of the national population.¹⁰ In Illinois, there are nearly eight times as many Black inmates as white inmates.¹¹ The Washington Lawyers' Committee for Civil Rights & Urban Affairs recently published an investigation which included testimonies from over 120 individuals incarcerated at a BOP facility in Illinois who alleged deeply troubling criminal and civil rights violations including sexual assault, racist verbal mistreatment and interference with inmates' access to legal counsel and the grievance process.¹² Although we commend this committee's efforts to address this issue in its recent letter urging the BOP to investigate these allegations, we remain deeply concerned by the racism laced into the reports of misconduct that the Washington Lawyers' Committee's investigation unearthed.¹³

Increased Congressional oversight of BOP and legislative reform is critical amidst continued allegations of abuse and corruption

Government oversight is an essential congressional duty. Effective oversight of BOP is of paramount importance given the inherent challenges in receiving reports of misconduct directly from incarcerated individuals. The nature of incarceration hinders open communication, and even when such reports do arise, individuals risk facing potential retribution from BOP staff in whose custody they find themselves. This underscores the vital role of independent oversight mechanisms in ensuring transparency and accountability across BOP facilities. This committee and the Senate Permanent Subcommittee on Investigations have done critical work to bring some of the issues to light, but further oversight work and legislative action is needed.

Congress has a menu of options it could choose from to exercise more robust oversight and, in the process, help rebuild some measure of public trust which BOP Director Colette Peters agrees has eroded given recent scandals.¹⁴ As a starting point, it is well within Congress' powers to allocate resources and personnel to strengthen oversight mechanisms within the BOP including prioritizing transparent reporting, independent audits and the implementation of accountability measures to prevent widespread mistreatment of

¹⁰ *Inmate Race*, Federal Bureau of Prisons (Sept. 2, 2023), https://www.bop.gov/about/statistics/statistics_inmate_race.jsp; *Census QuickFacts United States*, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/RHI225222>.

¹¹ *Detailed Data Tool*, The Sentencing Project, <https://www.sentencingproject.org/research/detailed-state-data-tool/>.

¹² The Washington Lawyers' Committee for Civil Rights and Urban Affairs et al., *Cruel and Usual: An Investigation into Prison Abuse at USP Thomson*, Washington Lawyers' Committee for Civil Rights and Urban Affairs (July 12, 2023),

<https://www.washlaw.org/wp-content/uploads/2023/07/Cruel-and-Usual-An-Investigation-Into-Prison-Abuse-at-USP-Thomson.pdf>.

¹³ *Durbin, Grassley, Duckworth, Sorensen Press BOP to Investigate Allegations of Abuse at USP Thomson*, U.S. Senate Committee on the Judiciary (Sept. 6, 2023), <https://www.judiciary.senate.gov/press/releases/durbin-grassley-duckworth-sorensen-press-bop-to-investigate-allegations-of-abuse-at-usp-thomson>.

¹⁴ Michael R. Sisak & Michael Balsamo, *New federal prisons chief vows to fix troubles, regain trust*, Associated Press (Sept. 29, 2022), <https://apnews.com/article/health-crime-prisons-covid-judiciary-233404fbc44b5c39b658c2b86a1958f5>.

inmates. The bipartisan bicameral Federal Prison Oversight Act (S. 1401 and H.R.3019) provides a framework to do just that.

The Federal Prison Oversight Act would require the Department of Justice's Office of Inspector General to conduct periodic, risk-based investigations of all BOP facilities and tasks the Attorney General with creating an Ombudsman within the Department of Justice to conduct targeted investigations of complaints regarding the wellbeing of incarcerated individuals and BOP staff.¹⁵ Further, the bill would create a telephone hotline and online form for incarcerated people to report misconduct to an accountability office, mandate federal watchdog inspections and create congressional reporting requirements and response plans from the BOP.¹⁶ These measures are designed to help avert the dangerous conditions we have seen in the past several years in places like the U.S. Penitentiary in Atlanta and the Metropolitan Correctional Center in New York. Additionally, they would help ensure that instances of employee misconduct and dangerous conditions do not go unnoticed by providing the Senate and House Judiciary Committees with inspection reports, thereby giving the legislature the essential information concerning BOP facilities that it needs to conduct effective oversight.

Conclusion

There is an urgent need for enhanced oversight, accountability and transparency throughout the BOP. Where the BOP has failed in this regard, Congress must step in. We urge this committee to commit to increased oversight of the BOP and work across the aisle to markup and vote out of committee the Federal Prison Oversight Act. We stand ready to work with you toward a more accountable and transparent BOP.

¹⁵ Federal Prison Oversight Act, S. 1401, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/1401>.

¹⁶ *Id.* § 6(a).