

**SEXUAL ABUSE OF FEMALE INMATES IN FEDERAL  
PRISONS**

---

---

**HEARING**

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
OF THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

DECEMBER 13, 2022

Available via the World Wide Web: <http://www.govinfo.gov>

Printed for the use of the  
Committee on Homeland Security and Governmental Affairs



**SEXUAL ABUSE OF FEMALE INMATES IN FEDERAL PRISONS**

**SEXUAL ABUSE OF FEMALE INMATES IN FEDERAL  
PRISONS**

---

---

**HEARING**

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON

HOMELAND SECURITY AND

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

DECEMBER 13, 2022

Available via the World Wide Web: <http://www.govinfo.gov>

Printed for the use of the  
Committee on Homeland Security and Governmental Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

GARY C. PETERS, Michigan, *Chairman*

THOMAS R. CARPER, Delaware	ROB PORTMAN, Ohio
MAGGIE HASSAN, New Hampshire	RON JOHNSON, Wisconsin
KYRSTEN SINEMA, Arizona	RAND PAUL, Kentucky
JACKY ROSEN, Nevada	JAMES LANKFORD, Oklahoma
ALEX PADILLA, California	MITT ROMNEY, Utah
JON OSSOFF, Georgia	RICK SCOTT, Florida
	JOSH HAWLEY, Missouri

DAVID M. WEINBERG, *Staff Director*  
ZACHARY I. SCHRAM, *Chief Counsel*  
PAMELA THIESSEN, *Minority Staff Director*  
LAURA W. KILBRIDE, *Chief Clerk*  
ASHLEY A. HOWARD, *Hearing Clerk*

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

JON OSSOFF, Georgia, *Chairman*

THOMAS R. CARPER, Delaware	RON JOHNSON, Wisconsin
MAGGIE HASSAN, New Hampshire	RAND PAUL, Kentucky
ALEX PADILLA, California	JAMES LANKFORD, Oklahoma
	RICK SCOTT, Florida

SARA SCHAUMBURG, *Staff Director*  
DAN EISENBERG, *Senior Counsel*  
BRIAN DOWNEY, *Minority Staff Director*  
PATRICK HARTOBEY, *Minority Senior Counsel*  
KATE KIELCESKI, *Chief Clerk*

## CONTENTS

Opening statements:	Page
Senator Ossoff .....	1
Senator Johnson .....	3
Senator Padilla .....	17
Prepared statements:	
Senator Ossoff .....	45
Senator Johnson .....	48

### WITNESSES

TUESDAY, DECEMBER 13, 2022

Carolyn Richardson, Formerly Incarcerated in the Federal Bureau of Prisons .	5
Briane Moore, Formerly Incarcerated in the Federal Bureau of Prisons .....	7
Linda De La Rosa, Formerly Incarcerated in the Federal Bureau of Prisons ...	9
Brenda V. Smith, Professor of Law, American University Washington College of Law .....	10
Hon. Michael E. Horowitz, Inspector General, U.S. Department of Justice .....	23
Colette S. Peters, Director, Federal Bureau of Prisons .....	25

### ALPHABETICAL LIST OF WITNESSES

De La Rosa, Linda:	
Testimony .....	9
Prepared statement .....	109
Horowitz, Hon. Michael E.:	
Testimony .....	23
Prepared statement .....	156
Moore, Briane:	
Testimony .....	7
Prepared statement .....	103
Peters, Colette S.:	
Testimony .....	25
Prepared statement .....	167
Richardson, Carolyn:	
Testimony .....	5
Prepared statement .....	49
Smith, Brenda V.:	
Testimony .....	10
Prepared statement .....	112

### APPENDIX

Staff Report .....	174
Kevin Ring, President, FAMM Statement for the Record .....	242



# SEXUAL ABUSE OF FEMALE INMATES IN FEDERAL PRISONS

TUESDAY, DECEMBER 13, 2022

U.S. SENATE,  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
OF THE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:30 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Jon Ossoff, Chairman of the Subcommittee, presiding.

Present: Senators Ossoff, Hassan, Padilla, Johnson, Lankford, and Scott.

## OPENING STATEMENT OF SENATOR OSSOFF<sup>1</sup>

Senator OSSOFF. The Permanent Subcommittee on Investigations (PSI) will come to order.

Today's hearing will examine the findings of our 8-month bipartisan investigation into the sexual abuse of women in Federal prisons.

Before we proceed, viewers are advised that this hearing will discuss sexual violence and other deeply disturbing issues that we are duty-bound to bring to light. Anyone seeking mental health assistance can call the nationwide hotline at 988 to connect with a trained counselor.

Eight months ago, as chair of PSI, I launched an investigation into the sexual abuse of women held in Federal prisons, and with Ranking Member Johnson's support, our bipartisan staff reviewed extensive non-public Bureau of Prisons (BOP) and whistleblower documents and conducted more than two dozen interviews with senior BOP leaders, whistleblowers, and survivors of prison sexual abuse.

Our findings are deeply disturbing and demonstrate, in my view, that the BOP is failing systemically to prevent, detect, and address sexual abuse of prisoners by its own employees.

The Subcommittee has found that Bureau of Prisons' employees sexually abused female prisoners in at least two-thirds of Federal prisons that have held women over the past decade. We found that BOP has failed to prevent, detect, and stop recurring sexual abuse, including by senior prison officials.

---

<sup>1</sup>The prepared statement of Senator Ossoff appears in the Appendix on page 45.

At Federal Correctional Institution (FCI) Dublin in California, for example, both the warden and the chaplain sexually abused female prisoners.

We found that BOP has failed to successfully implement the Prison Rape Elimination Act (PREA). For example, two prisons where multiple BOP employees were abusing multiple women over an extended period, FCI Dublin and Federal Correctional Complex (FCC) Coleman, nevertheless passed or were found to have exceeded the PREA audit criteria, which are mandated by Congress and intended to detect the risk of sexual abuse in BOP facilities.

In the case of FCI Dublin, the PREA compliance officer—the official specifically tasked with ensuring compliance with the Federal law whose purpose is the elimination of prison rape—was himself sexually abusing prisoners.

In the case of FCC Coleman in Florida, all female prisoners had been transferred out of the facility 2 days before the PREA audit, making it impossible for the auditor to interview female prisoners despite the legal requirement that they interview inmates as part of the audit.

Amidst more than 5,000 allegations of sexual abuse by BOP employees, we found at least 134 against female detainees were substantiated by BOP internal investigations or by criminal prosecutions.

Given the fear of retaliation by survivors of sexual abuse, the apparent apathy by senior BOP officials at the facility, regional office, and headquarters levels, and severe shortcomings in the investigative practices implemented by BOP's Office of Internal Affairs (OIA) and the Department of Justice (DOJ) Inspector General (IG), I suspect the extent of abuse is significantly wider.

Indeed, we found there is currently a backlog of 8,000 internal affairs cases at the Bureau of Prisons, including at least hundreds of sexual abuse allegations against BOP employees that remain unresolved.

DOJ's inspector general has found that BOP fails, at times, to properly credit allegations of sexual abuse brought by inmates. Multiple BOP employees who would later admit in sworn statements to sexually abusing prisoners have escaped criminal prosecution, due in part to weaknesses in the process by which BOP and the DOJ inspector general work together to investigate such allegations. In fact, several officers who admitted under oath to sexually abusing prisoners were able nevertheless to retire with benefits.

Let me be absolutely clear: this situation is intolerable. Sexual abuse of inmates is a gross abuse of human and constitutional rights and cannot be tolerated by the U.S. Congress. It is cruel and unusual punishment that violates the Eighth Amendment to the United States Constitution, and basic standards of human decency.

In July of this year, the former Director of BOP testified before this very Subcommittee and insisted that BOP was able to keep female prisoners safe from sexual abuse by BOP employees. We now know that that statement was unequivocally false.

The purpose of today's hearing is to understand what has gone so badly wrong, and to establish and examine the facts upon which we must build reform. Progress begins with the truth. It requires a full and unflinching examination of grievous failure.



On our first panel, we will hear from three survivors of sexual abuse at the hands of BOP employees that occurred while they were incarcerated in Federal prisons: Carolyn Richardson, Briane Moore, and Linda De La Rosa. All of their abusers have since been convicted.

The firsthand accounts of survivors are essential, and I am deeply grateful to them for coming forward to testify before the U.S. Senate. Their bravery will make it easier for others to tell their stories.

Next, we will hear from Professor Brenda V. Smith of American University, a national expert on sexual abuse in custodial settings. We will ask her to put the survivors' testimony in a broader context.

Finally, we will question two government witnesses: the inspector general for the Department of Justice, Michael Horowitz, whose office both oversees BOP and investigates criminal misconduct by BOP employees, and the new BOP Director Colette Peters, who began her tenure just 6 months ago, in July.

The hearing today is part of a 2-year bipartisan effort by this Subcommittee under my leadership to investigate conditions of incarceration and detention in the United States. From corruption at the U.S. Penitentiary Atlanta (USPA) to the Department of Justice's failure to count almost 1,000 deaths in custody across the country, to abusive and unnecessary gynecological procedures performed on women in Department of Homeland Security (DHS) custody.

Ranking Member Johnson, I thank you sincerely for your assistance in these efforts and your staff.

Before I yield to the Ranking Member for his opening statement, it is important to acknowledge that law enforcement professionals working in our prisons have among the hardest jobs in our country, and I believe the vast majority of BOP employees share our goals of ending sexual abuse once and for all in Federal prisons.

I also want to state for the record the Subcommittee investigated sexual abuse of women in Federal prison because of some of their unique considerations. Women are more likely than male prisoners to have suffered from trauma and sexual abuse prior to incarceration, and particularly susceptible to subsequent abuse in a custodial setting. However, the Subcommittee fully acknowledges that sexual abuse is not limited to female prisoners.

Finally, the Subcommittee's findings, which form the basis for today's hearing, are laid out in a bipartisan staff report, and I ask unanimous consent that this report be entered into the record.<sup>1</sup>

Ranking Member Johnson.

#### **OPENING STATEMENT OF SENATOR JOHNSON**

Senator JOHNSON. Thank you, Mr. Chairman. You pretty well laid out the case, so I will just ask that my opening statement<sup>2</sup> be entered in the record.

Senator OSSOFF. Without objection.

<sup>1</sup>The staff report appears in the Appendix on page 174.

<sup>2</sup>The prepared statement of Senator Johnson appears in the Appendix on page 48.

Senator JOHNSON. I think it is safe to say, based on your opening comments when you say that what we have uncovered is deeply disturbing, and it is, that I do not think anyone is looking forward to this hearing. I do not know about you but any movie I watch where there is any kind of sexual assault, I have to turn it off. I cannot watch it. That is fiction.

We are going to be hearing some pretty horrific testimony today. It is the government's duty to incarcerate individuals, to punish people for crime, for keeping dangerous people away from the general public. I do not want anything in this hearing to downplay that very serious responsibility of government. It is not a pleasant responsibility. But it also the responsibility of government to make sure when we do incarcerate individuals that they are safe, that these types of rapes, these types of assaults do not occur.

This is something that the Federal Government has recognized has been a problem dating back to 2003. I would say that was probably a pretty good-faith effort to try and develop data, do audits, to try and prevent this. You will never eliminate all of this, but I do not think there is any doubt that the government can do more. Looking at the inspector general's testimony, understanding what this Administration is doing, it does appear that they are making good-faith efforts to do more to try and prevent this.

As deeply disturbing and although I am not looking forward to hearing any of this, I agree with you it is our responsibility. We cannot turn our face from it. We have to face this. We have to do everything we can to eliminate it, recognizing what a difficult task that really is.

Mr. Chairman, thank you, and thank all of our staff for doing a good job of looking into something that is not fun to look at but that is our responsibility to look at and try and fix. Thank you.

Senator OSSOFF. Thank you, Ranking Member Johnson.

We will now call our first panel of witnesses for this morning's hearing. Ms. Carolyn Richardson was formerly incarcerated in Metropolitan Corrections Center (MCC) in New York City. Ms. Briane Moore was formerly incarcerated at Federal Prison Camp (FPC) in Alderson, West Virginia. Ms. Linda De La Rosa was formerly incarcerated at the Federal Medical Center (FMC) in Lexington, Kentucky. Professor Brenda V. Smith is a national expert on sexual abuse in custodial settings.

I appreciate all of you for being with us today. I look forward to your testimony.

The rules of the Subcommittee require all witnesses to be sworn in, so at this time I would ask all of you to please to raise your right hand.

Do you swear that the testimony you are about to give before this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. RICHARDSON. I do.

Ms. MOORE. I do.

Ms. DE LA ROSA. I do.

Ms. SMITH. I do.

Senator OSSOFF. Let the record state that all witnesses answered in the affirmative.

We are using a timing system today. Your written testimony will be printed in the record in its entirety. We would ask that you limit your oral testimony to approximately 5 minutes. You will see a timer in front of you. Please confirm, if you can, with the help of your counsel, if necessary, that your microphones are on, as indicated by the red light, before beginning.

Ms. Richardson, at your convenience we will begin with you first please.

**TESTIMONY OF CAROLYN RICHARDSON,<sup>1</sup> FORMERLY  
INCARCERATED IN THE FEDERAL BUREAU OF PRISONS**

Ms. RICHARDSON. Hello. Good morning. I would like to first express my sincere gratitude to Chairman Ossoff and Ranking Member Johnson for the opportunity to testify before you today. My name is Carolyn Richardson. I was incarcerated in Federal BOP custody from August 2016 through October 2022, when my motion for compassionate release was granted on the grounds of extraordinary compelling circumstances I suffered while I was at Metropolitan Correctional Center in New York.

My testimony will focus on repeated sexual abuse that I suffered for several months at the hands of former correctional officer Colin Akparanta. While I struggle to speak about the abuse, I am hopeful that my testimony will give voice to survivors in similar circumstances and help prevent sexual crimes in BOP facilities.

In August 2016, I was indicted for my participation in a conspiracy to procure and distribute oxycodone. I am deeply remorseful for what I had done, which was fueled by my own addiction to oxycodone. I accepted a guilty plea and was sentenced to 12 years in prison, knowing that I would miss so many years with my six children. What I did not know was that I would come to suffer neglect and abuse in BOP custody that will forever change my life.

Prior to my arrest I had received an artificial iris transplant for cosmetic purposes. When I was taken into custody I had normal vision and was in good physical health. Shortly after arriving in MCC New York, in August 2016, I began to experience complications with my transplanted irises. BOP personnel failed to provide me with timely medical care and caused my eyesight to deteriorate beyond repair. When I was finally taken to an eye surgeon in January 2017, I learned that due to the delay I would be permanently legally blind and would require extensive eye treatment.

Since then, I required periodic visits to outside hospitals, including seven eye surgeries. Former correctional officer Akparanta was the BOP correction officer tasked with taking me to these hospital appointments. I was in an extremely vulnerable state—physically, mentally, and spiritually—due to my medical condition, and Akparanta preyed on this fact.

When he took me to doctors' appointments, Akparanta made himself out to be someone I could trust. He talked to me about faith and spirituality, which was of central importance to me in coping with my loss of vision. He brought me food and medicine that I needed, but that I could not otherwise obtain. Right at my

---

<sup>1</sup>The prepared statement of Ms. Richardson appears in the Appendix on page 49.

most vulnerable I believed that here was a person who cared about me when no one else did. I was wrong.

After several months, and around May 2018, Akparanta began to demand sexual favors in exchange for the food and medicine that he brought. He switched from working the day shift to the night shift, and came to my cell at night. I did not have a cellmate. He told me that my cell was in a perfect area because the security cameras could not see him coming or going. He was the only officer working the night shift in my unit, which consisted of approximately 40 female prisoners. He used a flashlight to signal to me that he was coming to my cell.

I felt utterly powerless. I was a vision-impaired prisoner who was relying on Akparanta for basic life needs and transportation to medical appointments.

For about 6 months, Akparanta regularly demanded sexual favors from me. He became increasingly rough and cruel in the way that he treated me. I told him that I did not like it, but he continued in his conduct.

Before the assaults he would act like he cared about me, and would ask me what was wrong when I was looking down or sad. After the sexual assaults began he stopped showing any signs of caring, and all he wanted was sexual favors. I felt disgusted with him but also with myself. I felt worthless, like I was something less than human, that he could deal with as he wished.

When I indicated that I did not like what he was doing, Akparanta suggested that we would both get in trouble if I were to tell. I believed him. I was terrified that he or other BOP staff would retaliate against me or take away my privileges. I was afraid of being questioned and doubted. I felt the officers would stick together instead of believing me or caring for me, especially after Akparanta manipulated me.

I felt that everyone had ulterior motives, but then I felt ashamed and blamed myself for not speaking up about the abuse. I felt like I should have yelled and screamed when he was sexually assaulting me, even though at that time I felt that I had no real voice.

Further details of these can be found in Exhibit A, a complaint filed in my civil lawsuit.

Even though BOP has a zero-tolerance policy toward sexual abuse, in reality it is extremely difficult for inmates to step up and report the abuse. It feels that there is no real protection from the guards retaliating against you under a pretext, or harassing you with their authority.

Even when the abuse is reported, inmates are kept in the dark about the progress of the investigation, and the repeated questioning is jarring and emotionally scarring to relive the trauma. I could personally gain a small measure of peace by cooperating with the criminal prosecution with Akparanta, resulting in his guilty plea, and by my civil lawsuit, which allowed me to gain information and knowledge about what happened.

However, my hope is that no other inmate will have to suffer similar abuse and that safeguards will be put in place to ensure that.

I am appreciative of this opportunity to share my experience that I had at MCC. I stand here for other female inmates who have ex-

perienced sexual abuse, many of whom may feel that they are alone, without anyone to care about their story, like I used to feel. I hope in sharing this we can improve our system and prevent this from ever happening again. Thank you.

Senator OSSOFF. Thank you Ms. Richardson. Ms. Moore, you may now present your statement.

**TESTIMONY OF BRIANE MOORE,<sup>1</sup> FORMERLY INCARCERATED  
IN THE FEDERAL BUREAU OF PRISONS**

Ms. MOORE. Good morning. Thank you for giving me the opportunity to speak. I am not an activist or someone who would normally use my voice like I am today. Speaking about my experience in such a public setting is incredibly hard. I am willing to do so because other women are still in prison and I am out. I hope that they will not have to go through what I went through.

I grew up in Illinois. My grandmother raised me, supported me, loved me. When I was 17 I had my daughter. I wanted to make money to support myself. I made the wrong decision. I sold drugs, crack cocaine to be exact. I was sentenced to 10 years in Federal prison. I accepted that because that was my choice at the time. I could have chosen to do something else and I chose to do that.

I got 10 years in prison, and I accepted that as well, because as a result of doing that, consequences happened. I decided to take the time while I was in prison to improve myself, do my time so that I could get back home to my family.

The prison guards tell you when you can sleep and when you can eat, when you can go. People who are in prison do not get to choose the location of the prison they are sent to. First I was sent to Alabama. I was there for about 2 years. I was transferred to FPC Alderson. Both prisons are about 12 hours away from my home. It was difficult for my family to visit. Not being able to see my daughter and grandmother was devastating.

I put in a request to transfer prisons as a closer-to-home transfer so I could be closer to my family. BOP officials have the discretion to grant or deny requests. But I was determined to survive. I followed the rules. I took all the programs and opportunities available to me. I hoped the transfer request would eventually be granted. I knew that I needed to do my best for a chance at a transfer closer to home.

Family is the most important thing to me. I was determined not to let prison break me. I was determined to return home a better mother.

When I was in Federal prison in Alderson, in 2017, a captain began to target me. He took me to areas that were isolated in the prison, where there were no cameras. He told me that he knew I wanted to transfer to another prison. He said, "The paperwork goes through me."

In October 2017, the building officer ordered me to go to the captain's office. The captain then summoned me into his office. There was a secretary's office within the captain's office. When I arrived there was no secretary. After the captain had me alone he locked the secretary's door and closed his door behind him. He reminded

<sup>1</sup>The prepared statement of Ms. Moore appears in the Appendix on page 103.

me that the transfer went through him. He told me that if I did not follow his orders he would interfere with my transfer. He then raped me.

To be clear, even before the captain spoke those words I knew he had the power to prevent me from being transferred to a prison closer to my family, closer to my daughter. He was a captain with total control over me. I had no choice but to obey. I always had to follow orders in prison. It is hard to fully describe how this felt. The captain already had complete control over my day-to-day life and was now unfortunately in control over my body.

Using my desire to see my children, he threatened me to stay silent. The captain made it clear that if I wanted a transfer I had to accept the abuse. I felt powerless. The abuse continued.

Before my request could go through for a transfer closer to home I escaped the abuse when a prison close to home reopened, which was Pekin. When they asked for volunteers I jumped on the opportunity to save myself. I left Alderson in December 2017, and before I left the captain knew I was leaving. He raped me one final time. In total, he raped me five times, sexual assault on other occasions.

After the abuse I could not sleep full nights for months. I had reoccurring nightmares that played over and over like a broken record. I woke up in cold sweats. I would wake up crying after nightmares that the captain was trying to kill me for reporting the abuse. I isolated myself from others. I developed post traumatic stress disorder (PTSD) and had to seek mental health treatment.

The captain abused his authority and power, and while he was raping me he was raping other women in prison. We were not protected. I had no power to stop the abuse. The captain had total power over me and he knew that. He knew that I had no control and could not say no. The captain knew that I knew that. He made sure to make sure that I knew that. He made sure that he could for me to know that he could make things worse for me.

Even before this threat, I knew that if I reported him I could be placed in solitary confinement or shipped to special housing unit (SHU), shipped out to another prison away from my family, which was something I did not want to do. I saw this happen to other women in prison. They would tell their story and they would be shipped, and the officer would still be there.

I left Alderson in 2017. After the investigation began the captain resigned and was prosecuted for sexually abusing me and other women at the prison. He plead guilty.

I am here today 5 years later, and I want you to know that I am still suffering. This has changed the course of my life forever. I am a different person physically and emotionally because of this. I am still in mental health treatment. I have lost trust in the system. I knew prison would be tough—I accepted that. I will do punishment for my crimes. It was not easy doing time.

I was sentenced and put in prison for choices I made. I was not sentenced to prison to be raped and abused while in prison. This should not have happened to me, and it should not have happened to anyone in prison.

Speaking about this is not easy. The day I started to hear was the day I could talk about what happened to me without being afraid. Thank you for your time.

Senator OSSOFF. Thank you, Ms. Moore, for your testimony. For the benefit of all of our panelists, you may hear various sounds from the clock, and those have nothing to do with our hearing but indicate to us what is happening on the Senate floor. Please do not be alarmed.

Ms. Richardson, Ms. Moore, thank you so much for your testimony.

Ms. De La Rosa, you may present your opening statement.

**TESTIMONY OF LINDA DE LA ROSA,<sup>1</sup> FORMERLY  
INCARCERATED IN THE FEDERAL BUREAU OF PRISONS**

Ms. DE LA ROSA. Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee, I am a victim and survivor of sexual abuse by a Federal correctional officer. That predator is now serving a 135-month sentence in a Federal prison. In 2019, he sexually attacked me and three other women inmates at the Federal Medical Center in Lexington, Kentucky, which is a minimum-security prison. It took 3 years to arrest, prosecute, convict and sentence him.

On the one hand, I am grateful for the efforts of those in the Department of Justice who did help me and who successfully put my attacker away, in particular, the Federal Bureau of Investigation (FBI) Victim Specialist Cassie Young and Assistant U.S. Attorney Tashena Fannin.

However, the Bureau of Prisons entirely failed. My attacker stayed at his job for years, even though BOP management and investigators knew he was a sexual predator. My life at FMC-Lexington was a living hell.

I believe my attacker had been investigated on numerous occasions for sex crimes against female inmates. FMC-Lexington management and investigators were well aware that female inmate-victims were reluctant to come forward because they rightly feared retaliation, which took many forms, including transfer to different facilities, solitary confinement, loss of early release rights, detrimental write-ups, loss of work privileges, and interference with vocational skills programs. I witnessed many examples of punishments handed out to other inmates that challenged or reported abuse by prison officials. The ongoing threat of retaliation stopped me and other inmates from filing complaints, let alone timely ones.

Let me tell you what happened to me. I was transferred from Lexington. After reporting the sexual abuse that happened to me in Lexington, I was sent back to that facility. When I returned to Lexington, all of my belongings were missing. There were photos and letters from my son and daughter's father, both of whom had passed. They can never be replaced.

When I returned I also learned my attacker was still working at that facility. Incredibly, FMC-Lexington management granted my attacker unrestricted and unsupervised contact with me on work details, which gave him one-on-one access to abuse or threaten to abuse me. Because of his position, my attacker could and did access my personal history files, recordings of my telephone calls and per-

---

<sup>1</sup>The prepared statement of Ms. De La Rosa appears in the Appendix on page 109.

sonal emails, giving him additional leverage to extract sexual favors and threaten my safety.

The system failed at every level, management from the warden on down, repeatedly. They failed to monitor, supervise, discipline, and remove male correctional officers, predators sexually abusing female inmates. Special Investigative Services officers supposedly charged with investigating staff misconduct failed repeatedly to investigate known and suspected predators. It is not enough to call this horrible. I believe the problem is “the old boys club.” Prison staff—managers, investigators, correctional officers—they all work together for years, if not decades. No one wants to rock the boat, let alone listen to female inmates. There is no effective, independent oversight.

The mission of the BOP is “to protect society by confining offenders in the controlled environments of prisons . . . that are safe, humane . . . and appropriately secure.” The agency failed me and my fellow inmates. We were knowingly confined in a facility that was unsafe, inhumane and unsecure. Nothing was done. That was wrong. It never should have happened.

Senators, I make one request: stop this from happening, from repeating. Now. Nothing you are hearing today is new. You have the power and authority to force the system to change. Please use it. Thank you.

Senator OSSOFF. Thank you, Ms. De La Rosa.

Dr. Smith, your opening statement, please.

**TESTIMONY OF BRENDA V. SMITH,<sup>1</sup> PROFESSOR OF LAW,  
AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW**

Ms. SMITH. First, I want to say how privileged I feel to be able to sit at the table with these survivors, because they are the ones who are doing the work to actually bring these issues to the fore. I thank you for your courage and for being willing to tell what has happened to you in custody.

Good morning, Chairman, Ranking Member Johnson, and Committee Members. I am a law professor at the American University Washington College of Law. I founded the Project on Addressing Prison Rape in 1993, after successfully representing a class of over 500 women who experienced physical, sexual, medical, and psychological abuse as well as systematic inequality of services and opportunities in D.C. correctional facilities. I was appointed to the Prison Rape Elimination Commission in 1994, by House Minority Leader Nancy Pelosi.

Having sat on the PREA Commission for a decade, there is no question that the Prison Rape Elimination Act standards could, if followed, prevent the abuse of women in custody. At the same time, we know that while the PREA standards outline a successful approach to preventing, reducing, and punishing sexual abuse in custody, agencies, as these witnesses testimony has identified, often do not follow the standards.

Agencies complain that the standards are nitpicking and not consistent with their lived experience of people in custody or correctional settings. They also argue that women in custody are trying

<sup>1</sup>The prepared statement of Ms. Smith appears in the Appendix on page 112.



to game the system by claiming that they were abused. They claim that it would be too expensive or take too much time to follow the standards that would protect these women. They also argue that the standards are there, but you really do not have to pay attention until there is an audit.

I am familiar with Federal Bureau of Prisons facilities because many of the D.C. women I represented served their sentences in Federal facilities and returned to the District of Columbia after discharge from Federal facilities. These women spoke of abuse they had observed or experienced in a number of the Federal facilities that are the subject of this hearing today. The most recent incidents involving FCI Dublin, MDC Brooklyn, FPC Alderson, and FMC Lexington are instructive but they are not unusual. In other words, this is not new behavior.

The abusers represent staff from a broad cross-section of the workforce. We have a chaplain, correctional officers, volunteers, and wardens. This points to abuse that is systemic in nature. What is clear from these incidents is that staff had unfettered, uninterrupted access to women. They abused with impunity and at will. They abused women in their offices, in corridors, out of sight of cameras, and in collusion with other staff.

They also abused the authority of their positions. One of the assailants was a chaplain, another a warden; these are people who we should be able to trust.

These system actors and leaders had intercourse with the women, took nude images of them, and threatened them, as we have heard. One of the assailants ran the PREA training, for preventing prison sexual assault, while he was actively involved in abusing women prisoners.

Given the systemic nature of this abuse, I have three recommendations that have the potential to provide women with greater protection from abuse.

First, reform the audit process for the Prison Rape Elimination Act. PREA audits are supposed to identify problems or practices that affect the protection of people in custody from abuse. The current audit structure is not well designed to ensure its success. The requirements to become an auditor, and the marketplace for auditors, make it very difficult for anyone who does not work in corrections to become a DOJ-certified PREA auditor. Having said that, we all know how hard it is for an institution to investigate itself. Agencies hire and pay the auditors who conduct the audit, so in reality, auditors work for the very agencies that they audit, making independence difficult. This creates a financial disincentive to identify problems.

Next, another suggestion. Some agencies are audited through consortia, which means that State corrections agencies from one agency will send their staff to audit another State's facilities in a round-robin arrangement. This has not eliminated the potential for conflicts of interest in those arrangements. There is a quid pro quo.

Finally, the cost of audits and the time that agencies or third-party auditing bodies that employ auditors allow for the conduct of audits do not adequately compensate auditors or allow the time necessary to conduct the audit methodology laid out by DOJ. If there were time, then what could happen is they could actually go

through and look closely at these institutions, interview women, interview outside folks, and be able to find problems.

Each of the facilities that are the subject of the hearing passed their audits with only minimal issues identified. Again, neutral auditors, from an independent external auditing authority, diversifying the auditor pool to include individuals with experience working with victims. There also needs to be ongoing training for auditors with a focus on auditing investigation standards and meaningful responses to retaliation, because as we have heard, many of these women experienced and feared retaliation.

I think the other thing that we have to do is address the conditions of confinement that create vulnerability for women in custody. Each of these women have identified common elements of vulnerability that relate to their victimization.

Women, as you know, often bring multiple well-known vulnerabilities into the correctional setting—past histories of childhood and adult physical and sexual abuse, poverty, involvement with powerful systemic actors like courts, child protection, housing, and immigration authorities that control their existence, their future, and their families. These factors create the leverage of pressure that correctional staff employ to ensure compliance with both legitimate and illegitimate requests.

Given this inequality of power, women bargain, capitulate, and comply, even as they fear for their lives, their freedom, and often for their families. Though there are constitutional limitations on cross-sex supervision, male staff still have found ways to have unfettered, unsupervised access to female inmates in their care.

Clearly, identifying and implementing better supervision strategies are in order. These strategies include increasing the number of female staff at every level, including leadership at women's correctional facilities. They also include decreasing the numbers of women in custodial settings. Women inmates are still incarcerated for primarily nonviolent offenses. Increasing the opportunities for supervision in the community would also help keep women safe from the pervasive sexual abuse culture we are discussing today.

Finally, we need vigorous prosecution of these cases and enhanced penalties. The penalties for abusing a person in custody should be commensurate with the harm and damage they do to women in custody, their families, the community, and to our ideals of the rule of law. The sentences that prison sex offenders receive are not commensurate with the injury that they inflict or the harm they cause. In my view, the penalties should be comparable to the offenses for other individual victims who have been framed by the law as unable to consent. That would include people with developmental and other disabilities, children, and individuals in institutional settings, including prisoners.

Finally, what I want to say is that the abuse of women in custody has created a stain on our society. It is a stain that I do not believe can be cleaned. What I hope we can do is repair our broken systems. I hope we can go forward and do better for women in custody. We can create the conditions that provide safety for these women, provide safety for our communities, and actually improve the integrity of the correctional system. As a community and coun-

try, we can provide punishment where appropriate but also provide justice for people who are abused in custody.

I thank you for this opportunity, and I look forward to answering your questions.

Senator OSSOFF. Thank you very much, Professor Smith, and thank you to our first panel. Thank you Ms. Richardson, Ms. Moore, and Ms. De La Rosa, in particular, for having the strength to share these horrific ordeals that you endured with the U.S. Senate and the American public.

I would like to begin, please, by discussing the imbalance in power that underlies so much of this abuse. Ms. De La Rosa, you made reference to this in your remarks, the power over transfer, the power over all aspects of your life. How did that feel, and how did that play a role in making you vulnerable to this abuse?

Ms. DE LA ROSA. Senator, I felt trapped, powerless. There were so many things that were taken from me or times I was stuck in transit. I was held longer than I was supposed to be because of not being at a facility that could file my paperwork. I was imprisoned 6 months longer than I was supposed to be, for this investigation. There is so much we need to work on as far as being able to report it.

Senator OSSOFF. Ms. De La Rosa, the officer who assaulted you had previously been investigated—

Ms. DE LA ROSA. Yes, sir.

Senator OSSOFF [continuing]. For sexually abusing other female prisoners.

Ms. DE LA ROSA. Yes, sir.

Senator OSSOFF. But was still on the job.

Ms. DE LA ROSA. Yes, sir.

Senator OSSOFF. You are in a Federal prison, supervised by a male officer who had complete control over all aspects of your life.

Ms. DE LA ROSA. Yes, sir.

Senator OSSOFF. Unrestricted access to you while working.

Ms. DE LA ROSA. Yes, sir.

Senator OSSOFF. Who eventually pled guilty to sexual abuse and was sentenced to 135 months in prison.

Ms. DE LA ROSA. Yes, sir.

Senator OSSOFF. While that abuse was ongoing, did you have any safe outlet to report it? Did you feel you had any safe outlet to report it?

Ms. DE LA ROSA. No, sir. In Lexington they have something called the “penalty box,” which is if an officer is under investigation they put them in the phone and email room. They listen to your phone calls and read your emails. Inmates would call it the “hot box,” but all officers called it the “penalty box.” Any way that you can report something to outside staff on the PREA signs throughout the prison is an email or a phone number, but you would not feel safe reporting it when the officer you want to report is in the penalty box, listening to all of your phone calls and reading all of your emails.

So no, at Lexington I did not feel safe reporting.

Senator OSSOFF. What kind of retaliation did you fear?

Ms. DE LA ROSA. All of the retaliation that I got. I was working on an 8,000-hour welding apprenticeship. I got transferred to a

prison that did not have that program. I was 46 hours from completing that program. I was transferred to the prison that I was scared to be at. I got transferred straight back there after reporting it. I got put back at the prison that I had reported.

All of my belongings ended up missing. There were letters from my son, my grandpa, my Paw Paw that passed, pictures over the last 9 years that I was incarcerated, of my child coming to see me, and he passed away. I cannot ever get those things back, letters he wrote me since he was 10 years old. I will never get those things back, and they came up missing.

They tell you that whenever you tell on an officer that it is completely confidential, but all of those things that happened to me afterwards were not coincidence. They were not.

Senator OSSOFF. Access and proximity to your family. How did they play a role in your fear of retaliation and the retaliation that you experienced?

Ms. DE LA ROSA. Not being able to make phone calls, constantly being put in, once Coronavirus Disease 2019 (COVID-19) started, "quarantine." They would restart your quarantine, 21 days, with no phone calls, no anything. Every time they move you, you have 21 days, not being able to contact your family, not being able to have video visits with your kids, and for 9 years that is what my kids looked forward to every week. They can do anything they want, and they do.

Senator OSSOFF. Ms. Moore, I would like to ask you the same question, how access to family, proximity to family play a role. If you would not mind, Ms. Moore, just ensure your microphone is on. Thank you.

Ms. MOORE. Like she said, the same fear of getting incident reports for nothing, not being able to call home, not being able to have contact with those video visits. I did not necessarily have that happen where I was but I did fear retaliation, which is why I never reported it while I was still at the prison.

My whole goal was to try to get closer to home. I put in a near-home transfer before I went to Anderson, and because Alderson needed head count I had to go there. That is how I ended up at Alderson.

Again, here I am trying to fight to get closer to my family so that I can have visits, because I had one visit while I was there, for my daughter's birthday, and I did 7 years in prison. Being able to talk to my family and my grandmother, because she is older and sick, was very important to me. My daughter was 7 when I went to prison, so that was very important to me.

Like she said, the officers have a lot of control. They have a lot of control, and we really do not have a say-so. I had already been in prison with women who had reported stuff and been sent to county jails where the food is moldy and they are wearing underwear that had been previously worn. It is like, nobody wants to be uprooted from a prison that you have taken time to do programs in and be sent to another prison because you report this stuff. I am sure that is why a lot of people do not report, besides the retaliation.

I had already heard that he had been under investigation before, but nothing was done. Who was I to report someone, thinking that

something was going to happen, and I did not report it. They called me after I transferred prisons. I was at another prison before they called me to ask about it.

Senator OSSOFF. Thank you, Ms. Moore. Ms. Richardson, I will have a question for you in the next round. At this time I am going to yield to Ranking Member Johnson for his first round of questions.

Senator JOHNSON. Thank you, Mr. Chairman. I think Ms. Moore is really highlighting the most difficult aspect of this is the inability to report, the power that prison guards have over the prisoners, and how certainly some of them peripherally abuse that power.

I want to quickly go down the table. We know, Ms. Moore, you never did report the sexual assaults. Correct?

Ms. MOORE. Correct.

Senator JOHNSON. How did they ever come to light? Why are you sitting here before us? At what point in time—was it during the prosecution of your abuser?

Ms. MOORE. No. I guess the day after I transferred, they day after I left to go to Pekin from Alderson, he got walked off. Maybe a week or two later, they called me at the prison I was at. They called my counselor and he came down and got me, and said somebody was investigating. I do not know how they got my name, but they wanted to know what happened. At the time—

Senator JOHNSON. Somehow somebody heard about your abuse. You might have talked to other fellow prisoners? Did you ever talk to anybody about it?

Ms. MOORE. Not really, no.

Senator JOHNSON. Somehow the investigators found out that you may have been abused so they contacted you and then you told your story to the investigators.

Ms. MOORE. Yes. They asked if I wanted to tell my story, and at first I said no. Then they gave me a couple of days to give them a call back. I do not know. I know they have cameras in the administration building, so I do not know if maybe they went through the cameras and saw that I had been there.

Senator JOHNSON. Ms. Richardson, what about you? Did you ever report this to anybody when you were in prison?

Ms. RICHARDSON. No, sir, I did not. Actually, I found out through a former inmate that Akparanta had been arrested and that empowered me to come forward. But prior to that I would have never told anyone because I was mandated to be there in MCC because I was on medical hold for my eyes, and I had already been sentenced.

Senator JOHNSON. What about you, Ms. De La Rosa? Did you ever report this when you were a prisoner?

Ms. DE LA ROSA. I was moved from Lexington to Bryant, Texas, to complete a program there, and when I was in Bryant, Texas, someone came and spoke with me and asked me about it. I was reluctant to talk to them at first, and I ended up reporting it while I was in Bryant, and shortly after that I was moved back.

Senator JOHNSON. The only reason any of your situations came to light is because somebody investigating abuse came and talked to you.

Ms. DE LA ROSA. Yes.

Senator JOHNSON. Ms. Smith, being an expert in this area—and again, I am not looking for a hard and fast answer. I doubt this has been researched. But it would seem that probably most cases of this kind of abuse go completely unreported.

Ms. SMITH. I think these cases are like sexual abuse in the community as well. Often those cases go unreported as well. To be victimized means that you do not have power, and I think it is that sense of powerlessness that makes you think that either: you cannot report; nobody is going to believe you; or that nothing is going to happen to help you. You believe you will not be protected because you were not protected in this situation.

Senator JOHNSON. Chances are, based on the statistics we have, it is something like 8,000 complaints that have not been filed. That may still be the tip of the iceberg.

Ms. SMITH. Absolutely.

Senator JOHNSON. Obviously, PREA, those audits, have not worked. Maybe they have in some cases, but they certainly have not eliminated sexual assaults.

Ms. SMITH. So, let us say with PREA, some aspects of it have worked, but some of the procedures have not. What I would say is that the audits, as I have testified, need a tremendous amount of work.

Senator JOHNSON. Can any of you think of any process of reporting where you might feel safe enough to actually try and report it? I have a hard time thinking of one, quite honestly. It is a devilish problem. Ms. Smith, can you think of some kind of reporting? I mean, you find out a chaplain is doing the abuse of this, you would think that would be a place for somebody to go. If somebody set up inside the prison, in a position of power could be abusing. Where does the solution lie here?

Ms. SMITH. I think there are a number of issues. OK, so first of all you start with being able to report outside of the institution.

Senator JOHNSON. Correct. Where would you go outside, and how would that be done when they are monitoring phone calls and email messages, that type of thing?

Ms. SMITH. The fact is that there should be a phone line that you can use that is not monitored, right? There should be a way to report out to a rape crisis center or an inspector general's office.

Senator JOHNSON. But the prison guards are going to know that you are using that phone, right?

Ms. SMITH. Yes. But the fact that there is a potential for abuse, as there currently is already, does not mean that you do not take those steps.

I think you also have to protect people from retaliation. What you are also hearing here is that these women did not report because they actually had no confidence at all that they would be believed—

Senator JOHNSON. No, again—yes, the retaliation, the power is real.

Ms. SMITH. Exactly.

Senator JOHNSON. The power is real, to transfer you away from your family. The power is real. It really does come down to, if we are going to really prevent this, there has to be some method of an anonymous reporting system that cannot be abused for other

things prisoners may be doing from inside the prison. There is the real devilish problem here.

Ms. SMITH. Yes. Agree.

Senator JOHNSON. Any of the three witnesses, can you think of a reporting system that you would have had confidence in? Can you think of one? I will start with you, Ms. De La Rosa. Can you think of something that, if it would have been available you might have used to try and report this, or is the power just such overwhelming and the threats of retaliation are so horrific that you just had to bear it?

Ms. DE LA ROSA. I honestly cannot think of a way that you can report it that the staff will not know about.

Senator JOHNSON. Ms. Moore, can you think of one?

Ms. MOORE. No.

Senator JOHNSON. Ms. Richardson?

Ms. RICHARDSON. No, sir, because one thing is for sure is that wrong or right does not matter. They all stick together.

Senator JOHNSON. Mr. Chairman, to me there is the crux of the problem that needs to be solved. How can people inside prisons report without having a very high probability of being retaliated against, against the very people that are abusing them? I think our next panel, that will be the main line of questioning I will be pursuing there. But thank you, Mr. Chairman.

Senator OSSOFF. Thank you very much, Ranking Member Johnson. Senator Padilla.

#### **OPENING STATEMENT OF SENATOR PADILLA**

Senator PADILLA. Thank you, Mr. Chair. As you have so well laid out, the purpose of today's hearing is to address the sexual misconduct that plagues U.S. Federal prisons and the irreversible harm that it causes victims. While the various investigations tell us that abuse and exploitation has run rampant, there is no misconception that incidents are isolated to only the facilities explicitly mentioned.

The horrendous reality is that detainee abuse is pervasive in facilities across the country. My office has received far too many reports about California facilities suffering from dangerous living conditions, year-long delays in providing adequate health care in the midst of the COVID-19 pandemic, and yes, claims of sexual abuse and assault.

Yesterday, Senators Durbin, Feinstein, Grassley, and I sent a follow-up letter to our original letter requesting more information from BOP concerning sexual misconduct allegations by its personnel. We reiterated that the Department of Justice must take immediate action to root out staff misconduct at BOP.

This behavior cannot continue. The Bureau must act urgently to make meaningful, systemic improvements in facilities across the country.

Now it has been reported that incarcerated individuals who are victims of sexual misconduct and abuse may become overwhelmed with crippling anxiety and fear of retaliation of incidents are reported. Correctional facilities should not be contributing to an environment where victims are terrified of reporting abuse due to fear of retaliation.

Now one detainee in Dublin said that she was, and I will quote, “overwhelmed with fear, anxiety, and anger, and cried uncontrollably” after enduring abuse and retaliation for reporting it.

Ms. Richardson, Ms. Moore, and Ms. De La Rosa, I want to thank you as well for being here today and for your courage to share your stories. No one should have to suffer what you have, and your testimony today is invaluable as we work to ensure that these abuses are prevented in the future.

Would you each be willing to share a little bit about your mental health journey, how you have been able to manage, how you have been able to cope? Again, it has taken courage for you to be able to tell your story, to tell your story publicly, and to be here today to participate in this hearing. If you can talk a little bit about what the impacts have been, what resources or support you have been able to access to help.

Ms. Richardson.

Ms. RICHARDSON. I was diagnosed with PTSD and I believe it is called persistent anxiety disorder. Since that diagnosis I have been on medication. Also my spirituality comes into play and keeps me grounded somewhat.

Senator PADILLA. Thank you. Ms. Moore.

Ms. MOORE. I continued to see a therapist at the prison that I was transferred to, and then the prison after that, and then when I got home. I have been out 3 years and I continue to see a therapist. I have not really had anxiety since I have been out of prison because I feel like I am not contained anymore, and so the retaliation is not as scary as it is in there.

But with this, like before when they asked me if I wanted to do it, at first I was afraid because I felt like, what kind of retaliation can I get from this? My anxiety has been high, knowing that I am coming here to do this. But as I told my attorneys, I am not the only one who has went through this, and if my story can help somebody else, then maybe going through it or could potentially go through it, I decided to put my anxiety to the side. And like she said, my faith helps me.

I have two children, and I work every day. I am trying not to use it as a crutch and let it control my life. I am trying to keep control of my life, keep the control of my life since I have it back after what happened, and I am trying to move on with my life. But part of this is a part of me healing by doing this today.

Senator PADILLA. Thank you. Ms. De La Rosa.

Ms. DE LA ROSA. Anxiety has definitely been my biggest struggle. I was a lot more anxious prior to his incarceration. During his trial they did not even have him incarcerated. He got a bond and he was out, and my anxiety was so high during that time. But since he has been incarcerated I feel much safer.

Senator PADILLA. Thank you. Thank you all for again being able to speak about that publicly, because we know there is still a lot of stigma around mental health and accessing it, whether it is seeing a counselor, a therapist, or medication, that we have to overcome, because it is OK. It is OK to not feel OK.

Professor Smith, I wonder if, in the brief time we have left, you can begin to discuss more generally the mental health impacts of



correctional officer abuse on detainees, both while they are in custody and when they are no longer incarcerated.

Ms. SMITH. What we know is that a significant number of women who come into custodial settings come in with past histories of abuse and trauma, and that abuse, the abuse as these women have talked about, in custody actually deepens that existing trauma that they already have. As we know, there are not a lot of resources available for women in custody to actually deal with the trauma that they are experiencing, that they experienced before they were in custody, while they are in custody, and also that they will experience upon their return.

I think that it is really important that we enhance those services in custodial settings and actually after women return to the community.

Senator PADILLA. OK. Thank you very much. Thank you, Mr. Chair.

Senator OSSOFF. Thank you, Senator Padilla.

Ms. Richardson, you stated in court, you described a meeting in 2017, where a BOP supervisor told you and other assembled female prisoners, quote, "I don't want to hear nothing about my officers touching you." Another officer who ignored pleas for help from a group of female prisoners and said that your abuser, quote, "will eventually get caught." What was it like to hear those things, and what, in your view, was it about MCC New York and the environment there that contributed to that culture?

Ms. RICHARDSON. Two of those statements were not actually made by me. It was made by the other ladies on the complaint. But I did hear one of the statements by Counselor Lewis, and at the time it did not register to me what it actually meant. But the dynamics of that place, like I said before, wrong or right does not matter. They all stuck together.

Senator OSSOFF. Unpack that a little bit for us please, Ms. Richardson.

Ms. RICHARDSON. Just like you said the statement that was Counselor Lewis. She is saying, "I don't want to hear anything about what my officers are doing to you ladies." Everybody wants to cover their own butts so they basically—they do not do anything about what they hear. They sort of sweep it under the carpet.

Senator OSSOFF. Thank you, Ms. Richardson.

Ms. Moore, you explained how the captain would take you to isolated areas where there were not security cameras. Talk a little bit about the presence of cameras in the prison, the lack of coverage of certain areas in the prison, and how that contributed to an environment where you and others were vulnerable.

Ms. MOORE. I was at a camp so there are not very many cameras at a camp. Maybe they have some in the buildings, but Alderson, if you have ever been there, is really big, and 75 percent of the place is not covered by cameras.

In his office, of course his office does not have a camera in it. Certain parts of the building where we slept, where the counselors and the case managers worked, did not have cameras in those areas. Being at a camp, they say it is supposed to be low security, so I am assuming that is why they do not have as many cameras.

But for things like this I feel like there could be more, even if it is just some outside, just more.

What can you do about a camera in his office? He is the captain. Of course, they are probably not going to put a camera in his office. It was like he had the perfect opportunity to be in there with little visibility for anyone to see.

Senator OSSOFF. Thank you, Ms. Moore.

Professor Smith, let us talk a little bit about the Prison Rape Elimination Act, and it is perhaps obvious given the title, but what is the purpose of the Prison Rape Elimination Act?

Ms. SMITH. The purpose is not only prevention but also detection, punishment, and to create the conditions, whether it is the law, whether it is policy, whether it is related to prosecution to end sexual abuse of people in custody. That is the aim.

Senator OSSOFF. Professor Smith, one of the most concerning aspects of our investigation is that we found these PREA audits were conducted during times when there was ongoing sexual abuse inside Dublin, inside Coleman, and yet the auditors found and stated in these reports that both facilities met or exceeded every PREA standard. Talk a little bit about that, and I have to ask the question, do these audits work?

Ms. SMITH. I think, as I testified, there are significant problems with the audit, and there need to be substantial improvements. Currently, as I mentioned, we have the people who are supposed to be being audited, auditing themselves, essentially. What happens, there is not a great deal of diversity. What we have is auditors who formerly worked as wardens. We have agencies who audit each other, and so there is a disincentive for them to actually find another agency out of compliance, because they are concerned that when they are audited that they will be found out of compliance.

I think that what is really important is having neutral auditors, to have people who are clearly not a part of that system, and also to have audits of the audits, to actually go behind the audits in the same way that you did in your report, to actually identify, yes, there were zero complaints here but, we looked at case law and we looked at actual criminal complaints, and this does not match up with what you—the correctional agencies—are reporting.

I think that it has to be more than the actual audit, but there actually has to be some other independent verification of that audit, which would include, as the Committee has done here, looking at whether there are complaints, looking at litigation, talking to external organizations, talking to people who are outside of the system.

Senator OSSOFF. My time remaining is brief, if you can attempt this one. Do you think it would be helpful to have more women working in facilities that incarcerate women?

Ms. SMITH. Absolutely, and I testified to that as well. The presence of female staff—in fact, one of the huge issues that come to bear in each of these situations is how did these male staff actually have unfettered access to women inmates? A door should have been open when they were alone with a female inmate. Female staff should have been walking through. In many places, what has happened is female staff are the only ones who are allowed to perform certain services or perform in certain ways with female inmates.

Senator OSSOFF. Thank you, Professor Smith.

Ranking Member JOHNSON, do you have further questions for this panel?

Senator JOHNSON. Yes. Thank you, Mr. Chairman.

As Professor Smith pointed out earlier, obviously rape and sexual assault occur throughout society. You could actually argue inside the walls of a prison might be one place where you could actually prevent it from happening. There are guards. There are people there to enforce the law. You could argue that it should not happen.

I think with my last round of questioning here I wanted to try and get some sense of how pervasive it is within prison. Obviously, in society there are so many reasons why rape victims do not come forward. You have those same dynamics occurring with prisoners, plus you have the even more horrific power and fear of retaliation, which would prevent victims from coming forward and blowing the whistle.

What I would like to ask the three witnesses is, within the spectrum of isolated to pervasive, having talked to fellow prisoners, do you have any sense whatsoever? Were you unfortunately a victim of an isolated problem? Maybe it is different for every facility. It probably is different for different facilities. But do you have any kind of sense whatsoever in terms of what kind of problem we are dealing with here, that you were the unfortunate victim of an isolated case or you are unfortunately the victim of something that is pervasive within the prison population, of women's prisons?

I will start with you, Ms. Richardson.

Ms. RICHARDSON. I was one of seven victims from MCC that the officer pled guilty to, and that was in the pretrial facility that I was housed in for 4½ years. When I was transferred to Tallahassee, Florida, prior to me leaving in October, there were three inmates there who were sexually assaulted by an officer, and one officer was walked off the compound. It seems to be in all of the facilities.

Senator JOHNSON. Yes. It is occurring. I am trying to get some sense. What is the total prison population of women, something like 17,000? Is that from my briefing? I will go to Ms. Moore. What is your sense, isolated or pervasive throughout prison systems?

Ms. MOORE. I think it is throughout the prison system as well. The captain abused more than just me. I never knew the ladies but there were other women on his case as well that came forward, for him to be prosecuted. It is not isolated.

Senator JOHNSON. You are dealing with the same information we are looking at right now in terms of what has been in the end prosecuted, what has come to light. I am trying to get some sense, through conversations with fellow prisoners, do you have any sense whatsoever?

I will go to Ms. De La Rosa for that.

Ms. DE LA ROSA. Pervasive throughout. It is way more than just the people who have reported. It is throughout the system.

Senator JOHNSON. That would also imply there are a lot more perpetrators.

Ms. DE LA ROSA. Yes.

Senator JOHNSON. Again, Mr. Chairman, I appreciate you forcing us to look at something we have to look at. We just do. We really

do need the Department of Justice to step up to the plate, examine this carefully, utilize different tools, recognize that the PREA Act certainly has not eliminated this. We need more of a sense to figure out, really, how pervasive this is and what we can really do. I will, again, point out that the real problem is how can prisoners have any confidence to report?

The other thing that I found bizarre, and we will cover this with our next panel too, is the strange situation if the Office of Internal Affairs compels a guard to do an interview and they find out that wrongdoing has occurred, that is a Get Out Of Jail Free card. I think we are going to have to obviously look to the Office of Inspector General (OIG) to step up their investigations, because I think the Supreme Court has ruled on that. That is the way it is going to be, compelled testimony.

We are going to have to figure out a better way to investigate because that is one of the ways you reduce this, at least, would be more consistent prosecutions and very severe penalty, which, by the way, penalty includes incarceration. But even those perpetrators deserve to be in a prison that is safe and where they are not abused as well.

This is a big problem, and as I said at the outset, it is not a fun problem to look at. It just is not. But it is one that we have to, and I appreciate the fact that you are forcing us to look at it.

Senator OSSOFF. Ranking Member Johnson, I very much appreciate your consistent support and engagement in this investigation and that of your staff. I think it sends a powerful message to the Department that there is strong bipartisan will to address this crisis, and we will have the opportunity to question government witnesses in the next panel.

I want to take this opportunity to thank each and every one of you. I want to thank, in particular you, Ms. Richardson, Ms. Moore, and Ms. De La Rosa, for coming forward, for having the strength and courage to address the U.S. Senate in this setting, to speak publicly about what you endured, to help Senators and the entire Congress to understand the dynamics that led to this exploitation, that led to the horrific ordeals that you suffered. Please know that we will continue to work on the basis of what you shared with us, and I believe that the courage you have demonstrated today will inspire and empower others as well to share their stories.

It is with gratitude and admiration for your courage that I thank you, and Professor Smith, thank you for lending your expertise to the Senate today, and I hope that as Senator Johnson and I continue to work together to identify solutions, either at the administrative or legislative level, that you will remain engaged with us.

At this time we will excuse this panel. Thank you again for your contributions. We will take a brief recess and set up for the second panel of government witnesses.

[Recess.]

We will now call our second panel of witnesses for this afternoon's hearing.

Michael Horowitz serves as the Inspector General for the Department of Justice. Colette Peters serves as the Director of the Federal Bureau of Prisons.

The rules of this Subcommittee require all witnesses to be sworn in, so at this time I would ask you both to please stand and raise your right hand.

Do you swear that the testimony you are about to give before this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HOROWITZ. I do.

Ms. PETERS. I do.

Senator OSSOFF. Thank you. You may be seated. Let the record show that both witnesses have answered in the affirmative.

Your written testimonies in full will be printed in the record, and I would ask that you seek to limit your oral testimony to approximately 5 minutes, as indicated by the clocks in front of you.

Mr. Horowitz, we will hear from you first.

**TESTIMONY OF THE HONORABLE MICHAEL E. HOROWITZ,<sup>1</sup>  
INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE**

Mr. HOROWITZ. Thank you, Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee.

During my tenure as inspector general I have identified for each of the five Attorneys General and Deputy Attorneys General that I have worked with that the safety and security of the Federal prisons is one of the most important and compelling issues facing the Department of Justice, so I am particularly pleased to be here today to talk about these issues and to work with the Committee on how to address them. I also want to thank you for the important and impactful report that was released today through the bipartisan work of the Committee.

I also want to take a moment to thank Ms. De La Rosa, Ms. Moore, and Ms. Richardson for their courageous and compelling testimony that we heard in the first panel and for their bravery in cooperating with my office as we pursued the wrongdoers who committed the heinous acts that they described. Because of their assistance, those corrupt employees were held accountable in Federal court and are no longer able to terrorize other BOP inmates.

No inmate should ever suffer sexual abuse in prison, and as your report details, female inmates are particularly vulnerable to such assaults. We must do everything we can to eradicate such behavior, and you have my commitment that the OIG will continue to make this fight against sexual assault one of our highest priorities.

Indeed, our office regularly commits about 50 percent of our investigative resources to addressing criminal administrative wrongdoing by BOP employees, an outsized percentage of resources given that the BOP accounts for about 30 percent of the Department's employees. However, I only have about 113 agents nationwide, which means I have the equivalent of 56 agents available to handle the thousands of allegations we receive across the 123 Federal prisons.

It is clear that more independent oversight is needed, and that is why we have asked Congress, and I am working with Congress, to try and get more resources to do that kind of work.

<sup>1</sup>The prepared statement of Mr. Horowitz appear in the Appendix on page 156.

We continue to see widespread instances of sexual assault, most recently, as was discussed earlier, at the BOP's prison in Dublin, California, an all-female prison. Last week, the jury convicted the former warden of sexually assaulting eight inmates at the prison. The investigation that we have conducted with the FBI has also identified other Dublin employees and charged other Dublin employees, including the former chaplain, and we have a very active and ongoing investigation there.

These problems did not happen overnight, and the BOP must do more to prevent and detect them before they become endemic at other institutions, as we have seen in Coleman and others, as we heard in the first panel.

In short, these are substantial problems that need immediate attention and action, and the Subcommittee's report and the recommendations in it are going to be very valuable as we move forward to address them. We are also pleased by the recommendations contained in the Deputy Attorney General's recent report by her Task Force on Sexual Assault. Those recommendations need to be implemented promptly. I have also had several positive discussions with Directors Peters since she became the director in July of this year.

Let me mention some additional issues that I am hoping the Committee will consider. First, the BOP needs to be, and take more timely and effective action at holding accountable corrupt BOP employees. Second, the BOP needs to rely on credible inmate testimony in its administrative misconducts proceedings. Third, the BOP must repair and improve its camera systems.

Fourth, the BOP needs to implement an effective staff search and contraband policy. One of the things that I am hoping that the Committee will consider is a potential increase in the penalties for contraband smuggling. In some instances, those are merely misdemeanors, when contraband is smuggled into BOP prisons to provide contraband to inmates that they are grooming for their sexual assaults. That should be addressed.

I am also taking several steps within the OIG to ensure that we can do a better job in our office, investigating and pursuing these allegations. I have included them in my testimony. Among them, using data analytics to identify problems early on, like you have recounted in FCI Coleman and what occurred there. We will take more action, and I am assuring this Committee that we will take those steps.

I appreciate the support of this Committee and of the Congress in pursuing our work and allowing us to conduct our investigations. We will use all the tools you have provided us to take action to prevent this scourge from occurring.

I look forward to answering your questions today, and thank you again for the important work that you have done.

Senator OSSOFF. Thank you, Inspector General Horowitz.  
Director Peters.

**TESTIMONY OF COLETTE S. PETERS,<sup>1</sup> DIRECTOR, FEDERAL  
BUREAU OF PRISONS**

Ms. PETERS. Good morning, Chairman Ossoff, Ranking Member Johnson, and Members of the Committee. I am honored to appear before you as the Bureau's 12th director and to provide leadership to corrections professionals in the largest corrections agency in the country.

After 30 years in public safety, working in roles from victim advocate and inspector general to serving as the director of the Oregon Department of Corrections, I can tell you that the topic of this hearing is of immense importance to me, I thank the Committee for their years of work, and I especially thank the victims who are here today, bravely sharing their heartbreaking and compelling stories.

I welcome accountability and oversight, and I welcome this hearing. We must come to this work with our arms wide open. Our work with Congress, the Office of the Inspector General, and the Government Accountability Office (GAO), among others, has helped us identify and address areas of concerns within our agency. Sexual misconduct by Bureau employees is an issue of critical importance, and I also appreciate this Committee's support in this area.

With your oversight I see this moment as an opportunity to work together to make our facilities safer for the people in our care and custody. I believe we all want the same thing: a safe, humane, and effective Federal Bureau of Prisons.

Any kind of misconduct, especially sexual misconduct by Bureau employees, is always unacceptable and must not be tolerated. The vast majority of our employees come to work every day ready to serve in complex and challenging jobs that can also change lives and make our communities safer. I join these dedicated employees in being horrified by the small number of employees who engage in inappropriate, egregious, and criminal behavior. We must hold accountable those who violate that public trust, and we are strengthening our processes, realigning resources, and clearly communicating those expectations.

Our work is to combat sexual misconduct, and that work is complex and must include prevention, reporting, investigation, discipline, and also prosecution. We must begin with assessing and then changing the culture and the environment in our facilities where need be. At all women's facilities, we want to ensure that gender responsive, and trauma-informed practices are being followed. We must train all Bureau employees on their obligation to report misconduct.

Since leadership is essential to creating the appropriate culture, we are also examining how we select, supervise, and support wardens in our women's facilities. I believe that detection and accountability is critical to deterrence. We will leverage both technological and human resources (HR) to better detect and prevent sexual misconduct.

On the technological side, we are working on upgrading camera technology and usage.

---

<sup>1</sup>The prepared statement of Ms. Peters appear in the Appendix on page 167.

I have also been very clear in my communication to Bureau employees that while I am proud of those who come to work every day dedicated to our core values and mission, for those that are not we will fetter them out and hold them accountable, up to and including termination and conviction. We will also not tolerate any acts of reprisal.

There is no and should be no limitation on who may submit allegations of misconduct, and our Office of Internal Affairs works closely with the Office of Inspector General and other entities to ensure all obligations are reviewed. In this vein, we are looking into collaborating with formerly incarcerated individuals and using the lessons learned from their experience. Myself and other Bureau employees have already participated in two very powerful listening sessions, which included formerly incarcerated individuals.

We too are bolstering and reorganizing investigative resources and personnel to support the Office of Internal Affairs in conducting timely, thorough, and unbiased investigations. This includes adding more than 40 employees to the OIA team, realigning reporting structure for those agents, and training investigators in trauma-informed techniques.

When criminal misconduct is uncovered it is important that people are held accountable, either administratively or criminally, if legal action is warranted. That is why I would like to publicly thank the Inspector General for his commitment to ensuring the Bureau's success through the timely investigations, and I would like to thank the Deputy Attorney General for giving very clear direction to all U.S. Attorneys on prioritizing prosecution of criminal misconduct in the Bureau.

As I have said many times, and I will repeat here today, I believe in good government, I believe in transparency, and I know we cannot do this work alone. We must come to this work, as I have said, with our arms wide open.

Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee, I am honored to speak on behalf of the Bureau and its dedicated employees. This concludes my opening statement and I look forward to your questions.

Senator OSSOFF. Thank you, Director Peters, and I will begin.

Director Peters, you were appointed over the summer. You have been on the job about 5 months. Correct?

Ms. PETERS. That is correct.

Senator OSSOFF. I think it is important to acknowledge—and I know Ranking Member Johnson and I, both acknowledge you are new in this post—the overwhelming majority, if not all, of the events presented in our report occurred prior to your tenure.

Nevertheless, as you and I discussed in your confirmation, or your first hearing, rather, in the Judiciary Committee, the buck now stops with you. One thing I wanted to state at the outset of your responses to our questions today is that while we are deeply interested in your plans for reform, and you will have every opportunity to present them, the purpose of this hearing as well is to examine what happened in the past, what went wrong, and what has been broken at the Bureau of Prisons. You, in your capacity, leading the BOP, today are here to help us understand that. I hope that is clear, Director Peters.



Ms. PETERS. Very clear, Senator. Thank you.

Senator OSSOFF. Thank you. I appreciate that. Same to you, Mr. Horowitz.

Mr. HOROWITZ. Yes.

Senator OSSOFF. Ranking Member Johnson made reference to this in his questions to our prior panel, defining the scope of the problem. We agree that is vital. What we found in the course of this investigation is that in two-thirds of the Federal prisons that have housed women in the last 10 years, there has been sexual abuse of female prisoners by BOP employees. I believe this number is likely significantly higher, both in the number of facilities and the number of cases, in part because of the severe deficiencies we have identified in terms of how, Director Peters, the Office of Internal Affairs handles investigations of allegations of sexual abuse, the limitations that you have acknowledged, Inspector General Horowitz, in your office, as well as the widespread fear of retaliation and a culture of impunity that we have seen prevail in multiple of these cases.

We start with Dublin. It was widely known, before it broke into the official record, that there was a serious problem at Dublin. There have been multiple convictions. There are over a dozen ongoing criminal investigations. This went on for years. The warden and the chaplain were sexually abusing prisoners.

Before Dublin, multiple officers abusing multiple female inmates in other facilities—MCC New York, Metropolitan Detention Center (MDC) Brooklyn, FCC Coleman. Every few years, despite the culture of impunity, despite the fear of retaliation, it has broken into the public consciousness that there is a serious problem, and yet nothing systemic has been done to address it. In fact, when we asked senior BOP personnel, “What was done after the Brooklyn facts came to light?” “What was done after the Coleman facts came to light?” little or nothing in the way of a systemic attempt to address the issue.

I want to understand from you, Director Peters, why. You have been in the job now for 5 months. Presumably you have debriefed senior leadership that is outgoing. Yes?

Ms. PETERS. Yes, Senator.

Senator OSSOFF. You have inspected prisons?

Ms. PETERS. Yes.

Senator OSSOFF. You have discussed these issues with regional directors, with wardens. You have, I assume, done your best to understand this so that you can be effective at addressing it.

Before we get into what you are going to change, why is it that for 10 years, despite being known to BOP leadership that there was a serious problem, nothing was done to address it in any kind of systemic or effective way?

Ms. PETERS. Senator, I wish I had a good answer to that question. What I can tell you is that when you look at the institutions that you are highlighting—the Brooklyn, MCC New York, Dublin—and you see an institution that has been riveted with cases, it is hard to explain. It is hard to understand how systemic changes were not implemented.

When you look at the power differential inside an institution there is no ability for an individual who is incarcerated to consent

to any form of sexual relations. Then when you look at individuals like a warden and like a chaplain, there is something even more exponential there in terms of that power differential.

I find that that situation is absolutely egregious, and it is about the systemic change. That is what we need to look at, Senator. We need to be able to look in all of the categories that I mentioned in my opening statement. We have to figure out how to prevent this. We have to figure out how to better investigate, streamline resources, hold people accountable, and work to prosecute those who deserve prosecution.

Senator OSSOFF. Thank you, Director Peters. I appreciate that. Again I want to stipulate, I think it is important for the public to be reminded that the events that we are investigating predated your tenure. Nevertheless, I think you have to understand why systemic change was neither attempted nor did it succeed. Because for you to reform this vast bureaucracy, which is diseased—and this Subcommittee has done other work looking at the BOP in the last few months. We looked at corruption and misconduct in Atlanta, for example, and we examined, in the course of that hearing, a lack of accountability from the very top. You need to understand that in order to change it.

Here is something I want to put to you and get your response, Director Peters. We, in the course of conducting this investigation, heard different things from folks at different levels of your organization. For example, we interviewed a former warden at Dublin, not the one who has been convicted but a former warden at Dublin, who described this as—and this is a quote from his interview—“bad people making bad choices.” He identified it and I am now paraphrasing, but the gist of it was a few bad apples, people making the wrong choices, not so much systemic. He denied there was a culture of abuse.

But we spoke with your chief of Internal Affairs, who described a culture of abuse, who described it as systemic at that facility.

Have you, for example, talked to the regional director who was in charge at the time, to understand how it could have evaded their attention that this was ongoing at Dublin for so long, and how is it that there are these different views within your own bureaucracy? You have a former warden saying just a few bad apples, and your own Internal Affairs folks saying it was culture of abuse.

Ms. PETERS. Thank you, Senator. I have a tough time understanding how the warden drew that conclusion based on the facts as I observe them today. I have not spoken to that warden. I have had lengthy conversations with the administrator responsible for our Office of Internal Affairs, and we agree, that is a culture of abuse, that is a culture of misconduct, and that culture needs to be reset in order to ensure the safety and security of those in our care and custody. I think we do have systemic changes in the works that will help us reset that culture there and throughout the Federal Bureau of Prisons.

Senator OSSOFF. Thank you. Ranking Member Johnson.

Senator JOHNSON. Director Peters, how do you determine whether it is a few bad apples versus a culture of abuse? How do you make that determination systemically? Obviously, when you have the warden and the chaplain, you kind of figure that is probably

a culture. But again, you have a number of facilities. How do you make that determination?

Ms. PETERS. Thank you, Senator. I think the Bureau is now putting together cultural assessments where we have teams who are trained to come in and assess that culture. I think some of the signs are absolutely, Senator, like you said, when it is high-level officials engaging in these egregious criminal acts, there is clearly a culture.

But also when you find those who are incarcerated who openly tell our cultural assessment team that they do not feel comfortable coming forward, they do not feel like there are avenues to report in a way where they can report without fear of reprisal. It is those sorts of warning signs that we want to be able to find during these cultural assessments so that we do not have a Dublin repeat again, and so those individuals in our care and custody are safe.

We look forward to continuing those cultural assessments and ensuring that we are taking all of that data into account.

Senator JOHNSON. Do you have any idea, in terms of how somebody is being sexually abused inside a prison, can report that without having a very legitimate fear of retaliation or reprisal? Can you think of anything—understanding you have a hotline. They will know they are using the hotline. You provide confidential communication. That will be abused by drug traffickers. It is a tough nut to crack. Do you have any possible ideas of what might work?

Ms. PETERS. Thank you, Senator, and I appreciated those questions directly to those who were formerly incarcerated and now victims of these egregious acts that you asked earlier this morning.

I think the answer is there has to be many avenues. First, we have to create a culture where they have developed relationships with the frontline officers and they do feel comfortable talking to them. Absent that, we have to develop a culture where family members and loved ones know that they too can report, internally or externally. I think the key—and as we listened to the women talk this morning—that ability to report independently, without any tracking from the Bureau, directly to the Inspector General's Office is a key component of being able to crack that nut.

Senator JOHNSON. But again, they are in prison. How can they report without people knowing? Then, let us face it. They report it, and after a certain amount of time all of a sudden people are asking questions?

Ms. PETERS. That is right. Right now the way they can report directly to the Inspector General without us knowing is through Trust Fund Limited Inmate Computer Systems (TRULINCS). They are able to send an email directly to the Inspector General, outlining their allegations and their concerns.

You are absolutely right. Then investigators come, Senator, and questions are asked. The information is inside the institution. It cannot just be reporting alone. It has to be things like the convictions that we are seeing out of California, so that our Bureau employees know that if they engage in this type of behavior, or engage in acts of reprisal, that they will be held accountable. I think that level of prosecution and accountability will allow us, over time, to develop an environment where individuals can come forward without that fear of reprisal.

Senator JOHNSON. In the PREA audits, what percentage of the inmates are questioned during those things in a confidential manner?

Ms. PETERS. Senator, I do not know the answer to that question.

Senator JOHNSON. OK. That would certainly be one way, a more all-inclusive survey, surveillance audits, that type of thing.

How many personnel do you have in the Office of Internal Affairs?

Ms. PETERS. I do not know the total number, but I do know that we added more than 40 positions to the Office of Internal Affairs in order to help us—

Senator JOHNSON. It is probably in the hundreds?

Ms. PETERS. Yes.

Senator JOHNSON. Inspector General Horowitz, do you know?

Mr. HOROWITZ. I do not know the exact number in the BOP's operations. I do think it is—I would be guessing. I am not sure exactly how many they have in their internal affairs. As I said, we have about 113 agents around the country devoting about half their time to this.

If I could answer, I think you have hit on, as you talked about in the first panel, a critically important question. As Director Peters said, there is this ability to send an email directly to us that is anonymized, that cannot be traced. The question, of course, is who is watching over people's shoulders when that occurs, where is the terminal, what happens when we respond, because obviously we want to respond, so that has to be addressed.

But I think one of the things that is critically important is the culture question we have been talking about, because as you know from having run a business, the question is why are the employees not stepping forward? Why do we need the inmates, and only the inmates, to step forward?

It is a very serious problem. We have the warden, a chaplain, and many other employees at the Dublin prison. We could talk about Brooklyn, MDC Brooklyn. We could talk about MCC New York. We could talk about FCI Atlanta. We could talk about Thompson Prison. We can keep going, right? Why are those employees not coming forward, when they have a predator among their fellow employees? They are the eyes and ears, along with the inmates. They are the ones who need to come forward. There needs to be that ability and accountability for people who are responsible and for people who should have come forward, including supervisors.

Senator JOHNSON. Director Peters, I know local law enforcement, for a host of reasons, are having a very difficult time recruiting. The Defund the Police movement, the blame cops first, that type of thing. What kind of recruitment issues are you having within the Bureau of Prisons?

Ms. PETERS. Thank you for that question, Senator. First, I cannot agree more with what the inspector general just said. Our employees have an obligation to come forward. I think it ties directly into your next question, which is how do we hire the right people to come in, who want to change hearts and minds, who want to do the right thing, who have those core values, who have those ethics?

If ever there was a time where it was difficult to hire at the Bureau of Prisons, it is now, for all the reasons you just mentioned, Senator. It was difficult to hire before the pandemic. Then the pandemic hit and made these jobs even less attractive, as well as the other issues that you just raised, in the field of law enforcement.

One of our top priorities is recruitment and retention strategies, and we have been working diligently, internal with the Bureau, but we have also reached out to two organizations and contracted with them in hopes that we can rely on their expertise to improve our ability to hire not just people but the right people for this business.

Senator JOHNSON. If you will indulge me for one more point, maybe question. There is a real problem of false reports. Correct? Do either of you have any indication of how significant a problem that is? Let us face it. You are talking about people who have committed crimes. Some of them maybe are not the most honorable or most honest, and it is not a bad way to retaliate against a guard either.

How does Bureau of Prisons, how does the Office of Internal Affairs, how the Office of Inspector General try and sift through the true claims versus the fraudulent ones?

Mr. HOROWITZ. Yes, it is an excellent question, Senator. It is something, actually, having done police corruption cases back when I was a Federal prosecutor in New York, was one of the key questions also, which is you had a lot of allegations against the bad cops, but you had allegations against the good cops because the drug dealers knew that was a convenient way—or thought it was, at least—to impact them.

You have to be very careful as investigators to understand that. Frankly, the only way you do it is by getting the complaints, carefully vetting them, and not jumping to a conclusion, and that is one of the challenges we face also, particularly because it is so challenging to get into the prison to see if there is corroboration, and this is where cameras come in. I could talk about this for days. It is not only on sexual abuse, it is on assaults in prison. How many times do we get a complaint that an inmate was assaulted by another correctional officer? A lot of those are false, because they had an injury and it was their own doing. We do not have a camera. There is no excuse for that, none whatsoever.

Senator JOHNSON. By the way, I completely agree with that, and that is just table stakes. That has to be fixed. The cameras have to be fixed. They have got to provide, as much as possible, 100 percent coverage. That would take care of an awful lot of this. In the scheme of things, probably one of the most cost-effective ways of really addressing this.

Mr. HOROWITZ. You are a thousand percent right.

Senator OSSOFF. Thank you, Ranking Member Johnson. I would note, as a point of personal privilege, Senator Lankford, that Senator Grassley and I have the Prison Camera Reform Act. It has passed the Senate unanimously. Any help that anybody in this room can muster to get that through the House before this Congress ends would be deeply appreciated.

Senator Lankford.

**OPENING STATEMENT OF SENATOR LANKFORD**

Senator LANKFORD. Mr. Chairman, thank you. Thank you to both of you for your work. I have several questions on this topic and a couple of other questions because it is unique to be able to sit down with both of you on that. I want to take advantage of that moment.

I want to pick up, Director Peters, in this discussion about cameras. That was actually my first question. A common story on the sexual assault that we have heard already was that the assault was happening with staff members in the locations where they were not monitored. How do we get that fixed? In the meantime, how do we make sure that, until we get cameras and monitoring in those locations, we get additional staff eyes and ears in those locations, or certain policies that if you are passing through these certain locations you cannot do it one-on-one? What is in process right now?

Ms. PETERS. Thank you, Senator. I could not agree more with your sentiments or that of the Inspector General. In my 30 years in public safety, having formerly been the Inspector General of Oregon and the Director of the Oregon Department of Corrections, technology and camera usage is key.

You are absolutely right. The stories we heard this morning, people know where those cameras are, both my employees and those in our care and custody, and probably more importantly, they know where those cameras are not.

Senator LANKFORD. Right.

Ms. PETERS. The more that we can improve that technology inside, in my experience I have seen this type of behavior and other non-sexual behavior decrease dramatically with the introduction of cameras, both static cameras inside the institution and also the usage of body cameras.

One of the concerns I have today, as the new director of the Bureau, is the lack of resources that we have for the camera installation. The time it is going to take to install these cameras that have been approved, based on the resources we have, is concerning to me. I always appreciate the support of Congress in establishing those resources so that we can ensure that those institutions are safe and secure, with the most upgraded technology possible.

Senator LANKFORD. Thank you. We appreciate that. We look forward to getting a chance to track what facilities were chosen first, what the process was for the rollout of that. That will be important to see, as well, how that actually happens, and how those priorities are actually set.

While I am on the technology conversation, different subject on this but still technology related to this has been the microjammers in the managed access. That is a security issue not only within the prison but outside the prison for individuals to not be basically stalked from inside the prison or to use contraband cellphones to be able to communicate with other prisoners, to coordinate activities within the prison as well.

This has been one I have worked on for years. I have continued to be able to push. There have been pilot programs, but we have not seen wide distribution. The technology currently exists to do managed access or microjamming in all of our facilities, but it is

not being rolled out quickly. What is needed to do that? Where does that land on your priority list?

Ms. PETERS. I could not agree more, and the Inspector General alluded to this in his opening comments. Contraband is the beginning of sexual assault, and so eradicating the use of cellphones inside our institutions for the various reasons that you just talked about, addressing this issue of drones, which is the new way to introduce contraband inside our institutions, and really figuring out how to ensure that that type of technology is not the introduction of further criminality.

At the core of the Bureau has to be safety and security, and this issue is really important to me. To answer your question, it is about resources. It is about funding and being able to ensure that that technology is kept outside of our institutions. Absent that funding, we are relying, in some of our institutions, on local law enforcement to come in with their cell dogs, if you will, their cellphone dogs, to help us figure out where those cellphones are and how to ensure that the least amount of contraband is being introduced into our institutions.

Senator LANKFORD. Mr. Horowitz, do you want to comment on that as well?

Mr. HOROWITZ. It is something, Senator, I know you have been working on and something we have been writing about for 10 years now. Other States are doing it. Long ago, finally the BOP—and I appreciate them—finally taking that effort. But as Director Peters said, cellphones in a prison are a deadly weapon.

Senator LANKFORD. Right.

Mr. HOROWITZ. We did a case in Puerto Rico where it was used to put a hit on a correctional officer. They run drug businesses. They are used to groom future abused inmates. You know what? Smuggling a cellphone into prison is a misdemeanor.

Senator LANKFORD. Right. Yes. There are several issues that we have to resolve here, both the disincentive to be able to bring that in, the consequences for smuggling that into, whether that be a drone or whether that be a staff member, however they may get that in, a contractor may get that cellphone in.

But for the longest, States, local entities could not do this jamming because it was blocked in Federal law. This is still a big issue for us, and we are still blocking the microjamming, that the technology is there. We are acting like this is 20 years ago, but the technology is there and the managed access where it is being used is being used effectively to deter future crimes that are there.

I appreciate the engagement. This is an area that we have to continue to advance on to make our prisons more secure and our staff that are there, that the vast majority are good actors in that, to continue to protect them as well.

Director Peters, I want to ask you, as well, about the First Step Act, and I am going to make a quick comment and move on to other things. One of the aspects of the First Step Act was actually outside groups being allowed to do the annual recidivism work. This has always been very difficult for the Bureau of Prisons to allow outside entities to come in and do this. It is very common in State and county facilities. There are very popular programs that are done in State and county facilities on recidivism.

But the Bureau of Prisons has continued to lock them out. Even after the First Step Act is passed, many have applied and few are actually getting in, to do that work. Faith-based entities and others are trying to step in and they are being blocked out to do that. I would like to have a follow-up conversation with you and your team on this. I met with the previous director on this, and what I really got was a “We are thinking about it. We are working on it. There is no requirement to many.” But it was very clear from Congress, start allowing some outside groups to work on recidivism issues within our Federal Bureau of Prisons as we do in State and Federal.

Will you commit to meet with me on that so we can get a chance to talk about it?

Ms. PETERS. I look forward to the conversation.

Senator LANKFORD. Thank you. We do want to help in that area, and Congress has spoken clearly on this.

We have talked a lot about staff-to-inmates assaults. This continues to be an issue within inmates as well. I have a culturally difficult area that you have to deal with all the time on this, and that is the transgender population that is now in the Bureau of Prisons care.

As of June of this year, the best numbers that I have, we have 1,427 individuals in Bureau of Prisons custody who are transgender. Of those, 72 percent of those are male. Of those, 47 percent of those male individuals are currently incarcerated for sex crimes.

My question is, how are we protecting other inmates where we have individuals that have a sex crimes conviction? They have currently transitioned already and they are in another facility where they are biologically male in a female prison or biologically female in a male prison. Based on that, what policies are in place to protect other inmates? I have read through some of the areas on the policy to honor those individuals and the gender that they have chosen, but what about for other individuals that are in that prison as well, and what are you seeing?

Ms. PETERS. Thank you, Senator. This has been an issue that I have been personally working on as the former Director of the Department of Corrections and, of course, now as the Director of the Bureau of Prisons. The bottom-line answer is safety and security and individualized case management, not making sweeping decisions around our trans population but really looking at that individual sitting in front of you, what their situation is, what is the safety and security of the institution we are considering assigning them to, and then training our employees to understand the complexities of housing individuals who are trans inside of our institutions, and ensuring not just their safety but as you said, Senator, the safety of those who are incarcerated and the safety of our employees.

Senator LANKFORD. Right. I appreciate that. Mr. Chairman, thank you for the little bit of extra time on this. Can I make one more follow-up statement on that?

When I read through the Bureau of Prisons transgender policy it has a section there where it says, “Transgender inmates shall be given the opportunity to shower separate from other inmates when



individual shower stalls are unavailable. The agency shall not place transgender or intersexed inmates in dedicated facilities units or weighing solely on the basis of such identification or status.”

That gives some rights to them. Is that also extended to other individuals? If a biological male is placed in a female prison, do the other prisoners there also have the same rights on protecting themselves as well, to saying, hey, this is also our preference, to not be housed with an individual that is a biological male, especially one that is currently incarcerated for sex crimes?

Ms. PETERS. Senator, I think that obligation and that onus is on us, not those who are incarcerated. It is our obligation to ensure that we are placing them on units where they are safe and the people on those units are also safe. I would not want to put that ownership on the adults in custody to determine their safety and security. That is an issue that lies with us.

Senator LANKFORD. Right. But based on this policy, a transgender inmate is given the opportunity to be able to choose. What I am asking is, do the individuals that they are housed with, do they also get that same opportunity, or is that opportunity for choice only given to the transgender inmate?

Ms. PETERS. The opportunity to provide input is only given to that transgender inmate. The choice of placement is not up to the individual that is incarcerated. That is on us to make that security and housing placement.

Senator LANKFORD. The opportunity to give input is not given to the other folks that they are placed with that are not transgender?

Ms. PETERS. That is correct.

Senator LANKFORD. Why?

Ms. PETERS. I think that it is really important for us to own that safety and security and that placement decision. We are the experts in corrections. We are the ones that need to determine where those individuals can be appropriately housed.

Senator LANKFORD. You have also got a situation where some people get input and some people do not on that, and I think if you are going to give input to individuals on housing and safety and what they feel secure, their own background and perspective, I think that should be given to all in that situation.

Ms. PETERS. Thank you.

Senator LANKFORD. Mr. Chairman, thank you.

Senator OSSOFF. Thank you, Senator Lankford.

Investigating the abuse of incarcerated women by BOP employees, I want to return to some questions about management, accountability, what has gone wrong for the last 10 years such that there has been no systemic effort to address this crisis despite acknowledgment today from the inspector general that it is widespread.

Let me begin by saying we found approximately 5,200 allegations of sexual abuse targeting inmates by BOP employees over the last decade. As the Ranking Member noted, not all of them will be valid. We also heard, however, from three survivors in the first panel, none of whom themselves made a complaint. Given the fear of retaliation, given the power that BOP employees have over the

lives of those in their custody, it stands to reason that there are a substantial number of incidents where no complaint is made.

We also found, to our shock, that the Office of Internal Affairs, Director Peters, has an 8,000-case backlog, including at least hundreds of sexual abuse allegations. The first question for you this round is, how and by when will you clear it?

Ms. PETERS. Thank you, Senator. I spoke earlier. We have added more than 40 positions to the Office of Internal Affairs to help shore up that backlog. I think when you talk about, Senator, what has gone wrong over the last 10 years it has been lack of resources. It has been a lack of accountability. When you have investigations open for as long as we have had it is hard to hold people accountable at the end of those investigations.

It is my hope that those additional positions will help shore up that backlog. But as you know, and from the testimony of the administrator to you from our Office of Internal Affairs, even those additional resources, it is going to require us 2 years to clear that backlog.

Senator OSSOFF. Two years. Understood, Director Peters. I hope that those sexual abuse allegations will be prioritized as you work through those 8,000 cases. I recognize the resource constraints but I think, Ranking Member Johnson, it is fair to say we hear pretty consistently that the solution to intractable bureaucratic deficiencies is more funding and more personnel, and sometimes that is true, but there are deeper management problems here.

Director Peters, I want to discuss a little bit about how you are approaching this, again, with the stipulation that you have been on the job for 5 months, you are new to this role, you are taking charge of the institution and these events predated your tenure, how you are going to handle ensuring that you have all of the information about what is happening within your facilities, that the regional directors have all of the necessary information about what is happening in their facilities.

How could it be, based upon your experience thus far in the role and your experience managing this organization the last 5 months, for example, that the regional director responsible for Dublin would have been unaware that the chaplain and the warden and other employees, now over a dozen investigations, were abusing inmates, such that it spilled out into the Associated Press (AP) reporting that it dubbed "The Rape Club"? Why was the regional director unaware?

Ms. PETERS. Thank you, Senator. In my 18 years in adult corrections this is one of the biggest questions I have been faced with since I have taken on this new role. Having been in institutions countless times, understanding how corrections works, the warden cannot leave his or her office without people knowing, so how this type of behavior happened, unaccounted for, without people stepping forward, I do not understand it.

But what I have been working on is sending very clear messages to every member of my executive team and the wardens that I must know about the good, the bad, and the ugly that is happening inside this organization, which means they too need to know. They need to have a pulse on what is happening in their regions and in their institutions.

Going back to the previous question, it starts with the investigators. One of the changes that we made was to ensure that the investigators that are handling these very significant sexual abuse cases report to headquarters. There needs to be more accountability in headquarters. There needs to be more accountability in the Director's Office. We are going to ensure that that reporting authority is changed, and then myself and the Deputy Director will be meeting with the administrator of OIA and our HR division Assistant Director regularly to review those cases.

Also as it relates to the broader leadership structure, we are really looking at how those appointments are made, how we recruit for those positions, who fills those positions. But I have also sent a very clear message to the organization that we are going to be transparent and that we need to be aware of what is happening inside our institutions.

Senator OSSOFF. All well noted, Director Peters.

Returning to the question—and I think it is important that the Congress and you personally have answers to these specific questions—how is it that the regional director, with direct responsibility for FCI Dublin, did not know the extent of ongoing abuse in a facility for which they were directly responsible? If you have not, will you seek to speak with that person to understand how they possibly could have been blind to that severe abuse happening on their watch?

Ms. PETERS. Yes, Senator.

Senator OSSOFF. Thank you, Director Peters.

One of our courageous witnesses from the first panel, Ms. De La Rosa, who was assaulted at Lexington, described the culture of the institution as an “old boys’ club.” What do you think she meant by that?

Ms. PETERS. I would not want to surmise what she meant by that, Senator.

Senator OSSOFF. I think you probably have an idea.

Ms. PETERS. Senator, I think the notion of an old boys’ club, as I have seen and experienced in my career, is one where decisions are made often behind closed doors, they are often made without women in the room, and I assume that is what she is speaking to.

Senator OSSOFF. Inspector General Horowitz, you made this point in the previous round of questions, not just that BOP employees are not reporting when they are aware of abuse that is perpetrated by their colleagues, but, in fact, what we heard from the survivors who testified in the first panel is a culture of mutual protection. Talk a little bit about that please, Mr. Horowitz.

Mr. HOROWITZ. That is one of the biggest challenges we face. These are not secrets. The warden taking these actions, the chaplain taking these actions, other inmates taking these actions, they are not secret. You mentioned Atlanta, the Federal prison there, that was essentially closed for a period of time. When they tossed the prison to go look, we had been doing case after case there. Dozens of phones found. Other contraband found. It is not a problem that happened overnight. In fact, we looked at the past audit reports. They got passes. But if you read those reports, you could not miss the problem.

There needs to be more ownership at the director and senior levels of the BOP, at the regional levels of the BOP, and there has to be put in place a process by which the good actors, the people who do not want to be working next to a predator—and I think that is probably most employees—are comfortable coming forward and reporting it, knowing they are not only not going to get retaliated against for doing that but they are going to be held on a pedestal and supported by the organization, rather than have the people who are engaged in the wrongdoing promoted.

Senator OSSOFF. Thank you, Mr. Horowitz. Senator Johnson.

Senator JOHNSON. Thank you, Mr. Chairman. Yes, I am very mindful of the fact that this hearing really is about prison personnel preying on prisoners. I got that. But I think Senator Lankford brought up a pretty relevant point as well that, certainly coming into this hearing I was thinking about to what extent are there sexual assaults occurring between prisoners?

Director Peters, how many biological males are being housed with biological females in Federal prisons?

Ms. PETERS. Senator, I do not have an answer to that today.

Senator JOHNSON. Do we have some?

Ms. PETERS. Yes, Senator.

Senator JOHNSON. I will go on the record and I will not belabor this point. Let me go on the record, when we are incarcerating somebody because they have committed a crime, we have taken away their right of moving freely around society, I would say they have no right to determine, if you are a biological male, to be housed with biological females. They have no right. That is insane policy. When we are talking about sexual assaults, to have the Federal Government engage in a policy that allows biological males to choose to be housed and come in close proximity with female prisoners. That is insane. That is something Congress probably ought to address if the Administration is not smart enough to reverse this policy.

Thank you, Mr. Chairman.

Senator OSSOFF. Thank you, Senator Johnson.

Director Peters, let us talk about how the BOP implements the Prison Rape Elimination Act, whose purpose is indeed in the name of the legislation. It is to eliminate prison rape. We must dispense of any notion that there is any inevitable level or any acceptable level of sexual abuse of inmates by BOP employees. Our objective, our imperative, our moral obligation, and your moral obligation, Director Peters, as I believe you know and have stated you accept, is to eliminate sexual abuse of those in your custody.

I was pleased to hear you describe the possibility that this hearing could be a turning point. Those were your words, a turning point. Because again—I am repeating this so that the public viewing this hearing understands this because it is important—you are new to this job, and the events that we are describing did not occur under your tenure.

But now that you are in this role, I want to respectfully tell you that I believe your tenure will be judged by whether you succeed in eliminating the sexual abuse of those who are in your custody. I think this is your highest and most immediate moral imperative in this position.

Prison Rape Elimination Act, audits are conducted periodically to assess the compliance of BOP facilities. It is correct, is it not, that those audits are viewed, and they have testified to it in a recent subcommittee by BOP leadership as an essential tool.

Ms. PETERS. That is correct, Senator.

Senator OSSOFF. Help us to understand—again, you were not in the role at the time, but you need to understand this—help us to understand how it is that, let us take Dublin and Coleman, two facilities with widespread, in the case of Dublin, high-level, ongoing sexual abuse, months, in some cases years, could both pass their PREA audits during the period in question?

Ms. PETERS. Thank you, Senator, for the question. I was with the Oregon Department of Corrections when the Prison Rape Elimination Act was passed. I was the inspector general as we implemented those recommendations. It is an issue with every corrections agency. We had hoped that those standards would eliminate sexual misconduct, as you mention but what we have learned is that is only one tool in our toolbox. Those audits come in and ensure that the institution is compliant with the Federal standards that were created. It does not address cultural issues. I think there are, back to my opening statement, other avenues and other tools that we need to rely on in order to work toward eliminating sexual misconduct inside of our institutions.

I heard the professor speak earlier. There are concerns about how audits are conducted. In some State correctional systems, as she alluded to, some audit themselves. Some rely on other jurisdictions to audit their jurisdiction and then vice versa. At the Bureau we do hire outside contractors to come in and conduct those PREA audits, so I think that is a step in the right direction.

But again, Senator, I think the bottom-line answer to your question is the PREA audits are just one tool in our toolbox.

Senator OSSOFF. I think we need to understand how this tool can be so ineffective that at Dublin, for example—and here is the 2017 Dublin audit—it was found that the facility met the standard of “zero tolerance of sexual abuse and sexual harassment.” It says that the facility “meets the standard.” The warden, the chaplain, others who have been convicted, allegedly over a dozen who may be under investigation at this time, were, in fact, engaged in sexual abuse.

Here is what really stands out about this. It cites the PREA coordinator as the key source for making that finding. The PREA coordinator was sexually abusing inmates.

I understand the intent of these audits, and you and your team believe it is a key tool. It is clearly not working, right?

Ms. PETERS. That is correct, Senator. It has not eliminated prison rape.

Senator OSSOFF. I think it is not just that it has not eliminated prison rape, it is that it is generating false negatives at facilities where, as the inspector general said—and Mr. Horowitz, if I am correct, your comments to the effect that if the warden and the chaplain are engaged in widespread sexual abuse of inmates, there is no way that is a secret. Mr. Horowitz, is that—

Mr. HOROWITZ. Yes.

Senator OSSOFF. You have abuse occurring at this facility that is so severe and so high level that it must have been widely known. In fact, as I said, it eventually spilled out into the public. The place was called "The Rape Club," but the PREA audit found that it met the standard of zero tolerance.

In Coleman—again, predates your tenure—two days before the PREA audit was executed, every female inmate had been removed from the facility. Now I am not saying there was or was not foul play involved there, but it is true, is it not, Director Peters, that interviewing inmates is a core part of the process of conducting a PREA audit. Yes?

Ms. PETERS. Yes.

Senator OSSOFF. If every female inmate had been removed from the facility 2 days before the PREA audit, those interviews could not have been properly conducted, could they have?

Ms. PETERS. That is correct.

Senator OSSOFF. Director Peters, this was before your tenure. My point is this process is badly, badly broken, and as a result the tool that you are going to have to rely on—and I know you are also implementing these cultural assessments, and I am eager to see how effective they are—to know what is happening in your own facilities is not currently functioning to give you the visibility that you are going to need. If you lack that visibility, with you as the leader of reform, we are not going to be able to implement change.

Let us talk a little bit about OIA processes, the Garrity precedent, Inspector General Horowitz, when prosecutions are or are not brought, what the consequences of those are. Looking into Coleman, multiple BOP employees who eventually admitted, in sworn statements, compelled by Bureau of Prisons Office of Internal Affairs, admitted, in graphic and explicit detail, to sexual abuse of prisoners. All or most of those cases had been referred to your office as candidates for criminal prosecution.

The outcome is that none of them were criminally prosecuted, and in fact, many retired with their benefits intact. How did that happen?

Mr. HOROWITZ. I have looked at those cases and there are multiple reasons for it. First and foremost, we need to do, as a general matter, and are doing a more effective job at looking at these cases when they come back to us. Initially, remember, we are essentially in a triage business. We get thousands of complaints every year. We have a dozen agents, for example, in the Florida region, in our Miami field office, to cover a number of prisons throughout the Southeast.

We are doing triage initially, keeping the ones that look like they need independent oversight by us, and we are returning the vast majority to the BOP for their internal affairs to handle. It is very simply a resource question. There are only so many cases a dozen agents, spending half their time on BOP work, can take. We are looking for those at the outset.

BOP then investigates, and they, on occasion, when they find things, come back to us and say, "We have found additional evidence." It is particularly at that stage that many of these cases came back that we probably could have done—and most of the people, by the way, are no longer in the organization because many

of these happened years ago, so I have not been able to talk to the actual decisionmakers—but it appears, looking at the file, that in most cases we could have taken several steps to further investigate those, before deciding to send them back to the BOP again.

It was at that stage that the BOP sought to compel the officer, and of course, as has been alluded to, once an employee is compelled to speak it means they cannot invoke their Fifth Amendment right against self-incrimination, and anything they say is tainted from a prosecution, which is how they ended up not being prosecuted.

We need to both look at those cases that come to us with a more stringent review. We also need to make sure we are well-coordinated with the Office of Internal Affairs at BOP and sharing insights, including what we are now doing with data analytics, which is looking for trends at prisons so that we cannot look at these anymore as one-offs, but do they reflect a broader problem, suggesting that we might have more witnesses out there if we go in and talk to inmates.

Because what we have seen, frankly, at Coleman—and I have talked to my agents about this around the country—once we go into a prison—and by the way, the three inmates on the first panel who said they did not report it, we went to them because we had learned about wrongdoing in the prison and reached out to them as potential witnesses. My agents tell me this over and over again. Once inmates see us on the ground and see action being taken, like when we searched the warden's residence in connection with Dublin—we searched the warden's home during that investigation—we received a substantial number of complaints from inmates, several of which we have corroborated. But those happened once they saw that action.

There are a lot of things that need to occur, both on our end and on the BOP's end. I will go back to talking about two things that would help up front—cameras and search policy, contraband penalties. Inmates are being groomed. Contraband is a huge problem. If we had cameras—I cannot tell you how many cases we have where the absence of video testimony makes it extraordinarily difficult.

One other thing that is important on the accountability front and the credit to the deputy attorney general for doing this. She has told the U.S. attorneys they need to prosecute these cases. Because keep in mind that is the other thing my agents are looking at these cases for. If there was a crime but no one is going to prosecute it, our investigating it as a criminal matter does not make any sense. There needs to be the partner on the receiving end, and that has been very helpful.

Senator OSSOFF. You mentioned the proactive monitoring of data to include complaint data. Correct to include complaint data?

Mr. HOROWITZ. Correct.

Senator OSSOFF. My view is that both OIG and OIA need to be engaged in that. In fact, we heard from OIA that they are not doing that. I will enter into the record, without objection, some

charts<sup>1</sup> that we produced that show that at several of these key, most notorious facilities, there was a data signature of increased complaints in the years during which the misconduct was occurring but before it broke into the public domain and before there was significant official action.

Director Peters, will you commit to ensuring that OIA is proactively monitoring sexual assault complaint data at the facility level to get ahead of any possible major crises at a facility?

Ms. PETERS. Yes, Senator. The inspector general and I just met a couple of weeks ago and he talked about this notion of data analytics, and I went back and talked to my team. We certainly want to be looking at the exact same data that the inspector general is looking at so that we see that information parallel to him looking at it. Our Office of Internal Affairs is looking forward to that collaboration and ensuring that we are monitoring the same sets of data.

Mr. HOROWITZ. Keep in mind, most of the data that we receive are the referrals we get from the BOP. The ones we cannot share with the BOP are the whistleblower complaints, the inmates that come straight to us that need confidentiality. So short of that data, we should have the same data.

Senator OSSOFF. I think proactively monitoring that data is going to be essential, and Inspector General Horowitz, you noted that in those Coleman cases, at least in several of the, OIA brought them back.

Mr. HOROWITZ. Correct.

Senator OSSOFF. But still no prosecution was brought, and as a result, those folks faced no criminal penalties for pretty egregious acts. Clearly it sounds that you engaged in and change is necessary. I understand you both face resource constraints, but this is a crisis that requires immediate action.

We are going to close now. Just a couple of final thoughts for you.

Director Peters, I have been genuinely encouraged by the tone of your tenure thus far, by the ambitious reform objectives that you set out in public, and when we have met in private and during these public engagements I have encouraged you to make good on those intentions and those promises. I want to encourage you again to embrace the possibility that you can turn this agency around with everything that you have. I think you should expect that so long as I have the ability, I will be calling you back to the Senate to ask what progress you have made.

The one thing that concerned me from today's discussion is that your admirable plans for reform, which I hope you implement with speed and strength, need to be informed by a fulsome understanding of what has gone wrong in the past. When we investigated Atlanta, what we heard from your predecessor was that he was blind, in my view willfully blind, but blind to what was happening at the regional level and at the facility level, and the regional director did not know what was happening at the facility level.

<sup>1</sup>The charts referenced by Senator Ossoff appears in the Appendix on page 212.



You will be held accountable for knowing, and I believe you have an opportunity to establish a legacy as a reformer who saves lives and protects vulnerable people from sexual assault, one of the most heinous things that can happen to any human being. This has to stop. You have the power to stop it.

I also hope that you will be responsive to the U.S. Congress, and I want to note that we are still awaiting answers to specific questions regarding U.S. Penitentiary Atlanta that were submitted following that July 26th hearing. You need to set the tone within your organization and working with DOJ's Office of Legislative Affairs that responsiveness to the Senate is essential, because it is not an encouraging sign when we are stymied in our efforts to conduct oversight.

Thank you for your commitment to change, and please make good on it. Please cooperate fully with our efforts to support reform. We should be working together to make these changes.

This will be the final hearing for the Permanent Subcommittee on Investigations this Congress. I believe that the work that we have done investigating conditions of incarceration and detention in the United States has been among the most substantive and focused effort in the history of the U.S. Congress. We have investigated corruption and misconduct at Bureau of Prisons facilities. We have investigated the medical mistreatment in DHS custody. We have investigated failures to implement the Death In Custody Reporting Act. We are now continuing to investigate the sexual abuse of women in Federal custody.

This work will continue. Accountability will continue. Both of you have key roles to play in making sure that when I close this hearing, that is not the end of this. It is the turning point that you referenced in your opening remarks, Director Peters.

Thank you both for your testimony, and the hearing is adjourned.

[Whereupon, at 12:12 p.m., the Subcommittee was adjourned.]



# A P P E N D I X

---

**Opening Statement of Chair Jon Ossoff  
“Sexual Abuse of Female Inmates in Federal Prisons”  
U.S. Senate Permanent Subcommittee on Investigations  
Homeland Security and Governmental Affairs Committee  
December 13, 2022**

The Permanent Subcommittee on Investigations will come to order.

Today’s hearing will examine the findings of our eight-month bipartisan investigation into the sexual abuse of women in federal prisons.

Before we proceed, viewers are advised that this hearing will discuss sexual violence and other deeply disturbing issues that we are duty-bound to bring to light.

Anyone seeking mental health assistance can call the nationwide hotline at 988 to connect with a trained counselor.

Eight months ago, as chair of PSI, I launched an investigation into the sexual abuse of women held in federal prisons.

With Ranking Member Johnson’s support, our bipartisan staff reviewed extensive non-public Bureau of Prisons and whistleblower documents and conducted more than two-dozen interviews with senior BOP leaders, whistleblowers, and survivors of prison sexual abuse.

Our findings are deeply disturbing and demonstrate, in my view, that the BOP is failing systemically to prevent, detect, and address sexual abuse of prisoners by its own employees.

The Subcommittee has found that Bureau of Prisons’ employees sexually abused female prisoners in at least two-thirds of Federal prisons that have held women over the past decade.

We found that BOP has failed to prevent, detect, and stop recurring sexual abuse, including by senior prison officials.

At FCI Dublin in California, for example, both the Warden and the Chaplain sexually abused female prisoners.

We found that BOP has failed to successfully implement the *Prison Rape Elimination Act*, or PREA.

For example: two prisons where multiple BOP employees were abusing multiple women over an extended period, FCI Dublin and FCC Coleman, nevertheless passed or were found to have exceeded the PREA audit criteria, which are mandated by Congress and intended to detect the risk of sexual abuse in BOP facilities.

In the case of FCI Dublin, the PREA compliance officer — the official specifically tasked with ensuring compliance with the Federal law whose purpose is the elimination of prison rape — was himself sexually abusing prisoners.

In the case of FCC Coleman in Florida, all female prisoners had been transferred out of the facility two days before the PREA audit, making it impossible for the auditor to interview female prisoners despite the legal requirement that they interview inmates as part of the audit.

Amidst more than 5,000 allegations of sexual abuse by BOP employees, we found at least 134 against female detainees were substantiated by BOP internal investigations or by criminal prosecutions.

And given the fear of retaliation by survivors of sexual abuse, the apparent apathy by senior BOP officials at the facility, regional office, and headquarters levels, and severe shortcomings in the investigative practices implemented by BOP's Office of Internal Affairs and the Department of Justice Inspector General, I suspect the extent of abuse is significantly wider.

Indeed, we found there is currently a backlog of 8,000 internal affairs cases at the Bureau of Prisons, including at least hundreds of sexual abuse allegations against BOP employees that remain unresolved.

DOJ's Inspector General has found that BOP fails, at times, to properly credit allegations of sexual abuse brought by inmates.

And multiple BOP employees who would later admit in sworn statements to sexually abusing prisoners have escaped criminal prosecution, due in part to weaknesses in the process by which BOP and the DOJ Inspector General work together to investigate such allegations. In fact, several officers who admitted under oath to sexually abusing prisoners were able nevertheless to retire with benefits.

Let me be absolutely clear: this situation is intolerable. Sexual abuse of inmates is a gross abuse of human and Constitutional rights and cannot be tolerated by the United States Congress.

It is cruel and unusual punishment that violates the Eighth Amendment to the United States Constitution, and basic standards of human decency.

In July of this year, the former Director of BOP testified before this very Subcommittee and insisted that BOP was able to keep female prisoners safe from sexual abuse by BOP employees. "We now know that that statement was unequivocally false.

"The purpose of today's hearing is to understand what's gone so badly wrong — to establish and examine the facts upon which we must build reform. Progress begins with the truth. It requires a full and unflinching examination of grievous failure.

On our first panel, we will hear from three survivors of sexual abuse at the hands of BOP employees that occurred while they were incarcerated in federal prisons: Carolyn Richardson, Briane Moore, and Linda De La Rosa. All of their abusers have since been convicted.

The first-hand accounts of survivors are essential, and I am deeply grateful to them for coming forward to testify before the Senate. Their bravery will make it easier for others to tell their stories.

Next, we will hear from Professor Brenda V. Smith of American University, a national expert on sexual abuse in custodial settings. We will ask her to put the survivors' testimony in a broader context.

Finally, we will question two government witnesses: the Inspector General for the Department of Justice, Michael Horowitz, whose office both oversees BOP and investigates criminal misconduct by BOP employees, and the new BOP Director Colette Peters, who began her tenure just six months ago, in July.

The hearing today is part of a two-year bipartisan effort by this Subcommittee under my leadership to investigate conditions of incarceration and detention in the United States. From corruption at the U.S. Penitentiary Atlanta in Georgia, to the Department of Justice's failure to count almost 1,000 deaths in custody across the country, to abusive and unnecessary gynecological procedures performed on women in Department of Homeland Security custody.

Ranking Member Johnson, I thank you sincerely for your assistance in these efforts and your staff.

Before I yield to the Ranking Member for his opening statement, it is important to acknowledge that law enforcement professionals working in our prisons have among the hardest jobs in our country, and I believe the vast majority of BOP employees share our goals of ending sexual abuse once and for all in Federal prisons.

I also want to state for the record the Subcommittee investigated sexual abuse of women in federal prison because of some of their unique considerations: women are more likely than male prisoners to have suffered from trauma and sexual abuse prior to incarceration, and particularly susceptible to subsequent abuse in a custodial setting. However, the Subcommittee fully acknowledges that sexual abuse is not limited to female prisoners.

Finally, the Subcommittee's findings, which form the basis for today's hearing, are laid out in a Bipartisan staff report, and I ask unanimous consent that this report be entered into the record.

**Opening Statement of Ranking Member Ron Johnson**  
**“Sexual Abuse of Female Inmates in Federal Prisons”**  
**December 13, 2022**

*As submitted to the record:*

Over the last eight months, the Permanent Subcommittee on Investigations (“PSI” or “the Subcommittee”) conducted a bipartisan review of sexual abuse of female inmates in federal prisons. Although our work mostly focused on cases of male Bureau of Prisons (“BOP”) staff abusing female inmates at only four prisons, what we uncovered should raise serious concerns about BOP’s failure to prevent horrific instances of sexual abuse at federal prisons.

PSI found that since 2012, there have been several documented instances of sexual abuse of female inmates by male staff at the Federal Correctional Complex Coleman in Florida, Metropolitan Correctional Complex in New York, and Metropolitan Detention Center Brooklyn, also located in New York. Just last week, the warden at Federal Correctional Institution Dublin in California, which the press dubbed a “rape club,” was convicted of sexually abusing female inmates.

The Subcommittee determined that BOP failed to proactively investigate and review data that could have led to improvements to prevent sexual abuse of female inmates. Specifically, BOP did not look at trends in complaints by facilities that could have been used to identify potentially problematic BOP institutions. Finally, the Subcommittee found that, as a result of a significant backlog of misconduct cases, BOP failed to hold its employees accountable for wrongdoing in a timely manner. BOP is required to resolve complaints involving employee misconduct within 180 days. The Subcommittee uncovered that some of BOP’s 8,000 outstanding cases involving staff misconduct were pending for more than five years, resulting in delays in staff accountability.

The findings of this investigation underscore the need for BOP to take immediate corrective actions to prevent sexual abuse of female prisoners by BOP employees. BOP should proactively analyze trends in complaints by facility or employee to pinpoint potential misconduct. In addition, BOP must address its backlog of outstanding cases involving employee misconduct. Delays in accountability—particularly for individuals who have committed sexual violence—are unacceptable. Congress should continue to demand transparency from BOP to ensure that failures in the federal prison system are adequately addressed.

Anyone who is found guilty of a crime, must face the consequences of their actions. Indeed, one witness will tell the Subcommittee that she was “sentenced and put in prison for the choices [she] made.” Regardless, no one should endure sexual abuse ever. I want to thank the witnesses for their testimony today.

Written Statement of Carolyn Richardson  
Before the Homeland Security and Governmental Affairs Committee (HSGAC)  
Permanent Subcommittee on Investigations (PSI)  
Hearing on PSI's Investigation into Sexual Abuse of Female Prisoners  
in the Custody of the Federal Bureau of Prisons (BOP)

I would like to first express sincere gratitude to Chairman Ossoff and Ranking Member Johnson for the opportunity to testify before you today. My name is Carolyn Richardson. I was incarcerated in Federal BOP custody from August 2016 through October 2022, when my motion for compassionate release was granted on the grounds of extraordinary neglect and abuse that I suffered while I was in Metropolitan Correctional Center New York (MCC). My testimony will focus on repeated sexual abuse that I suffered for several months at the hands of Colin Akparanta, a former MCC correction officer. While I struggle to speak about the abuse, I am hopeful that my testimony will give voice to survivors in similar circumstances and help prevent sexual crimes in BOP facilities.

#### **I. INTRODUCTION**

In August 2016, I was indicted for my participation in a conspiracy to procure and distribute oxycodone. I was deeply remorseful for what I had done, which was fueled by my own addiction to oxycodone. I accepted a guilty plea and was sentenced to 12 years in prison, knowing that I will miss so many years with my six children. What I did not know was that I will come to suffer neglect and abuse in BOP custody that will forever change my life.

Prior to my arrest, I had received an iris transplant for cosmetic purpose. When I was taken into custody, I had normal vision and was in good physical health. Shortly after arriving in MCC in August 2016, I began to experience complications with my transplanted irises. BOP personnel failed to provide me with timely medical care and caused my eyesight to deteriorate beyond repair.<sup>1</sup> When I was finally taken to an eye surgeon in January 2017, I learned that due to the delay, I will be permanently legally blind and will require extensive eye treatment. Since then, I required periodic visits to outside hospitals including for seven eye surgeries. Akparanta was the BOP correction officer tasked with taking me to these hospital appointments. I was in an extremely vulnerable state, physically, mentally, and spiritually due to my medical condition, and Akparanta preyed on this fact.

#### **II. EMOTIONAL MANIPULATION AND SEXUAL ABUSE**

When he took me to doctor's appointments, Akparanta made himself out to be someone I could trust. He talked to me about faith and spirituality, which was of central importance to me in coping with my loss of vision. He brought me food and medicine that I needed, but that I

---

<sup>1</sup> Through civil litigation, I learned that BOP does not share medical diagnosis and treatment plan with prisoners due to purported security concern. Because of this, I was misled into thinking that my eye problem was temporary when I went to MCC's medical clinic on a weekly basis.

could not otherwise obtain. Right at my most vulnerable, I believed that here is one person who cared about me when no one else did.

I was wrong. After several months, in or around May 2018, Akparanta began to demand sexual favors in exchange for the food and medicine. He switched from working the day shift to the night shift, and came to my cell at night. I did not have a cellmate. He told me that my cell was in a “perfect area” because the security camera could not see him coming or going. He was the only officer working the night shift in my unit, which consisted of approximately 40 female prisoners. He used a flashlight to signal to me that he was coming to my cell.

### **III. IMPACT OF SEXUAL ABUSE**

I felt utterly powerless. I was a vision-impaired prisoner who was relying on Akparanta for basic life needs and transportation to medical appointments. For about six months, Akparanta regularly demanded sexual favors from me including numerous instances of digital penetration, oral sex, and fondling. He became increasingly rough and cruel in the way that he treated me. I told him that I did not like it, but he continued in his conduct. Before the sexual assaults, he would act like he cared about my feelings and would ask me what was wrong if I looked sad. After the sexual assaults began, he stopped showing any signs of caring and all he wanted to do was sexual. I felt disgusted, with him but also with myself. I felt worthless, like I was something less than human that he could do with as he wished.

When I indicated that I did not like what he was doing, Akparanta suggested that we would both get in trouble if I were to tell. I believed him. I was terrified that he or other BOP staff would retaliate against me or take away my privileges. I was afraid of being questioned and doubted. I felt that officers would stick together instead of believing me or caring for me. Especially after how Akparanta manipulated me, I felt that everyone has ulterior motives. But then, I felt ashamed and blamed myself for not speaking up about the abuse. I felt like I should have yelled and screamed when he was sexually assaulting me, even though at the time, I felt that I had no real choice. Further details of the abuse can be found in Exhibit A, complaint filed in my civil lawsuit.

One day in November 2018, about six months after the sexual abuse began, Akparanta disappeared and did not come back. I later came to find out that he was criminally charged for sexually abusing at least four other female inmates. I was devastated. I thought I was the only victim and was going to live with the shame. Knowing that there were other victims, I made the decision to come forward and cooperate with the Government in its prosecution of Akparanta. I felt extremely scared because I was still in MCC, under the custody of his colleagues. Nonetheless, I felt that I had to do what I could do to stand with other survivors and hold him accountable for his conduct.

In March 2020, Akparanta pleaded guilty to engaging in abusive sexual contact with an inmate and admitted to having engaged in such conduct with seven victims including myself. He is now incarcerated, and I feel relieved that he will no longer be able to abuse other victims. However, every time I hear keys jangling, or see a flashlight, I am reminded of those nights in my jail cell. I will forever be his victim, and his survivor.



#### IV. LOOKING FORWARD

Having experienced the jarring sexual abuse, I came to learn that officer-on-inmate sexual abuse is a pervasive issue throughout the BOP system, though rarely acknowledged in public. In June 2021, Department of Justice (“DOJ”) reported that as of 2018, inmates reported 27,826 allegations of sexual victimization, which is a 15% increase from 2015; and of the 27,826 allegations, 55% were allegedly perpetrated by prison staff.<sup>2</sup> I have learned that there are challenges in criminal prosecution of the abusers, especially because officers often do not use overt threats or physical force to obtain sex with inmates, but rather psychological manipulation and the inherent power dynamic as in my case.

Even though BOP has a zero-tolerance policy toward sexual abuse, in reality, it is extremely difficult for inmates to step up and report the abuse. It feels that there is no real protection from the guards retaliating against you under a pretext, or harassing you with their authority. Even when the abuse is reported, inmates are kept in the dark about the progress of the investigation, and the repeated questioning is jarring—and emotionally scarring to relive the trauma.

I could personally gain a small measure of peace by cooperating with the criminal prosecution with Akparanta, resulting in his guilty plea; and by my civil lawsuit,<sup>3</sup> which allowed me to gain information and knowledge about what happened. However, my hope is that no other inmate will have to suffer similar abuse, and that safeguards will be put in place to ensure that. I also learned through my civil lawsuit that under the current law, it is nearly impossible to hold the individual officer accountable for their unconstitutional and inhumane conduct, because there is no federal law that provides such remedy. I was shocked by this, and hope that this will change, as I am afraid that without individual exposure, it is easy for officers to diffuse the responsibility and hide behind the system. I also hope that basic measures such as making sure that all areas of jails are viewable by camera, and allowing female officer to be posted with female inmates, can be implemented so that there is no opportunity for officers to take advantage of the system and approach vulnerable inmates.

#### V. CONCLUSION

I am appreciative of this opportunity to share my experience in MCC. I stand here for other female inmates who have experienced sexual abuse, many of whom may feel that they are alone without anyone to care about their story, like I used to feel. I hope, in sharing this, we can improve our system and prevent this from ever happening again. Thank you.

---

<sup>2</sup> <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/pdca21.pdf>

<sup>3</sup> *Herrera v. U.S.*, 1:20-cv-10206 (S.D.N.Y.)

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

KARILIE HERRERA, FRANCESCA MORALES,  
and CAROLYN RICHARDSON,

Plaintiffs,

-against-

UNITED STATES OF AMERICA,  
COLIN AKPARANTA, NORMAN REID,  
LIEUTENANT WEST, STACEY HARRIS,  
OFFICER COLLIER, TROY HILL,  
OFFICER LEWIS, and JOHN AND JANE DOES 1-10,

Defendants.

Civil Action No.: 1:20-cv-10206

ECF Action

**COMPLAINT AND  
JURY DEMAND**

Plaintiffs Karilie Herrera, Franchesca Morales, and Carolyn Richardson, by and through their attorneys, The Jacob D. Fuchsberg Law Firm, LLP, for their Complaint against Defendants as above captioned, allege as follows upon information and belief:

**PRELIMINARY STATEMENT**

1. Colin Akparanta (hereinafter “Defendant Akparanta”), a former correctional officer at a federal jail known as Metropolitan Correctional Center - New York (hereinafter “MCC”), exploited his position to stalk, assault, and sexually abuse at least 14 inmates who were incarcerated in MCC in the custody of the United States Bureau of Prisons (hereinafter “BOP”) since he started the job in 2004. Plaintiffs Karilie Herrera, Franchesca Morales, and Carolyn Richardson were each sexually abused by Defendant Akparanta on multiple occasions in 2017 and/or 2018.

2. Defendant Akparanta’s abuse only came to an end when he was suspended from MCC and eventually criminally charged for sexually abusing inmates. At a plea hearing held on

March 4, 2020, Defendant Akparanta admitted to having sexual contacts with persons in BOP custody to gratify his sexual desires while in the performance of his official duties as a correctional officer in MCC. At the hearing, the government indicated that it could prove beyond a reasonable doubt that Defendant Akparanta had engaged in sexual acts with at least seven female inmates at MCC. Defendant Akparanta pled guilty and is awaiting sentencing. *See United States v. Akparanta*, 1:19-cr-00363-LGS (S.D.N.Y.).

3. Defendant Akparanta's recurrent abuse of inmates was obvious to various agents, servants, and employees of BOP, including but not limited to his supervisors such as Defendants Norman Reid and Lieutenant West, his colleagues such as Defendants Stacey Harris and Officer Collier, and the Unit Counselors such as Defendants Troy Hill and Officer Lewis. These Defendants knew of and disregarded Defendant Akparanta's suspicious interactions with female inmates, some of which amounted to flagrant and obvious violations of MCC's security or operating protocols.

4. For many years, BOP personnel deliberately ignored alarming warning signs as well as inmates' sex abuse allegations against Defendant Akparanta. Upon information and belief, as early as 2012, Defendants were aware of at least one prior allegation that Akparanta had sexually assaulted a female inmate in a similar location and manner as he later attacked the Plaintiffs. Nevertheless, Defendant Akparanta was only terminated in or around December 2018 and arrested in or around May 2019. With the willful ignorance and tacit approval of his supervisors and colleagues, Defendant Akparanta continued his predatory reign on Unit 2, MCC's only female dormitory unit, leaving countless victims in his wake including the Plaintiffs.

5. It was apparent to MCC's inmates that BOP personnel would not intervene to prevent Defendant Akparanta from assaulting inmates, let alone adequately discipline, supervise,

or train him in accordance with BOP's purported zero-tolerance policy against suspected staff-on-inmate sex abuse. At least some of the individual Defendants, including Stacey Harris, Officer Collier, Troy Hill, and Officer Lewis, had explicit discussions with MCC inmates regarding Defendant Akparanta's abuse and yet refused to take steps to prevent further assaults. For example, in or prior to 2017, a female inmate confided in Defendant Officer Collier regarding Defendant Akparanta's predatory behavior and was merely told that "eventually he'll get caught."

6. It was only through the deliberate indifference, recklessness, carelessness, gross negligence, and negligence of other BOP personnel, as well as abject systemic failures at MCC, that Defendant Akparanta's abuses could continue for over a decade until around December 2018.

7. Defendant Akparanta was allowed to work shifts in which he was the only officer on guard duty in Unit 2, the female dormitory unit of MCC, performing daily rounds and "safety checks" on vulnerable inmates—thereby enabling his ongoing sexual abuse of inmates including all three Plaintiffs. Defendants Norman Reid and Stacey Harris, as part of the Unit team in charge of overseeing Unit 2, were aware of warning signs that Defendant Akparanta was abusing inmates including that he was bringing contrabands to certain inmates. In addition, Defendant Lieutenant West, as the person in charge of monitoring security cameras, knew that Defendant Akparanta often brought inmates to "Bubble" areas<sup>1</sup> that are not captured by security cameras and stayed there for lengthy periods of time for no apparent reason.

8. Defendants' reckless disregard of the safety and welfare of inmates including Plaintiffs is highlighted by the fact that Defendant Akparanta is not the only correctional officer

---

<sup>1</sup> "The Bubble" refers to a control room that is intended as a station and/or a breakout room for Correctional Officers. It is surrounded by windows so that Officers sitting in it can look out and monitor the inmates. The Bubble is outside of the view of MCC's security cameras, and inmates are not permitted to enter the Bubble as a matter of policy and protocols.

that raped and sexually assaulted inmates at MCC. Upon information and belief, during Defendant Akparanta's tenure at MCC, at least one other Correctional Officer sexually assaulted inmates including by using the same *modus operandi* that Defendant Akparanta used, such as taking inmates to the various off-camera areas of MCC. By repeatedly failing to take adequate steps to protect inmates from foreseeable harm, Defendants permitted, condoned, approved, and/or encouraged Defendant Akparanta to sexually assault MCC's inmates.

9. As a result, Ms. Herrera, Ms. Morales, and Ms. Richardson were each forced to engage in recurrent sexual acts and encounters with Defendant Akparanta by threats of force or coercion.

10. Defendant Akparanta sexually assaulted Ms. Herrera from approximately November 2017 through December 2018, including by digitally penetrating her, fondling her, and having her masturbate him. He often ordered Ms. Herrera to come to the Bubble areas and assaulted her there. He also assaulted Ms. Herrera in other areas that are not visible on security cameras, including Ms. Herrera's jail cell, MCC's laundry area, and Solitary Housing Unit (hereinafter "SHU") intended for solitary confinement. Ms. Herrera was assaulted about four times on an average week.

11. From approximately May 2017 through September 2018, Defendant Akparanta also sexually abused, harassed, and demanded sexual favors from Ms. Morales regularly. For example, when Ms. Morales was placed in the same cell as Ms. Herrera, Defendant Akparanta forced them to perform sexual acts on each other. Defendant Akparanta also forced Ms. Morales to watch or serve as a 'lookout' when he assaulted other inmates.

12. From approximately February 2018 through November 2018, Defendant Akparanta also sexually assaulted Ms. Richardson whom he had befriended while taking her for medical

appointments. He emotionally manipulated her by claiming to be a reverend and offering to guide her spiritually. Especially when he was assigned to “graveyard shifts” from 12am through 8am, Defendant Akparanta came to Ms. Richardson’s cell several times a week, abusing and assaulting her with increasing roughness over time.

13. Ms. Herrera, Ms. Morales, and Ms. Richardson (hereinafter collectively “Plaintiffs”) experienced catastrophic and unnecessary pain and suffering because of Defendants’ egregious disregard for, and deliberate indifference to, Plaintiffs’ safety and well-being. Plaintiffs suffer from debilitating psychological injuries and trauma, as a direct result of Defendants’ reckless disregard of myriad warning signs and inmate complaints regarding Defendant Akparanta’s abhorrent conduct for many years.

14. Plaintiffs bring this suit pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and its progeny, for violations of their respective rights under the Fifth and Eighth Amendments to the United States Constitution for Defendants’ willful failure to provide, and Defendants’ withholding of, proper supervision and custodial care, which caused them to suffer cruel and unusual treatment while they were prisoners in BOP custody. Plaintiffs further bring this suit under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671, *et seq.*, for negligence in connection with the deficient supervision and custodial care provided to them by each Defendant, within the scope of their employment with the BOP.

15. Plaintiffs seek redress for Defendants’ unconstitutional and otherwise unlawful conduct, which caused them to suffer permanent and catastrophic injuries.

#### **JURISDICTION AND VENUE**

16. This Court has original subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1346(b) as arising under the Constitution, laws, and/or treaties of the United

States of America. Plaintiffs' claims are predicated, in part, upon the FTCA, 28 U.S.C. §§ 2671, *et seq.*, authorizing actions seeking relief against the United States. Plaintiffs further invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367(a) with respect to any state law claims, as they are related to and form part of the same case or controversy as claims based on the federal Constitution, laws, and/or treaties.

17. This Court has personal jurisdiction over the Defendants because the alleged incidents occurred within the confines of the State of New York.

18. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(2) and 1402 (b) as a substantial part of the events giving rise to Plaintiffs' claims occurred within the boundaries of this District.

**CONDITIONS PRECEDENT TO THIS LAWSUIT**

19. Plaintiffs have properly complied with the requirements of 28 U.S.C. § 2675 by presenting Administrative Claims against the United States of America, all of which were received by BOP on January 22, 2020.

20. In a letter dated January 24, 2020, the BOP acknowledged receipt of these Administrative Claims but has failed to respond to same. Under 28 U.S.C. § 2675 (a), BOP's failure "to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim." By the filing of this action, Plaintiffs deem BOP to have finally denied Plaintiffs' Administrative Claims in their entirety.

21. This action is timely brought pursuant to 28 U.S.C. § 2401(b) in that it is begun within six months of BOP's constructive denial of Plaintiffs' Administrative Claims.



**PARTIES**

22. At all times relevant hereto, Plaintiff Karilie Herrera was a prisoner in the custody of BOP, incarcerated in an administrative housing facility located at 150 Park Row, New York, NY 10007, commonly known as MCC. Ms. Herrera was released from MCC in or around December 2019 and is currently housed at Bedford Hills Correctional Facility in Westchester County in the State of New York.

23. At all times relevant hereto, Plaintiff Franchesca Morales was a prisoner in the custody of BOP, incarcerated in MCC. Ms. Morales was released from MCC in or around September 2018 and is currently housed at Federal Correctional Institution, Hazelton in Preston County in the State of West Virginia.

24. At all times relevant hereto, Plaintiff Carolyn Richardson was a prisoner in the custody of BOP, incarcerated in MCC. Ms. Richardson was released from MCC in or around October 2020 and is currently housed at Metropolitan Detention Center in Kings County in the State of New York.

25. Defendant United States of America (hereinafter "United States") is the appropriate defendant for Plaintiffs' claims under the Federal Tort Claims Act.

26. At all times relevant hereto, Defendant United States, acting through the BOP, was responsible for the operation, control, supervision, policy, practice, implementation, and conduct of all BOP matters including at MCC and was responsible for the hiring, retention, training, supervision, discipline, and conduct of all BOP personnel, including but not limited to the Defendants referenced herein.

27. In addition, at all relevant times, United States was responsible for enforcing the rules of the BOP, and for ensuring that BOP personnel obey the Constitution and laws of the United States.

28. At all times relevant hereto, Defendant Colin Akparanta (hereinafter “Defendant Akparanta”) was a Correctional Officer, and an employee of BOP and/or Defendant United States. In his capacity as an agent, servant, and employee of Defendant United States, and within the scope of his employment as such, Defendant Akparanta was responsible for the day-to-day oversight, supervision, care, custody, and control of inmates confined at MCC, including Plaintiffs. With respect to Plaintiffs’ *Bivens* claims herein, Defendant Akparanta is sued in his individual capacity.

29. At all times relevant hereto, Defendant Norman Reid (hereinafter “Defendant Reid”) was supervisory correctional personnel and/or a Unit Manager, and an employee of BOP and/or Defendant United States. In his capacity as an agent, servant, and employee of Defendant United States, and within the scope of his employment as such, Defendant Reid was responsible for the day-to-day oversight, supervision, care, custody, and control of inmates confined at MCC, including Plaintiffs. In particular, upon information and belief, Defendant Reid was the head of the “Unit Team,” a team of Correctional Officers who were in charge of providing day-to-day custodial care to inmates in Unit 2, which was MCC’s only female dormitory unit until its recent closure. With respect to Plaintiffs’ *Bivens* claims herein, Defendant Reid is sued in his individual capacity.

30. At all times relevant hereto, Defendant Lieutenant West (hereinafter “Defendant West”) was supervisory correctional personnel and/or a Lieutenant, and an employee of BOP and/or Defendant United States. In his capacity as an agent, servant, and employee of Defendant United States, and within the scope of his employment as such, Defendant West was responsible

for the day-to-day oversight, supervision, care, custody, and control of inmates confined at MCC, including Plaintiffs. In particular, upon information and belief, Defendant West was in charge of overseeing and monitoring security cameras and supervising Correctional Officers such as Defendant Akparanta at all relevant times. With respect to Plaintiffs' *Bivens* claims herein, Defendant West is sued in his individual capacity.

31. At all times relevant hereto, Defendant Stacey Harris (hereinafter "Defendant Harris") was a Correctional Officer and/or a Unit Secretary, and an employee of BOP and/or Defendant United States. In her capacity as an agent, servant, and employee of Defendant United States, and within the scope of her employment as such, Defendant Harris was responsible for the day-to-day oversight, supervision, care, custody, and control of inmates confined at MCC, including Plaintiffs. In particular, upon information and belief, Defendant Harris was a member of the Unit Team for Unit 2 and served as the secretary to Defendant Reid at all relevant times. With respect to Plaintiffs' *Bivens* claims herein, Defendant Harris is sued in her individual capacity.

32. At all times relevant hereto, Defendant Officer Collier (hereinafter "Defendant Collier") was a Correctional Officer and/or a commissary officer, and an employee of BOP and/or Defendant United States. In his capacity as an agent, servant, and employee of Defendant United States, and within the scope of his employment as such, Defendant Collier was responsible for the day-to-day oversight, supervision, care, custody, and control of inmates confined at MCC, including Plaintiffs. In particular, upon information and belief, Defendant Collier directly supervised MCC's inmates who worked at the jail commissary as part of their job assignments. With respect to Plaintiffs' *Bivens* claims herein, Defendant Collier is sued in his individual capacity.

33. At all times relevant hereto, Defendant Troy Hill (hereinafter “Defendant Hill”) was a Correctional Officer and/or a Unit Counselor, and an employee of BOP and/or Defendant United States. In her capacity as an agent, servant, and employee of Defendant United States, and within the scope of her employment as such, Defendant Hill was responsible for the day-to-day oversight, supervision, care, custody, and control of inmates confined at MCC, including Plaintiffs. In particular, upon information and belief, Defendant Hill was a member of the Unit Team for Unit 2 and served as a Counselor to the female inmates at MCC. With respect to Plaintiffs’ *Bivens* claims herein, Defendant Hill is sued in her individual capacity.

34. At all times relevant hereto, Defendant Officer Lewis (hereinafter “Defendant Lewis”) was a Lieutenant and/or a Unit Counselor, and an employee of BOP and/or Defendant United States. In her capacity as an agent, servant, and employee of Defendant United States, and within the scope of her employment as such, Defendant Lewis was responsible for the day-to-day oversight, supervision, care, custody, and control of inmates confined at MCC, including Plaintiffs. In particular, upon information and belief, Defendant Lewis was a member of the Unit Team for Unit 2 and served as a Counselor to the female inmates at MCC. With respect to Plaintiffs’ *Bivens* claims herein, Defendant Lewis is sued in her individual capacity.

35. At all times relevant hereto, Defendants John and Jane Does 1-10, whose actual names are not known to Plaintiffs despite reasonable efforts to obtain such information, and who are sued herein by the fictitious designation of “John and Jane Doe,” were persons in charge of the custodial care provided to Plaintiffs during relevant times. Specifically, Defendants John and Jane Does 1-10, acting within the scope of their capacity as agents, servants, and employees of BOP and/or Defendant United States, either had supervisory authority or the opportunity to observe and

intervene with respect to Defendant Akparanta's sexual abuse of MCC's inmates. With respect to Plaintiffs' *Bivens* claims herein, John and Jane Does 1-10 are sued in their individual capacities.

36. Defendants Reid, West, and "JOHN AND JANE DOES 1-10" who served as supervisors to Defendant Akparanta are hereinafter collectively referred to as "Supervisory Defendants" for ease of reference.

37. Defendants Harris, Collier, Hill, Lewis, and "JOHN AND JANE DOES 1-10" who acted as Defendant Akparanta's equals or colleagues are hereinafter collectively referred to as "Officer Defendants" for ease of reference.

#### **JURY DEMAND**

38. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a trial by jury on all issues and claims in this action that are so triable, including but not limited to their *Bivens* claims.

#### **STATEMENT OF FACTS**

##### **INDICATIONS AND WARNING SIGNS OF AKPARANTA'S ABUSE**

39. Since Defendant Akparanta was first hired by Defendant United States as a Correctional Officer at MCC in or around 2004, the warning signs of his perversion were ample and obvious to any reasonable BOP personnel.

40. For 14 years, Defendant Akparanta utilized similar methods to stalk, assault, abuse, and terrorize at least 14 different inmates. His routines and *modus operandi* involved flagrant violations of MCC's security and operating protocols, which were and should have been obvious to the Supervisory Defendants as well as Officer Defendants.

41. For example, Defendant Akparanta violated MCC's protocols to bring female inmates to private areas such as "the Bubble" that are not captured by MCC's security cameras.

He also identified the jail cells that happen to fall outside of the view of the security cameras. He repeatedly took advantage of these known “blind spots” to brutally abuse inmates, including by forcefully digitally penetrating their vaginas, forcing them to touch his penis, forcing them to perform oral sex, fondling their breasts and buttocks, ordering them to remove their clothes, making them watch pornography on a tablet, and forcing inmates to perform sexual acts on each other while he watched and masturbated.

42. In addition, Defendant Akparanta orchestrated unjustified lockdowns<sup>2</sup> as a part of his scheme to assault and abuse inmates. Upon information and belief, Defendant Akparanta sometimes put Unit 2, the female dorm, into lockdown with the sole purpose of using that time to sexually assault inmates without interruption. These lockdowns were another egregious breach of MCC’s security and operating protocols that the other Defendants knew of and yet disregarded.

43. Defendant Akparanta’s routines included coercing his victims to stay silent by depositing money into their commissary accounts or bringing them ‘gifts,’ such as alcohol, outside clothing, cosmetics, food, beauty supplies, medications, and tampons. Correctional Officers are forbidden from giving money or personal items to inmates. Moreover, many of the gifts that Defendant Akparanta gave to his victims were contrabands forbidden by BOP policies. If BOP personnel had conducted needed investigations into the contrabands that inmates had received from Defendant Akparanta, they would have discovered Defendant Akparanta’s abuse years before he came to target the Plaintiffs.

44. The fact that Defendant Akparanta could get away with sexual abuse for many years while flagrantly violating MCC’s policies led the Plaintiffs to believe that Defendant Akparanta

---

<sup>2</sup> “Lockdown” refers to the Correctional Officers’ locking certain cells down, such that the inmates housed in those cells must remain in their cells without an ability to leave.

was 'untouchable.' Plaintiffs had legitimate concern that they would suffer retaliation or other harm if they were to report Defendant Akparanta's predatory behavior. To further fuel this fear, Defendant Akparanta verbally threatened his victims to ensure their silence. For example, Defendant Akparanta warned Ms. Herrera that he was "cool with the warden," and that he would change her cell assignments if she were to resist his demands. In or around April 2018, Defendant Akparanta in fact moved Ms. Herrera and Ms. Morales to a two-person room that was in a blind spot from security cameras, openly flaunting his power and control over Plaintiffs' lives to place them in fear of life and safety.

45. Given the overtness and frequency with which Defendant Akparanta preyed on inmates, other BOP personnel including Supervisory Defendants and Officer Defendants suspected or should have suspected that Defendant Akparanta was abusing inmates. Nevertheless, Defendants failed to investigate, discipline, question, or stop Defendant Akparanta.

46. From 2004 onward, Defendants had numerous opportunities to stop Defendant Akparanta's abuse. For example, Defendant West's job duties included sitting in a Bubble, monitoring the security cameras, and following up on any suspicious activities that he noticed on the cameras. Defendant West saw or should have seen that Defendant Akparanta frequently disappeared into unmonitored areas with inmates who were not authorized to be in those areas. Nevertheless, Defendant West nor any other Defendants took any actions to investigate into this suspicious and recurrent behavior.

47. When they have a reason to suspect staff-on-inmate sex abuse, BOP personnel are required to personally inspect and investigate the situation to prevent any misconduct. Supervisory Defendants and Officer Defendants refused to take any steps to discipline, supervise, monitor, or investigate Defendant Akparanta despite numerous indications of misconduct. Therefore, these

Defendants condoned, permitted, acquiesced to, consented to, and even tacitly approved Defendant Akparanta's longstanding abuse of inmates.

48. Defendants' behavior was in direct violation of mandatory BOP policies, was not related to a discretionary function or duty, and served no plausible penological policy purpose.

**INMATE COMPLAINTS REGARDING AKPARANTA'S ABUSE**

49. As if these warning signs were insufficient to put Defendants on notice, inmates at MCC attempted to lodge a complaint against Defendant Akparanta to various BOP personnel including the named Defendants. From 2004 onward, Defendants received several inmate complaints regarding Defendant Akparanta's misconduct.

50. Any time a BOP personnel learns of *suspected* sexual abuse by a Correctional Officer, the BOP policy mandates that such allegation be investigated in full and be reported to the BOP Office of the Inspector General. For example, Sexually Abusive Behavior Prevention & Intervention Program requires staff to immediately safeguard an alleged victim when sexually abusive behaviors have been reported. Placing an inmate in protective custody or transferring the inmate to another federal, state, or local correctional facility are some of the viable options to safeguard an inmate.

51. If any MCC staff detected, or even *suspected*, potential staff-on-inmate sexual abuse, they were required to immediately report that suspicion for investigation. *See* BOP Policy Number 5324.12 (referencing 28 CFR § 115.61, wherein "The agency shall require all staff to report immediately and according to agency policy *any knowledge, suspicion, or information* regarding an incident of sexual abuse or sexual harassment that occurred in a facility ...; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.").



52. Despite having actual notice of Defendant Akparanta's sexual abuse, Defendants neglected and refused to follow these mandatory and binding protocols in an attempt to cover up for Defendant Akparanta.

53. At various times between 2004 and 2017, each of the Supervisory Defendants and Officer Defendants received reports or complaints regarding Defendant Akparanta from inmates who had found courage to step up.

54. For example, upon information and belief, in or around 2012, a female inmate<sup>3</sup> shared her discomfort regarding Defendant Akparanta's sexual advances to Defendant Hill as the Unit's guidance Counselor. Defendant Hill and her supervisors refused to follow the mandatory protocols to properly investigate the alleged abuse, allowing Defendant Akparanta to continue to sexually abuse inmates with impunity.

55. As another example, in 2017 and prior thereto, Defendant Collier as a commissary officer received multiple complaints regarding Defendant Akparanta from various female inmates who worked at the commissary and who chose to confide in Defendant Collier. Instead of taking inmates' complaints seriously, Defendant Collier merely told them that Defendant Akparanta will "get caught" eventually.

56. Defendant Hill, Defendant Collier, and other Officer Defendants refused to take any action to stop Defendant Akparanta's abuse or to address inmates' legitimate concerns regarding his behavior. In the alternative, Officer Defendants did report their concerns regarding Defendant Akparanta, but Supervisory Defendants and the United States refused to take any action to investigate, supervise, discipline, or penalize Defendant Akparanta.

---

<sup>3</sup> For the sake of privacy, this inmate who is not a Plaintiff in this lawsuit is referred to pseudonymously in this Complaint.

57. By 2012, Supervisory Defendants and the United States knew or should have known of Defendant Akparanta's sex abuse and of the irreparable risk of harm that he posed to inmates. These Defendants, as well as Officer Defendants, were clearly aware of Defendant Akparanta's frequent protocol violations and unexplained suspicious interactions with inmates.

58. It is extraordinary and inexplicable that Defendant Akparanta faced no disciplinary consequences and continued working as a Correctional Officer for the female inmates of MCC.

59. Supervisory Defendants and the United States continued to allow Defendant Akparanta to work in Unit 2 by himself, creating daily opportunities for him to commit additional sexual assaults.

#### **HISTORY OF STAFF-ON-INMATE SEXUAL ABUSE AT MCC**

60. Astonishingly, Defendant Akparanta was not the only Correctional Officer at MCC who exploited his position of power to prey upon female inmates. Therefore, Defendants knew that the existing MCC custom and practices were ineffective in preventing sexual abuse of inmates by Correctional Officers.

61. For example, beginning in or around 2014, a Correctional Officer named Rudell Mullings began sexually abusing female inmates of MCC. As in Defendant Akparanta's case, other officers and supervisors turned a blind eye to Mullings's behavior, allowing him to assault and eventually rape an inmate.

62. Upon information and belief, Defendant Collier was notified about Mullings's abuse from inmates who worked at the commissary just as he was later notified about Defendant Akparanta's abuse. Again, Defendant Collier merely told the inmates to stay away from Mullings and failed to take any further steps to report or stop Mullings.

63. Notably, Mullings used highly similar routines and *modus operandi* as Defendant Akparanta's. For instance, Mullings took victims to the off-camera areas including the Bubble and the SHU. On November 23, 2015, Mullings pled guilty to sexually abusing an inmate at MCC. *See United States v. Mullings*, 1:19-cr-00817-ERK (E.D.N.Y.).

64. Therefore, Defendants had actual notice and knowledge that Correctional Officers could abuse their position of power to assault inmates in off-camera areas.

65. Nevertheless, Defendants failed to take adequate steps to prevent Defendant Akparanta from engaging in sex abuse before and after Mullings's assaults with near-identical *modus operandi*. Defendants failed to monitor the Bubble and other off-camera areas to ensure that Correctional Officers could not continue to sexually assault inmates in those areas.

66. Defendants failed to take any steps to prevent further assaults of MCC's inmates from occurring, including by installing additional security cameras to eliminate the blind spots. This was in direct violation of mandatory and non-discretionary BOP policies, which required that BOP staff eliminate any known blind spots and install sufficient video monitoring to protect inmates against sexual abuse. Some but not all of MCC's blind spots were identified and ordered to be corrected during Prison Rape Elimination Act ("PREA") Audit of MCC, which occurred in April 2018.

67. Emboldened by other Defendants' failure and/or refusal to stop him, Defendant Akparanta continued his sadistic reign on MCC's female inmates. In fact, Defendant Akparanta's unchecked predatory behavior predictably increased in scope and frequency over time. Upon information and belief, between 2017 and 2018, Defendant Akparanta sexually assaulted at least *nine* women including Plaintiffs Ms. Herrera, Ms. Morales, and Ms. Richardson.

#### **AKPARANTA'S ABUSE OF PLAINTIFFS**

68. At various overlapping periods of time between 2015 and 2018, each of the Plaintiffs became incarcerated in Unit 2 of MCC.

69. During these times, Plaintiffs were under the custodial care, supervision, and control of the agents, servants, employees, and independent contractors of Defendant United States and/or BOP, including the Defendants named herein and other Correctional Officers of MCC whose identities are not presently known. As a matter of both State and Federal law, Defendants had an absolute non-delegable duty to see that prisoners in their custody receive adequate custodial care and supervision.

70. Individual Defendants, as correctional personnel of MCC acting as agents for BOP, had the responsibility to maintain the safety, health, and well-being of inmates and to prevent inmates such as the Plaintiffs from being subjected to undue harm and/or cruel and unusual punishment. Defendants abjectly failed to carry out this responsibility.

71. In or about 2015, Plaintiff Ms. Morales first entered MCC.

72. Within a week of her arrival at MCC, Ms. Morales learned from other inmates that Defendant Akparanta had a reputation for being a “perv[ert]” who likes to show his private parts to female inmates.

73. Inmates warned Ms. Morales to avoid Defendant Akparanta as much as possible. They told her that he had assaulted other female inmates before and “nothing ever happened” to him, even after an inmate had reported him to Defendant Hill in or around 2012 as described above.

74. It is clear that by 2015, it was a common understanding among MCC’s inmates that Defendant Akparanta’s behavior was protected and condoned by his supervisors, including but not limited to the Supervisory Defendants.

75. Ms. Morales saw Defendant Akparanta serving as a security officer for Unit 2. His shift schedule would vary: sometimes he was there for 4pm-to-12am shifts, and sometimes for 12am-to-8am “graveyard” shifts. Upon information and belief, Correctional Officers are allowed to ‘bid’ for a desired position or shift on a quarterly basis, and Defendant Akparanta intentionally requested to do nighttime or graveyard shifts in female dormitory with the purpose of assaulting inmates there.

76. In or around 2016, Ms. Morales was transferred to a different BOP jail. It was when Ms. Morales returned to MCC in or around May 2017 that Defendant Akparanta began to sexually abuse her. Upon information and belief, Defendant Akparanta took an interest in Ms. Morales when he learned that she identified herself as a man.

77. Over the next year, almost every time he was assigned to do rounds in Unit 2, Defendant Akparanta used it as an opportunity to sexually abuse, harass, or demand sexual favors from Ms. Morales. He also made cruel and demeaning remarks regarding Ms. Morales’s gender identity such as “you shouldn’t be who you are” and “you shouldn’t be a girl.”

78. Defendant Akparanta’s abuse of Ms. Morales did not stop until she was transferred out of MCC in or around September 2018.

79. Ms. Herrera entered MCC in or around July 2017. Upon information and belief, she was a pre-trial detainee awaiting a trial at the time.

80. Starting in or around November 2017, Defendant Akparanta also abused Ms. Herrera, sometimes by herself and sometimes together with Ms. Morales. Defendant Akparanta continued to abuse Ms. Herrera approximately four times a week over the next year.

81. Consistent with his *modus operandi*, Defendant Akparanta took advantage of the fact that Ms. Morales and Ms. Herrera’s jail cell was in an off-camera area. Defendant Akparanta

forced Ms. Morales to perform sexual acts on Ms. Herrera and/or their third cellmate in their shared cell while he watched or masturbated. He also made sexual demands such as ordering them to watch pornography on his tablet and instructing them not to bathe until he tells them to. He frequently taunted and threatened Ms. Morales and Ms. Herrera by telling them what time of night he will be coming to their cell.

82. Defendant Akparanta also sometimes abused Ms. Morales and/or Ms. Herrera to in other blind spots such as the Bubble area, laundry room, or SHU. Ms. Morales and Ms. Herrera, as well as their third cellmate, sometimes argued about whose “turn” it was to go because none of them wanted to go.

83. Inmates are not allowed in the Bubble, and therefore, Supervisory Defendants monitoring the security cameras including Defendant West were and should have been suspicious of Defendant Akparanta’s recurrent behavior. Nevertheless, no BOP personnel came to investigate, intervene, or inquire as to what was happening.

84. Defendant Akparanta frightened and terrorized Ms. Morales and Ms. Herrera to make them submit to his perverted demands. For example, he claimed to be “cool with the Warden” and told them that no one would believe them if they tried to report him. Defendant Akparanta also threatened to put Ms. Morales and Ms. Herrera in the SHU or to “ship them out” to a different jail if they did not comply with his demands. Once when Ms. Herrera told Defendant Akparanta she was going to report him, he grabbed her hand tightly and warned her not to tell anyone, which behavior implied to Ms. Herrera that he would hurt or injure her if she tried to blow the whistle.

85. In or around April 2018, Defendant Akparanta moved Ms. Morales and Ms. Herrera from a three-person cell to a two-person cell, also in an off-camera area, with the sole purpose of

abusing them at his convenience. His ability to make such a decision further scared and traumatized Ms. Morales and Ms. Herrera.

86. Defendant Akparanta exploited his power and authority not only to abuse Ms. Morales and Ms. Herrera but also to force them to serve as a “lookout” while he sexually assaulted other inmates, further exacerbating their psychological trauma and fear of retaliation were they to report Defendant Akparanta’s abuse.

87. Ms. Morales and Ms. Herrera often discussed between themselves their feeling of utter helplessness, how there appeared to be nothing they could do, how Defendant Akparanta appeared to ‘rule everything’ around them, and how they would ‘pay the price’ if they were to report him. They internalized the hatred that they felt against Defendant Akparanta and, in turn, felt disgusted, humiliated, and guilty.

88. Upon information and belief, other MCC staff, including without limitation the named Supervisory Defendants and Officer Defendants, knew or should have known about Defendant Akparanta’s assaults on Ms. Morales and Ms. Herrera and yet did nothing to prevent him from going on to repeatedly assault Ms. Richardson starting in or around February 2018.

89. Ms. Richardson first encountered Defendant Akparanta in or around January 2017 when he was assigned to take her for medical appointments. At the time, Ms. Richardson was in a vulnerable position where she was losing her eyesight due to BOP medical officers’ negligence. Defendant Akparanta noticed this vulnerability and emotionally manipulated Ms. Richardson.

90. Defendant Akparanta used spirituality and Bible scripture to get close to Ms. Richardson. He claimed to be her Chaplain. He also brought her gifts such as Chinese food, Subway sandwiches, makeup, Benadryl, fruit, and alcohol, which were prohibited by BOP policy as contraband. He frequently gave these items to Ms. Richardson in a Bubble, where inmates

should not be allowed. Ms. Richardson came to rely upon Defendant Akparanta as a friend and someone who would be in her corner.

91. Defendant Akparanta's ulterior motive became clear when he started holding out food and medicine in exchange for sexual favors starting in or around February 2018. Like the other Plaintiffs, Ms. Richardson felt that she could not refuse and that she would suffer adverse consequences if she tried to resist.

92. Defendant Akparanta entered Ms. Richardson's cell several times a week to sexually assault her, including by touching, fingering, and digitally penetrating her vagina.

93. The assaults increased in frequency when Defendant Akparanta began working primarily graveyard shifts, from 12am to 8pm, in the summer of 2018. Defendant Akparanta was the only officer assigned to Unit 2 during these hours and was free to do what he wanted without any interruption or intervention.

94. Over time, Defendant Akparanta became increasingly physically rough with Ms. Richardson and stopped offering spiritual guidance. He also made Ms. Richardson perform additional sexual acts such as oral sex.

95. Defendant Akparanta flaunted his knowledge regarding the coverage of security cameras, telling Ms. Richardson that her jail cell was "perfect because the cameras can't see."

96. When he came to her cell, Defendant Akparanta shone his flashlight in Ms. Richardson's direction to let her know that he was coming. Lieutenants who were overseeing the cameras were able to see Defendant Akparanta's suspicious conduct, including disappearing into an off-camera area for lengthy periods of time. Defendant West was one of those lieutenants and knew or should have known about Defendant Akparanta's misconduct.



97. Defendant West had the obligation and authority to come to Unit 2 to investigate if he noticed any suspicious behavior. When abusing Ms. Richardson, Defendant Akparanta intentionally locked the doors leading to Ms. Richardson's cell so that he would know if Defendant West or other Lieutenants came to check on him. Nevertheless, neither Defendant West nor any other BOP personnel ever actually came to investigate.

98. In summary, Defendant Akparanta had unlimited, unmonitored access to inmates including Plaintiffs, which allowed him to sexually abuse each of them on numerous occasions between 2017 and 2018. There were many missed opportunities for Supervisory Defendants and Officer Defendants to notice and stop Defendant Akparanta's crime.

99. In fact, at least some of the Defendants openly acknowledged that they were aware of Defendant Akparanta's abuse but that they were not willing to take further steps in response, in direct violation of BOP protocols.

100. For example, in or around 2017, during a "town hall" meeting with Unit 2 inmates, Defendant Lewis told the assembled women, in substance or effect, "I don't want to hear nothing about my officers touching you." The gathered inmates understood Defendant Lewis to be prohibiting them from reporting Defendant Akparanta's sexual abuse despite Defendant Lewis's knowledge of same.

101. Upon information and belief, Defendant Lewis served as a Unit Counselor for Unit 2 inmates and therefore knew or should have known about Defendant Akparanta's misconduct.

102. As another example, from 2017 through 2018, Defendant Reid and Defendant Harris supervised the same inmates as Defendant Akparanta, albeit during different hours. Because these Defendants often started their shifts immediately after Defendant Akparanta's, Defendants Reid and Harris observed inmates with contraband that must have been given to them by a

Correctional Officer, heard from female inmates who expressed discomfort regarding Defendant Akparanta, and otherwise learned of Defendant Akparanta's misconduct.

103. Defendant Akparanta frequently gave contraband items to all three Plaintiffs, including but not limited to clothes, makeup, food, perfume, and female hygiene products. Some of the contraband items such as clothes and makeup were so obvious that other inmates asked Plaintiffs where the contrabands came from.

104. Nevertheless, Defendant Reid and Defendant Harris either failed to notice the contrabands or deliberately disregarded their significance even though they did notice them. In addition, upon information and belief, they did not perform periodic inspections or "shakedowns" of the jail cells as they were required to do.

105. Despite being aware of Defendant Akparanta's suspicious behavior, Defendants Reid and Harris refused to take any action other than to warn inmates to "go to your cell" and to "stay away from the Bubble" when Defendant Akparanta was there. Plaintiffs understood these instructions to mean that Defendants Reid and Harris were in fact aware of Defendant Akparanta's assaults but were allowing him to continue with impunity.

106. Defendant Akparanta himself told inmates including Ms. Herrera that Defendant Lewis and Defendant Harris were "after him," indicating that at a minimum, they were suspecting Defendant Akparanta's sexual misconduct. Nevertheless, these Defendants allowed Defendant Akparanta to continue to victimize inmates on a daily basis.

107. As yet another example, Ms. Morales heard other female inmates discuss Defendant Akparanta's behavior with Defendant Collier, the commissary officer. Defendant Collier ignored inmates' pleas for help and simply quipped that Defendant Akparanta will "eventually get caught."

108. Upon information and belief, Defendant Collier also advised inmates not to report Defendant Akparanta to any other BOP personnel, claiming that it will be more burdensome and riskier for the inmates than beneficial.

109. Individual Defendants including Defendants Hill, Lewis, Harris, and Collier violated their mandatory obligations under applicable BOP protocols as well as regulations including 28 CFR § 115.61, wherein all staff members must immediately report “*any knowledge, suspicion, or information* regarding an incident of sexual abuse or sexual harassment that occurred in a facility.”

110. In the alternative, if these Officer Defendants in fact reported their suspicion or knowledge to Supervisory Defendants including Defendants Reid or West, these Supervisory Defendants refused to take appropriate action in accordance with applicable BOP protocols and federal regulations.

111. Defendant Akparanta’s assaults only came to an end when he suddenly ‘disappeared’ from MCC in November or December of 2018. Upon information and belief, he was suspended or terminated by BOP and/or MCC around that time due to suspicion of sex abuse.

#### **AFTERMATH OF DEFENDANT AKPARANTA’S ABUSE**

112. On or around May 21, 2019, after more than a decade of abusing his authority as a Correctional Officer to abuse more than a dozen women, Defendant Akparanta was finally arrested. Geoffrey S. Berman, then-United States Attorney for the Southern District of New York, denounced Defendant Akparanta as “a predator in uniform.”

113. During the summer of 2019, the Department of Justice interviewed several of Defendant Akparanta’s victims, including Ms. Herrera and Ms. Richardson, as part of the criminal proceeding against Defendant Akparanta.

114. On March 4, 2020, Defendant Akparanta pled guilty to a count of abusive sexual contact, which carries a maximum sentence of two years in prison, and a count of deprivation of civil rights, which carries a maximum sentence of 10 years in prison. *See United States v. Akparanta*, 1:19-cr-00363-LGS (S.D.N.Y.).

115. At the plea hearing, the Assistant United States Attorney stated that a search of Defendant Akparanta's locker at MCC and his cell phone revealed incriminating evidence; and that such evidence could prove beyond a reasonable doubt that Defendant Akparanta had engaged in sexual acts with at least seven female inmates at MCC. Upon information and belief, the Plaintiffs were all included among the seven referenced by the Assistant United States Attorney.

116. To borrow from former United States Attorney Geoffrey S. Berman's description of Defendant Akparanta's plea, "[a]s he has now admitted, Colin Akparanta abused his position of authority as a correctional officer at the MCC to sexually abuse at least seven inmates whose safety and security he was duty-bound to protect."

117. Disturbingly, after Defendant Akparanta was arrested, several MCC officers acknowledged and confirmed that they had known or suspected Defendant Akparanta's misconduct all along. For example, Defendant Harris told an inmate<sup>4</sup> that "I know something was happening but could never catch him," referring to Defendant Akparanta. This statement buttresses that Defendant Harris was either not properly trained regarding mandatory reporting obligations under BOP protocols and federal regulations, or that she knew of and yet deliberately disregarded those obligations.

---

<sup>4</sup> For the sake of privacy, this inmate who is not a Plaintiff in this lawsuit is referred to pseudonymously in this Complaint.

118. Moreover, Plaintiffs' fear regarding potential retaliation was borne true after Defendant Akparanta's arrest. For example, Ms. Herrera was abused and harassed by an Officer Olivera, who upon information and belief was the Unit Counselor and/or a case manager who became assigned to Unit 2. Upon finding out that Ms. Herrera was interviewed by the Department of Justice, Ms. Olivera retaliated against Ms. Herrera by writing unjustified disciplinary tickets, taking away her belongings, and telling other inmates to avoid Ms. Herrera, openly calling her a "liar" who "took that poor officer's job." Ms. Olivera also violated Ms. Herrera's privacy by telling other inmates regarding the sexual assaults that Ms. Herrera suffered.

119. Even after Defendant Akparanta was criminally indicted, the BOP did not offer proper counseling or psychological treatment to Plaintiffs.

120. In summary, Defendants knew of and consciously disregarded the serious consequences of leaving Defendant Akparanta alone with Plaintiffs, their awareness of which is highlighted by the fact that Defendant Akparanta had previously assaulted other female inmates. By May 2017 at the latest, Supervisory Defendants and Officer Defendants knew or should have known from numerous warning signs as well as inmates' explicit complaints that Defendant Akparanta was abusing and sexually assaulting inmates housed in Unit 2. In violation of mandatory BOP policies and federal regulations, and in reckless disregard for the rights and welfare of inmates, Supervisory Defendants and Officer Defendants took no steps to keep inmates including Plaintiffs safe from Defendant Akparanta.

121. At relevant times, Supervisory Defendants and Officer Defendants were deliberately indifferent to the risk that Defendant Akparanta would sexually assault inmates including Plaintiffs Ms. Herrera, Ms. Morales, and Ms. Richardson. These Defendants were well aware of facts from which the inference could be drawn that a substantial risk of serious harm

existed to inmates under Defendant Akparanta's purported custodial care. Defendants' willful withholding of proper custodial care and supervision caused Plaintiffs to suffer cruel and unusual treatment, which resulted in catastrophic injuries and damages to Plaintiffs. Defendants thus violated Plaintiffs' rights under the Fifth and Eighth Amendments to the United States Constitution.

122. Defendants' conduct herein shocks the contemporary conscience.

123. Specifically, Supervisory Defendants and Officer Defendants knew of and deliberately disregarded a substantial and excessive risk to Plaintiffs' safety by failing to undertake reasonable measures to prevent Defendant Akparanta's repeated sexual assaults on inmates, even though they were aware of the assaults, either directly from inmate complaints or indirectly from Defendant Akparanta's recurrent suspicious behaviors with female inmates. These Defendants refused to intervene even though they knew that their intervention could prevent the unnecessary and wanton infliction of unconscionable pain and suffering on the Plaintiffs.

124. At relevant times, Defendants Harris, Collier, Hill, and Lewis were each notified by at least one inmate regarding Defendant Akparanta's misconduct and yet allowed him to continue to have unmonitored access to female inmates, in direct violation of applicable laws and BOP protocols. The Officer Defendants' failure to protect Plaintiffs against Defendant Akparanta's longstanding abuse, despite being on actual and constructive notice that he posed a substantial risk of serious harm, constitutes deliberate indifference to Plaintiffs' safety that cannot possibly be regarded as discretionary judgments.

125. In addition, at relevant times, Defendants Reid and West knew about the *modus operandi* of Defendant Akparanta and yet failed to take minimum precautions including proper and adequate placement of security cameras, in direct violation of applicable laws and BOP

protocols. The Supervisory Defendants also failed and refused to remedy the situation by properly investigating, monitoring, disciplining, and training Defendant Akparanta. The Supervisory Defendants' failure to protect Plaintiffs against Defendant Akparanta's longstanding abuse, despite being on actual and constructive notice that he posed a substantial risk of serious harm, constitutes deliberate indifference to Plaintiffs' safety that cannot possibly be regarded as discretionary judgments.

126. By allowing Defendant Akparanta to repeatedly harm MCC's inmates, Supervisory Defendants and Officer Defendants deliberately assumed and/or acquiesced in the risk of injuring additional inmates such as the Plaintiffs. Defendants' conduct demonstrated a plain disregard of an excessive risk to inmates' safety and welfare.

127. The United States and the Supervisory Defendants knew or should have known of the substantial problems and shortcomings at MCC: in the training that staff receive regarding sexual abuse; the system for reporting sexual abuse complaints; the treatment of female inmates who reported sexual abuse; the oversight of the sexual abuse prevention program; the actual violations of BOP security and operating protocols by Defendant Akparanta; and his propensity in engaging in sexually inappropriate and abusive behavior with inmates.

128. The United States and the Supervisory Defendants knew or should have known of the systemic deficiency in having Unit 2, the only female dormitory unit in MCC housing approximately 35 inmates, be guarded by a male Correctional Officer without an accompanying or supervisory officer present. By allowing Defendant Akparanta in particular to serve this role, Defendant United States and the Supervisory Defendants knew or should have known that inmates in Unit 2, including the Plaintiffs, faced a substantial risk of being sexually abused by Defendant Akparanta.

129. The United States and the Supervisory Defendants knew or should have known that security cameras in the facility were improperly placed, and that certain aspects of the layout of the facility served to facilitate sexual assaults, abuse, and harassment.

130. The United States and the Supervisory Defendants failed to implement procedures or policies to ensure that inmates not be sexually assaulted.

131. The United States and the Supervisory Defendants retained Defendant Akparanta even after they received reports of his sexual abuse of inmates as early as in 2012. Moreover, Defendant Akparanta was frequently stationed as the only security guard in Unit 2, including during nighttime and early morning hours. Defendant Akparanta was also allowed to enter inmates' cells and to take them into off-camera areas without any intervention or supervision.

132. The repeated horrors that Defendant Akparanta came to inflict on the Plaintiffs occurred only as a direct result of the negligence, gross negligence, carelessness, recklessness, and deliberate indifference of numerous BOP officials including the named Defendants.

133. Each Plaintiff continues to suffer from debilitating psychological trauma, permanent and catastrophic psychological injuries, severe emotional distress, permanent physical ailments associated with psychological injuries, pain, humiliation, loss of enjoyment of life, and loss of quality of life.

134. The foregoing are permanent injuries as a direct result of Defendants' deliberate indifference to Plaintiffs' health and safety, Defendants' disregard of the excessive risk of harm to Plaintiffs' health and safety, and/or Defendants' negligent failure to promptly protect Plaintiffs from foreseeable assaults by Defendant Akparanta. Plaintiffs also suffer from other permanent injuries and deficits that will be established through expert consultation and/or evaluation in this litigation.



135. Upon information and belief, Plaintiffs will require sustained, long-term intensive psychiatric and/or psychological treatment with appropriate qualified experts, which are not currently provided to them. Even with such professional treatment, it is expected that Plaintiffs' injuries and damages are permanent and will continue to severely impact their health, welfare, and daily functioning.

**CLAIMS FOR RELIEF**

**FIRST CAUSE OF ACTION**

**(*Bivens* Claim for Cruel and Unusual Punishment under the Eighth Amendment)  
(Against Defendants Akparanta, Reid, West, Harris, Collier, Hill, Lewis,  
and John/Jane Does 1-10, in their respective individual capacities)**

136. Plaintiffs hereby repeat, reiterate, and incorporate each of the foregoing paragraphs with the same force and effect as though fully set forth herein.

137. At all relevant times, Defendants were acting under color of law, *to wit*, under color of Constitution, statutes, ordinances, laws, rules, regulations, policies, customs, and usages of the United States.

138. The Eighth Amendment to the Constitution of the United States prohibits the infliction of "cruel and unusual punishments" on those arrested and awaiting trial or those convicted of crimes, including punishments that "involve the unnecessary and wanton infliction of pain."

139. Defendants have deprived Plaintiffs of their Constitutional rights under color of federal law and are thus liable to Plaintiffs pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and its progeny.

140. Defendant Akparanta intentionally and repeatedly sexually abused Plaintiffs, in reckless and callous disregard for Plaintiffs' clearly established rights to be free from cruel and

unusual punishment, as guaranteed under the Fifth and Eighth Amendments to the United States Constitution.

141. Defendant Akparanta's sexual abuse of Plaintiffs was severe and repetitive, and caused Plaintiffs physical pain and emotional trauma. His assaults on Plaintiffs served no legitimate penological purpose.

142. Defendant Akparanta's sexual abuse of Plaintiffs was done with the subjective intent to gratify Defendant Akparanta's sexual desire and to humiliate Plaintiffs. Defendant Akparanta was aware of the criminal and wrongful nature of his conduct and yet refused to stop or rectify his behavior. He acted with deliberate and/or reckless disregard of the risk that Plaintiffs' constitutional and civil rights would be violated.

143. In addition, Supervisory Defendants and Officer Defendants' conduct also deprived Plaintiffs of their clearly established rights under the Fifth and Eighth Amendments to the United States Constitution to be free from cruel and unusual punishment, in that they refused to acknowledge or respond to Defendant Akparanta's history of assaults and denied adequate protection to MCC's inmates, although they knew or should have known that doing so posed an excessive and irreversible risk to Plaintiffs' safety and welfare.

144. Supervisory Defendants and Officer Defendants deliberately disregarded inmates' complaints and numerous warning signs or indications of Defendant Akparanta's inappropriate behavior. They refused to take reasonable measures to provide Plaintiffs with a reasonably safe environment, and instead allowed Defendant Akparanta to roam free in Unit 2 without any restraints or supervision.

145. Supervisory Defendants and Officer Defendants knew or should have known that there was a high degree of risk that female inmates, and Plaintiffs in particular, would be sexually assaulted by Defendant Akparanta.

146. Supervisory Defendants and Officer Defendants assisted in creating and increasing the danger to Plaintiffs by enabling, permitting, condoning, tolerating, and failing to prevent Defendant Akparanta's recurrent abuse. They enabled and acquiesced in Defendant Akparanta's conduct, thereby placing Plaintiffs directly in harm's way.

147. Moreover, Supervisory Defendants did not properly penalize, discipline, or train Defendant Akparanta to ensure that he would not continue to pose danger to inmates including the Plaintiffs. Defendant Akparanta operated with impunity in an environment in which he knew he would not be adequately supervised, trained, or disciplined.

148. Supervisory Defendants and Officer Defendants thereby effectively communicated to Defendant Akparanta that he had the freedom to harm inmates without risk of punishment.

149. Each of the Defendants affirmatively used his or her authority in a way that created a danger to Plaintiffs or that rendered Plaintiffs more vulnerable to danger.

150. Each of the Defendants acted with a degree of culpability that shocks the contemporary conscience.

151. Each of the Defendants knew of and disregarded the excessive risk of harm to Plaintiffs' health and safety.

152. Each of the Defendants was aware of facts from which the inference could reasonably be drawn that Defendants had an opportunity to intervene and prevent the exacerbation of Plaintiffs' injuries and damages, yet did not do so and instead inflicted unconscionable pain and suffering.

153. Such actions of each Defendant caused to subject the Plaintiffs in the custody or under the physical control of the United States Government to cruel, inhuman, or degrading treatment or punishment prohibited by the Fifth and Eighth Amendments to the Constitution of the United States and constitute a blatant violation of Plaintiffs' civil rights secured by laws of the United States.

154. As a direct and proximate result of the foregoing, Plaintiffs Ms. Herrera, Ms. Morales, and Ms. Richardson each suffered debilitating psychological trauma, excruciating pain and suffering, emotional distress, permanent and catastrophic psychological injuries, permanent physical ailments associated with psychological injuries, humiliation, fear, anxiety, frustration, loss of enjoyment and pleasures of life, and loss of quality of life, as well as attendant losses, including but not limited to any past and future medical expenses.

155. As a direct and proximate result of the aforementioned conduct of Defendants, each Plaintiff sustained damages in an amount to be determined at trial.

156. Plaintiffs also demand punitive damages as to this Cause of Action.

157. Defendant Akparanta's horrific abuse constitutes willful or malicious violation of Plaintiffs' constitutional, statutory, and civil rights, which justifies an award of punitive damages.

158. Supervisory Defendants and Officer Defendants' deliberate indifference in their refusal to provide necessary protection to vulnerable inmates including Plaintiffs and/or their direct refusal to intervene once they observed or were notified about Defendant Akparanta's sexual abuse constitutes willful or malicious violation of Plaintiffs' constitutional, statutory, and civil rights, which justifies an award of punitive damages.

159. The egregious circumstances surrounding the treatment of Plaintiffs at relevant times, which caused them to suffer the injuries and damages as set forth above, justify an award of punitive damages.

**SECOND CAUSE OF ACTION**  
**(Bivens Claim for Violation of Due Process Rights under the Fifth Amendment)**  
**(Against Defendants Akparanta, Reid, West, Harris, Collier, Hill, Lewis,**  
**and John/Jane Does 1-10, in their respective individual capacities)**

160. Plaintiffs hereby repeat, reiterate, and incorporate each of the foregoing paragraphs with the same force and effect as though fully set forth herein.

161. At all relevant times, Defendants were acting under color of law, *to wit*, under color of Constitution, statutes, ordinances, laws, rules, regulations, policies, customs, and usages of the United States.

162. Defendants' conduct deprived Plaintiffs of their substantive due process rights protected under the Fifth Amendment to the United States Constitution, in that they failed and refused to provide Plaintiffs with proper custodial care and/or protection although they knew or should have known that doing so posed an excessive risk to Plaintiffs' safety and welfare.

163. Defendants have deprived Plaintiffs of their Constitutional rights under color of federal law and are thus liable to Plaintiffs pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and its progeny.

164. Defendant Akparanta intentionally and repeatedly sexually abused Plaintiffs, in reckless and callous disregard for Plaintiffs' clearly established rights to be free from cruel and unusual punishment, as guaranteed under the Fifth and Eighth Amendments to the United States Constitution.

165. Defendant Akparanta's sexual abuse of Plaintiffs was severe and repetitive, and caused Plaintiffs physical pain and emotional trauma. His assaults on Plaintiffs served no legitimate penological purpose.

166. Defendant Akparanta's sexual abuse of Plaintiffs was done with the subjective intent to gratify Defendant Akparanta's sexual desire and to humiliate Plaintiffs. Defendant Akparanta was aware of the criminal and wrongful nature of his conduct and yet refused to stop or rectify his behavior. He acted with deliberate and/or reckless disregard of the risk that Plaintiffs' constitutional and civil rights would be violated.

167. In addition, Supervisory Defendants and Officer Defendants' conduct also deprived Plaintiffs of their clearly established rights under the Fifth and Eighth Amendments to the United States Constitution to be free from cruel and unusual punishment, in that they refused to acknowledge or respond to Defendant Akparanta's history of assaults and denied adequate protection to MCC's inmates, although they knew or should have known that doing so posed an excessive and irreversible risk to Plaintiffs' safety and welfare.

168. Supervisory Defendants and Officer Defendants deliberately disregarded inmates' complaints and numerous warning signs or indications of Defendant Akparanta's inappropriate behavior. They refused to take reasonable measures to provide Plaintiffs with a reasonably safe environment, and instead allowed Defendant Akparanta to roam free in Unit 2 without any restraints or supervision.

169. Supervisory Defendants and Officer Defendants knew or should have known that there was a high degree of risk that female inmates, and Plaintiffs in particular, would be sexually assaulted by Defendant Akparanta.

170. Supervisory Defendants and Officer Defendants assisted in creating and increasing the danger to Plaintiffs by enabling, permitting, condoning, tolerating, and failing to prevent Defendant Akparanta's recurrent abuse. They enabled and acquiesced in Defendant Akparanta's conduct, thereby placing Plaintiffs directly in harm's way.

171. Moreover, Supervisory Defendants did not properly penalize, discipline, supervise, or train Defendant Akparanta to ensure that he would not continue to pose danger to inmates including the Plaintiffs. Defendant Akparanta operated with impunity in an environment in which he knew he would not be adequately supervised, trained, or disciplined.

172. Supervisory Defendants and Officer Defendants thereby effectively communicated to Defendant Akparanta that he had the freedom to harm inmates without risk of punishment.

173. Each of the Defendants affirmatively used his or her authority in a way that created a danger to Plaintiffs or that rendered Plaintiffs more vulnerable to danger.

174. Each of the Defendants acted with a degree of culpability that shocks the contemporary conscience.

175. Each of the Defendants knew of and disregarded the excessive risk of harm to Plaintiffs' health and safety.

176. Each of the Defendants was aware of facts from which the inference could reasonably be drawn that Defendants had an opportunity to intervene and prevent the exacerbation of Plaintiffs' injuries and damages, yet did not do so and instead inflicted unconscionable pain and suffering.

177. Such actions of each Defendant caused to subject the Plaintiffs in the custody or under the physical control of the United States Government to cruel, inhuman, or degrading treatment or punishment prohibited by the Fifth and Eighth Amendments to the Constitution of the

United States and constitute a blatant violation of Plaintiffs' civil rights secured by laws of the United States.

178. As a direct and proximate result of the foregoing, Plaintiffs Ms. Herrera, Ms. Morales, and Ms. Richardson each suffered debilitating psychological trauma, excruciating pain and suffering, emotional distress, permanent and catastrophic psychological injuries, permanent physical ailments associated with psychological injuries, humiliation, fear, anxiety, frustration, loss of enjoyment and pleasures of life, and loss of quality of life, as well as attendant losses, including but not limited to any past and future medical expenses.

179. As a direct and proximate result of the aforementioned conduct of Defendants, each Plaintiff sustained damages in an amount to be determined at trial.

180. Plaintiffs also demand punitive damages as to this Cause of Action.

181. Defendant Akparanta's horrific abuse constitutes willful or malicious violation of Plaintiffs' constitutional, statutory, and civil rights, which justifies an award of punitive damages.

182. Supervisory Defendants and Officer Defendants' deliberate indifference in their refusal to provide necessary protection to vulnerable inmates including Plaintiffs and/or their direct refusal to intervene once they observed or were notified about Defendant Akparanta's sexual abuse constitutes willful or malicious violation of Plaintiffs' constitutional, statutory, and civil rights, which justifies an award of punitive damages.

183. The egregious circumstances surrounding the treatment of Plaintiffs at relevant times, which caused them to suffer the injuries and damages as set forth above, justify an award of punitive damages.



**THIRD CAUSE OF ACTION**  
**(Negligence under Federal Tort Claims Act)**  
**(Against Defendant United States)**

184. Plaintiffs hereby repeat, reiterate, and incorporate each of the foregoing paragraphs with the same force and effect as though fully set forth herein.

185. At all relevant times, Defendant United States, individually or through its agents, servants, and/or employees including individual Defendants undertook and endeavored to, and did provide custodial care to inmates at MCC including but not limited to the Plaintiffs.

186. At all relevant times, the individual Defendants were each a correctional and/or administrative personnel duly employed to provide custodial care and supervision to inmates incarcerated at MCC. They were hired by Defendant United States through the BOP in such capacities.

187. The individual Defendants were federal employees and were acting within the scope of their employment with the United States when exercising custodial care, control, and supervision to Plaintiffs Ms. Herrera, Ms. Morales, and Ms. Richardson.

188. At all relevant times, the individual Defendants held each of themselves out to persons incarcerated at MCC, and in particular Plaintiffs, as correctional and/or administrative personnel with the knowledge, capacity, and ability to provide due care in accordance with standards of reasonable care common and acceptable in the community.

189. Defendant United States and its employees at MCC owed a duty of care to Plaintiffs while they were housed at MCC.

190. It was the duty of the Defendants and their agents, servants, and/or employees to ensure that Correctional Officers with history of assaults against inmates are not allowed to harm or injure other inmates.

191. It was the duty of the Defendants and their agents, servants, and/or employees to maintain, operate, and control MCC as a safe and secure space for persons in it, including but not limited to Plaintiffs.

192. It was the duty of the Defendants and their agents, servants, and/or employees to provide adequate custody, control, supervision, and monitoring to inmates at MCC, including but not limited to Plaintiffs.

193. It was the duty of the Defendants and their agents, servants, and/or employees to adequately protect inmates including Plaintiffs from foreseeable harm inflicted by BOP personnel known to be dangerous, including Defendant Akparanta.

194. Defendant United States of America, individually and/or through its employees, agents and/or servants including individual Defendants, acting within the scope of their office or employment, breached each of the foregoing duties that they owed to Plaintiffs by failing to take adequate steps to protect them from Defendant Akparanta within a reasonable time despite the obvious risks presented by Defendant Akparanta, a known predator in uniform.

195. That breach directly exposed Plaintiffs to an unreasonable risk of bodily injury, caused them to fear for their life and safety, and resulted in their being sexually abused by Defendant Akparanta.

196. Employees of the United States knew or should have known that Defendant Akparanta was likely to engage in unlawful conduct that injured Plaintiffs and other inmates of MCC.

197. Employees of the United States knew or should have known Defendant Akparanta had a propensity to sexually abuse inmates because of the multiple reports made against Defendant Akparanta, Defendant Akparanta's suspicious practices that violated BOP and/or MCC policies

including his pattern of entering off-camera spaces alone with inmates and giving contrabands to inmates, and the history of inmate sexual abuse by MCC officers with similar *modus operandi* as that of Defendant Akparanta.

198. Employees of the United States knew or should have known that Defendant Akparanta was targeting Plaintiffs, and observed or should have observed that Defendant Akparanta was approaching and interacting with Plaintiffs at specific/unusual times and in an unusual manner, such that they knew or should have known to report the behavior, investigate further and/or otherwise intervene to prevent any further sexual abuse.

199. Despite actual and constructive notice of Defendant Akparanta's abuse, employees of the United States acted negligently in failing to take reasonable steps to prevent inmates at MCC including Plaintiffs from being preyed upon.

200. Despite actual and constructive notice of Defendant Akparanta's abuse, employees of the United States acted negligently in hiring, training, retaining, supervising, and/or disciplining Defendant Akparanta.

201. Despite actual and constructive notice of Defendant Akparanta's abuse, employees of the United States negligently failed to supervise, investigate, or discipline Defendant Akparanta.

202. Defendants did not possess the necessary skill to maintain safe and secure environment and protect Plaintiffs from foreseeable harm.

203. Defendants neglected to apply the skill they did have.

204. Defendants did not use reasonable care in applying the skill they had.

205. Defendants mistreated Plaintiffs and/or were negligent in other ways that are documented in the relevant records and/or in ways of which Plaintiffs are not yet aware.

206. At all relevant times, each of the Defendants stood in such a relationship with the other Defendants as to make each of the Defendants liable for the acts and omissions of all other Defendants with regard to their treatment of Plaintiffs.

207. Plaintiffs' injuries herein were proximately caused by the carelessness, recklessness, gross negligence, and negligence of Defendant United States and its employees, agents, and servants, who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein.

208. Plaintiffs' injuries were inflicted solely through the carelessness, recklessness, gross negligence, negligence, and deliberate indifference of Defendant United States and its employees, agents, and servants, and through no fault or want of care of negligence or contributory negligence on the part of Plaintiffs.

209. The failure of Supervisory Defendants and Officer Defendants to prevent, investigate, or acknowledge Defendant Akparanta's sexual abuse served no legitimate policy purpose. On the contrary, MCC staff are required by mandatory and binding BOP policies to immediately intervene and investigate when they learned of his suspected abuse against inmates. Their failure to do so was patently outside of their discretionary function or duty.

210. Defendants' conduct was grossly negligent in that Defendants were so careless as to show complete disregard for the rights and safety of Plaintiffs.

211. Defendants were aware of facts that gave rise to an unreasonable risk that Plaintiffs would be irreparably injured.

212. It was foreseeable to the Defendants, based on facts known to them, that Plaintiffs were at risk of imminent serious harm.

213. Yet, Defendants failed and/or refused to prevent the abuse of Plaintiffs or to prevent its psychological consequences from worsening to the extent that they did.

214. The conduct of Defendants, including Supervisory Defendants and Officer Defendants, constitutes the tort of negligence under the laws of the State of New York.

215. Under the Federal Tort Claims Act, Defendant United States of America is liable for the individual Defendants' acts and omissions that occurred within the scope of their employment as here.

216. As a direct and proximate result of Defendants' negligence, Plaintiffs Ms. Herrera, Ms. Morales, and Ms. Richardson each suffered debilitating psychological trauma, excruciating pain and suffering, emotional distress, permanent and catastrophic psychological injuries, permanent physical ailments associated with psychological injuries, humiliation, fear, anxiety, frustration, loss of enjoyment and pleasures of life, and loss of quality of life, as well as attendant losses, including but not limited to any past and future medical expenses.

217. As a direct and proximate result of Defendants' negligence, each Plaintiff sustained damages in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION  
(Negligent Infliction of Emotional Distress under Federal Tort Claims Act)  
(Against Defendant United States)**

218. Plaintiffs hereby repeat, reiterate, and incorporate each of the foregoing paragraphs with the same force and effect as though fully set forth herein.

219. At all relevant times, Defendant United States, individually or through its agents, servants, and/or employees including individual Defendants undertook and endeavored to, and did provide custodial care to inmates at MCC including but not limited to the Plaintiffs.

220. At all relevant times, the individual Defendants were each a correctional and/or administrative personnel duly employed to provide custodial care and supervision to inmates incarcerated at MCC. They were hired by Defendant United States through the BOP in such capacities.

221. The individual Defendants were federal employees and were acting within the scope of their employment with the United States when exercising custodial care, control, and supervision to Plaintiffs Ms. Herrera, Ms. Morales, and Ms. Richardson.

222. At all relevant times, the individual Defendants held each of themselves out to persons incarcerated at MCC, and in particular Plaintiffs, as correctional and/or administrative personnel with the knowledge, capacity, and ability to provide due care in accordance with standards of reasonable care common and acceptable in the community.

223. Defendant United States and its employees at MCC owed a duty of care to Plaintiffs while they were housed at MCC.

224. It was the duty of the Defendants and their agents, servants, and/or employees to ensure that Correctional Officers with history of assaults against inmates are not allowed to harm or injure other inmates.

225. It was the duty of the Defendants and their agents, servants, and/or employees to maintain, operate, and control MCC as a safe and secure space for persons in it, including but not limited to Plaintiffs.

226. It was the duty of the Defendants and their agents, servants, and/or employees to provide adequate custody, control, supervision, and monitoring to inmates at MCC, including but not limited to Plaintiffs.

227. It was the duty of the Defendants and their agents, servants, and/or employees to adequately protect inmates including Plaintiffs from foreseeable harm inflicted by BOP personnel known to be dangerous, including Defendant Akparanta.

228. Defendant United States of America, individually and/or through its employees, agents and/or servants including individual Defendants, acting within the scope of their office or employment, breached each of the foregoing duties that they owed to Plaintiffs by failing to take adequate steps to protect them from Defendant Akparanta within a reasonable time despite the obvious risks presented by Defendant Akparanta, a known predator in uniform.

229. That breach directly exposed Plaintiffs to an unreasonable risk of bodily injury, caused them to fear for their life and safety, and resulted in their being sexually abused by Defendant Akparanta.

230. Employees of the United States knew or should have known that Defendant Akparanta was likely to engage in unlawful conduct that injured Plaintiffs and other inmates of MCC.

231. Employees of the United States knew or should have known Defendant Akparanta had a propensity to sexually abuse inmates because of the multiple reports made against Defendant Akparanta, Defendant Akparanta's suspicious practices that violated BOP and/or MCC policies including his pattern of entering off-camera spaces alone with inmates and giving contrabands to inmates, and the history of inmate sexual abuse by MCC officers with similar *modus operandi* as that of Defendant Akparanta.

232. Employees of the United States knew or should have known that Defendant Akparanta was targeting Plaintiffs, and observed or should have observed that Defendant Akparanta was approaching and interacting with Plaintiffs at specific/unusual times and in an

unusual manner, such that they knew or should have known to report the behavior, investigate further and/or otherwise intervene to prevent any further sexual abuse.

233. Despite actual and constructive notice of Defendant Akparanta's abuse, employees of the United States acted negligently in failing to take reasonable steps to prevent inmates at MCC including Plaintiffs from being preyed upon.

234. Despite actual and constructive notice of Defendant Akparanta's abuse, employees of the United States acted negligently in hiring, training, retaining, supervising, and/or disciplining Defendant Akparanta.

235. Despite actual and constructive notice of Defendant Akparanta's abuse, employees of the United States negligently failed to supervise, investigate, or discipline Defendant Akparanta.

236. Defendants did not possess the necessary skill to maintain safe and secure environment and protect Plaintiffs from foreseeable harm.

237. Defendants neglected to apply the skill they did have.

238. Defendants did not use reasonable care in applying the skill they had.

239. Defendants mistreated Plaintiffs and/or were negligent in other ways that are documented in the relevant records and/or in ways of which Plaintiffs are not yet aware.

240. At all relevant times, each of the Defendants stood in such a relationship with the other Defendants as to make each of the Defendants liable for the acts and omissions of all other Defendants with regard to their treatment of Plaintiffs.

241. Plaintiffs' injuries herein were proximately caused by the carelessness, recklessness, gross negligence, and negligence of Defendant United States and its employees, agents, and servants, who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein.



242. Plaintiffs' injuries were inflicted solely through the carelessness, recklessness, gross negligence, negligence, and deliberate indifference of Defendant United States and its employees, agents, and servants, and through no fault or want of care of negligence or contributory negligence on the part of Plaintiffs.

243. The failure of Supervisory Defendants and Officer Defendants to prevent, investigate, or acknowledge Defendant Akparanta's sexual abuse served no legitimate policy purpose. On the contrary, MCC staff are required by mandatory and binding BOP policies to immediately intervene and investigate when they learned of his suspected abuse against inmates. Their failure to do so was patently outside of their discretionary function or duty.

244. Defendants' conduct was grossly negligent in that Defendants were so careless as to show complete disregard for the rights and safety of Plaintiffs.

245. Defendants were aware of facts that gave rise to an unreasonable risk that Plaintiffs would be irreparably injured.

246. It was foreseeable to the Defendants, based on facts known to them, that Plaintiffs were at risk of imminent serious harm.

247. Yet, Defendants failed and/or refused to prevent the abuse of Plaintiffs or to prevent its psychological consequences from worsening to the extent that they did.

248. These acts and/or omissions constituted extreme and outrageous conduct, and caused or disregarded a substantial probability of causing severe emotional distress to Plaintiffs. Plaintiffs' mental injury and emotional harm were a direct result of Defendants' breach of their duty of care owed to Plaintiffs.

249. The conduct of Defendants, including Supervisory Defendants and Officer Defendants, constitutes the tort of negligent infliction of emotional distress under the laws of the State of New York.

250. Under the Federal Tort Claims Act, Defendant United States of America is liable for the individual Defendants' acts and omissions that occurred within the scope of their employment as here.

251. As a direct and proximate result of Defendants' negligence, Plaintiffs Ms. Herrera, Ms. Morales, and Ms. Richardson each suffered debilitating psychological trauma, excruciating pain and suffering, emotional distress, permanent and catastrophic psychological injuries, permanent physical ailments associated with psychological injuries, humiliation, fear, anxiety, frustration, loss of enjoyment and pleasures of life, and loss of quality of life, as well as attendant losses, including but not limited to any past and future medical expenses.

252. As a direct and proximate result of Defendants' negligence, each Plaintiff sustained damages in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION  
(Negligent Hiring, Retention, Training, and Supervision under Federal Tort Claims Act)  
(Against Defendant United States)**

253. Plaintiffs hereby repeat, reiterate, and incorporate each of the foregoing paragraphs with the same force and effect as though fully set forth herein.

254. At all relevant times, it was the duty of the United States to hire, retain, train, and supervise its agents, servants, and/or employees to operate, maintain, and manage MCC and its various facilities including dormitory units in a reasonable manner, and to protect the health and safety of the inmates within.

255. Defendant United States was negligent in hiring, retaining, training, and

supervising correctional personnel such as the individual Defendants who were deliberately indifferent, careless, reckless, unskillful, grossly negligent, and negligent in rendering custodial care to inmates including Plaintiffs.

256. Upon information and belief, Defendant United States failed to use reasonable care in the hiring, retention, training, and supervision of Defendant Akparanta.

257. Upon information and belief, Defendant United States failed to use reasonable care in the hiring, retention, training, and supervision of Supervisory Defendants and Officer Defendants.

258. Upon information and belief, Defendant United States failed to meet its duty of care owed to Plaintiffs in its screening, hiring, training, supervising, evaluating, and retaining of individual Defendants.

259. Defendant United States' conduct constitutes the tort of negligent hiring, retention, training, and supervision under the laws of the State of New York.

260. Under the Federal Tort Claims Act, Defendant United States of America is liable for this negligence.

261. As a direct and proximate result of the foregoing, Plaintiffs Ms. Herrera, Ms. Morales, and Ms. Richardson each suffered debilitating psychological trauma, excruciating pain and suffering, emotional distress, permanent and catastrophic psychological injuries, permanent physical ailments associated with psychological injuries, humiliation, fear, anxiety, frustration, loss of enjoyment and pleasures of life, and loss of quality of life, as well as attendant losses, including but not limited to any past and future medical expenses.

262. As a direct and proximate result of the foregoing, each Plaintiff sustained damages in an amount to be determined at trial.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs Karlie Herrera, Franchesca Morales, and Carolyn Richardson respectfully request that judgment be entered against Defendants as follows:

- a. An award of compensatory damages for all psychological and personal injuries, past and future pain and suffering, emotional distress, humiliation, physical injuries, loss of enjoyment of life, loss of quality of life, economic damages, both general and special, and other harm, in an amount to be determined at trial;
- b. An award of punitive damages against each individual Defendant as to the First and Second Causes of Action in an amount to be determined at trial;
- c. An award of pre- and post-judgment interest to the fullest extent permitted by law, for any and all monetary and/or non-monetary losses;
- d. An award of attorneys' fees and costs to the fullest extent permitted by law; together with
- e. Such other and further relief at law or in equity as this Court may deem just and proper.

Dated: New York, New York  
December 4, 2020

By: 

Jaehyun Oh  
The Jacob D. Fuchsberg Law Firm, LLP  
3 Park Avenue, Suite 3700  
New York, New York 10016  
(212) 869-3500, ext. 245  
j.oh@fuchsberg.com

*Attorneys for Plaintiffs*

**OPENING STATEMENT OF BRIANE MOORE**

BEFORE THE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE (HSGAC)  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS (PSI)

HEARING ON SEXUAL ABUSE IN FEDERAL PRISONS  
December 13, 2022

**I. Introduction**

I was glad to hear that this Committee is investigating sexual abuse in the Bureau of Prisons. I am nervous to be here today. I am not an activist or someone who would seek out an opportunity to use my voice like I am today. This is an incredibly difficult and personal topic for me. Speaking about sexual abuse is hard in most situations and even harder in such a public setting. But despite my nerves I am here today because I believe this is an opportunity for me to use my voice to help others. I am out of prison now, but I know other people are still there. I am speaking today in the hopes that telling you my experience will help protect the women inside now, who are vulnerable. If speaking to you today can spare other women from abuse, I am willing to do that. That is why I am here today.

I grew up in a loving home with a grandmother who supported me and loved me. When I was 17, I had my daughter. I made the wrong choice to sell drugs. I wanted to make money to support myself and my daughter. For that, I went to prison. I accept that I made the wrong choices. I was sentenced to 10 years in federal prison.

**II. My Experience as a Woman in Prison with No Control or Power**

In prison, I was far from my family. This was hard. Family is the loving center of my life. I accepted that I had to improve myself, do my time, and make it back home to my family. I saw that prison broke so many other people, and I was determined not to let it break me. Most people do not fully understand what it is like to be in prison. Life in prison means living under total control. The prison guards have complete power. They tell you when you can sleep, when you can eat, and where you can go. I did not have control over which prison I was sent to and ended up being placed so far from my family. After my sentencing, I was initially placed at FCI Aliceville in Alabama. About two years later—despite having made a request to be transferred closer to home—I was instead transferred to FCP Alderson in West Virginia. Before FCI Aliceville and FCP Alderson were around 12 hours away from my family which made it very difficult for them to visit. Not being able to see my daughter and grandmother was devastating. But I doubled down on my determination, I followed all the rules and had a record of good behavior. I took all the programming opportunities that were available to me to better myself and in the hopes that eventually my request to be transferred to a prison closer to my family would be granted. Being granted a transfer to a prison closer to home does not always happen and the BOP officials have discretion to grant or deny a transfer request.

### **III. My Experience in a Culture of Systemic Sexual Abuse**

At FCP Alderson, a captain began targeting me. The captain took me to places within Alderson that were private—where no one could catch him and where there were no cameras and there, he would abuse me. He was a captain with total control over me. Once, a building officer ordered me to go to the captain's office. There was a secretary's office within the captain's office. When I arrived, there was no secretary. The captain closed the door and raped me. On another occasion, the captain himself ordered that I come to his office. I had no choice but to obey. We always had to follow orders in prison. Most importantly, I knew the captain could interfere with my transfer and prevent me from being closer to my family—closer to my daughter. The captain also knew that I was aware that I was powerless and was aware that he could interfere with my transfer to be closer to my family and my daughter. He then explicitly reminded me of his control. In the office, he told me that he knew I wanted a transfer to another prison. He said, "The paperwork goes through me." He threatened me that if I resisted, he would interfere with my transfer. Other times, he sexually assaulted me in isolated areas of the prison.

It is hard to fully explain how this felt. The captain who already had complete control over my day-to-day life was now enforcing that control over my body and using my desire to see my child to threaten me to stay silent. The captain made it clear that if I wanted a transfer, I had to accept the abuse. I was faced with the choice of accepting the abuse and having an opportunity to be closer to my family or speaking up and facing retaliation that would likely put me further away from my family. I felt powerless. The abuse continued. My transfer request did not go through. I only escaped the abuse when FCI Pekin—a prison for women close to home in Illinois—reopened. When they asked for volunteers, I jumped on the opportunity to save myself. I left FCP Alderson in December 2017. But before I left, the captain raped me a final time. When I was in FCP Alderson, the captain raped me a total of 5 times.

Before he started sexually abusing me, he raped other women in prison. And during the time that he was abusing me, he was also abusing several other women. We were not protected. I had no power to stop the abuse. The captain had total power over me, and he knew that. He knew I had no control and could not say no. The captain made sure I knew that and made sure I knew he could make things worse for me. Even before his threat, I knew that if I reported him, I could be placed in solitary or shipped out to another prison even further away from my family. The prison system calls this "protection" because it separates us from the abuser. But it is punishment. It is retaliation. I saw it happen to other women in prison, and I knew that I would be punished unless and I endured sexual abuse. I had to **not** help myself to help myself. After an investigation began, the captain resigned and was prosecuted. He pled guilty.

### **IV. The Effects of Sexual Abuse and Fear of Retaliation Changed My Life**

When the captain was sentenced, I wrote a victim-impact statement, which is attached as **Exhibit 1**. After the abuse, I could not sleep a full night for months. I had reoccurring nightmares

that played over and over like a broken record in my head. I woke up in cold sweats. I would wake up crying after nightmares that the captain was trying to kill me for reporting the abuse. I isolated myself from others. I had to seek mental health treatment because I developed PTSD. I let the judge know that I was still suffering. The captain abused his authority and power. Today, I want you to know that I am still suffering. I left Alderson in December 2017. I am here today, 5 years later, and I want you to know that I am still suffering. This changed the course of my life forever. I am a different person physically and emotionally because of this. I am still in mental health treatment. I lost trust in the system. I have learned more and more about how guards in federal prison sexually abuse women. I am not alone. This is hard, but I am speaking today in hopes that you will help the women still in prison today and in the future. The captain was abusive, but he was also a product of the federal prison system that allowed him to abuse his power and authority. These awful things happen in a system that enables and protects abusers and retaliates against victims, who are powerless against the abuse.

#### **V. Conclusion**

When I received a 10-year prison sentence for a drug offense as a young mother, I knew prison would be tough. I accepted that I would be punished for my crime. It was not easy doing time. I was sentenced and put in prison for the choices I made. I was not sentenced to being raped and abused while in prison. This should not have happened to me. Speaking about this is not easy, but I am not powerless anymore. The day I started to heal was the day that I could talk about what happened to me without being afraid.

# **EXHIBIT 1**



## VICTIM IMPACT STATEMENT

Victim: Victim-Witness Coordinator FCI Pekin  
Bureau of Prisons  
USAO Number: 2018R00023  
Court Docket Number: 18-CR-00069

Insert the impact of the crime here (or, if a separate victim impact form is attached, please use that form to describe the impact of the crime):

Mr. Grimm, I pray that you get the help you need. I have been through a lot in my life and this ordeal has by far been the worse situation. I haven't slept a full night in months. The recurring dreams keep playing over and over like a broken record in my head that I wake up in cold sweats. I even sometimes wake up erratically crying from dreams where the image is of you trying to kill me for talking on you. When I hear the clanging sound of keys, my heart beat races and I immediately become very anxious and nervous. Because of all that has occurred from this situation, I do not respect men in authoritative roles anymore. The emotional distress has caused me to believe that those type of men abuse their power therefore resulting in a lack of trust. I have isolated myself from others and I often times feel as if the walls of the world are closing in on me. All of this has led me to disclose to my family what has happened to me which was very uncomfortable for me to do. I also disclosed to my family that I am seeing a mental health therapist in order to help me with coping mechanisms and solutions for PTSD (post-traumatic stress disorder). I was unable to cope with what you did to me and I'm still suffering from it today. I've watched television shows and saw things, like my situation, happen in the movies. I never in a million years would have thought something like this would have happen to me. You abused your authority and power,

file:///C:/Users/bop13946/AppData/Local/Temp/XPgrpwise/5B34FC06PEK\_DOM1PEK\_... 6/29/2018

Page 5 of 5  
you abused your position of trust, and you manipulated me into getting and satisfying your own personal desires. I thought you were someone with respect and integrity who gave wise counsel and advice while being genuinely concerned for me as a person. I was definitely wrong. All of your persuasion and manipulation and control were for your personal gain at the expense of my well being suffering. What has happened to me has changed the course of my life forever. I am a different person both mentally and emotionally which in turn has affected me physically resulting in ailments occurring in my body that I've never experienced before. I want to scream and cuss at you. I want to tell you how much I hate you. At the end of the day, what good would that do because I feel like you could care less. I hope you know deep down inside of me that I'm forever changed, and I have a long road of recovery to get back to a place that I love myself. What you did to me was disgusting, it wasn't right and has hurt me to my core. I hope you turn from your wicked ways. I wasn't strong enough to tell someone sooner about all that was happening and the pain and anguish you caused me. I have forgiven myself. I also must forgive you because that's what God says I should do. I pray that in time I can forgive you. I am an over comer and I am determined to over come what has happened to me, one day at a time. I believe whatever sentence you receive, you deserve it. The day I started to heal was the day I could talk about what happen without being afraid

**Senate Homeland Security & Governmental Affairs Committee**

**Permanent Subcommittee on Investigations**

**December 13, 2022 Hearing**

***Sexual Abuse of Female Prisoners***

***in the Custody of the Federal Bureau of Prisons***

**Written Testimony of Linda De La Rosa**

Chairman Ossoff, Ranking Member Johnson, and members of the Subcommittee.

I am a victim and survivor of sexual abuse by a federal correctional officer. That predator is now serving a 135 month sentence in a federal prison. In 2019, he sexually attacked me and three other women inmates at the Federal Medical Center (FMC) in Lexington, Kentucky. It took three years to arrest, prosecute, convict and sentence him.

On the one hand, I am grateful for the efforts of those in the Department of Justice who helped me and who successfully put my attacker away. In particular, FBI Victim Specialist Cassie Young and Assistant U.S. Attorney Tashena Fannin.

However, the Bureau of Prisons (BOP) entirely failed. My attacker stayed at his job for *years* – even though BOP management and investigators knew he was a sexual predator. My life at FMC-Lexington was a living hell.

I believe my attacker had been investigated on numerous occasions for sex crimes against female inmates. FMC-Lexington management and investigators were well aware that female inmate-victims were reluctant to come forward because they rightly feared retaliation, which

took many forms, including: transfer to a different facility, disciplinary segregation, loss of early release rights, detrimental write-ups, loss of work privileges, and interference with vocational skills programs. I witnessed many examples of punishments handed out to other inmates that challenged or reported abuse by prison officials. The ongoing threat of retaliation stopped me and other inmates from filing complaints, let alone timely ones.

Incredibly, FMC-Lexington management granted my attacker unrestricted and unsupervised contact with me on work details -- which gave him one on one access to abuse or threaten to abuse me. Because of his position, my attacker could and did access my personal history files, recordings of my telephone calls and personal emails -- giving him additional leverage to extract sexual favors and threaten my safety.

After my attacker was convicted, I filed a federal lawsuit seeking damages. My complaint, a public record and pending, alleges that:

- At FMC-Lexington, I was transferred to a work position for vehicle maintenance in the garage area. My attacker was a direct supervisor and was granted one-on-one access in designated areas that were not equipped with security cameras.
- My attacker began an immediate campaign of harassment by making sexually suggestive comments and statements. He also began requesting that I accompany him for "special" projects that required that I get into a vehicle with my attacker. Once inside the vehicle, my attacker would routinely pull his penis out of his pants, display his penis and demand that I engage in sexual acts.
- My attacker would also routinely grab me on the outside of my clothes, smack and hit my butt, grope my breasts and rub his pelvis area against my legs and butt. On one occasion while I was replacing a toilet in the administrative bathroom, my attacker walked up behind me, pulled out his penis and placed his penis out on my shoulder demanding I "suck his dick."
- Another time, I was working under a truck in the garage area replacing an exhaust pipe on one of the vans. I was holding the exhaust pipe with two hands laying on her back trying to reassemble the parts when my attacker appeared beside me under the van. Instead of helping with the exhaust pipe, my attacker forced his hands down my pants inserting his fingers into my vagina.

- As a result of the sexual assault and harassment, I have suffered and am suffering from extensive psychological trauma, depression, pain and suffering, physical trauma. I am seeking compensation from the United States and attacker for this abuse in an amount to be determined at trial.

The system failed at every level. Management from the warden on down – repeatedly – failed to monitor, supervise, discipline, and remove male correctional officers – predators – sexually abusing female inmates. Special Investigative Services (SIS) officers supposedly charged with investigating staff misconduct failed – repeatedly – to investigate known and suspected predators.

It is not enough just to call this horrible. I believe the problem is “the old boys club.” Prison staff – managers, investigators, correctional officers – work together for years, if not decades. No one wants to rock the boat, let alone listen to female inmates. There is no effective, independent oversight.

The mission of the BOP is “to protect society by confining offenders in the controlled environments of prisons ... that are *safe, humane* ... and *appropriately secure*.” (Emphasis added). The agency failed me and my fellow inmates. We were knowingly confined in a facility that was *unsafe, inhumane* and *insecure*. And nothing was done. That was wrong. It never should have happened.

\* \* \*

Senators, I make one request: stop this from happening, from repeating. Now. Nothing you are hearing today is new. You have the power and authority to force the system to change. Use it.

Thank you.

**Testimony for the United States Senate Permanent Subcommittee on  
Investigations**

**United States Senate Committee on Homeland Security and Governmental  
Affairs**

Tuesday, December 13, 2022

Professor Brenda V. Smith, American University, Washington College of Law

Director, Project on Addressing Prison Rape  
Director, Community Economic and Equity Development Law Clinic

Good morning, my name is Brenda V. Smith. I am a law professor at the American University, Washington College of Law, where I direct the Community Economic and Equity Development Law Clinic. I am also Director of the Project on Addressing Prison Rape. Women in every penal system in the United States, including the federal system, which we will discuss today, have experienced inequality of services and opportunities and physical and sexual abuse.<sup>1</sup> Indeed, inequality of opportunity and services is a crucial ingredient in abuse in any congregate setting, particularly institutional settings like juvenile facilities, prisons, jails, and immigration detention facilities.

I founded the Project over 30 years ago after representing a class of over 500 women in litigation on behalf of a class of District of Columbia women who experienced systematic physical, sexual, medical and psychological abuse in District of Columbia correctional facilities. I first became aware of the sexual abuse of women in custody as a Staff Attorney at the National Women's Law Center. I founded the Women's Education and Empowerment Series while employed at the National Women's Law Center.<sup>2</sup> The series provided women imprisoned at the Lorton Minimum Security Prison with education, resources, and assistance in addressing many of the issues that brought them into the correctional system – intimate partner abuse, child neglect, drug addiction, education, and employment training. In the course of directing that program, the Center learned that women prisoners were being denied access to educational and work opportunities comparable to those offered to male prisoners. This denial of access to education, work, and other opportunities, in addition to violating the U.S. Constitution's guarantee of equal protection created conditions that made the women particularly vulnerable to sexual predation.<sup>3</sup>

---

<sup>1</sup> See *Women Prisoners of D.C. Dep't of Corrs.*, Case No. 1:93-cv-02052 (D.C. 2004).

<sup>2</sup> See NAT'L WOMEN'S LAW CNT, *A VISION BEYOND SURVIVAL: A RESOURCE GUIDE FOR INCARCERATED WOMEN* (1995).

<sup>3</sup> See *Women Prisoners of D.C. Dep't of Corrs.*, Case No. 1:93-cv-02052 (D.C. 2004).

District of Columbia women prisoners were forced to trade sex in exchange for food, work opportunities, visitation, preparation of reports and recommendations to the court detailing their progress. Women also challenged their lack of privacy, including cross-gender searches and viewing by male officers often while they were unclothed. Women complained of being viewed while they were disrobing or showering by staff of the opposite gender. They also complained of intrusive pat searches, being importuned for sex, and having to trade sex for food, work assignments, visits with family, and completion of paperwork for their probation, parole or release from custody. Additionally, women complained of poor medical and mental health care that resulted in women laboring and giving birth in shackles. One of my clients delivered her baby in her cell assisted by another prisoner. Other clients engaged in self-injurious behavior because of the lack of mental health services and untreated trauma. The U.S. District Court for the District of Columbia ruled that the District of Columbia Department of Corrections and key officials had engaged in a found pattern and practice of sexual abuse and denial of opportunities and services that violated the 8<sup>th</sup> Amendment, 14<sup>th</sup> Amendment, 5<sup>th</sup> Amendment, and state law.<sup>4</sup> The Women Prisoners' litigation ended shortly after the enactment of the Prison Rape Elimination Act. Thus, my immersion in the issues of sexual abuse in custody have continued unabated for the past 30 years.

The abuse that women in District of Columbia prisons experienced is not an isolated incident in a "bad" system. It is a problem that has plagued women in custody from the beginning of the origins of custodial settings and continues to today regardless of the reputation of the agency, facility or leadership.<sup>5</sup> Separate women's prisons came into being as the result of the rape and beating of Rachel Welch, a young woman who entered the Auburn Prison on January 5, 1825, and died a year later on January 6, 1826, six weeks after giving birth to a child who was clearly conceived in custody. A prison commission empaneled to investigate the causes and circumstances of her death found that her death was connected to the "discipline" she received. Ms. Welch's death after being beaten and the resulting public outcry led to the creation of separate prisons for men and women.<sup>6</sup> This tendency for outcry, reform, and then relapse is common to systems that are crisis driven—that describes many U.S. prisons and jails.

I was appointed to the National Prison Rape Elimination Commission in 2003 by House Minority Leader Nancy Pelosi and served in that capacity through the promulgation of the final Prison Rape Elimination Act (hereinafter "PREA") standards. Though the commission sunsetted in 2013, former commission members continue their investment in issues of sexual violence in custody. Many people, including the former commissioners, continue to be deeply troubled by and invested in the issues of safety in custodial settings, particularly those related to safety from sexual abuse and exploitation of men, women, and children in custodial settings.

---

<sup>4</sup> While several provisions of the order related to equal services and opportunities were overturned by the D.C. Court of Appeals, the provisions related to addressing sexual abuse in custody remained. *See* Women Prisoners of D.C. Dep't of Corrs., Case No. 1:93-cv-02052 (D.C. 2004).

<sup>5</sup> Updates of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody (2022).

<sup>6</sup> *See* Cayuga Museum of History & Art, *The State Prison for Women*, <http://cayugamuseum.org/the-state-prison-for-women/>.

I serve as key partner in the PREA Resource Center providing resources, training, and technical support to agencies who seek assistance in complying with the standards. I have worked with the National Institute of Corrections, the Office of Juvenile Justice and Delinquency Prevention, and the United States Department of Justice, to provide research, training, and technical assistance aimed at preventing and addressing sexual victimization in custodial settings. Federal correctional wardens and staff attended those training. Finally, I have litigated and served as an expert in several cases challenging sexual abuse in custody.<sup>7</sup> I have also testified before a variety of oversight agencies, both domestic and international, on the subject of sexual victimization in custody.<sup>8</sup>

## **II. The PREA Standards Amplify and Provide Strength to the Enforcement of Standards of Care in Female Correctional Settings**

Having sat on the PREA Commission for a decade and having continued to work with a variety of stakeholders, there is no question that the PREA Standards can, if followed, prevent the abuse of women in custody. The PREA Standards were informed by the best practices for preventing, detecting, punishing, and prosecuting sexual abuse of women in custody, as well as providing trauma-informed care following abuse. The PREA Standards borrowed extensively from existing professional standards including those of the American Correctional Association, the National Commission on Correctional Health Care, the American Jail Association, and the American Probation and Parole Association. The standards were also informed by the voices of survivors, prisoners, prisoner's rights organizations, and victim services organizations. Agencies received and continue to receive funding, training, and technical assistance to assist in complying with the standards. In my opinion, the standards if followed could significantly reduce sexual abuse of women in custody and make custodial settings safer and more rehabilitative spaces.

The PREA standards outline strategies for prevention of sexual abuse, which requires robust supervision, reporting processes that are trusted and lead to a meaningful response when sexual abuse is detected or reported, investigations that lead to consequences, screening processes and training that ensure staff are able to identify vulnerable populations and know how to protect them, and trauma-informed care for victims. Implementing these standards with a commitment to their intent and investment in the culture shift they require assures a level of safety and standards of care for women in custody, as well as staff, and the broader community that both staff and incarcerated people return to. We know that well-run facilities that prioritize the safety of people in custody and promote a rehabilitative environment promise a more secure environment and community upon returning citizens' release.

At the same time, we know that while the PREA standards outline a successful approach to creating sexually safe institutions, staff and agencies too often do not follow them because they

---

<sup>7</sup> See e.g., *Doe v. Macleod, et al.*, Case No. 3:18-cv-03191-SEM-TSH (C.D. IL); *Doe v. Mich. Dep't of Corr.*, Case No. 13-14356 (E.D. Mich. Nov. 5, 2018); *Fontano v. Godinez et al.*, Case No. 3:12-cv-3042 (C.D. IL); *Fernandez v. Morris, et al.*, Case 3:08-cv-00601-H-PCL (S.D. Cal. 2008); *In the Matter of Ava Marie Suah*, A37-085-273, U.S. Dep't of Justice, Exec. Office for Immigration Rev., Office of the Immigration Judge (Miami, August 18, 2000).

<sup>8</sup> Testimony before the United States Commission on Civil Rights hearing in *Women in Custody: Seeking Justice Behind Bars* (2019); Testimony before the U.S. Department of Justice Review Panel on Prison Rape (2020).



believe: (1) the standards are nitpicking and not consistent with their lived experience of people in custody or correctional settings; (2) that women in custody who complain about sexual abuse are trying to “game” the system;<sup>9</sup> (3) it would be too expensive or take too much time to follow the standards; (4) the standards are there but you don’t really have to pay attention until there is an audit; and (5) auditors will not question practice or the sufficiency of a facility’s compliance with the standards as long as apparently compliant policies are in place.

### III. Abuse of Women in Federal Correctional Settings

Given my many years working with women convicted of criminal offenses in the District of Columbia, I am familiar with the Federal Bureau of Prisons facilities.<sup>10</sup> District of Columbia women serving sentences longer than a year are imprisoned in federal facilities.<sup>11</sup> Many of the women I represented served their sentences in federal facilities and returned to the District of Columbia after their discharge from federal facilities. When the District of Columbia decided to house its own prisoners serving long-term sentences in 1988, those women spoke of abuse they had observed or experienced in a number of the federal facilities that are the subject of this hearing today.

Over the last decade, there has been sexual abuse litigation in a number of federal prison housing women. The most recent incidents involving FCI Dublin, MCC Brooklyn, FPC Alderson, and FMC Lexington<sup>12</sup> are instructive but not unusual. In other words, this is not new behavior. The abuse of women in federal custody is longstanding and widespread. The abusers represent staff from a broad cross section of the work force—chaplain, correctional officers, volunteers, and warden.<sup>13</sup> The abuse of women in federal prisons is systemic. Given the systemic nature of this abuse, a fair question is how could this have happened in these facilities given that each was determined PREA compliant.

<sup>9</sup> Games inmates play; how to avoid inmate manipulation, etc. See Kenzie Koch, *How to be Aware of Inmate Manipulation*, GUARDIAN RFID (Oct. 15, 2021), <https://guardianrfid.com/blog/how-to-be-aware-of-inmate-manipulation>.

<sup>10</sup> As a result of the National Capital Revitalization and Self-Government Improvement Act of 1997, women serving felony sentences are transferred to the Federal Bureau of Prisons.

<sup>11</sup> *Id.*

<sup>12</sup> Press Release, Dep’t of Just., Federal Prison Chaplain Sentenced for Sexual Assault and Lying to Federal Agents (Aug. 31, 2022), <https://www.justice.gov/opa/pr/federal-prison-chaplain-sentenced-sexual-assault-and-lying-federal-agents>; Michael Balsamo and Michael R. Sisak, *AP Investigation: Women’s Prison Fostered Culture of Abuse*, AP (Feb. 6, 2022), <https://apnews.com/article/coronavirus-pandemic-health-california-united-states-prisons-00a711766f5f3d2bd3fe6402af1e0ff8>; Benjamin Weiser, *U.S. Pays \$4.2 Million to Victims of Jail Guard’s Long-Running Sex Abuse*, NY TIMES (July 18, 2022), <https://www.nytimes.com/2022/07/18/nyregion/mcc-officer-sex-abuse-victims-payout.html>; Christian Martinez, *Correctional Officer Sexually Abused Three Inmates at FCI Dublin, Federal Prosecutors Say*, LA TIMES (Oct. 1, 2022), <https://www.latimes.com/california/story/2022-10-01/correctional-officer-sexually-abused-three-inmates-at-fci-dublin-federal-prosecutors-say>; Jeffrey Schaub, *Trial to Begin in Former Dublin Prison Warden Sexual Abuse Case*, KCBS RADIO (Nov. 28, 2022), <https://www.audacy.com/kcbsradio/news/local/trial-to-begin-for-dublin-prison-warden-sexual-abuse-case>; Romv Ellenbogen, *Lawsuit Settled in which 15 Women Alleged Sexual Abuse at Florida Prison*, TAMPA BAY TIMES (May 5, 2021), <https://www.tampabay.com/news/florida/2021/05/05/lawsuit-settled-in-which-15-women-alleged-sexual-abuse-at-florida-prison/>.

<sup>13</sup> *Id.*

A. The Incidents at Issue Here Point to Ongoing Challenges to Efforts to Prevent Abuse of Women in Custody

On February 14, 2015, Officer Mullings was working as a correctional officer at the MCC Brooklyn. While overseeing a female inmate, who was cleaning the hallways and corridors of the MCC, he sexually assaulted her in the corridor. After the assault, Mullings returned to the hallway to ensure no security cameras had caught the assault. A DNA test later confirmed that Mullings had engaged in sex with the victim and he pled guilty to sexual abuse of an inmate on November 23, 2015.

James Highhouse, a former chaplain at Federal Correctional Institution (FCI) Dublin sexually abused an incarcerated woman on multiple occasions and lied to federal agents about his misconduct.<sup>14</sup> Highhouse pled guilty to five felonies on February 23, 2022. According to court documents, Highhouse was employed by the BOP as a corrections worker and chaplain starting in 2016 at FCI Dublin. He led religious services, offered spiritual guidance to incarcerated women, and taught religious-based classes about boundaries and self-worth. Given his duties, he was acutely aware of the trauma histories of the women and exploited it. In addition to being the chaplain and other duties, he could discipline the female prisoners by firing them from their jobs, writing them up for infractions, handcuffing them and referring them for disciplinary actions. Highhouse sexually assaulted the victim in the chaplain's office.

The December 8, 2022 conviction of Ray Garcia, the former warden of FCI Dublin of seven counts of sexually abusive conduct and one count of making false statements to government agents along with the guilty pleas of three of his staff demonstrates the depth of the problem.<sup>15</sup> In that case the behavior included sexually assaulting the women and taking nude photographs of them. Warden Garcia also provided training to prisoners on how to prevent and report abuse in custody.<sup>16</sup>

In several instances, facilities conducted their own investigations into the allegations of sexual abuse and failed to substantiate the claims—did not, in fact, have any way to protect women from their abusers when the abuse was happening from the top-down. Ideally, a PREA audit should have uncovered the inadequacy of the investigations. The PREA standards include requirements that, according to the OIG's report regarding the abuse at FCI Dublin, were not followed by investigators or administrative decision-makers at the BOP. The weaknesses in the investigations conducted by the FBOP in the Dublin case are the same weaknesses that are evident in prison investigations into sexual abuse in systems throughout the country where systemic abuse is uncovered, and if audited and enforced properly, the PREA standards should begin to address these weaknesses. The outcome for the women in Dublin, and for incarcerated

---

<sup>14</sup> Elisha Fieldstadt and The Associated Press, *Federal Prison Chaplain Pleads Guilty to Sexually Assaulting Inmate*, NBC NEWS (Feb. 24, 2022), <https://www.nbcnews.com/news/us-news/federal-prison-chaplain-pleads-guilty-sexually-assaulting-inmate-rcna17578>.

<sup>15</sup> Garcia was placed on administrative leave in July 2021 and retired in October 2021 while the investigation was pending.

<sup>16</sup> Ramon Antonio Vargas, *Former California Prison Warden Convicted on Sexual Abuse Charges*, THE GUARDIAN (Dec. 8, 2022), <https://www.theguardian.com/us-news/2022/dec/08/raj-j-garcia-california-prison-charges>.

people around the country, would be quite different if abuse they reported were substantiated and the appropriate protections and consequences flowed from those reports. However, the PREA audit as it exists now, conducted by auditors paid for directly by the prisons being audited, most of them without the expertise or perspective to question long-standing practice within corrections because they come from those same systems, has not produced the accountability or spurred the change necessary to prevent the kind of systemic abuse I've spent my career working to end.

#### IV. Recommendations

Thank you again for holding this oversight hearing on sexual abuse of women in federal correctional facilities. These hearings play an important role in shining a light on urgent issues of national concern. The ongoing sexual abuse of people in custody—men, women, children, citizens, immigrants—is a stain on and a tear in the fabric of our democracy. It is a stain that we cannot clean but hopefully a tear that we can begin to repair. These are my recommendations for repairing the integrity of our constitutional and ethical commitments to providing safe and humane conditions to people who are in the care and custody of the state.

##### A. Reform the audit process of the Prison Rape Elimination Act.

Audits are intended to give an early warning of problems or practices that affect protecting people in custody from sexual abuse. The current audit structure is not well designed to ensure its success. The requirements to become an auditor and the marketplace for auditors make it very difficult for anyone who does not work in corrections to become a DOJ certified PREA auditor. The PREA standards, implemented meaningfully, require critical culture change and auditors from within the field too often lack the perspective to know what that change should look like. Moreover, agencies hire and pay the auditors for conducting the audit, so ultimately, the auditors work for the agencies they audit, making independence aspirational. This creates a financial disincentive to identify problems. Some agencies are audited through “consortia,” which means that state corrections agencies send their staff to audit another state’s facilities in a round-robin arrangement that has not eliminated potential conflicts in those arrangements. The cost of audits and the time that agencies or third-party auditing bodies that employ auditors allow for the conduct of audits do not adequately compensate auditors or allow them the time necessary to conduct the audit methodology laid out by the DOJ. Each of the facilities that are the subject of the hearing passed their audits, with only minimal issues identified. Necessary reforms include:

1. Neutral auditors from an independent external auditing authority
2. Diversify the auditor pool to include individuals with experience in working with victims
3. Ongoing training for auditors with a focus on auditing investigation standards and meaningful responses to retaliation, and more rigorous oversight of auditors’ reports and evidence by the DOJ
4. Ongoing training for auditors and review of their reports

B. Address Conditions of Confinement that Create Vulnerability for Women in Custody

There are common elements of vulnerability in each of these women prisoner's victimization. First, these women, as you know, often bring multiple well-known vulnerabilities into the correctional setting—past histories of childhood and adult physical and sexual abuse; poverty; involvement with powerful systemic actors like courts, child protection, housing, and immigration authorities that control their existence and their families' existence; fear and deprivation that is part of the custodial experience. I could name many more elements, as could you. These factors create the levers of pressure that correctional staff can employ to ensure compliance with both legitimate and illegitimate requests. Given this inequality of power, women bargain, capitulate, and comply even as they fear for their lives, their freedom and often for their families. Combine these levers with a toxic culture, the forced compliance that is a part of the custodial environment, and powerful system actors who appear to be all powerful and above rules, regulations and indeed the law, women make the choice to survive even if survival means rape.

Though there are constitutional limitations on cross-sex supervision, male staff have still found ways to have unfettered unsupervised access to female inmates in their care. Clearly, identifying and implementing better supervision strategies are in order. These strategies include increasing the numbers of female staff at every level including leadership of women's correctional facilities. They also include decreasing the numbers of women in custodial settings. Women inmates are still incarcerated for primarily non-violent offenses. Increasing opportunities for supervision in the community would help to keep women safe from the pervasive sexual abuse culture we are discussing today.

C. Vigorous Prosecution and Enhanced Penalties

The penalties for abusing a person in custody should be commensurate with the harm and damage they do to women in custody, their families, the community, and to our ideals of the rule of law. The sentences that prison sex offenders receive are not commensurate with the injury they inflict or the harm they cause. In my view, the penalties should be comparable to the offenses for other individual victims who have been framed by the law as unable to consent. That would include people with developmental and other disabilities, children, and individuals in institutional settings including prisoners.

Thank you for taking up this issue and thank you for giving me the opportunity to testify before the committee.

PROMISE AMID PERIL: PREA'S EFFORTS TO REGULATE AN  
END TO PRISON RAPE

Brenda V. Smith\*

ABSTRACT

*This Article discusses the modest aspirations of the Prison Rape Elimination Act ("PREA") that passed unanimously in the United States Congress in 2003. The Article posits that PREA created opportunities for holding correctional authorities accountable by creating a baseline for safety and setting more transparent expectations for agencies' practices for protecting prisoners from sexual abuse. Additionally, the Article posits that PREA enhanced the evolving standards of decency for the Eighth Amendment and articulated clear expectations of correctional authorities to provide sexual safety for people in custody.*

INTRODUCTION

Since the Prison Rape Elimination Act ("PREA") passed unanimously in 2003, it has drastically changed the landscape of corrections. First, it expanded national understanding of the complexity of sexual abuse in custody,<sup>1</sup> shining a light on youth victimization in adult prisons and jails<sup>2</sup> and revealing the complexity of perpetration in custody.<sup>3</sup> Second, the Act validated the connections between

---

\* Brenda V. Smith is a professor of law and Director of the Project on Addressing Prison Rape at the American University Washington College of Law. In November 2003, Professor Smith was appointed to the National Prison Rape Elimination Commission by the United States House of Representatives Minority Leader Nancy Pelosi (D-CA). Prior to her faculty appointment at American University Washington College of Law in 1998, she was Senior Counsel for Economic Security at the National Women's Law Center and Director of its Women in Prison Project and Child and Family Support Project. She is a *magna cum laude* graduate of Spelman College and a 1984 graduate of the Georgetown University Law Center. She would like to thank her research assistants, Eric Rico and Brittany Stanek, and colleague Michelle Bonner for their tireless work. She also thanks Dr. Thomas Barth, Sheila Bedi, Llezlie Green, Dee Halley, Deborah LaBelle, Andi Moss, and Jaime Yarussi for their support, guidance, and input in the development of this article. Special thanks to Abbe Dembowitz, Ian Bruckner, and the *ACLR* staff for their dedication to this publication. She also acknowledges the inspiration and admiration she has for survivors and their champions who continue to move us closer to the goal of ending prison rape. © 2020, Brenda V. Smith.

1. See JASMINE AWAD ET AL., *CAMPAIGN FOR YOUTH JUSTICE, IS IT ENOUGH? THE IMPLEMENTATION OF PREA'S YOUTHFUL INMATE STANDARD 4* (2018) (noting that, although PREA leaves much to be desired, the Act has succeeded in raising awareness about the issue of sexual assault and has encouraged more victims to report their incidents); see also Brenda V. Smith, *Rethinking Prison Sex: Self Expression and Safety*, 15 COLUM. J. GENDER & L. 185, 185-86 (2006) (proposing to "frame the discussion of prison sexuality" and encourage more scholarship from a "multidisciplinary perspective" following the passage of PREA).

2. AWAD ET AL., *supra* note 1, at 4.

3. See James E. Robertson, *The "Turning-Out" of Boys in a Man's Prison: Why and How We Need to Amend the Prison Rape Elimination Act*, 44 IND. L. REV. 819, 842-43 (2011) (critiquing PREA's definition of sexual abuse for failing to take into account that some sexual relations, especially between men and boys, may seem

correctional leadership and prisoner vulnerability.<sup>4</sup> This Article posits that sixteen years since its passage, PREA has invigorated prison litigation and advocacy. And while PREA “does not create a private right of action”—language inserted to help ensure passage of the legislation<sup>5</sup>—PREA helps to further define the Eighth Amendment analysis in sexual abuse cases and provides tools to litigators and advocates in ways that the initial proponents likely did not anticipate.

While several scholars have written about PREA’s deficiencies in supporting prisoner causes of action for sexual abuse in custody,<sup>6</sup> in my view, there is reason for hope in looking at the trajectory of litigation since the enactment of PREA.<sup>7</sup> This Article discusses four major developments that resulted from PREA. Part I discusses PREA’s provision of greater discovery tools for prisoners and their counsel. Part II discusses PREA’s role in supporting new articulations of the standard of care for preventing, investigating, and addressing sexual abuse in custody. Part III examines litigation challenges to filing PREA-related claims. Part IV explores how PREA is being used to bolster claims of constitutional violations. Finally, Part V discusses PREA’s role in creating new fora for prisoners, agencies, and civil society to address abuse in custody.

#### BACKGROUND

When introduced in 2002, PREA was intended to be a modest piece of legislation that addressed the rape of men in custody<sup>8</sup> after previous attempts to address sexual abuse of women in custody achieved little success.<sup>9</sup> Interest in the PREA

---

consensual but are actually coercive when considering the power dynamics); *see also* Gabriel Arkles, *Regulating Prison Sexual Violence*, 7 NE. U. L.J. 69, 112–13 (2015) (criticizing PREA’s final definition of sexual abuse for failing to consider officer-on-inmate searches, nonconsensual medical interventions, and the consequences of prohibitions on consensual sex).

4. NAT’L PRISON RAPE ELIMINATION COMM’N, REPORT 51–52 (2009), <https://www.ncjrs.gov/pdffiles1/226680.pdf> (emphasizing the need for leadership committed to preventing prison rape).

5. Brenda V. Smith, *The Prison Rape Elimination Act: Implementation and Unresolved Issues*, 3 CRIM. L. BRIEF 10, 11 (2008) [hereinafter *Implementation and Unresolved Issues*].

6. *See* Gabriel Arkles, *Prison Rape Elimination Act Litigation and the Perpetuation of Sexual Harm*, 17 N.Y. U. J. LEGIS. & PUB. POL’Y 801, 802–03 (2014); Heather Schoenfeld, *Mass Incarceration and the Paradox of Prison Conditions Litigation*, 44 LAW & SOC’Y REV. 731, 759–60 (2010) (discussing the unintended harms of prison reform litigation).

7. *See, e.g.*, Robert A. Schuhmann & Eric J. Wodahl, *Prison Reform Through Federal Legislative Intervention: The Case of the Prison Rape Elimination Act*, 22 CRIM. JUST. POL’Y REV. 111, 124 (2011) (noting the optimism for legislative change in prison reform in the wake of PREA); Sarah K. Wake, *Not Part of the Penalty: The Prison Rape Elimination Act of 2003*, 32 J. LEGIS. 220, 235 (2006) (“[I]t initially appears that the PREA is meeting some of its goals and causing a change in the way that prison rape is viewed in America.”).

8. H.R.1765, 108th Cong. (2003); H.R.1707, 108th Cong. (2003).

9. *See Implementation and Unresolved Issues*, *supra* note 5, at 10 (“Though [Human Rights Watch] had published several reports on sexual violence in U.S. prisons dating back to its initial report on the rape of female prisoners, . . . there was little traction in Congress to pass legislation aimed at ending sexual violence in custody. In fact, an early effort to pass legislation introduced by Congressman John Conyers, Jr. (D. MI) to create a registry of staff involved in sexual abuse of inmates in custody failed to garner enough support even for consideration. The legislation, ‘The Custodial Sexual Abuse Act of 1998,’ was stripped from the reauthorization bill for the ‘Violence Against Women Act’ and was never reintroduced.”).

legislation was initially generated by a report from Human Rights Watch entitled *No Escape: Male Prisoner Rape in U.S. Prisons*.<sup>10</sup> The primary proponents of the legislation, Senators Edward Kennedy (D-MA) and Jeff Sessions (R-AL), and Representatives Bobby Scott (D-VA) and Frank Wolf (R-VA), garnered support from Human Rights Watch, Concerned Women of America, Stop Prisoner Rape, and conservative-leaning groups concerned about the victimization of vulnerable white men in custody.<sup>11</sup>

Linda Bruntmyer, the mother of seventeen-year-old Rodney Hulin, a white youthful inmate<sup>12</sup> from Texas, testified in support of the Act's passage.<sup>13</sup> Rodney was raped while incarcerated in the Texas Department of Criminal Justice and subsequently attempted suicide by hanging.<sup>14</sup> He later died from his injuries.<sup>15</sup> Others testifying in support of the legislation included Mark Earley, President of the Prison Fellowship Ministries; Rabbi David Saperstein, the Director of the Religious Action Center of Reform Judaism; and Robert Dumond, a clinical mental health counselor and board member of Stop Prisoner Rape.<sup>16</sup>

The initial legislation moved swiftly through Congress with little input from organizations and agencies such as the National Institute of Corrections ("NIC") or the Association of Correctional Administrators, that had been working on the issue of sexual abuse of women in custody for many years.<sup>17</sup> The NIC would subsequently

---

10. HUMAN RIGHTS WATCH, *NO ESCAPE: MALE RAPE IN U.S. PRISONS* (2001); *see generally* WOMEN'S RIGHTS PROJECT, HUMAN RIGHTS WATCH, *ALL TOO FAMILIAR: SEXUAL ABUSE OF WOMEN IN U.S. STATE PRISONS 1* (1996) (examining the sexual abuse of female prisoners largely at the hands of male correctional employees); WOMEN'S RIGHTS PROJECT, HUMAN RIGHTS WATCH, *NOWHERE TO HIDE: RETALIATION AGAINST WOMEN IN MICHIGAN STATE PRISONS 1* (1998) (examining reports on retaliatory behavior by corrections officers against women victims who pursued legal action).

11. *See The Prison Rape Reduction Act of 2002: Hearing Before the S. Comm. on the Judiciary*, 107th Cong. 1–2 (2002) [hereinafter *Hearing Before the S. Comm. on the Judiciary*]; *see also* Alex Friedman, *Prison Rape Elimination Act Standards Finally in Effect, but Will They be Effective?*, PRISON LEGAL NEWS (Sept. 15, 2013), <https://www.prisonlegalnews.org/news/2013/sep/15/prison-rape-elimination-act-standards-finally-in-effect-but-will-they-be-effective/>; *see also Implementation and Unresolved Issues*, *supra* note 5, at 10 (“[T]he initial version of PREA only sought to address male prison rape. In the initial congressional hearing, most of the survivors were male. One of the significant critiques of the initial legislation was its failure to include sexual violence against women in custody, which was more likely to be staff initiated. In its second iteration, PREA included staff sexual misconduct against inmates, but continued to focus heavily on male-on-male inmate rape.”).

12. 28 C.F.R. § 115.5 (2012) (“General definitions: . . . Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.”).

13. *Hearing Before the S. Comm. on the Judiciary*, *supra* note 11, at 8–9.

14. *Id.*

15. *Id.*

16. *Id.* at 9–15.

17. *See generally* WILLIAM C. COLLINS & ANDREW W. COLLINS, NAT'L INST. OF CORR., *WOMEN IN JAIL: LEGAL ISSUES*, 1 (1996), <https://www.prearesourcecenter.org/sites/default/files/library/womeninjaillegalissues.pdf>; *see also* NAT'L PRISON RAPE ELIMINATION COMM'N, *supra* note 4, at 48, 120–21. NIC began work on addressing staff sexual misconduct in early 1996. *Implementation and Unresolved Issue*, *supra* note 5, at 112. Shortly thereafter, NIC awarded the first of several cooperative agreements to American University to provide training on staff sexual misconduct and related legal issues such as cross-gender supervision, legal liability for sexual abuse in custody, and investigations of sexual abuse in custody.

push for the inclusion of women in custody in the legislation's execution.<sup>18</sup>

The final legislation, which passed both houses of Congress unanimously and became law, amounted to only nineteen pages, but it provided structure and resources for research and analysis of sexual abuse in correctional settings.<sup>19</sup> The legislation called for the creation of the National Prison Rape Elimination Commission (the "Commission") and indicated how the Commission would be composed.<sup>20</sup> Likewise, it ordered a study of the causes and consequences of sexual abuse in custody that examined the penological, physical, mental, medical, social, and economic impacts of prison rape.<sup>21</sup> The final legislation required the Commission to issue a report of its findings two years after its passage.<sup>22</sup>

The Act also called for the Bureau of Justice Statistics ("BJS") to conduct a national survey of the prevalence of sexual abuse in all custodial settings: prison, jail, lockup, immigration detention, juvenile, and military facilities, along with an appropriation of \$15 million for each fiscal year from 2004 through 2010 for the survey's implementation and analysis.<sup>23</sup> It also required NIC to direct funding to states and localities to develop strategies to address sexual victimization in custody, with an appropriation of \$5 million each year over the same period.<sup>24</sup> The largest allocation of funding was \$40 million per year over the same time period for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prison rape, with no less than fifty percent of these funds to be given in grants of up to \$1 million to states for protecting inmates from prison rape.<sup>25</sup>

After conducting hearings, empaneling experts, and gathering data, the Commission developed draft standards for the prevention, detection, and punishment

---

18. See NAT'L INST. OF CORR., PREA/OFFENDER SEXUAL ABUSE, <https://nicic.gov/prea-offender-sexual-abuse> ("The National Institute of Corrections has been a leader in this topic area since 2004, providing assistance to many agencies through information and training resources.").

19. Prison Rape Elimination Act, 34 U.S.C. ch. 301 (2018).

20. 34 U.S.C. § 30306(a)-(c) (2018).

21. 34 U.S.C. § 30306(d).

22. *Id.*

23. 34 U.S.C. § 30303.

24. 34 U.S.C. § 30304.

25. 42 U.S.C. § 15605(g)(2) (2011) Section 15605 was editorially reclassified as 34 U.S.C. § 30305, Crime Control and Law Enforcement. ("(g) Authorization of appropriations (1) In general. There are authorized to be appropriated for grants under this section \$40,000,000 for each of fiscal years 2004 through 2010. (2) Limitation. Of amounts made available for grants under this section, not less than 50 percent shall be available only for activities specified in paragraph (1) of subsection (b)."). Subsection (b)(1) specifies: "(b) Use of grant amounts . . . Amounts received by a grantee under this section may be used by the grantee, directly or through subgrants, only for one or more of the following activities: (1) Protecting inmates Protecting inmates by— (A) undertaking efforts to more effectively prevent prison rape; (B) investigating incidents of prison rape; or (C) prosecuting incidents of prison rape." Congress appropriated \$25 million dollars for the grant program in 2004, and another \$20 million in 2005. The Bureau of Justice Assistance awarded \$10 million of its 2004 PREA appropriation in the fourth quarter of that year. See also NAT'L INST. OF CORR., REPORT TO THE CONGRESS OF THE UNITED STATES ACTIVITIES OF THE DEPARTMENT OF JUSTICE IN RELATION TO THE PRISON RAPE ELIMINATION ACT (Public Law 108-70), <https://s3.amazonaws.com/static.nicic.gov/Library/022675.pdf>. The largest grants that year, \$1 million each, went to five state departments of corrections: Iowa, Michigan, New York, Texas, and Washington.



of prison rape, and issued them in August 2009.<sup>26</sup> Following lengthy notice, comment, and consultation with corrections professionals, experts, and other stakeholders through listening sessions, the Department of Justice (“DOJ”) issued final standards on August 20, 2012.<sup>27</sup> Conceding to opponents, the DOJ delayed the effective date of certain standards for particular custodial settings.<sup>28</sup>

The DOJ’s standards require staff training, inmate training, reporting options for prisoners, availability of mental and medical health resources, cross-gender supervision policies, and general oversight of compliance with PREA standards.<sup>29</sup> Every agency must employ an agency-wide PREA coordinator who has sufficient time and authority to implement PREA and oversee agency compliance efforts.<sup>30</sup> In addition, each facility within the agency must employ a PREA compliance manager who similarly has sufficient time and authority to coordinate the facility’s efforts to comply with the PREA standards.<sup>31</sup> Congress intended that the PREA standards would be minimum standards.<sup>32</sup> If agencies know of a particular vulnerability or threat based on the circumstances of their environment, they need to address those even if the standards do not do so.<sup>33</sup>

#### I. THE DEVELOPMENT OF PREA PROVIDED GREATER DISCOVERY TOOLS FOR PRISONERS AND THEIR COUNSEL

Though not initially envisioned as a boon to prisoner litigants, the process for developing the PREA standards created an important cache of discoverable information that has been useful to regulators and, surprisingly, prisoners and their counsel. Records of public comments and participation of state correctional agencies in the regulatory phase of development of PREA standards have made it

26. NAT’L PRISON RAPE ELIMINATION COMM’N, *supra* note 4, at 2–3.

27. Prison Rape Elimination Act National Standards, 28 C.F.R. § 115 (2019).

28. NAT’L PREA RES. CTR., WHAT ARE THE PREA STANDARDS AND WHEN ARE THEY EFFECTIVE? (June 2, 2015), <https://www.prearesourcecenter.org/node/3198> (delaying “[t]he restrictions on cross-gender pat-down searches of female inmates in prisons, jails, and community confinement facilities (115.15(b) and 115.215(b)) [until] August 20, 2015, for facilities whose rated capacity is 50 or more inmates, and do not go into effect until August 21, 2017, for facilities whose rated capacity does not exceed 50” and making “[t]he standard on minimum staffing ratios in secure juvenile facilities (115.313(c)) [ ] not go into effect until October 1, 2017, unless the facility is already obligated by law, regulation, or judicial consent decree to maintain the minimum staffing ratios set forth in that standard”).

29. 28 C.F.R. § 115.

30. *Id.* § 115.11(b).

31. *Id.* § 115.11(c).

32. N.Y.C. BD. OF CORR., NOTICE OF ADOPTION OF RULES, 1–2 (2016), <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2016-PREA/PREA%20Rules%20-%20FINAL%20FOR%20POSTING%2011.10.16%20w%20certification.pdf> (adopting basic PREA standards while also adding additional rules such as expanding on the reporting requirements).

33. See NAT’L PRISON RAPE ELIMINATION COMM’N, *supra* note 4, at 3 (“The Eighth Amendment of the U.S. Constitution forbids cruel and unusual punishment—a ban that requires corrections staff to take reasonable steps to protect individuals in their custody from sexual abuse whenever the threat is known or should have been apparent.”).

difficult for these agencies to justify conditions and actions exhibiting noncompliance with standards in prisoner litigation.

*A. Shining a Light on Agency Practices in the Standards Development Process*

After the quick passage of PREA, President George W. Bush, the House of Representatives, and the Senate appointed nine commissioners to the Commission.<sup>34</sup> Five commissioners were appointed by the Republican majority, while the other four were appointed by the Democratic minority.<sup>35</sup> Each brought a range of experience to the Commission, including knowledge of human rights and constitutional norms, connections to faith communities, and experience in research design.<sup>36</sup> After initial struggles to organize the effort, the Commission contracted the Vera Institute for Justice to manage the standards development effort.<sup>37</sup> Vera, and later the National Council on Crime and Delinquency, assisted the Commission in organizing hearings around the country, drafting the initial standards, and developing the process for gaining public input on the draft and final standards.<sup>38</sup>

At the same time that the Commission was developing its standards, the BJS was developing its process for determining the prevalence of sexual abuse in custodial settings.<sup>39</sup> At each stage of the development of the standards, organizations such as the American Probation and Parole Association, the Association of State Correctional Administrators, and the American Correctional Association organized states, localities, and agencies to comment on the standards.<sup>40</sup> Typically, these organizations developed charts which they submitted as public comments on

---

34. 34 U.S.C. § 30306(a)–(b) (2018).

35. *Id.* The Commission members were Judge Reggie Walton (Chair), John Kaneb, Pat Nolan, Gus Puryear, Professor Cindy Struckman-Johnson, James Aiken, Professor Brenda V. Smith, Jamie Fellner, and Professor Nicole Stelle Garnett. NAT'L PRISON RAPE ELIMINATION COMM'N, THE COMMISSIONERS (Aug. 17, 2009), <http://nprec.us/home/commissioners/> [<https://cybercemetery.unt.edu/archive/nprec/20090820154824/http://nprec.us/home/commissioners/>].

36. NAT'L PRISON RAPE ELIMINATION COMM'N, *supra* note 4, at vii-x (providing brief biographies of commission members and highlighting expertise related to their appointments to the Commission).

37. See ALLISON HASTINGS, VERA INST. OF JUSTICE, NATIONAL PRISON RAPE ELIMINATION COMM'N, <https://www.vera.org/projects/national-prison-rape-elimination-commission> ("Vera staff provided technical assistance to help the commission develop its standards, which were submitted for public comment in 2008.")

38. See Tara Graham, *NCCD Now: Ending Prison Rape*, NAT'L COUNCIL ON CRIME & DELINQUENCY (June 3, 2013), <https://www.nccdglobal.org/newsroom/nccd-blog/nccd-now-ending-prison-rape> ("[Tara Graham] vividly recall[s] [her] earliest visits on behalf of the National Prison Rape Elimination Commission (NPREC) to collect information to inform the development of NPREC'S recommended standards.")

39. 34 U.S.C. § 30303(a)(1) (requiring the BJS to collect data and conduct a statistical review of prison rape each calendar year).

40. See American Probation and Parole Association, Comment Letter on Proposed Rule for National Standards to Prevent, Detect, and Respond to Prison Rape (Apr. 4, 2011) (expressing concern that PREA standards do not apply to non-residential community corrections agencies); Association of State Correctional Administrators, Comment Letter on Proposed Rule for National Standards to Prevent, Detect, and Respond to Prison Rape (May 10, 2010) (claiming that NPREC exaggerated the extent of prison rape, expressing concern over the cost of compliance, rejecting the restrictions on cross-gender searches, etc.); American Correctional Association, Comment Letter on Proposed Rule for National Standards to Prevent, Detect, and Respond to Prison

PREA that indicated that they already met a given standard or indicated those standards that they could not or would not be willing to meet.<sup>41</sup> These documents were then uploaded into the public comment website for the DOJ.<sup>42</sup> While provided for a different purpose, these documents have become useful in litigation and have been used by both plaintiffs and defendants to show knowledge of and compliance (or lack thereof) with federal standards for eliminating abuse in custody.<sup>43</sup>

### B. *PREA Discovery in Litigation*

Three recent cases illustrate the availability and importance of the BJS data in shining a light on sexual abuse in custody. In *Does 1–12 v. Michigan Department of Corrections*,<sup>44</sup> a class of juvenile boys who were imprisoned with adult men sued the Michigan Department of Corrections, claiming violations of state and federal law.<sup>45</sup> The boys alleged that they were physically and sexually abused by older prisoners<sup>46</sup> and that prior to the enactment of the standards, Michigan knew of their vulnerability and did nothing to protect them.<sup>47</sup> The plaintiffs complained that even after the enactment of PREA and with substantial funding from the DOJ of over \$1 million,<sup>48</sup> Michigan continued its policy of housing youth with adults as late as 2017.<sup>49</sup> To support their claims, they were able to point to testimony of Michigan’s PREA Coordinator Nancy Zang that, as Administrator, she trained

---

Rape (Mar. 21, 2011) (encouraging the Attorney General to reconsider the training, certifying, and auditing policies).

41. See American Probation and Parole Association, *supra* note 40; see also NAT’L PREA RESOURCE CENTER, PUBLIC COMMENT REPORTS TO THE NATIONAL PRISON RAPE ELIMINATION COMMISSION PROPOSED STANDARDS (Jul. 23, 2008), <https://www.prearesourcecenter.org/file/787/public-comment-reports-national-prison-rape-elimination-commission-proposed-standards>.

42. Press Release, Office of Pub. Affairs, DOJ, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), <https://www.justice.gov/opa/pr/justice-department-releases-final-rule-prevent-detect-and-respond-prison-rape> (taking into account over 1300 public comments on the proposed standards in promulgating the final rule).

43. See, e.g., *Does 1–12 v. Mich. Dep’t of Corr.*, No. 13-14356, 2018 WL 5786199, at \*1 (E.D. Mich. Nov. 5, 2018).

44. *Id.*

45. *Id.* at \*2.

46. *Id.*

47. *Id.* at \*1.

48. See 34 U.S.C. § 30305 (2018); see also Maurice Chammah, *Rape in the American Prison*, THE ATLANTIC (Feb. 25, 2015), <https://www.theatlantic.com/politics/archive/2015/02/rape-in-the-american-prison/385550/>. In 2004, Michigan received the maximum amount of \$1 million awarded to individual states per the PREA grant provision. Michigan received additional amounts of \$490,740 from the Bureau of Justice Assistance, the Michigan Department of Corrections (2011-H5430-MI-RP), and a \$100,000 grant in 2017 to Wayne County from the PREA Resource Center.

49. MICH. DEPT. CORR. POLICY DIRECTIVE, PRISONER PLACEMENT AND TRANSFER 05.01.140 (Nov. 1, 2017), [https://www.michigan.gov/documents/corrections/05\\_01\\_140\\_629177\\_7.pdf](https://www.michigan.gov/documents/corrections/05_01_140_629177_7.pdf) (“All prisoners who are under 18 years of age shall be housed in specialized areas at TCF [Thumb Correctional Facility] or WHV [Women’s Huron valley Correctional Facility].”).

every warden and other staff on PREA requirements.<sup>50</sup> The plaintiffs were also able to use the Michigan Department of Corrections' responses to the public comment period as evidence of its knowledge about the potential impact of its practice of housing youthful male inmates with adult male inmates.<sup>51</sup>

In a second instance, multiple women in a class action lawsuit, *Brown v. State of New Jersey Department of Corrections*,<sup>52</sup> claimed that they had been routinely sexually abused while in custody at Edna Mahan Women's Correctional Facility, following a hearing before the New Jersey Senate Law and Public Safety Committee held on the widespread sexual abuse at the facility.<sup>53</sup> This was not the Edna Mahan Facility's first instance of reports of sexual abuse of women prisoners.<sup>54</sup> Past sexual abuse scandals had resulted in changes in staffing,<sup>55</sup> changes in policies,<sup>56</sup> and several criminal convictions.<sup>57</sup> Yet male guards continued to oversee women inmates, in spite of continued demands by women inmates to abandon the practice.<sup>58</sup> Being a strong union state, New Jersey had been unable to prevail against its unions in the fight for same-gender staffing at the Edna Mahan Facility.<sup>59</sup>

Critical to that hearing were audit data that the New Jersey Department of Corrections ("NJDOC") submitted each year about the prevalence of abuse in each

---

50. See Nancy Zang, MDOC Administrator, Remarks at the Nat'l Prison Rape Elimination Comm'n, Public Meeting at the University of Notre Dame Law School (Mar. 31, 2005), [https://cybercemetery.unt.edu/archive/nprec/20090820154955/http://nprec.us/home/public\\_proceedings/proceedings\\_notredame.php](https://cybercemetery.unt.edu/archive/nprec/20090820154955/http://nprec.us/home/public_proceedings/proceedings_notredame.php) (explaining she "personally, . . . trained every warden, deputy warden, assistant deputy warden, executive policy team member in the Michigan Department of Corrections relative to the requirements of PREA."); see also Chammah, *supra* note 48.

51. See *Mich. Dep't of Corr.*, No. 13-14356, 2018 WL 5786199, at \*1.

52. *Brown v. State of New Jersey Department of Corrections* was filed in Mercer County Court, New Jersey, on Mar. 12, 2018, after the February hearing before the New Jersey Senate Law and Public Safety Committee on the Edna Mahan Correctional Facility. Complaint, *Brown v. State of N.J. Dep't of Corr.*, No. MER-L-000503-18 (Mercer Cty. Ct. Mar. 12, 2018). The complaint alleged numerous instances of sexual abuse perpetrated by facility staff on female inmates. *Id.* at 2-3. The case was later settled in April 2019. See Derek Gilna, *New Jersey DOC Settles Sexual Abuse Suit, but More Cases Are Pending*, PRISON LEGAL NEWS (Apr. 2, 2019), <https://www.prisonlegalnews.org/news/2019/apr/2/new-jersey-doc-settles-sexual-abuse-suit-more-cases-are-pending/>. In another example, *Bernat v. State of New Jersey Department of Corrections*, the plaintiff alleged sexual abuse by staff at Edna Mahan Correctional Facility, which also settled for \$35,000 in June 2018. Complaint, *Bernat v. State of N.J. Dep't of Corr.*, No. 3:12-cv-02649-MAS-LHG (D.N.J. Mar. 26, 2013); see also Gilna, *supra* note 52.

53. Nick Muscavage, *Edna Mahan Inmates Testify About Sexual Assault Allegations Before State Senate*, MY CENT. JERSEY, Feb. 22, 2018.

54. See, e.g., *Heggenmiller v. Edna Mahan Corr. Inst. for Women*, 128 F. App'x. 240, 244 (3d Cir. 2005) (recording six sexual assault incidents between 1994 and 1998).

55. *Id.* (stating that at least five guards were fired for sexual incidents).

56. *Id.* at 247 ("Moreover, the Administrative Defendants had promulgated policies forbidding sexual contact between correctional officers and inmates; these policies were communicated to all officers in their training, and were enforced by the regulations and criminal laws of the States of New Jersey").

57. *Id.* at 249 (noting that five prior sexual assaults either resulted in firing and/or criminal convictions).

58. See generally N.J. STATE LEGISLATURE, COMMITTEE MEETING OF SENATE LAW AND PUBLIC SAFETY COMMITTEE (Feb. 22, 2018), <https://www.njleg.state.nj.us/legislativepub/pubhear/slp02222018.pdf> [hereinafter COMMITTEE MEETING OF SENATE LAW AND PUBLIC SAFETY COMMITTEE] (containing testimony concerning allegations of sexual abuse at the Edna Mahan Correctional Facility for Women).

59. *Id.*

of its facilities.<sup>60</sup> Though New Jersey had over 20,000 people in custody during the periods preceding the hearings, it reported one substantiated incident of sexual abuse in years 2012, 2013, and 2015; zero substantiated incidents in 2014; eight substantiated incidents in 2016; and two substantiated incidents in 2017.<sup>61</sup> The Law and Public Safety Committee deemed the NJDOC's audit findings as simply "not credible."<sup>62</sup> The hearing generated significant media attention, highlighting the data reported to BJS on substantiated sexual abuse complaints.<sup>63</sup> The hearing included testimony from advocacy organizations,<sup>64</sup> the correctional officers' union,<sup>65</sup> and victims of sexual abuse in custody,<sup>66</sup> which further highlighted the incredulity of data reported by the NJDOC on sexual abuse. The hearing resulted in the New Jersey Commissioner of Corrections not being reappointed and the creation of a commission to study sexual abuse at New Jersey's correctional facilities.<sup>67</sup> The legislature required the New Jersey Office of Victim Advocacy to provide services to victims in custody and to consider adding a formerly incarcerated person to the newly-created commission.<sup>68</sup>

In a third representative example of the impact of PREA on discovery, *Fontano v. Godinez*, a small, white, non-violent offender, alleged that he was sexually assaulted on multiple occasions and forced to perform oral sex on his older, larger,

60. See N.J. DEP'T. OF CORR., THE PRISON RAPE ELIMINATION ACT OF 2003, <https://www.state.nj.us/corrections/pages/PREA.html> (reporting on New Jersey's allegations of sexual victimization in custody from 2012 to 2018); see also 28 C.F.R. § 115.87(c) (2019) (requiring that state corrections agencies report the number of substantiated sexual abuse complaints to BJS in an annual Survey of Sexual Violence); 28 C.F.R. § 115.89(b) (requiring aggregated sexual abuse data to be reported on state agencies' websites).

61. N.J. DEP'T OF CORR., *supra* note 60.

62. COMMITTEE MEETING OF SENATE LAW AND PUBLIC SAFETY COMMITTEE, *supra* note 58, at 18.

63. See generally Nick Muscavage, *Another Edna Mahan Guard Charged with Official Misconduct, Sexual Contact*, MY CENTRAL JERSEY (Apr. 5, 2019), <https://www.mycentraljersey.com/story/news/crime/jersey-mayhem/2019/04/05/edna-mahan-guard-charged-official-misconduct-sexual-contact/3379612002/>; Mike Deak, *Former Edna Mahan Guard Found Not Guilty of Sexual Assault, Official Misconduct*, MY CENTRAL JERSEY (Nov. 13, 2018), <https://www.mycentraljersey.com/story/news/local/courts/2018/11/13/edna-mahan-guards-sexual-assault-misconduct/1987117002/>; Nick Muscavage, *Edna Mahan Inmates Testify about Sexual Assault Allegations before State Senate*, MY CENTRAL JERSEY (Feb. 22, 2018), <https://www.mycentraljersey.com/story/news/politics/new-jersey/2018/02/22/edna-mahan-inmates-testify-sexual-assault-allegations-before-state-senate/364409002/>.

64. See generally COMMITTEE MEETING OF SENATE LAW AND PUBLIC SAFETY COMMITTEE, *supra* note 58 (containing testimony from the American Friends Service Committee, New Jersey Association for Justice, New Jersey Coalition Against Sexual Assault, Freed Women Empowerment Network, and People's Organization for Progress).

65. *Id.* at 52.

66. *Id.* at 40, 76, 83.

67. Greenstein, *Cruz-Perez Resolution Establishing 'Commission to Protect Inmates in the Edna Mahan Correctional Facility from Sexual Assault and Sexual Misconduct' Passes Senate*, INSIDER NJ (June 25, 2018), <https://www.insidemj.com/press-release/greenstein-cruz-perez-resolution-establishing-commission-protect-inmates-edna-mahan-correctional-facility-sexual-assault-sexual-misconduct-passes-senate/>.

68. See N.J. J. Res., *Joint Resolution Creating a Commission to Study Sexual Assault, Misconduct, and Harassment in This State's Correctional [Facility For Women] Facilities*, 218th Cong. (2018) ("nine public members appointed by the Governor, who shall include the following: . . . former inmate of the Edna Mahan Correctional Facility for Women . . .").

African American male cellmate serving time for violent acts.<sup>69</sup> The Illinois Department of Corrections indicated its compliance with the proposed PREA standards on the form provided by the Association of State Correctional Administrators, which collected comments on proposed PREA standards in March 2011.<sup>70</sup> At issue were five sets of standards related to (1) reporting sexual abuse, (2) medical and mental health treatment of survivors, (3) investigating sexual abuse in custody, (4) the use of polygraphs, and (5) the use of segregation or protective custody.<sup>71</sup> The case went to trial and ultimately settled for a six-figure sum following Fontano's testimony.<sup>72</sup>

Thus, in each of these cases, the PREA standards created a map of where to look for persuasive evidence of correctional authorities' failure to comply with known standards and practices that increased safety for people in custody. In Michigan, it was the separation of youthful male inmates from adult male prisoners. In New Jersey, it was the continued practice of allowing male staff to supervise female inmates in its women's prison despite a long history of predatory sexual behavior by male staff. In Illinois, it was the failure to follow sexual assault medical, mental health, and investigative protocols.

### C. Notice and Comment as Admissions

The admissions that states made in the regulatory process are powerful evidence of the integrity and reasonableness of the PREA standards. These admissions and engagement with the regulatory process that formed the PREA standards establish a minimum standard of care that agencies must follow and that litigants will use to challenge agency action in preventing, addressing, and punishing sexual abuse in custodial settings. Moreover, the admissions in the regulatory process have contributed to the major goals of discovery: narrowing the areas of dispute between parties; providing parties with a foretaste of the strength of their case; providing the parties with information they can use to remedy harmful conditions and practices; encouraging resolution of disputes prior to trial; and, more fundamentally, helping achieve more just and humane processes, procedures, and conditions for people in custody.<sup>73</sup>

---

69. Fontano v. Godinez, No. 12-CV-3042, 2012 U.S. Dist. LEXIS 89061, at \*4–5, (C.D. Ill. June 27, 2012); see also Complaint at 5, 9, Fontano v. Godinez, No. 12-CV-3042, 2012 U.S. Dist. LEXIS 89061 (C.D. Ill. June 27, 2012).

70. Association of State Correctional Administrators, *ASCA Response Template for Attorney General's Proposed PREA Standards: State Responding: Illinois Department of Corrections* (Mar. 11, 2011). These comments were collected by ASCA from each state and forwarded to the Department of Justice as it finalized the PREA standards.

71. Complaint at 2, 4, 11–12, Fontano v. Godinez, No. 12-CV-3042, 2012 U.S. Dist. LEXIS 89061 (C.D. Ill. June 27, 2012) (topics raised comport with PREA standards 28 C.F.R. §§ 115.51, 115.71, 115.81).

72. Josh McGhee, *State to Pay \$450K to Inmate Raped While in Prison*, DNA INFO (Sept. 2, 2016), <https://www.dnainfo.com/chicago/20160902/uptown/450000-settlement-prison-rape-case-reported/>.

73. See generally American Bar Association, *How Courts Work*, AMERICAN BAR ASSOCIATION (Sept. 9, 2019), [https://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/](https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/) (explaining the general purposes of discovery); see also Giovanna Shay, *Ad Law Incarcerated*, 14 BERKELEY J. CRIM. L. 329, 361–63 (2010) (discussing the value of notice-and-comment rulemaking).

There are legitimate critiques of using agencies' comments in this fashion.<sup>74</sup> If agencies become aware that the information they provide to influence the outcome of regulation in their industry might come back to haunt them in litigation, they may be less likely to provide needed feedback to regulators for the industry. This lack of feedback would deprive regulators of needed expertise in crafting reasonable standards and regulation.

The regulated actors in this process—the corrections industry—used their power to favorably impact the timing of the applicability of the standards,<sup>75</sup> the process by which they would be audited for compliance,<sup>76</sup> and the penalties for failure to comply with the standards.<sup>77</sup> For example, although the Commission finished writing the standards in 2009, the final rule was not issued for another three years.<sup>78</sup> Correctional agencies and actors even started receiving grants to come into compliance with the standards prior to their promulgation.<sup>79</sup> Notwithstanding the long period of consultation and input to the standards, the DOJ delayed the effective date of the standards for a year, until 2013.<sup>80</sup> The first required set of audits for one-third of an agency's facilities was not due until August 20, 2014.<sup>81</sup> There was a further delay in implementing the standards for restrictions on cross-gender pat-down searches of female inmates in prisons, jails, and community confinement facilities until 2015 or 2017 depending on the number of inmates.<sup>82</sup> The standard on minimum staffing ratios in secure juvenile facilities did not go into effect until October 2017.<sup>83</sup> Large swathes of the corrections industry—immigration, military facilities, and probation and parole—remain for all intents and purposes untouched by PREA although they continue to have obligations under its standards.<sup>84</sup> Overall,

74. *Id.* at 369.

75. For instance, though final rulemaking for the PREA standards was in 2012, juvenile facilities had until October 2017 to become compliant with minimum juvenile staffing ratio standard (28 C.F.R. § 115.313) and facilities with capacity less than 50 had extensions until August 21, 2017 to become compliant with standard for cross-gender pat-down searches of female inmates (28 C.F.R. § 115.15). *See* 28 C.F.R. § 115 (2012).

76. *See* COMMITTEE MEETING OF SENATE LAW AND PUBLIC SAFETY COMMITTEE, *supra* note 58, at 50.

77. Arkles, *supra* note 6, at 806. ("If an agency's facilities are not in full compliance with PREA, its qualifying federal grants may be reduced by five percent unless the Governor of the state certifies that those funds will only be used to come into compliance with PREA." Citing 42 U.S.C. § 15607(c) (2012). However, "[f]ederal funding accounts for only 2.9% of state prison budgets.")

78. Arkles, *supra* note 6, at 805.

79. *Implementation and Unresolved Issues*, *supra* note 5, at 11.

80. Arkles, *supra* note 6, at 805–06.

81. 28 C.F.R. § 115.401(a) (2020).

82. 28 C.F.R. § 115.15(b) (2019) ("As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances.")

83. *See also id.* § 115.313(c) (2019) ("Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.")

84. *See* Victoria López & Sandra Park, *ICE Detention Center Says It's Not Responsible for Staff's Sexual Abuse of Detainees*, ACLU (Nov. 6, 2018), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/ice-detention-center-says-its-not-responsible> (criticizing the PREA standards for only applying to agencies that enter, renew, or modify contracts); *see also* Christy Carnegie Fujio, *No One Held In US Custody*

the Commission's recommendations to hold corrections agencies accountable for violating the standards is small compared to the power the corrections industry had in shaping the process and the standards.

## II. NEW ARTICULATIONS FOR THE STANDARD OF CARE IN PREVENTING, INVESTIGATING, AND PUNISHING SEXUAL ABUSE IN CUSTODY

The most important outcome of the PREA standards is the conversion of long-acknowledged best practices into "enforceable" standards. Five standards received the most attention before, during, and after their promulgation:<sup>85</sup> (1) youthful inmates;<sup>86</sup> (2) limits to cross-gender viewing and searches;<sup>87</sup> (3) evidence protocol and forensic medical examinations;<sup>88</sup> (4) inmate reporting;<sup>89</sup> and (5) inmate access to outside confidential support services.<sup>90</sup> This Part will examine the Youthful Inmate Standard, highlighting how the development and implementation of PREA standards have provided strength to the enforcement of standards of care in correctional settings.

The young, inexperienced prisoner, male, female, or non-binary, who enters adult prison or jail and is victimized or exploited is a well-known narrative of custodial settings.<sup>91</sup> As with most narratives, this comes from a place of truth.<sup>92</sup> Young people are vulnerable to abuse in any custodial setting, including in juvenile

---

Should Be At Risk for Rape or Sexual Assault, PHYSICIANS FOR HUMAN RIGHTS (Dec. 9, 2011), <https://phr.org/resources/no-one-held-in-us-custody-should-be-at-risk-for-rape-or-sexual-assault/> (urging the DOJ to apply PREA standards to immigration centers). *But see* Derek Gilna, *Prison Rape Elimination Act Finally Extended to ICE Detention Facilities, But Not to Private or County Jails*, PRISON LEGAL NEWS (Apr. 13, 2017), <https://www.prisonlegalnews.org/news/2017/apr/13/prison-rape-elimination-act-finally-extended-ice-detention-facilities-not-private-or-county-jails/> (applauding, although with reservations, the extension of PREA standards to undocumented immigrants in ICE facilities); U.S. IMMIGRATION AND CUSTOMS ENF'T, PREA, <https://www.ice.gov/prea> (showing commitment to PREA compliance) (last updated Aug. 7, 2019).

85. 28 C.F.R. § 115 (2019) (containing 52 provisions that cover standards for prisons and jails, lockups, community confinement, and juvenile facilities, where each provision contains definitions and standards on prevention planning, responsive planning, training and education, screening, reporting, agency duties, investigations, discipline, medical and mental care, data collection and review, the auditing process, compliance, etc.).

86. *Id.* § 115.14.

87. *Id.* § 115.15.

88. *Id.* § 115.21.

89. *Id.* § 115.51.

90. *Id.* § 115.53.

91. Brenda V. Smith, *Boys, Rape, and Masculinity: Reclaiming Boys' Narratives of Sexual Violence in Custody*, 93 N.C. L. REV. 1559, 1565 (2015) [hereinafter *Boys, Rape, and Masculinity*] (stating that one assumption in the initial framing of PREA was that certain populations were more vulnerable to prison rape such as racial minorities, members of the LGBTQI community, and young people).

92. *See* Cindy Struckman-Johnson et al., *Sexual Coercion Reported by Men and Women in Prison*, 33 J. OF SEX RES. 67, 68 (1996) (concluding that few incarcerated youth are capable of escaping "the 'epidemic' of sexual assault in city jails"); Nancy Wolff et al., *Sexual Violence Inside Prisons: Rates of Victimization*, 83 J. OF URB. HEALTH: BULL. OF THE N.Y. ACAD. OF MED. 835, 836 (2006) (showing that, although there is a lot of variance on victimization rates across studies, there is a consensus that younger inmates face a greater risk of sexual victimization).



settings that are ostensibly designed for them.<sup>93</sup> The BJS has found that rates of victimization in juvenile settings are much higher than in any other setting.<sup>94</sup> There are a number of reasons for this. First, there is likely a stronger culture of reporting in juvenile settings as juvenile workers are mandatory reporters under state and federal law.<sup>95</sup> There is also ongoing oversight of juveniles in custody through periodic hearings before courts,<sup>96</sup> the involvement of social workers,<sup>97</sup> and oversight of juvenile agencies by legislators.<sup>98</sup> However, youth who were held in adult facilities, or youthful inmates, did not have access to the same types of protections as youth in the juvenile system prior to PREA.<sup>99</sup>

In fact, the Commission has stated that youthful inmates who are incarcerated with adults face the highest risk for sexual abuse.<sup>100</sup> Youthful inmates are caught

93. See David Kaiser & Lovisa Stannow, *The Crisis of Juvenile Prison Rape: A New Report*, THE N.Y. REV. OF BOOKS (Jan. 7, 2010), <https://www.nybooks.com/daily/2010/01/07/the-crisis-of-juvenile-prison-rape-a-new-report/> (explaining that although youth tried as adults are probably more vulnerable to sexual assault, sexual victimization in juvenile facilities is so common that staff at a Juvenile Facility in Plainfield, Indiana created flowcharts to keep track of sexual assaults); Sara Medina, Comment, *Sexual Abuse of Juveniles in Correctional Facilities: A Violation of The Prison Rape Elimination Act*, 26 AM. U. J. GENDER, SOC. POL'Y & L. 947, 949–50 (2018) (asserting that, although juvenile detention rates decreased from 2007 to 2012, sexual abuse allegations against staff doubled in juvenile facilities and “the number of sexual assaults in correctional facilities continues to rise, especially in juvenile populations”); see RICHARD A MENDEL, MALTREATMENT OF YOUTH IN U.S. JUVENILE CORRECTIONS FACILITIES 3 (2015) (referring to sexual abuse in juvenile facilities as a “continuing national epidemic”); see also Chammah, *supra* note 48 (“There was an assumption from the beginning of PREA that we wanted to protect the vulnerable... [a]lge was a given. It’s the number one vulnerability.”).

94. Compare ALLEN J. BECK ET AL., U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2012 9 (June 2013) (illustrating that about ten percent of youth in juvenile facilities reported one or more sexual victimization incidents in 2012), with RAMONA R. RANTALA, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION REPORTED BY ADULT CORRECTIONAL AUTHORITIES, 2012–15 6 (2018) (concluding that only 4.49 adults per every 1,000 inmates (0.4%) alleged sexual victimization in 2012).

95. 28 C.F.R. § 115.361(a)–(b) (2019) (requiring all staff to report any knowledge, suspicion, or information about any sexual abuse or harassment incident that occurs in a facility, retaliation against those who reported an incident, and any neglect that may have contributed to an incident or retaliation, while juvenile facility staff must also comply with any applicable child abuse mandatory reporting laws); CHILDREN’S BUREAU, MANDATORY REPORTS OF CHILD ABUSE AND NEGLECT 2 (2015) (compiling a list of state mandatory reporting statutes that shows that, as of August 2015, 26 states either explicitly designated juvenile correctional staff as mandated reporters or required any person who has cause to believe sexual abuse occurred to report); see also Wis. Stat. § 48.981(2) (2018) (adding juvenile correctional officer to its list of mandatory reporters).

96. See Kathleen Michon, *Juvenile Delinquency: What Happens in a Juvenile Case?*, NOLO, <https://www.nolo.com/legal-encyclopedia/juvenile-delinquency-what-happens-typical-case-32223.html> (last visited Jan. 29, 2020) (“The judge may also order the juvenile to appear in court periodically (called post-disposition hearings) so that the judge can monitor the juvenile’s behavior and progress.”).

97. See generally Christina Reardon, *Juvenile Justice Journey – Social Work Role Returns in New Era of Reform*, 19(5) SOC. WORK TODAY 12 (Oct. 2019).

98. See generally Michele Deitch, *Independent Correctional Oversight Mechanisms Across the United States: A 50-State Inventory*, 30 PACE L. REV. 1754 (2010) (comparing the oversight of juvenile agencies by legislators across the 50 states).

99. See Chammah, *supra* note 48, at 14 (recounting youthful inmates’ stories of being housed and raped by adult cellmates and staff refusing to investigate the incidents, like when “John told the authorities about the assaults in late July, roughly three weeks before the standards took effect, so nobody was failing to abide by PREA when they did not investigate John’s allegations”).

100. NAT’L PRISON RAPE ELIMINATION COMM’N, *supra* note 4, at 18.

between the juvenile and adult systems. Up until 2007, it was commonplace for youth who had been waived for prosecution as adults to be housed in adult prisons and jails.<sup>101</sup> There are a hodgepodge of inconsistent practices among the states: offenses for which youth could be charged as adults; different ages at which youth could be waived for adult prosecution; different practices about where the youth were placed prior to achieving their majority; and the age of majority in each state.<sup>102</sup> Even prior to the passage of PREA, there was considerable advocacy at the state and federal level against the prosecution and imprisonment of youth as adults.<sup>103</sup> PREA's passage, however, elevated youth imprisonment as a target for reform.

Several witnesses testified in the hearings prior to PREA's passage about those who were imprisoned with adults as youth.<sup>104</sup> Linda Bruntmeyer, whose son died by suicide after being raped in custody, offered some of the most compelling testimony:

At sixteen, Rodney was a small guy, only 5'2 and about 125 pounds. And as a first-time offender, we knew he might be targeted by older, tougher, adult inmates. Then, our worst nightmares came true. Rodney wrote us a letter telling us he'd been raped . . . . But that was only the beginning. Rodney knew if he went back into the general population, he would be in danger. He wrote to the authorities requesting to be moved to a safer place. He went through all the proper channels, but he was denied.

After the first rape, he was returned to the general population. There, he was repeatedly beaten and forced to perform oral sex and raped. He wrote for help again. In his grievance letter he wrote, "I have been sexually and physically assaulted several times, by several inmates. I am afraid to go to sleep, to shower, and just about everything else. I am afraid that when I am doing these things, I might die at any minute. Please sir, help me."

---

101. JUSTICE POL'Y INST., RAISING THE AGE: SHIFTING TO A SAFER AND MORE EFFECTIVE JUVENILE JUSTICE SYSTEM 4 (2017) (presenting statistics showing that since 2007, when many states began to raise the age limit, the number of youth excluded from juvenile court and facilities has been cut in half).

102. CARMEN E. DAUGHERTY, CAMPAIGN FOR YOUTH JUSTICE, ZERO TOLERANCE: HOW STATES COMPLY WITH PREA'S YOUTHFUL INMATE STANDARD 1 (2015) ("[S]tate laws vary widely as to the regulations and parameters for housing youth in adult prisons. In fact, some states have no regulations or parameters governing the treatment of youth sentenced as adults at all. While some states have fully removed youth from their prison systems—Hawaii, West Virginia, Maine, California, and Washington—the overwhelming majority of states allow youth to be housed in adult prisons. In fact, 37 states housed youth under 18 years of age in their state prisons in 2012.").

103. JULIE A. SCHUCK, NAT'L RESEARCH COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 41 (2013) ("Youth advocates persisted in promoting traditional policies, but in the 1990s researchers and major private foundations also began to challenge the wisdom of criminalizing juvenile justice. For example, the Annie E. Casey Foundation undertook a national program of alternatives to detention, and in the mid-1990s the John D. and Catherine T. MacArthur Foundation launched a 10-year research network to study differences between juveniles and adults relevant to justice policy.").

104. NAT'L PRISON RAPE ELIMINATION COMM'N, *supra* note 4, at 33–34 (describing the testimony of T.J. Parsell who was raped in an adult prison while he was seventeen).

Still, officials told him that he did not meet “emergency grievance criteria.” We all tried to get him to a safe place. I called the warden, trying to figure out what was going on. He said Rodney needed to grow up. He said, “This happens every day, learn to deal with it. It’s no big deal.”

We were desperate. Rodney started to violate rules so that he would be put in segregation. After he was finally put in segregation, we had about a ten-minute phone conversation. He was crying. He said, “Mom, I’m emotionally and mentally destroyed.”<sup>105</sup>

The Youthful Inmate Standard requires prisons and jails that detain youthful inmates to: (1) maintain sight, sound, and physical separation between adults and youth in housing units; (2) only permit contact between youth and adult inmates under direct staff supervision outside of the housing unit; and (3) make their best efforts to avoid isolating youth to achieve separation, and, absent exigent circumstances, provide youth with daily large muscle exercise, legally required special education services programming, and work opportunities.<sup>106</sup>

In addition to providing greater protection to youth already in adult settings, PREA decreased the number who were sent to adult prisons and jails in the first instance by giving valence to nationwide “Raise the Age” movements.<sup>107</sup> Facilities that failed to meet the sight, sound, and physical separation requirements as well as the restrictions on isolation have stopped housing youthful inmates or changed their laws to make the housing of youthful inmates more difficult.<sup>108</sup> For example, Oregon changed its laws to require the state’s Department of Corrections to transfer physical custody of youthful inmates to the Oregon Youth Authority if the youth could complete their sentence by age twenty-five or if the two agencies agreed that the youth should not be incarcerated in an adult facility.<sup>109</sup>

105. See Linda Bruntmyer, Testimony before Senate Judiciary Committee (July 31, 2002), [https://www.judiciary.senate.gov/imo/media/doc/bruntmyer\\_testimony\\_07\\_31\\_02.pdf](https://www.judiciary.senate.gov/imo/media/doc/bruntmyer_testimony_07_31_02.pdf).

106. 28 C.F.R. § 115.14 (2019). The sight-sound separation requirement can first be found in the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP), which included the mandate that juveniles not be in any institutions where they would have sight or sound contact with adults convicted of criminal charges. See Pub. L. No. 93-415, 34 U.S.C. §§ 11101–11322 (2018); U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, OJJDP STATISTICAL BRIEFING BOOK: JJDP CORE REQUIREMENTS, [https://www.ojjdp.gov/ojstatbb/structure\\_process/qa04302.asp?qaDate=2013](https://www.ojjdp.gov/ojstatbb/structure_process/qa04302.asp?qaDate=2013) (last visited Jan. 29, 2020).

107. See JUSTICE POLICY INST., *supra* note 101, at 14 (“PREA has become a catalyst for raise the age initiatives by galvanizing stakeholder support for states to keep young people safer and avoid the increased taxpayer costs that would result from having to alter the physical structure of adult facilities to comply with federal law.”); MASS. DEP’T OF YOUTH SERVS., 2016 RAISE THE AGE REPORT (2016), <https://www.mass.gov/files/documents/2017/01/og/dys-raise-the-age-report-2016.pdf> (stating that raising the age has facilitated compliance with PREA and allowed Massachusetts to avoid costly construction and staffing changes).

108. JUSTICE POLICY INST., *supra* note 101, at 14 (listing states that have raised the age in recognition of PREA’s Youthful Inmate Standard such as Illinois, Louisiana, Massachusetts, and New Hampshire, as well as Texas, which has filed legislation to raise the age, “cit[ing] the need to keep young people safe and comply with PREA as reason to raise the age”).

109. DAUGHERTY, *supra* note 102, at 1. *But see*, OHIO REV. CODE ANN. §§ 2152.10, 2152.12 (West 2020).

Thus, the PREA standards were a victory for existing federal legislation, the Office of Juvenile Justice and Delinquency Prevention Act (“OJJDP”),<sup>110</sup> and for the efforts of the Juvenile Detention Alternatives Initiative (“JDAI”). Funded by the Annie E. Casey Foundation, JDAI had been pushing states to codify their standards and practices for protecting and improving the conditions of juvenile detention.<sup>111</sup> Having the OJJDP standards and JDAI recommendations codified as the PREA standards achieved the codification of important safety protections for youth in adult custody. Furthermore, the inability to meet the standards gave additional life and credibility to advocacy efforts to raise the age that youth could be prosecuted as adults.<sup>112</sup> These groups played a vital role in crafting the PREA standards by staffing the Commission’s efforts,<sup>113</sup> testifying at hearings,<sup>114</sup> and commenting at various stages of the standards development process,<sup>115</sup> thereby holding the Commission and the DOJ accountable for their decisions.

The standards also accelerated movements to remove youth from adult prisons and jails.<sup>116</sup> In 2006, the BJS conducted research showing that 8,500 youth were

110. 34 U.S.C. §§ 11101–11322 (2017) (aiming to prevent delinquency and improve the juvenile justice system through four core requirements: deinstitutionalization of status offenders, separation of juveniles from adults in secure facilities, removal of juveniles from adult jails and lockups, and addressing disproportionate minority contact).

111. See ANNIE E. CASEY FOUNDATION, JUVENILE DETENTION ALTERNATIVES INITIATIVE, <https://www.aecf.org/work/juvenile-justice/jdai/>; ANNIE E. CASEY FOUNDATION, JDAI AT 25: INSIGHTS FROM THE ANNUAL RESULTS REPORTS 1 (2017); UNLOCKING THE FUTURE: DETENTION REFORM IN THE JUVENILE JUSTICE SYSTEM – THE 2003 ANNUAL REPORT FROM THE COALITION FOR JUVENILE JUSTICE, COALITION FOR JUVENILE JUSTICE 4 (2003). It is important to note, however, that JDAI only focused on juvenile detention facilities, most at the local or county level, and not on post-adjudication juvenile facilities where sexual abuse of juveniles is most rampant.

112. Lindsey Linder, Texas Criminal Justice Coalition, Testimony 2017: HB 122, (2017), [https://www.texasajc.org/system/files/publications/HB%20122%20Testimony%20\(Raise%20the%20Age\)\\_1.pdf](https://www.texasajc.org/system/files/publications/HB%20122%20Testimony%20(Raise%20the%20Age)_1.pdf) (urging House Juvenile Justice & Family Issues committee to raise the age of juvenile jurisdiction to 18 years old to “better comply with the Prison Rape Elimination Act” and avoid potential violations and litigation); Prison Rape Elimination Act National Standards, *supra* note 27, at §115.14.

113. NAT’L PRISON RAPE ELIMINATION COMM’N, STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE, AND MONITORING OF SEXUAL ABUSE IN ADULT PRISONS AND JAILS 81–85 (revealing that NPREC convened expert committees to provide guidance during the standards development process, which included personnel from Just Detention International, Detention Watch Network, Prisoners’ Rights Project, ACLU, and Justice Policy Institute, among others).

114. *Id.* at 2 (“The Commission held eight public hearings, during which more than 100 witnesses testified, including corrections leaders, survivors of sexual abuse in confinement, researchers, investigators, prosecutors, and advocates for victims and the incarcerated.”).

115. See Letter from Campaign for Youth Justice et al. to Eric Holder, U.S. Attorney General, Dep’t of Justice (April 4, 2011).

116. See ACT 4 JUVENILE JUSTICE, CORE PROTECTIONS: JAIL REMOVAL/SIGHT AND SOUND SEPARATION (2019) (“A little over half of the states and Washington, D.C. already permit youth charged as adults to be housed in juvenile facilities. There has been considerable movement in advancing these reforms at the state and local level over the past decade . . . . On October 1, 2018, 25 youth were moved to New Beginnings, a youth facility run by the Department of Youth Rehabilitative Services (DYRS) in Washington, D.C. . . . Since these young people have been transferred to New Beginnings, there have been no outbreaks of violence and, in line with national standards, the facility does not use pepper spray or restraints as a method of discipline.”). *But see* Maddy Troilo, *Locking Up Youth with Adults: An Update*, PRISON POLICY INITIATIVE (Feb. 27, 2018), <https://www.prisonpolicy.org/blog/2018/02/27/youth/> (noting that jurisdictions move young people in custody after they age out).

confined with adults in prisons and jails on any given day.<sup>117</sup> By the end of 2013, that number had decreased to only 1,200 youths.<sup>118</sup> Admittedly, while PREA standards contributed to this decline, the decrease resulted from a variety of other factors, including efforts to raise the age of criminal responsibility that preceded the enactment of PREA,<sup>119</sup> more aggressive enforcement of OJJDP standards on sight and sound separation of youth from adults in jails,<sup>120</sup> the fiscal and logistical impacts of sight and sound separation from adults,<sup>121</sup> the prohibition on using solitary confinement to meet the sight and sound separation requirement,<sup>122</sup> and high profile litigation related to the abuse of youthful inmates in adult prisons and jails.<sup>123</sup>

### III. LOWERING BARRIERS AND GIVING NEW LIFE TO EXISTING CONSTITUTIONAL AND STATE LAW CLAIMS

Given the conditions of confinement that people in custody in the United States face, there was no shortage of prison litigation prior to the passage of the Prison Litigation Reform Act (the “PLRA”) in 1995.<sup>124</sup> Over the years, federal and state

117. NAT’L PRISON RAPE ELIMINATION COMM’N, *supra* note 4, at 18.

118. E. ANN CARSON, U.S. DEPT’ OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013 19 (2014), <https://www.bjs.gov/content/pub/pdf/p13.pdf>.

119. JUSTICE POLICY INST., *supra* note 101.

120. Compare 28 C.F.R. § 115.14 (2019) (covering any person under 18, supervised by the adult court and incarcerated or detained in a prison or jail), with COAL. FOR JUVENILE JUSTICE, HISTORY OF THE JJDP, <http://www.juvjustice.org/federal-policy/juvenile-justice-and-delinquency-prevention-act> (ensuring “that accused and adjudicated delinquent, status offenders, and non-offending juveniles are not detained or confined in any institution where they may have contact with adult inmates”).

121. Jeree Thomas, *Is It Enough? The Implementation of PREA’s Youthful Inmate Standard*, THE CAMPAIGN FOR YOUTH JUSTICE (Sept. 4, 2018), <http://www.campaignforyouthjustice.org/2018/item/is-it-enough-the-implementation-of-prea-s-youthful-inmate-standard> (“Compliance with the Youthful Inmate Standard, is costly for many states, especially as states struggle to retain qualified correctional officers to staff these facilities. As a result, a growing number of states and localities are finding alternatives to adult facilities for youth.”).

122. AWAD ET AL., *supra* note 1, at 26 (reporting that state legislators in Virginia introduced legislation that would require the Board of Corrections to approve adult facilities that house youth after seven boys were placed in solitary confinement at Hampton Roads Regional Jail to avoid putting 100 beds out of commission to house the boys separately).

123. See generally *Poore v. Glanz*, 724 F. App’x 635, 638 (10th Cir. 2018) (ruling in favor of a 17-year-old girl who was housed in an adult facility and raped by a corrections officer because the female youthful inmates were housed in an isolated and unmonitored section of the facility staffed by only one male guard, which showed that the administration was deliberately indifferent to the vulnerabilities youthful inmates face); see also Michael Kunzelman, *Louisiana Teen Prisoner Raped by Inmate and Infected With HIV, Lawsuit Alleges*, CHI. TRIB. (Jan. 30, 2018), <https://www.chicagotribune.com/nation-world/ct-louisiana-prison-rape-hiv-lawsuit-20180130-story.html> (detailing lawsuit that made national headlines involving a teenager who filed suit against the East Baton Rouge Parish Prison after being raped by another inmate and contracting HIV).

124. *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (asserting that Congress enacted the Prison Litigation Reform Act because of “a sharp rise in prisoner litigation in the federal courts”); *Alexander v. Hawk*, 159 F.3d 1321, 1324–25 (11th Cir. 1998) (noting that Congress found that “the number of prisoner lawsuits ‘has grown astronomically—from 6,600 in 1975 to more than 39,000 in 1994’”); *Rivera v. Allin*, 144 F.3d 719, 727–28 (11th Cir. 1998) (concluding that prisoners file more frivolous lawsuits than any other class of persons); *Roller v. Gunn*, 107 F.3d 227, 230 (4th Cir. 1997) (citing statistics that show “[i]n 1995, prisoners brought over 25% of the civil cases filed in the federal district courts”).

officials have created barriers to litigation for people in custody.<sup>125</sup> The primary barrier to conditions of confinement litigation has been the PLRA.<sup>126</sup> Data from the Administrative Office of U.S. Courts reflect the role that the PLRA has played in diminishing prison litigation.<sup>127</sup> In 2018, the amount of inmate petitions filed for civil rights violations was 18,842, compared to 41,679 petitions filed in 1995, prior to passage of the PLRA.<sup>128</sup>

An initial barrier to the passage of PREA was whether the statute itself would create a new cause of action, thereby increasing the number of filings pertaining to conditions of confinement.<sup>129</sup> The legislation makes clear that PREA did not create a new cause of action.<sup>130</sup> So, claims of prisoner abuse that cite PREA as a separate cause of action end with dismissal, while claims involving the same conduct proceed under other available federal and state law bases.<sup>131</sup>

The PLRA requires prisoners, among other hurdles,<sup>132</sup> to: (a) exhaust administrative remedies prior to filing suit;<sup>133</sup> (b) avoid filing “frivolous cases;”<sup>134</sup> and (c) show physical injury resulting from conditions of confinement.<sup>135</sup> While PREA

125. Rachel Poser, *Why It's Nearly Impossible for Prisoners to Sue Prisons*, NEW YORKER (May 30, 2016), <https://www.newyorker.com/news/news-desk/why-its-nearly-impossible-for-prisoners-to-sue-prisons> (“[T]he P.L.R.A. makes it nearly impossible for inmates to get a fair hearing in court.”).

126. *Id.* (“[T]he number of federal lawsuits by inmates against prisons has fallen by sixty per cent [sic] in the twenty years since the P.L.R.A.’s passage.”).

127. See generally Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Enters Adulthood*, 5 UC IRVINE L. REV. 153, 172 (2015) (using data from the Administrative Office of the U.S. Courts to analyze case filing, termination, and outcome figures).

128. U.S. COURTS, TABLE 4.4 U.S. DISTRICT COURTS—CIVIL CASES FILED, BY NATURE OF SUIT (Sep. 30, 2018), [https://www.uscourts.gov/sites/default/files/data\\_tables/jff\\_4.4\\_0930.2018.pdf](https://www.uscourts.gov/sites/default/files/data_tables/jff_4.4_0930.2018.pdf) (noting that the 2018 statistics are slightly down from the 2016 and 2017 statistics, but are still an increase from the statistics in 2000, 2005, and 2010).

129. *Implementation and Unresolved Issues*, *supra* note 5, at 11 (stating that PREA garnered bi-partisan support and was quickly passed in part because organizations such as the Human Rights Watch and Stop Prisoner Rape conceded a “private right of action” and neutralized fears that the legislation would cause more prison litigation).

130. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) (asserting that Congress must create a private right of action either explicitly or implicitly and the court cannot create a private right of action without that intent); *Collen v. Yamaoka*, No. 14-00577 SOM/KSC, 2015 U.S. Dist. LEXIS 22322, at \*5 (D. Haw. Feb. 24, 2015) (“Absent specific congressional intent, no private right of action exists.”).

131. *Bennett v. Parker*, No. 3:17-cv-1176, 2017 U.S. Dist. LEXIS 169876, at \*5–6 (M.D. Tenn. Oct. 13, 2017) (dismissing plaintiff’s PREA claims because other district courts have asserted that the statute does not create a private cause of action); *Longoria v. Cty. of Dallas*, No. 3:14-CV-3111-L, 2017 WL 958605, at \*16 (N.D. Tex. Mar. 13, 2017) (dismissing plaintiff’s rape claims alleging that an officer raped her because the “claim based on . . . PREA is fundamentally flawed, as it is based on the faulty assumption that the standards established by PREA are mandatory requirements”); *Miller v. Griffith*, No. 4:16CV539 JAR, 2016 U.S. Dist. LEXIS 56507, at \*4–5 (E.D. Miss. Apr. 28, 2016) (dismissing plaintiff’s PREA sexual assault claims as legally frivolous).

132. 28 U.S.C. § 1915(b) (2018) (requiring payment of court filing fees in order to file suit).

133. 42 U.S.C. § 1997e(a) (2013).

134. 28 U.S.C. § 1915(g) (containing an exception for circumstances in which the inmate is in “imminent danger of serious physical injury”).

135. 42 U.S.C. § 1997e(c) (“No federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of

does not provide a separate cause of action, litigants and courts are using it to determine whether the PLRA provisions are being met.

#### A. Exhaustion of Administrative Remedies

Under the PLRA, the failure to exhaust administrative remedies is an affirmative defense, such that a prisoner stating a claim need not prove exhaustion of their administrative remedies.<sup>136</sup> And while case law prior to the enactment of PREA provided that agencies could, with few exceptions, define what constitutes exhaustion in order to comply with PREA,<sup>137</sup> agency exhaustion requirements must mirror those in the PREA standards.<sup>138</sup> PREA provides that there is no time limit for submitting a grievance for sexual abuse.<sup>139</sup> So, agencies may not, for example, set a thirty or ninety-day time limit for filing a complaint about sexual abuse, then later plead that the prisoner's claim is precluded, and still comply with PREA.<sup>140</sup> The PREA standard provides the possibility that filing a report of abuse—no matter how distant from the actual incident that gave rise to the complaint—is sufficient to exhaust administrative remedies.<sup>141</sup> Some courts, however, have interpreted PREA as not covering incidents that occurred prior to the effective date of the standards.<sup>142</sup> For instance, in *Does 1-12 v. Michigan Dep't of Corrections*, retroactivity was at the core of the litigation because some of the plaintiffs' claims involved incidents occurring prior to the effective date of the standards, prompting their dismissal.<sup>143</sup> The district court ruled that plaintiffs who were abused prior to when the PREA grievance policy was implemented in the Michigan Department of

---

physical injury or the commission of a sexual act."); see Eleanor M. Levine, *Compensatory Damages Are Not for Everyone: Section 1997e(e) of the Prison Litigation Reform Act and the Overlooked Amendment*, 92 NOTRE DAME L. REV. 2203, 2205 (2017) ("[S]ome courts had interpreted § 1997e(e) to bar rape claims when the prisoner could not prove a physical injury."); Jamie Fellner, *Ensuring Progress: Accountability Standards Recommended by the National Prison Rape Elimination Commission*, 30 PACE L. REV. 1625, 1644 (2010) ("That requirement fails to take into account the very real emotional and psychological injuries that often follow sexual assault, and it has been perversely interpreted by at least a few courts that concluded sexual assault alone does not constitute a 'physical injury.'").

136. *Brown v. Croak*, 312 F.3d 109, 111 (3d Cir. 2002) ("Failure to exhaust administrative remedies is an affirmative defense that must be pled and proven by the defendant.").

137. Karen M. Harkins Slocomb, Case Note, *How the Court Got It Wrong in Woodford v. Ngo by Saying No to Simple Administrative Exhaustion Under the PLRA*, 44 SAN DIEGO L. REV. 387, 390 n.10 (2007) ("The Court does not offer a brightline definition of 'critical procedural rules,' and its holding leaves administrative procedure to the discretion of the individual prisons.").

138. 28 C.F.R. § 115.52 (2019).

139. *Id.* § 115.52(b)(1) (providing that "[t]he agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse").

140. *Id.*

141. *Id.*

142. See *Payton v. Thompson*, No. 2:13-cv-92-DPM-JJV, 2015 WL 252277, at \*4–5 (E.D. Ark. Jan. 20, 2015) (rejecting PREA application to an assault that occurred on July 2, 2012); *Wakeley v. Giroux*, No. 1:12-CV-2610, 2014 WL 1515681, at \*4 (M.D. Pa. Apr. 15, 2014) (rejecting application of PREA to assault that occurred in March 2011).

143. *Does 1–12 v. Mich. Dep't of Corr.*, No. 13-14356, 2018 WL 5786199, at \*7 (E.D. Mich. Nov. 5, 2018).

Corrections (“MDOC”) did not timely exhaust administrative remedies and that the new PREA grievance policy was not retroactive.<sup>144</sup>

While the district court was deciding the motion for summary judgment with regard to plaintiffs Does 1-6, plaintiffs Does 8-10 separately appealed the district court’s grant of summary judgment in a separate action.<sup>145</sup> The Sixth Circuit Court of Appeals reversed the district court’s decision on December 18, 2019, stating that MDOC’s PREA administrative remedies process was so convoluted as to be unavailable to exhaust.<sup>146</sup> The appellate court based its decision on MDOC’s decision to route the plaintiff’s grievances under its convoluted PREA administrative remedies process, even though the sexual abuse allegations occurred before it adopted a PREA grievance procedure in April 2016.<sup>147</sup>

Courts are accepting that PREA standards provide multiple ways of reporting sexual abuse complaints beyond official grievance procedures, and these alternative methods of reporting may be considered exhaustion of administrative remedies under the PLRA. For example, in *Williams v. Phillips*, the plaintiff filed suit pursuant to 42 U.S.C. § 1983 alleging violation of his Eighth Amendment rights.<sup>148</sup> The plaintiff claimed that two police officers sexually assaulted and harassed him. The officers moved for dismissal for failure to exhaust all administrative remedies.<sup>149</sup> The court analyzed PREA and found that because the plaintiff alleged that he reported the allegations of abuse and harassment by one of the officers to a staff member—which is consistent with the available reporting options under PREA—the motion to dismiss should be denied.<sup>150</sup> Reaching this result would recognize that prisoners, even more than other victims, need multiple avenues to report abuse, and that the impact of trauma and fear of further victimization is as real for victims in prison as for those in the community.

### B. *Frivolous Claims*

The PLRA’s frivolous claim provision aims to deter incarcerated individuals from filing these claims by imposing a “three strike rule” for inmates bringing a

144. *Id.* at \*9 (“MDOC did not adopt a set of PREA grievance procedures until April 2016. Before these policies were effective, then, MDOC’s formal grievance procedure applied.”). Summary judgment was granted as to plaintiffs Doe 1, 2, 5, and 6 for this reason. *Id.* CIVIL RIGHTS LITIGATION CLEARINGHOUSE, UNIV. OF MICH. L. SCHOOL, <https://www.clearinghouse.net/detail.php?id=14925>. At the time of this writing, other plaintiffs’ claims are still being litigated in district court.

145. *Does 8–10 v. Snyder*, 945 F.3d 951, 961 (6th Cir. 2019).

146. *Id.* at 965. Unavailability of administrative remedies applied to Does 8 and 10. Doe 9 feared retaliation, so they did not file for an administrative remedy that likely would not have been available as well. *Id.* at 966–67.

147. *Id.* at 962. While the court states that “an inmate’s failure to exhaust can no longer result from an untimely grievance if that grievance involved an allegation of sexual abuse,” it did not reach the issue of whether PREA’s prohibition on agency time limits for grieving allegations of sexual abuse applied to John Does 8–10’s complaints. *Id.* at 956.

148. *Williams v. Phillips*, No. 2:17-cv-04291, 2018 WL 1887462, at \*1 (E.D. Pa. Apr. 20, 2018).

149. *Id.* at \*1.

150. *Id.* at \*5.



civil suit action or an appeal in federal court.<sup>151</sup> Specifically, unless the inmate is under “imminent danger of serious physical injury,” they may not file a civil action or an appeal to a civil judgment if they have brought civil actions or appeals that were dismissed for being frivolous, malicious, or failing to state a claim for which relief could be granted on three or more prior occasions.<sup>152</sup> Although the PLRA intended to decrease the number of frivolous lawsuits brought by inmates, instead it has “greatly undermined the crucial oversight role played by courts in addressing sexual assault and other constitutional violations in corrections facilities” by removing the courts from the process.<sup>153</sup>

An inmate who has filed three or more lawsuits that have been dismissed for any of the aforementioned reasons will lose *in forma pauperis* status and have to pay the full filing fee, which can range from \$350 to \$450, if they wish to file a claim in the future.<sup>154</sup> This provision does not account for how much time has passed between the prior frivolous claims or the current claim’s merit.<sup>155</sup> Most importantly, the provision does not consider the significant hurdles that individuals alleging sexual assault of any kind face in being believed.<sup>156</sup> Undoubtedly, the filing fee imposes an additional barrier for many inmates and diminishes agency responsibility to address sexual violence that inmates experience.<sup>157</sup>

Courts often set a low hurdle for determining that a claim is frivolous. For example, in *Lumpkin v. Salt*, the court issued a strike to the plaintiff under the PLRA when the plaintiff filed suit after corrections officers cut off all of his clothing in the middle of booking him, exposing him to other inmates and female staff.<sup>158</sup> The court granted defendants’ request to issue a strike because there were no constitutional violations, and because video surveillance showed there were no other inmates in the area of the room at the time his clothes were cut off.<sup>159</sup> Similarly, in *Sublett v. McAlister*, the court ruled against a plaintiff who filed suit after he

151. 28 U.S.C § 1915(g) (2018).

152. *Id.*

153. JUST DETENTION INT’L, THE PRISON LITIGATION REFORM ACT OBSTRUCTS JUSTICE FOR SURVIVORS OF SEXUAL ABUSE IN DETENTION 1 (2009), <https://justdetention.org/wp-content/uploads/2015/10/FS-The-Prison-Litigation-Reform-Act-Obstructs-Justice-for-Survivors-of-Sexual-Abuse-in-Detention.pdf>.

154. *Id.* at 1–2.

155. *Id.* at 2.

156. According to BJS data, “nearly half of prisoner rape survivors who did not report the abuse were afraid they would not be believed.” JUST DETENTION INT’L, HOPE BEHIND BARS: AN ADVOCATE’S GUIDE TO HELPING SURVIVORS OF SEXUAL ABUSE IN DETENTION 10 (2014). Also, nearly one half of those who reported staff-on-inmate sexual abuse and nearly one third reporting inmate-on-inmate sexual abuse were disciplined. *Id.* Those reporting sexual abuse are also likely moved to solitary confinement. *Id.*

157. Broc Gullett, *Eliminating Standard Pleading Forms that Require Prisoners to Allege Their Exhaustion of Administrative Remedies*, 2015 MICH. ST. L. REV. 1179, 1190 (2015) (“Therefore, if a prisoner has thrice had claims dismissed because they are frivolous, malicious, fail to state a claim, or seek monetary relief from someone who is immune from such relief, then a prisoner will be ineligible for IFP Status and will therefore have no access to the courts if he cannot afford to pay a filing fee.”).

158. See *Lumpkin v. Salt*, No. C18-330-RSM-JPD, 2019 WL 1522000, at \*1 (W.D. Wash. Jan. 16, 2019).

159. *Id.* at \*6. The court found no constitutional violations, as the court believed the officers acted reasonably to ensure the safety of the jail staff and prevent contraband from entering the institution. *Id.* at \*4–6.

observed a female prison guard staring into the men's showers because he was fully clothed when the action occurred and no other sexual misconduct occurred.<sup>160</sup> The court found this claim to be frivolous because the plaintiff was not engaged in constitutionally protected conduct.<sup>161</sup>

The strikes in such cases reflect the court's frustration with *pro se* prison litigation and its preference that lawyers curate more serious claims of abuse.<sup>162</sup> While this approach increases judicial efficiency, it has worsened the state of prisons. Thus, matters that come to the court's attention are often deeper and more serious problems that might have been remedied had the court intervened sooner at the behest of *pro se* litigants.<sup>163</sup>

### C. Physical Injury

While PREA is explicit that it does not create any new causes of action, it does give weight to prisoner claims that rape is a serious injury that violates the Eighth Amendment prohibition against cruel and unusual punishment.<sup>164</sup> The PLRA removed the ability of plaintiffs to file for damages for mental anguish without first showing physical injury or sexual assault.<sup>165</sup> Rape is, therefore, the kind of serious injury that is not precluded by the PLRA.<sup>166</sup> PREA has since provided standards that aid in the detection, reporting, and preservation of physical evidence in support of sexual assault claims.

One of the most hotly contested issues is whether rape is a *per se* physical injury.<sup>167</sup> Although PREA seems to have laid that issue to rest, courts still require

160. *Sublett v. McAlister*, No. 5:16-CV-00138-TBR, 2018 U.S. Dist. LEXIS 216714, at \*1 (W.D. Ky. Dec. 27, 2018).

161. *Id.* at \*6.

162. See Jonathan D. Rosenbloom, *Exploring Methods to Improve Management and Fairness in Pro Se Cases: A Study of the Pro Se Docket in the Southern District of New York*, 30 *FORDHAM URB. L.J.* 305, 306–307 (2002) (describing courts' and court staff's frustration in dealing with *pro se* litigants); *id.* at 314, n.38 (“[T]he PLRA ‘will help bring relief to a civil justice system overburdened by frivolous prisoner lawsuits . . . .’”) (quoting Sen. Hatch on PLRA, 141 *CONG. REC.* S14611-01, S14626-27 (daily ed. Sept. 29, 1995)).

163. *Id.* at 335. (“The percentage of granted/meritorious applications has decreased, implying that the PLRA has deterred not only frivolous cases, but also cases with enough merit to warrant the granting of counsel.”).

164. U.S. Const. amend. VIII.

165. Rosenbloom, *supra* note 162, at 314; 42 U.S.C. § 1997(e) (2018) (“No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act.”).

166. See *Alexander v. Sandoval*, 532 U.S. 275, 291 (2003) (holding that, in the absence of explicit authorization by Congress, no private right of action is created simply by statute); *Chao v. Ballista*, 772 F. Supp. 2d 337, 341 n.2 (D. Mass. 2011) (citing that every court that has dealt with the issue has decided that PREA does not create a private cause of action); see also 42 U.S.C. § 15602(3), (7) (describing the purposes of PREA to prevent and punish prison rape and protect the Eighth Amendment Rights of prisoners); Kate Walsh, *Inadequate Access: Reforming Reproductive Health Care Policies for Women Incarcerated in New York State Correctional Facilities*, 50 *COLUM. J.L. & SOC. PROBS.* 45, 70 (2016) (arguing that, despite PREA lacking a private right of action provision, litigants can use PREA noncompliance to argue that facilities are failing to meet constitutional obligations).

167. Deborah M. Golden, *It's Not All in My Head: The Harm of Rape and the Prison Litigation Reform Act*, 11 *CARDOZO WOMEN'S L.J.* 37, 45 (2004) (concluding that the question of whether rape in and of itself is a

plaintiffs, even in sexual assault cases, to allege actual physical injuries such as bruises and tearing.<sup>168</sup> Litigants receive resistance from the courts if they are not able to prove that their allegations resulted in a physical injury. Many courts have held that mere verbal harassment of a sexual nature does not violate the Eighth Amendment.<sup>169</sup> For example, in *Gipson v. West Valley Detention Risk Management*, the court ruled against the plaintiff after two officers “groped and made sexual comments about his buttocks.”<sup>170</sup> The court dismissed the plaintiff’s Eighth Amendment claims on the grounds that mere sexual commentary does not rise to a constitutional violation.<sup>171</sup> Likewise, many courts have held that a single isolated incident of sexual assault that does not result in physical injury also does not constitute cruel and unusual punishment.<sup>172</sup> Although PREA helps plaintiffs by emphasizing that rape is a serious injury, litigants must still show that they suffered from a physical injury as a result of the sexual assault.

In sum, while PREA did not create a new cause of action, it signaled to prisoners and their counsel that sexual victimization of people in custody were serious matters that the court would examine more carefully. PREA also put correctional agencies on notice that it would look more carefully at whether their practices, particularly those related to complaining about victimization, affected inmate safety. Finally, PREA seems to have settled the issue that courts should view sexual victimization as a serious physical injury that can give rise to a cause of action and a remedy.

---

physical injury is one that remains open and describing how some courts have said that the rape in a respective case is a physical injury without providing when rape constitutes a physical injury).

168. See generally 28 C.F.R. § 115.6 (2019) (defining sexual abuse and harassment without requiring any physical injury).

169. See *Thomas v. Gore*, No. 3:18-CV-1929-GPC-MDD, 2019 U.S. Dist. LEXIS 30591, at \*4 (S.D. Cal. Feb. 26, 2019) (holding that the deputy calling plaintiff “baby” or “black king” did not violate the Eighth Amendment); *Brown v. Cronin*, No. 17-CV-74-FPG, 2019 WL 635578, at \*3 (W.D.N.Y. Feb. 14, 2019) (holding that an officer’s threatening remarks to penetrate the plaintiff on several occasions does not alone violate the Eighth Amendment); *Anderson v. Silva*, No. 1:18-cv-01612-BAM (PC), 2019 WL 484191, at \*3 (E.D. Cal. Feb. 7, 2019) (holding mere verbal harassment does not arise to an Eighth Amendment violation); *Collins v. Diocese of Sacramento*, No. 2:17-cv-2307 MCE CKD P, 2019 WL 95454, at \*3 (E.D. Cal. Jan. 3, 2019) (holding that priest who was placed within the prison system did not violate the constitution by using sexually abusive language towards the plaintiff).

170. *Gipson v. W. Valley Det. Risk Mgmt.*, No. EDCV 19-197-DDP (KK), 2019 U.S. Dist. LEXIS 23677, at \*1 (C.D. Cal. Feb. 13, 2019).

171. *Id.* at \*3–4.

172. See *Fletcher v. O’Bryan*, No. 5:17cv146-MCR-CJK, 2019 WL 573179, at \*5 (N.D. Fla. Jan. 25, 2019) (dismissing the plaintiff’s PREA claims that officer was observing him taking a shower through video surveillance because the isolated incident was not serious enough to give rise to a constitutional violation); see also *Booth v. Comm’r of Corr.*, No. 3:19-cv-100 (MPS), 2019 U.S. Dist. LEXIS 28942, at \*4 (D. Conn. Feb. 25, 2019) (finding no Eighth Amendment violation where an officer watched inmates in the shower area on only one occasion); *Sarvey v. Wetzel*, No. 1:16-cv-00157 (Erie), 2019 U.S. Dist. LEXIS 7595, at \*4 (W.D. Pa. Jan. 16, 2019) (granting summary judgment to defendants because female inmate who was groped, forcibly kissed, and digitally penetrated by an officer inside an elevator failed to provide evidence of a physical injury among other reasons).

## IV. LITIGATION INTERPRETING PREA

Despite the litigation barriers imbedded at the core of the PLRA, litigants have attempted to use PREA as an additional source of relief for sexual abuse in custody. A review of 286 cases decided between March 2017 and June 2019 provide a snapshot of how the courts are interpreting PREA.<sup>173</sup> Of the 286 cases reviewed, 111 included claims of sexual abuse and harassment by other inmates or prisoner officials.<sup>174</sup> In almost a third of the cases, prisoners made specific claims related to violations of PREA.<sup>175</sup> Of these 286 cases, courts dismissed approximately twenty percent for failure to exhaust all administrative remedies.<sup>176</sup> Importantly, LGBTQI people in custody raised fifteen percent of these claims.<sup>177</sup>

While the courts have been clear that PREA does not create a separate cause of action that gives rise to relief,<sup>178</sup> courts are willing to use violations of the PREA standards to support Eighth Amendment and state and federal tort claims raised by incarcerated victims.<sup>179</sup>

*A. Cases Attempting to Use PREA as a Separate Cause of Action Have Not Succeeded*

After the standards became final, initial cases sought to use PREA as a separate cause of action, despite the fact that the Act did not create a new cause of action.<sup>180</sup> In *Longoria v. County of Dallas*, a female prisoner claimed that an officer violated PREA by escorting her out of her cell to a mattress room in the infirmary and raping her.<sup>181</sup> The defendant officer alleged that the sex was consensual.<sup>182</sup> The court dismissed the plaintiff's claims of inadequate training and deliberate indifference stating, "[t]he plaintiff's claims based on PREA are fundamentally flawed, as it is based on the faulty assumption that the standards established by PREA are mandatory requirements."<sup>183</sup> The court did, however, allow the plaintiff to proceed on a state tort claim and a 42 U.S.C. § 1983 claim, under which she ultimately prevailed.<sup>184</sup>

---

173. This data was collected as part of an ongoing project to document how courts are interpreting the Prison Rape Elimination Act. The details of this research are detailed in a PowerPoint, *The Evolution of PREA: Case and Currents*, (June 19, 2019) (on file with author).

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Longoria v. Cty. of Dallas*, No. 3:14-CV-3111-L, 2017 WL 958605, at \*180 (N.D. Tex. Mar. 13, 2017).

179. *Id.*

180. See *Implementation and Unresolved Issues*, *supra* note 5, at 11, n.120 (stating that PREA garnered bipartisan support and was quickly passed in part because organizations such as the Human Rights Watch and Stop Prisoner Rape conceded a "private right of action" and neutralizing fears that the legislation would cause more prison litigation).

181. *Longoria*, 2017 WL 958605, at \*17.

182. *Id.* at 1.

183. *Id.*

184. *Id.*; see also *Longoria v. Cty. of Dallas, Texas*, No. 3:14-CV-3111-L, 2018 WL 339311 (N.D. Tex. Jan. 9, 2018).

In another case, *Bennett v. Parker*, the plaintiff alleged that the defendant warden raped him several times and made the plaintiff perform oral sex on him nine times.<sup>185</sup> While the court allowed the plaintiff's Eighth Amendment claims to proceed, it dismissed the PREA claims as "several district courts recognized that this statute does not create a private cause of action."<sup>186</sup>

In *Moore v. Jordan*, the plaintiff filed a 42 U.S.C. § 1983 action and pled a violation of PREA that the defendant and its employees violated the Eighth Amendment by failing to protect him from physical and sexual assault by another inmate.<sup>187</sup> The court ruled that the plaintiff's PREA claim was not cognizable, stating, "[n]othing in the PREA suggests that Congress intended to create a private right of action for prisoners to sue for non-compliance."<sup>188</sup>

In *Zollicoffer v. Livingston*, the plaintiff filed a 42 U.S.C. § 1983 complaint alleging that the defendants had violated her Eighth Amendment rights and PREA.<sup>189</sup> The plaintiff, a transgender woman, claimed that since being incarcerated twelve years ago, she had been repeatedly raped, forced into non-consensual sexual relationships, and assaulted by other inmates, with no action taken by staff after she repeatedly reported incidents.<sup>190</sup> The court announced that it would not address PREA in this case, as other courts have held that PREA does not establish a private right of action and is not relevant where the inmate has alleged Eighth Amendment violations.<sup>191</sup> Instead, the court allowed all Eighth Amendment claims to proceed, stating, "Plaintiff was sentenced to serve time in prison. She was not sentenced to be raped and assaulted by her fellow inmates."<sup>192</sup>

Thus, the case law is clear that PREA does not create a private right of action and that courts will dismiss claims directly pleading a violation of PREA. At the same time, courts will use the conduct claimed to be a violation of PREA to frame traditional constitutional claims of abuse in custody.

#### B. *PREA's Contribution to the Eighth Amendment Analysis*

As exhibited in the above cases where PREA was rejected as a private cause of action, PREA seems to have made the most impact in buttressing prisoners' Eighth Amendment constitutional claims. In *Hayes v. Dahlke*, the court cited PREA as part of its articulation of "evolving standards of decency."<sup>193</sup> In *Hayes*, a transgender inmate filed suit under 42 U.S.C. § 1983 alleging violations of his First and Eighth Amendment rights, claiming that an officer sexually assaulted him during a

185. *Bennett v. Parker*, No. 3:17-cv-1176, 2017 U.S. Dist. LEXIS 169876, at \*3 (M.D. Tenn. Oct. 13, 2017).

186. *Id.* at \*6.

187. *Moore v. Jordan*, No. TDC-16-1741, 2017 WL 3671167, at \*1 (D. Md. Aug. 23, 2017).

188. *Id.* at \*7.

189. *Zollicoffer v. Livingston*, 169 F. Supp. 3d 687, 689 (S.D. Tex. 2016).

190. *Id.*

191. *Id.* at 692, n.14.

192. *Id.* at 700.

193. *Hayes v. Dahlke*, No. 9:16-CV-1368, 2017 WL 9511178, at \*5 (N.D.N.Y. Oct. 30, 2017).

pat-frisk and sexually harassed him saying, “[d]o you consider yourself a male or female” and other disparaging remarks on multiple occasions.<sup>194</sup> As a result of filing the PREA complaint, defendants placed the plaintiff in solitary confinement and reprimanded the plaintiff for “falsely report[ing] incidents of sexual abuse.”<sup>195</sup> The court examined the Eighth Amendment claims “by looking beyond historical conceptions to the evolving standards of decency that mark the progress of a maturing society,” and referenced PREA in its analysis.<sup>196</sup> The court allowed the plaintiff’s Eighth Amendment claims and First Amendment retaliation claims against the defendant officer to proceed.<sup>197</sup>

As the courts have struggled to find their footing in interpreting PREA, they have bootstrapped retaliatory conduct from corrections officials into proof of the valence of prisoners’ Eighth Amendment claims. In *Landau v. Lamas*, the court denied the correctional defendants’ motion for summary judgment because the plaintiff averred that a defendant correctional officer threatened to file a false report against him if he filed a PREA complaint that she sexually abused him.<sup>198</sup> The court dismissed the motion for summary judgment, as it was unclear what remedies were available to the plaintiff because of defendant’s convoluted grievance and PREA reporting procedures. Also, the allegation of retaliatory threats prevented plaintiff from making a PREA report.<sup>199</sup>

Thus, PREA has been interpreted by the court as reflecting “evolving standards of decency” which in turn support applying the Eighth Amendment prohibition against cruel and unusual punishment.<sup>200</sup> Courts recognize that sexual victimization in custody by either staff or other inmates violates the Eighth Amendment. Additionally, though not a separate cause of action, courts have used correctional agencies’ actions in suppressing plaintiffs’ reports as additional evidence to support the existence of a constitutional violation.

---

194. *Id.* at \*1.

195. *Id.* at \*2.

196. *Id.* at \*5.

197. *Id.* at \*11.

198. *Landau v. Lamas*, No. 3:15-CV-1327, 2018 WL 8950127, at \*9 (M.D. Pa. Oct. 11, 2018). The plaintiff prisoner filed suit pursuant to 42 U.S.C. § 1983. *Id.* at \*22. The plaintiff claimed that a female defendant officer sexually abused him and that other defendant officers knew about her conduct and failed to prevent it. *Id.* at \*9. The plaintiff further alleged that the defendant officer deterred him from submitting a PREA report by threatening to make false reports to prison officials regarding his sexual conduct as disciplinary matters. *Id.*

199. *Id.* at \*22; see also *Fontano v. Godinez*, where the court denied a motion for summary judgment where an officer and warden allegedly retaliated against plaintiff for reporting rape by punishing him with solitary confinement. No. 3:12-CV-03042, 2012 U.S. Dist. LEXIS 89061 (C.D. IL, Mar. 28, 2016). The Illinois Department of Corrections settled the case for \$450,000 six months after this motion was denied. Press Release, Roderick and Solange MacArthur Justice Center, Settlement Reached in Lawsuit Alleging Illinois Prison Officials Retaliated Against Victim of Prison Rape, (Sept. 2, 2016) (on file with Northwestern University Pritzker School of Law).

200. *Hayes*, 2017 WL 9511178, at \*5, (quoting *Graham v. Florida*, 560 U.S. 48, 58 (2010), which cites “evolving standards of decency” dicta in *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)).

## V. EXTENDING CIVIL RIGHTS AND SERVICES TO INCARCERATED PERSONS

Though sexual assault in custody is objectively serious enough to result in a constitutional violation, only recently have individuals who have been sexually assaulted in custody had access to the services that survivors in the community receive.<sup>201</sup> PREA advanced that movement by creating access to sexual assault services such as Sexual Assault Nurse Examiners' examinations for incarcerated victims of sexual assault.<sup>202</sup> PREA also waded into the contentious area of cross-gender supervision, prohibiting cross-gender viewing and searches of women in custody and limiting cross-gender viewing of male inmates while nude.<sup>203</sup> The PREA standards also took steps to address the vulnerability of LGBTQI people in custody by setting standards for searches, housing, and protection from abuse.<sup>204</sup>

### A. Sexual Assault Services for People in Custody

Another provision in PREA provides that upon a complaint of sexual assault, agencies must provide access to appropriate sexual assault services, including access to sexual assault nurse examiners and forensic examinations.<sup>205</sup> While

---

201. See 28 C.F.R. § 115.21(d)–(e) (2019) (requiring access to rape crisis center or other community victim advocate).

202. See 24 C.F.R. § 115.21(c) (providing access to forensic medical examinations).

203. See *id.* § 115.15(d) (establishing limits to cross-gender viewing and searches).

204. See *id.* § 115.15(e) (prohibiting examinations to determine genital status); *id.* § 115.15(f) (requiring staff training to professionally and respectfully conduct pat-down searches); *id.* § 115.42 (allowing use of screening information to ensure inmates' health and safety).

205. See 28 C.F.R. § 115.21(c)–(e). This subsection provides that:

(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

*Id.*

seemingly non-controversial, in the context of the history of the Violence Against Women Act (“VAWA”), this provision pushes a long debate about the provision of sexual assault services to men and to people in custody. When VAWA initially passed in 1994, it specifically excluded men and people in custody from receiving services.<sup>206</sup> The name of the Act itself refers to women only, and the Act addresses crimes for which women are the highest at risk of victimization, including domestic violence, sexual assault, and stalking.<sup>207</sup> VAWA provides programs and grants to coordinate criminal justice and community services for victims of crime and for prevention.<sup>208</sup> The Office on Violence Against Women administers most of VAWA’s programs and grants.<sup>209</sup>

When VAWA and the Victims of Crime Act (“VOCA”)<sup>210</sup> were passed in 1994 and 1984, respectively, individuals who were victimized while in custody could not utilize services funded under the acts.<sup>211</sup> While the incidence of sexual victimization while in custody was a well-known problem,<sup>212</sup> victims in custody were precluded from some of the largest funding sources for victim services. This exclusion was premised on the view that the most pressing problem was violence against women.<sup>213</sup> VAWA did not include services for incarcerated persons, and VOCA specifically precluded funding for anyone in custody because of the fear that funds for services for women would be diverted to programs for imprisoned batterers.<sup>214</sup> This exclusion had the effect of also limiting services for battered women in custody.<sup>215</sup>

206. See generally, Violence Against Women Act of 1994, Pub. L. No. 103-322, §§ 40001–40703, 108 Stat. 1796 (1994).

207. See CONG. RESEARCH SERV., R45410, THE VIOLENCE AGAINST WOMEN ACT (VAWA): HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION 5 (Apr. 23, 2019).

208. *Id.* at 12.

209. *Id.* at 4.

210. See CONG. RESEARCH SERV., THE CRIME VICTIMS FUND: FEDERAL SUPPORT FOR VICTIMS OF CRIME 1 (June 1, 2017). The Victims of Crime Act of 1984 provides funding to states for victim compensation and assistance through the Crime Victims Fund. *Id.*

211. See generally §§ 40001–40703 (omitting incarcerated persons in the Act); see also Victims of Crime Act (VOCA) Victim Assistance Grant Program, 67 Fed. Reg. 56,457 (Sept. 3, 2002) (“VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.”).

212. See *Farmer v. Brennan*, 511 U.S. 825, 833–34 (1994), which was decided in the same year that VAWA was passed. Senator Edward Kennedy, in the 2002 Hearing on the Prison Rape Reduction Act, even quoted the *Farmer* decision, stating, “In 1994, the Supreme Court ruled that, ‘Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society.’” *Prison Rape Reduction Act of 2002: Hearing Before the S. Comm. on the Judiciary*, 107th Cong. 1 (2002) (“Nevertheless, we know that hundreds of thousands of inmates across the nation, not only convicted prisoners, but pre-trial detainees and immigration detainees, as well, are victims of sexual assault each year.”).

213. See HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION, *supra* note 207, at 2 (“The shortfalls of legal responses and the need for a change in attitudes toward violence against women were primary reasons cited for the passage of VAWA.”).

214. See Jaime M. Yarussi, *The Violence Against Women Act: Denying Needed Resources Based on Criminal History*, 3 CRIM. L. BRIEF 29, 31 (2008).

215. *Id.* The failure to include battered women in custody led several prominent organizations, including the National Women’s Law Center, to initially oppose the VAWA.



During the period before the 1999 to 2000 reauthorization of VAWA, Congress introduced a separate bill that would have covered individuals in custody, but which ultimately did not pass: The Prevention of Custodial Sexual Assault by Correction Staff Act of 1998.<sup>216</sup> Subsequently, Congress reauthorized VAWA without extending coverage to individuals in custody in 2000.<sup>217</sup> Similarly, Congress passed the 2005 VAWA reauthorization with no provision applying to individuals in custody, albeit adding a non-exclusivity provision, indicating that nothing in the Act should be construed as to exclude men from receiving any services related to domestic violence, dating violence, sexual assault, and stalking.<sup>218</sup>

In 2013, Congress replaced the non-exclusivity provision with a nondiscrimination provision stating that:

No person in the United States shall, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity . . . , sexual orientation, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded . . . by [VAWA].<sup>219</sup>

Congress finally extended the application of VAWA to individuals victimized while in custody when it was reauthorized in 2013,<sup>220</sup> which was soon after the effective date of the PREA standards for the states.<sup>221</sup> Congress amended VAWA and allowed “the commission of a sexual act” as a ground for a federal prisoner to file a civil action against the federal government.<sup>222</sup> Additionally, to ensure funding under STOP grants, a provision was included for the purpose of “developing, enlarging, or strengthening programs addressing sexual assault against men, women, and youth in correctional and detention settings.”<sup>223</sup>

Previously, a restricted provision for VOCA funding implicitly precluded most individuals in custody from ever receiving services funded by VOCA.<sup>224</sup> However, in 2016, the restrictive provisions were changed to allow victim services agencies

---

216. Yarussi, *supra* note 214, at 30–31.

217. *Id.* at 29.

218. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2005) (codified as amended at 42 U.S.C. § 40002(b)(8) (2018)).

219. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (codified as amended at 42 U.S.C. § 13925(13)(A) (2018)). In 2019, the House added a provision that governs reviews for compliance with the nondiscrimination requirements for Services, Training, Officers, and Prosecutors (STOP) Grants under the VAWA. H.R. 1585, 116th Cong. (2019). The various amendments to the VAWA ensure that all genders may receive services from programs funded under the Act. *Id.*

220. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54, 82 (2013).

221. See 28 C.F.R. § 115.5 (2019); National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106 (June 20, 2010) (rule containing PREA standards becoming effective August 20, 2012).

222. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (codified as amended at 42 U.S.C. § 1997e(a) (2018)).

223. *Id.* at 14.

224. Yarussi, *supra* note 214, at 31.

to use their VOCA funding to serve individuals who are in custody.<sup>225</sup> The PREA standards, in combination with the changes in VAWA and VOCA, more widely opened facilities' doors to community-based sexual assault advocates while funding their work.<sup>226</sup>

Though VAWA initially did not allow these agencies to use their funds for people in custody, those provisions have been relaxed and agencies now provide confidential support services to prisoners<sup>227</sup> and support for inmate victims when they are transported for forensic exams.<sup>228</sup> This inclusion of victim services providers has yielded important credibility to inmate victims.<sup>229</sup> It has also caused an important shift in thinking about the nature of victimization among victim services providers and created opportunities for them to expand their services to a vulnerable and underserved population.<sup>230</sup>

### B. *Limits on Cross-Gender Supervision*

Another place where PREA has made a tremendous difference has been in limiting cross-gender supervision (supervision of prisoners by staff of the opposite gender).<sup>231</sup> The U.S. is among the few countries that continue to permit cross-gender

225. 28 C.F.R. § 94.119; Victims of Crime Act Victim Assistance Program, 81 Fed. Reg. 44524 (July 8, 2016) (“In this final rule, OVC simply removes the prohibition on perpetrator rehabilitation and counseling, as the prohibition unnecessarily prevents States and communities from fully leveraging all available resources to provide services to these victims, who have been shown to have a great need for such services.”).

226. Joye Frost & Bea Hanson, *New VOCA Assistance Rule Means More Services, More Funds for Victims*, THE UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF PUBLIC AFFAIRS (Dec. 31, 2016), <https://www.justice.gov/archives/opa/blog/new-voca-assistance-rule-means-more-services-more-funds-victims>; Office on Violence Against Women, *Building Partnerships Between Rape Crisis Centers and Correctional Facilities to Implement the PREA Victim Services Standards*, NATIONAL PREA RESOURCE CENTER 1, 18, 19, 37 (Sept. 27, 2013).

227. See MISSISSIPPI COALITION AGAINST SEXUAL ASSAULT, PREA: PRISON RAPE ELIMINATION ACT, <http://www.msCasa.org/prea/> (providing victims access to medical and mental health care, forensic evidence collection, crisis intervention services, crisis counseling, etc.).

228. *Id.*

229. NATIONAL PREA RESOURCE CENTER, 2016–2017 ANNUAL REPORT 1, 18 (2018), <https://www.prearesourcecenter.org/sites/default/files/library/PRC%20Annual%20Report%202016-2017%20-%20Final%20.pdf>.

230. *Id.* at 18. The report notes that:

The Victim Rights Law Center (VRLC) proposes to convene two focus groups of community-based advocates (advocates) to gather input, educate advocates, and increase awareness among advocates not sufficiently engaged about how to best to implement PREA standards establishing incarcerated sexual assault (SA) survivors' (survivors') right to access community-based advocacy “in as confidential a manner as possible.” Focus groups will identify how advocates' work with survivors has changed since the March 2013 Office for Victims of Crime (OVC) and Office on Violence Against Women (OVW) forum on partnerships between rape crisis centers and correctional facilities. Focus group results will be published and will inform technical assistance and training that VRLC will provide to help meet incarcerated survivors' advocacy and privacy needs through an existing project.

*Id.*; see Carol L. Shrader et al., *Access to Confidential Support Services for Sexual Assault Survivors Who Are Confined: National Focus Group Findings*, VICTIM RIGHTS LAW CENTER 1 (June 2019).

231. 28 C.F.R. § 115.15 (2019).

viewing and supervision of prisoners.<sup>232</sup> In custodial settings, there are many places where staff come into visual and physical contact with prisoners, detainees, and youths.<sup>233</sup> There has been ongoing debate and litigation for decades about whether correctional staff may supervise inmates, detainees, and youths of the opposite gender.<sup>234</sup>

In general, the law permits women to supervise men in all but the most intimate of spaces: bathrooms, showers, and medical exams.<sup>235</sup> The idea that women are more professional, less predatory, and less likely to initiate or engage in sexual contact is hardwired into notions of femininity and masculinity.<sup>236</sup> However, the data collected pursuant to PREA suggest a more complicated view.<sup>237</sup> BJS data suggest that relative to their numbers in the correctional workforce, women are overrepresented as perpetrators in staff sexual abuse claims involving men and boys.<sup>238</sup> There are many explanations for this overrepresentation, including the overwhelming numbers of men and boys in custody, female staff's vulnerability to sexual harassment by staff and prisoners, and women's relative lack of institutional

---

232. Alysia Santo, *Peeping Toms: Do Prison Inmates Have a Right to Privacy?*, THE MARSHALL PROJECT (Dec. 17, 2014), <https://www.themarshallproject.org/2014/12/17/peeping-toms>.

233. *Id.* (noting that, before PREA standards took effect, staff often conducted cross-gender pat down searches at Muskegon County Jail in Michigan where male correctional officers and inmates could see naked women from the hallway because of the location of the showers and toilets).

234. Flynn L. Flesher, *Cross-Gender Supervision in Prison and the Constitutional Right of Prisoners to Remain Free from Rape*, 13 WM. & MARY J. WOMEN & L. 841, 846 (2007). Flesher notes that:

Some prisons, recognizing that cross-gender supervision violates prisoners' rights and poses a danger to those prisoners' mental and physical health, have unilaterally decided to restrict access of prison guards to opposite sex prisoners. Other prisons have reached the same result but out of concern for the safety of female guards and not out of concern for the rights of prisoners. Both situations have generated much litigation from prison guards under Title VII of the Civil Rights Act of 1964.

*Id.*

235. 28 C.F.R. § 115.15(d) (2019) (implementing policies to allow inmates to shower, use the bathroom, and change without nonmedical staff of the opposite gender viewing them). *But see* Flesher, *supra* note 234, at 851–53 (noting that cross-gender viewing is allowed in exigent circumstances or if it is incidental to routine cell checks).

236. *See Boys, Rape, and Masculinity*, *supra* note 91, at 1572 (asserting that narratives of sexual abuse among boys are often shaped by popular culture and fail to reflect, because of stereotypical gender roles, that boys, and not just women, are often the victims of sexual abuse); *see also* Anne K. Peters, 9 CRIME & SOC. JUST. 86, 86 (1978) (reviewing CAROL SMART, *WOMEN, CRIME & CRIMINOLOGY: A FEMINIST CRITIQUE* (1976)) (arguing that women have been excluded in studies about deviance).

237. *See generally* ALLEN J. BECK ET AL., BUREAU OF JUSTICE STATISTICS, *SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2008–09* 1 (2010), <https://www.bjs.gov/content/pub/pdf/svjfry09.pdf>.

238. *Id.* (reporting that ninety-five percent of youth who reported staff sexual misconduct were victimized by female staff even though only forty-two percent of staff in state juvenile facilities were female); *see also* ALLEN J. BECK ET AL., BUREAU OF JUSTICE STATISTICS, *SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2012* 5 (2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf> (revealing that 89.1% of 1,300 youth reporting victimization by staff were boys victimized by female staff).

power.<sup>239</sup> Nonetheless, while limits on cross-gender supervision of both men and women were proposed in the initial standards, only those limited to cross-gender viewing of men and women while unclothed by staff survived, along with limits on cross-gender supervision for women and youth.<sup>240</sup> Female staff can pat-down search both male and female adult prisoners and detainees largely because of gendered notions about men's predatory nature and women's more "professional" demeanor.<sup>241</sup>

Depending on the gender and age of the officer and prisoner and the particulars of the search, the search and viewing can violate the Fourth, Eighth, or Fourteenth Amendment rights of prisoners.<sup>242</sup> Also, on the state level, plaintiffs can plead common law or state tort claims such as assault, battery, and intentional infliction of emotional distress in order to address emotional or psychological trauma that arise from sexual assault.<sup>243</sup>

The DOJ provided guidance on the cross-gender standards limiting cross-gender viewing and physical searches of prisoners to address the significant opposition it faced from the corrections community.<sup>244</sup> PREA standards have strengthened existing prohibitions about cross-gender supervision of women and girls in juvenile settings<sup>245</sup> and for women in custody.<sup>246</sup> Unfortunately, PREA has not changed the trajectory of abuse related to men and boys in custody, especially when the perpetrator is female.<sup>247</sup>

239. See generally *Boys, Rape, and Masculinity*, *supra* note 91, at 1569–70 (including other reasons, namely that women correctional staff are often closer in age to boys in detention, women are more fit for correctional positions because of education and lack of a criminal record, and women correctional officers are less likely to be married than their male counterparts).

240. See 28 C.F.R. § 115.15 (2019); 28 C.F.R. § 115.315 (2019).

241. See *Boys, Rape, and Masculinity*, *supra* note 91, at 1589–90 (noting the tension between the "maternal, sisterly, friendly, appropriate correctional staff person" and the "unprofessional, predatory, 'turnt up,' 'turnt out' female correctional worker who we see in the media narratives"); see also Brenda V. Smith, *Watching You, Watching Me*, 15 YALE J.L. & FEMINISM 225 (2003).

242. See Robyn Gallagher, Note, *Constitutional Law—Cross-Gender Pat Searches: The Battle Between Inmates and Corrections Officers Enters the Courtroom*, 33 W. NEW ENG. L. REV. 567 (2011).

243. Hannah Brenner et al., *Sexual Violence as an Occupational Hazard & Condition of Confinement in the Closed Institutional Systems of the Military and Detention*, 44 PEPP. L. REV. 881 (2017). Brenner et al. note that:

On the state level, there are many common law tort causes of actions that individual victims of sexual violence may initiate against individuals or entities, including intentional torts like battery, assault, false imprisonment, intentional infliction of emotional distress; and in the case of systemic abuse that occurs in an institutional setting, negligence.

*Id.* at 931 n.392.

244. NATIONAL PREA RESOURCE CENTER, PLEASE EXPLAIN THE ADULT CROSS-GENDER VIEWING AND SEARCHES STANDARD (Feb. 7, 2013), <https://www.prearesourcecenter.org/node/3256>; see COMMITTEE MEETING OF SENATE LAW AND PUBLIC SAFETY COMMITTEE, *supra* note 58 (expressing concern over the limitations to cross-gender viewing and searches).

245. See *Boys, Rape, and Masculinity*, *supra* note 91, at 253–68.

246. *Id.*

247. See Gallagher, *supra* note 242. Gallagher notes that:

Female inmates' privacy rights have been viewed by a number of courts as being "qualitatively different than the same rights asserted by male inmates." . . . Many states have already decided not

### C. *Providing Protections for LGBTQI Persons in Custody*

The PREA standards contain provisions to address the vulnerability of LGBTQI individuals in custody.<sup>248</sup> However, corrections agencies still do not provide the privacy and dignity protections that would reduce the vulnerability of these youth and inmates.<sup>249</sup>

Though PREA enjoyed bipartisan support and passed in both houses of Congress unanimously, the Trump Administration has diminished the protection of LGBTQI prisoners in federal facilities,<sup>250</sup> thereby weakening protections provided by the PREA standards. The Transgender Executive Council (“TEC”) is the body that determines the appropriate housing of transgender inmates housed in federal prisons.<sup>251</sup> Under guidance released in 2019, the TEC now uses an inmate’s biological sex to initially determine where they will be housed.<sup>252</sup> Although the TEC can consider other factors in determining where to house transgender inmates, the guidance indicates that only in rare cases will an inmate be placed in a facility that aligns with their gender identity if it differs from biological sex at birth.<sup>253</sup> The revised guidance provides that the TEC must first consider whether the inmate’s placement in a certain facility would threaten the facility’s management, security, or pose a risk to other inmates.<sup>254</sup> Likewise, the TEC must also determine whether the transgender individual has taken significant progress towards transition before assigning them to a facility based on their gender identity.<sup>255</sup> These guidelines significantly differ from initial regulations promulgated in 2012, which provided that

---

to use cross-gender pat searches in female institutions. Part of the rationale behind this decision may be the perception that men and women experience unwanted touching differently.

*Id.* at 578.

248. 28 C.F.R. § 115.15(e)–(f) (2019); 28 C.F.R. § 115.42 (c)–(g).

249. NATIONAL CENTER FOR TRANSGENDER EQUALITY, LGBTQ PEOPLE BEHIND BARS: A GUIDE TO UNDERSTANDING THE ISSUES FACING TRANSGENDER PRISONERS AND THEIR LEGAL RIGHTS (2018), <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>. The report notes that:

While PREA is often a useful tool, it is also important to keep in mind that it is not a perfect one: some of its provisions are limited or unclear, and PREA has even been used as an excuse to justify mistreatment of LGBTQ people, such as by penalizing LGBTQ prisoners for consensual physical contact.

*Id.* at 10.

250. Katelyn Burns, *Members of Congress: Trump Administration’s Prison Policy Could Lead to ‘Significant Discrimination’ for Trans People*, REWIRE NEWS (Aug. 2, 2018), <https://rewire.news/article/2018/08/02/members-of-congress-trump-administrations-prison-policy-could-lead-to-significant-discrimination-for-trans-people/>.

251. See U.S. DEP’T OF JUSTICE, FEDERAL BUREAU OF PRISONS, TRANSGENDER OFFENDER MANUAL (2018), <https://www.documentcloud.org/documents/4459297-BOP-Change-Order-Transgender-Offender-Manual-5.html>.

252. *Id.* at 2 (stating that other factors the TEC will take into consideration are the inmate’s health, safety, behavioral history, overall demeanor, and likely interaction with other inmates in the facility); Burns, *supra* note 250 (reporting on guidelines announced in May 2018).

253. See TRANSGENDER OFFENDER MANUAL, *supra* note 251, at 2.

254. *Id.*

255. *Id.*

housing for transgender prisoners should be determined on an individual basis, taking into account the individual's wishes and not basing the decision on genital status.<sup>256</sup>

The Trump Administration's revisions raised several concerns among advocates for prison reform.<sup>257</sup> In particular, reformers expressed concern about the disproportionate impact on transgender women of color, as they are more likely to be incarcerated<sup>258</sup> and are more susceptible to sexual violence in custodial settings.<sup>259</sup> Another issue under the new changes is that "biological sex" is not defined in the Transgender Offender Manual ("Manual") where the administration has made these changes.<sup>260</sup> Furthermore, officials have declined to clarify what the term means.<sup>261</sup> It remains unclear whether transgender inmates who were already housed would be subject to transfer because of the administration's changes to the policy.<sup>262</sup> The ambiguity in the new rules allows for discretion and inconsistency in who will be defined as transgender, and therefore where these individuals will be housed, which increases their vulnerability and susceptibility to sexual violence.<sup>263</sup> The Commission expressed its concerns over these new changes and other organizations filed lawsuits against the DOJ and Bureau of Prisons.<sup>264</sup> The new rollbacks under President Trump undo some of the protections afforded to an already vulnerable population, and many, including several members of Congress, argue it contradicts PREA's purpose in eliminating prison rape.<sup>265</sup>

Another noticeable change in the Manual was the addition of the word "necessary" in order for transgender inmates to receive medical treatment.<sup>266</sup> The Manual now provides that "hormones or other necessary medical treatment may be

256. Burns, *supra* note 250 (describing new guidelines announced in May 2018).

257. *Id.*

258. *Id.* (comparing the twenty-one percent of transgender women of color who have been incarcerated at some point to the less than three percent incarceration rate among the general population).

259. *Id.* (citing the 2012 Department of Justice survey that presented data demonstrating that almost thirty-five percent of transgender inmates reported themselves to be victims of sexual violence within the previous twelve months of when the survey was taken).

260. Dominic Holden, *Which Prisoners Are Considered Transgender? The Trump Administration Won't Explain Its New Rules*, BUZZFEED NEWS (May 16, 2018), <https://www.buzzfeednews.com/article/dominic-holden/which-prisoners-are-considered-transgender-the-trump#.us3Av8dpwy> (revealing that officials have declined to comment further when emailed for clarifications).

261. Burns, *supra* note 250.

262. Holden, *supra* note 260.

263. *Id.*

264. See Nat'l Prison Rape Elimination Comm'n, Letter to Ken Hyle, Assistant Director, BOP (2018), <https://www.wcl.american.edu/impact/lawwire/open-letter-to-federal-bureau-of-prisoners-on-changes-to-transgender-offender-manual/11-13-18-letter-to-assistant-director-hyle-bop/>; see also John Riley, *Justice Department and Bureau of Prisons Sued Over Rollback of Protections for Transgender Inmates*, METRO WEEKLY (Nov. 20, 2018), <https://www.metroweekly.com/2018/11/justice-department-bureau-of-prisons-sued-rollback-protections-transgender-inmates/> (discussing the lawsuit that the Southern Poverty Law Center and Lambda Legal have filed against the Department of Justice and Bureau of Prisons over their rollbacks of the protections afforded to transgender inmates).

265. Burns, *supra* note 250.

266. TRANSGENDER OFFENDER MANUAL, *supra* note 251, at 1, 3.

provided after an individualized assessment of the inmate by institution medical staff.<sup>267</sup> This new “necessary” standard gives additional discretion to prison officials in deciding whether incarcerated transgender individuals need to receive medical treatment,<sup>268</sup> and indeed harkens back to the early struggles of Dee Farmer, a transgender woman and plaintiff in the seminal *Farmer v. Brennan* case of 1994.<sup>269</sup>

Despite changes at the federal level affecting transgender inmates in federal prisons, some states have changed their legislation and operations regarding the housing and treatment of transgender inmates in their correctional systems. In 2018, Connecticut and Massachusetts passed laws requiring their departments of corrections to house, provide clothing and personal items to, choose staff for searches of, and address transgender inmates based on their gender identity.<sup>270</sup> The state of Maryland changed its correctional practices after a transgender inmate sued its Department of Corrections in 2015 for violations of PREA standards designed for the protection of transgender inmates.<sup>271</sup> In other states such as Illinois, litigation is ongoing in pursuit of protection for transgender inmates.<sup>272</sup> The development and enforcement of the PREA standards for the protection of transgender inmates are changing the landscape of corrections through legislation and litigation, despite current federal efforts to stem the tide of this progression.

267. *Id.* at 3 (defining an “individualized assessment” to include requesting consultation from Psychology Services regarding the mental health benefits of hormone or other necessary medical treatment).

268. See Ryan Koronowski, *Trump Administration Rolls Back Transgender Prison Protections*, THINKPROGRESS (May 12, 2018), <https://thinkprogress.org/trans-prison-rollback-trump-administration-87e01cb6805c/> (citing survey that shows that forty four percent of transgender inmates were denied hormone treatment).

269. *Farmer v. Brennan*, 511 U.S. 825, 829 (1994). Dee Farmer was a transgender woman in the Federal Bureau of Prisons who had obtained breast implants, removal of testicles, and estrogen therapy while in the community; she had hormonal therapy smuggled into the prison while incarcerated, as the BOP did not medically provide such treatment. *Id.*

270. An Act Concerning the Fair Treatment of Incarcerated Persons, 2018 Conn. Pub. Acts No. 18-4 (2018), <https://www.cga.ct.gov/2018/ACT/pa/pdf/2018PA-00004-R00SB-00013-PA.pdf>. Note, however, that this applies only to transgender inmates who have diagnoses of gender dysphoria or have legally changed their gender identity. The Massachusetts statute allows for use of pronouns, personal items and programming, and housing consistent with one’s gender identity, with or without gender dysphoria diagnosis. Housing will ultimately be determined by the department’s evaluation of inmate safety and corrections management. MASS. GEN. LAWS ch.127, § 32A (2018), <https://www.mass.gov/info-details/mass-general-laws-c127-ss-32a>.

271. *Brown v. Patuxent Inst.*, OAH No. DPSC-IGO-002V-14-33232 (Md. Dep’t of Pub. Safety & Corr. Servs. Apr. 1, 2015) (affirmed Aug. 17, 2015). Plaintiff was in solitary confinement for 66 days and was taunted by corrections officers, who watched her shower. The administrative law judge found that the corrections staff violated the PREA standards that were designed to protect her and other transgender inmates. See Rebecca Earlbeck, *FreeState Legal Wins Groundbreaking Victory on Protections for Transgender People in Prison* (Sept. 24, 2015), <https://freestatelegal.org/wp-content/uploads/2015/09/Brown-Case-Press-Release-.pdf>.

272. See *Hampton v. Baldwin*, in which plaintiff, a transgender woman, stated she was placed in male prison facilities where she was abused, placed in solitary confinement, and afforded no protection from corrections staff. No. 3:18-cv-00550, 2018 WL 5830730, at \*1–3 (S.D. Ill. Nov. 7, 2018). Although there has been a report that plaintiff has been moved to a female facility, the case is ongoing. See also CIVIL RIGHTS LITIGATION CLEARINGHOUSE, CASE PROFILE: HAMPTON V. BALDWIN (2018), <https://www.clearinghouse.net/detail.php?id=16859>.

## CONCLUSION

PREA initially intended to address what Congress perceived as a narrow problem: the sexual abuse of men in custody. In the course of conducting its study of the causes and consequences of sexual abuse in custody, the PREA Commission learned that sexual abuse affects all people in custody, regardless of age, gender, or sexual identity. The Commission learned that sexual abuse in custody is the end result of a series of custodial practices that create vulnerability for people in custody, for custodial facilities, and for society. These practices include the failure to identify vulnerable prisoners such as youthful inmates and LGBTQI people, improper classification of prisoners, inadequate and inappropriate supervision, poor investigations, inadequate oversight of facilities by correctional authorities and by the federal government, and few services for incarcerated survivors of custodial sexual abuse. PREA created opportunities for custodial authorities to address sexual assault in their facilities. This practice has yielded unanticipated and useful opportunities for oversight by legislatures, courts, and the public, and has expanded the Eighth Amendment by incorporating the PREA standards as part of its evolving standards of decency.

Yet, much work that PREA could address remains. Three areas in particular bear mentioning. First, while PREA has made inroads in addressing sexual abuse in prisons, jails, and juvenile facilities, much work remains to address sexual vulnerability of adults and children in immigration detention facilities.<sup>273</sup> Though there have been many accounts of these abuses in immigration, little has been done to address these reports.<sup>274</sup>

Second, while most states have passed laws that eliminate consent as a defense in cases involving correctional officers,<sup>275</sup> gaps in the law still exist with regard to police officers, parole, and probation officers.<sup>276</sup> In 2019, Senator Jodi Ernst

---

273. See Victoria López & Sandra Park, *ICE Detention Center Says It's Not Responsible for Staff's Sexual Abuse of Detainees*, AMERICAN CIVIL LIBERTIES UNION BLOG (Nov. 6, 2018), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/ice-detention-center-says-its-not-responsible>.

274. Immigration, Customs and Enforcement (ICE) reportedly received 1345 allegations of sexual abuse between 2012 and 2017, and only 160, or 12 percent, of cases were substantiated. See Alice Speri, *Detained, Then Violated*, THE INTERCEPT (Apr. 11, 2018), <https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/>; see also Matthew Haag, *Thousands of Immigrant Children Said They Were Sexually Abused in U.S. Detention Centers, Report Says*, N.Y. TIMES (Feb. 27, 2019), <https://www.nytimes.com/2019/02/27/us/immigrant-children-sexual-abuse.html>.

275. See NIC/WCL Project on Addressing Prison Rape, *Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody* (Aug. 1, 2009), <https://www.prearesourcecenter.org/file/556/fifty-state-survey-criminal-laws-prohibiting-sexual-abuse-individuals-custody>.

276. Cody Carlson, *PA Lawmakers Push For 'No Consent in Custody' Bill*, WENY NEWS (Dec. 26, 2019), <https://www.weny.com/story/41495973/pa-lawmakers-push-for-no-consent-in-custody-bill> (“Currently, Pennsylvania bars sexual contact between prison guards and inmates, as well as mental health professionals and patients. But there is no such law in place for police officers and individuals in custody.”); see also Deanna Paul, *Police in Many States Could Legally Have Sex with a Person in Custody — until a N.Y. Rape Allegation*, WASH. POST (Oct. 8, 2018), <https://www.washingtonpost.com/nation/2018/10/08/should-police-be-able-have-sex-with-person-custody-rape-allegation-raises-issue/>; Press Release, U.S. Senator Joni Ernst, Ernst Works to Reduce



introduced legislation to close the loophole for federal law enforcement officials.<sup>277</sup>

Third, accountability through human resources processes is complicated by their opacity and the lack of engagement of such mechanisms in addressing custodial sexual abuse.<sup>278</sup> A deeper dive needs to be made in examining agency anti-fraternization policies and how—or if—they are implemented to protect vulnerable incarcerated persons from sexual abuse.

Notwithstanding these substantial hurdles, PREA's promise has encouraged people in custody, advocates, and many correctional authorities to reach beyond the ever-present perils of litigation, inconsistent oversight, and insufficient legislation to create safer environments for children and adults in custodial settings. Ultimately, this accountability and expansion of the Eighth Amendment benefits people in custody and society more broadly and reinforces the principle that no person is above the law or unworthy of the law's protection.

---

Sexual Abuse of Females in Custody (Mar. 27, 2019), <https://www.emst.senate.gov/public/index.cfm/2019/3/emst-works-to-reduce-sexual-abuse-of-females-in-custody>; Justin Rohrlich, *US Parole System Fraught with Allegations of Sexual Abuse*, QUARTZ (Feb. 21, 2020), <https://qz.com/1805184/us-parole-system-fraught-with-allegations-of-sexual-abuse/>.

<sup>277</sup>. See Ernst Works to Reduce Sexual Abuse of Females in Custody, *supra* note 276.

<sup>278</sup>. WCL PROJECT ON ADDRESSING PRISON RAPE, FIFTY-STATE ANTI-FRATERNIZATION SURVEY, <https://www.wcl.american.edu/impact/initiatives-programs/endsilence/research-guidance/anti-fraternization-laws/> (last visited Mar. 25, 2020).



Office of the Inspector General  
United States Department of Justice

Statement of Michael E. Horowitz  
Inspector General, U.S. Department of Justice

*before the*

U.S. Senate  
Committee on Homeland Security and Governmental Affairs  
Permanent Subcommittee on Investigations

*concerning*

"Sexual Abuse of Female Prisoners in the Custody of the Federal Bureau of Prisons"

December 13, 2022

Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for inviting me to testify at today's important hearing regarding sexual abuse of female inmates in the custody of the Federal Bureau of Prisons (BOP). The Department of Justice (Department or DOJ) Office of the Inspector General (OIG) investigates allegations of criminal and serious administrative misconduct by all Department employees, with the exception of certain misconduct by DOJ lawyers. The OIG's oversight authority includes wrongdoing by BOP personnel who are accused of sexually assaulting inmates. There is no clearer reminder of the importance of our work than the testimony we heard from Ms. Delarosa, Ms. Moore, and Ms. Richardson. My office will continue to prioritize sexual assault investigations to hold accountable any BOP official who abuses an inmate. Indeed, just last week, a jury in California convicted the former Warden at Federal Correctional Institution (FCI) Dublin on all 8 charges brought against him, including multiple sexual assault offenses. As I discuss later in my testimony, the former warden oversaw a toxic culture at FCI Dublin, which prompted my office, working with the FBI and the U.S. Attorney's Office for the Northern District of California (USAO), to conduct a widespread sexual misconduct investigation at the prison. To date, this investigation has resulted in criminal charges against 5 BOP personnel from Dublin and we continue to actively and aggressively investigate additional allegations.

Through these investigations, and our inspections, evaluations, audits, and reviews of BOP programs and operations, the OIG plays a critical role in helping the Department ensure that all BOP institutions are safe and secure for each of the approximately 159,000 inmates in federal custody. My office is committed to continuing to bring to justice anyone who violates the trust placed in them by the BOP and the American public by exploiting those in BOP custody and engaging in the horrific conduct described during the first panel.

The OIG recently had the opportunity to provide information about our past findings and concerns regarding the BOP's and DOJ's handling of sexual assault allegations to the working group created by the Deputy Attorney General to review the BOP's and DOJ's response to sexual misconduct by DOJ personnel. The OIG contributed to the efforts of the Working Group by meeting several times with its members and providing input on drafts of the recommendations. On November 2, 2022, the Working Group issued a Report and Recommendations, which the OIG supports and commends. Among the many important and positive recommendations from the working group was the implementation of a new chain of command for BOP's internal investigators, who will now report to the Office of Internal Affairs (OIA) instead of the warden at the facility they are investigating. Additionally, the working group recommended that Department prosecutors enhance their efforts to criminally pursue BOP sexual assault cases, which will have a positive impact on our investigative efforts and hopefully result in a higher number of OIG investigations resulting in criminal prosecution.

The experiences of Ms. Delarosa, Ms. Moore, Ms. Richardson, and all of the other victims of sexual assault and violence in BOP custody should deeply sadden all of us and redouble our efforts to prevent such heinous acts. There are three fundamental principles that guide our investigative work in this area: first, no inmate in federal custody should be subjected to sexual or physical assault while incarcerated. Second, Justice Department personnel, including those working in any capacity at federal prisons, have an obligation to uphold the law. Third, any DOJ personnel who violate their oath of office must be held fully accountable for their actions.

The Department is collectively responsible for both enforcing criminal laws and ensuring the care and protection of individuals in federal custody. In view of the Department's law enforcement mission, it is all the more abhorrent when its employees engage in criminal conduct at their workplace. I know nothing we say or do at this hearing can adequately address the harm Ms. Delarosa, Ms. Moore, and Ms. Richardson suffered, and I can only imagine the courage and strength it required for them to share their experiences again here today. I hope the investigations and prosecutions provided each of you with at least some sense of closure, and perhaps some sense of justice when those responsible for the crimes committed against you were held accountable in a federal court. I thank the subcommittee for giving me the opportunity to address this important topic and participate in this important hearing with these courageous victims.

The first part of my testimony today will discuss several of our completed criminal investigations of BOP personnel, and the recurring issues we have observed in those cases. The second part of my testimony will discuss areas my office has identified that need to be improved so the OIG and the Department are better positioned to address the challenge of preventing sexual assault in federal prisons. I also will discuss several internal reforms and proactive measures my office has taken, or is in the process of taking, as well as recommendations for the Department and Congress to consider. This includes a candid discussion of the resource constraints that severely limit the number of BOP investigations that my office can initiate.

#### **I. OIG Sexual Assault and Misconduct Investigations**

I want to start by commending the investigative work done each year by our criminal special agents, who hold accountable the BOP staff who assault those entrusted to their care and supervision. Over the last seven years, our agents have substantiated hundreds of misconduct allegations against BOP personnel, including 53 cases of sexual assault and related misconduct. Forty of those 53 cases were accepted for prosecution, including the cases that led to the criminal convictions of the 3 BOP officers who assaulted Ms. Delarosa, Ms. Moore, and Ms. Richardson. These 53 cases do not include many dozens of additional substantiated cases involving contraband introduction and bribery, which are often connected to instances of sexual abuse as corrupt BOP staff use contraband to groom inmates for sex. Each year, our BOP investigative work in all misconduct matters, which

also includes physical abuse of inmates, results in approximately 100 criminal convictions and administrative actions of BOP staff. I would like to highlight some of our cases that resulted in prosecution to show several of the patterns that emerged from our investigative work.

*Leadership Failures at an Institution May Result in Multiple Instances of Sexual Assault at the Same Facility*

Too often, we have seen clusters of sexual assault and abuse cases arise at the same facility, occurring at the same time, carried out by multiple individuals, with far too many victims. Most notably, as I referenced in my introduction, the OIG, in partnership with the FBI and the USAO, has an ongoing investigation of alleged widespread sexual assaults between 2018 and 2021 by numerous BOP officials against inmates at FCI Dublin, an all-female prison in California. To date, our ongoing investigation has resulted in 5 employees at FCI Dublin being charged criminally, including the former warden who just last week was convicted by a jury on 8 separate charges, including multiple counts of sexual abuse, illegal sexual contact with inmates, and lying to investigators. In addition, the former Dublin prison chaplain received an 84 month prison sentence after pleading guilty to repeatedly sexually abusing an incarcerated female and then lying to OIG agents about his misconduct. Further, two Dublin correctional officers have pled guilty and are awaiting sentencing, and another Dublin correctional officer has been indicted and is awaiting trial. We continue to aggressively pursue numerous additional allegations from victim-inmates about sexual assault at the prison, and we are working diligently with the FBI and USAO to ensure that all wrongdoers are brought to justice.

This is not the first time the OIG has seen a group of cases arise from one facility. For example, between 2017 and 2020, the OIG investigated multiple criminal sexual abuse cases at Metropolitan Detention Center (MDC) Brooklyn, resulting in the convictions of 2 lieutenants and one correctional officer. The common theme in the MDC Brooklyn prosecutions was the brazen nature of the assaults, which in some cases were carried out in common spaces where the assaults could be witnessed by others at the institution. Yet, because of threats made to the victims and other acts of intimidation, it took far too long for these allegations to reach the OIG and for the violators to be held accountable.

The role of senior BOP supervisors and officials in these horrific crimes, including the warden and chaplain at FCI Dublin, and two lieutenants at MDC Brooklyn, in addition to the public nature of the crimes at that facility, raise serious questions about the ability of the BOP to identify problematic institutions before they reach such a critical state. Indeed, as you heard from Ms. Moore, her assailant was a captain, a high-ranking officer at the Federal Prison Camp at Alderson, who was sentenced to 10 years in prison for sexually assaulting multiple female inmates, including Ms. Moore.

These investigations, in addition to our pending investigative work at the Metropolitan Correctional Center (MCC) New York and U.S. Penitentiary (USP) Atlanta, which has been informed by the Subcommittee's own outstanding investigative efforts, prompted us to examine the process by which the BOP identifies critical challenges at its institutions, and the process by which BOP leadership addresses such challenges. We are nearing completion of our work and we look forward to briefing the Subcommittee in the coming months on what I anticipate will be important findings and recommendations.

*BOP Staff in Positions of Trust Have Exploited those Positions to Sexually Assault and Abuse Incarcerated Persons*

I previously noted the recent sentencing of the prison chaplain at FCI Dublin. According to court documents, the chaplain exploited his position at Dublin by using Biblical parables and his victim's religious beliefs to manipulate her and coerce her into submitting to him. The chaplain committed sexual assault in the chapel office, and also told the victim that no one would believe her if she reported his abuse because she was an inmate and he was a chaplain. Unfortunately, this is not the first prison chaplain that the OIG has investigated and ultimately been found to have engaged in criminal activity. For example, in 2019, the former prison chaplain at FCI Berlin, in New Hampshire, was sentenced to 40 months for smuggling drugs into the prison and accepting bribes, although his crimes were not connected to any sexual assaults or abuse of female inmates.

Separately, we have seen prison staff in other positions of trust exploit them while working with female inmates. Recently, a drug treatment specialist at Federal Medical Center (FMC) Lexington was sentenced to 80 months in prison for sexually assaulting four women, each of whom was enrolled in his drug treatment classes. These victims were particularly vulnerable, on account of their need for drug treatment, and like the Dublin chaplain, the counselor exploited his position to abuse his victims. In its ongoing assessments of staffing needs within its institutions, the BOP must consider how to assess the risks associated with these unique positions of trust so that pastoral, educational, counseling, and treatment, as well as other positions of trust between BOP staff and inmates are not abused.

*Sexual Assault Crimes are Often Connected to other Criminal Activity, Such as Contraband Introduction and Bribery*

To address the chronic problem of sexual abuse of inmates in BOP facilities, a focus must be on curbing staff's ability to introduce contraband into these facilities. Too frequently, our investigations have identified BOP staff using contraband, including cell phones, cigarettes, and drugs to groom and develop relationships with inmates and subsequently assault them. In one of the MDC Brooklyn investigations we conducted, at sentencing, the Court noted that the defendant, who was sentenced to 120 months in prison after being convicted of sexual assault, contraband smuggling, and bribery, "hit the trifecta of corruption at the MDC." The Court further noted that the defendant "chose to abuse the

trust that had been placed in him as a correctional officer at the Bureau of Prisons in every way he possibly could. He did it to satisfy his greed by accepting thousands of dollars to smuggle in drugs, not just one drug but four different types of drugs, and he abused his trust to satisfy his own sexual desires.” Similarly, in the case of the drug treatment specialist at FMC Lexington I previously mentioned, although the plea agreement addressed only his sexual assault of victims in his drug clinic, the employee was also indicted for providing contraband, including suboxone, alcohol, and cigarettes, to inmates at FMC Lexington.

In a 2016 report, the OIG found significant issues with the BOP’s contraband interdiction efforts, including deficiencies in the BOP’s staff search policy and the need for an upgraded security camera system. The OIG’s four recommendations to strengthen the BOP’s staff search policy to more effectively deter the introduction of contraband remain open and unimplemented. For nearly 20 years, we have repeatedly informed the BOP and the Department that it is imperative that the BOP strengthen and finalize this policy. Finalizing a revised staff search policy will not only make BOP institutions more secure, it will also help to prevent sexual assault that is connected to contraband introduction.

Given the frequency with which we see a connection between contraband introduction and sexual assault in prisons, we believe Congress should consider making all cases of contraband smuggling by a BOP employee a felony. While it is currently a felony to smuggle a weapon and certain controlled substances into a federal prison, it is only a misdemeanor to smuggle a cell phone, tobacco, cash, alcohol, and many other items used to facilitate other criminal activity into federal prisons. In my view, Congress should revisit those misdemeanor penalties in Section 1791 of Title 18, particularly when the offense is committed by a BOP employee. In addition to the Deputy Attorney General’s instruction to prosecutors to prioritize BOP sexual assault cases, this change could encourage more prosecutions in cases in which the OIG substantiates contraband smuggling, particularly where it is related to other suspected wrongdoing, but because the current penalty is a misdemeanor, they may not meet a prosecutor’s threshold for bringing criminal charges. Further, it is my understanding that a misdemeanor conviction, including for contraband smuggling, does not automatically disqualify a BOP employee from retaining their BOP employment. I would be pleased to work with the Subcommittee on potential legislation to address this problem.

*BOP Assaults Frequently Occur in Areas of Facilities where BOP Staff Know Cameras Are Not Present*

The OIG has consistently informed the BOP and the Department of the critical importance of addressing the inadequate and outdated camera coverage in BOP facilities, including in the same 2016 contraband report mentioned above and in a Management Advisory Memorandum issued in 2021. Follow-through by the BOP on this issue is needed to prevent corrupt correctional officers or other BOP personnel from taking advantage of

blind spots in camera coverage to sexually and physically assault inmates. I thank Chairman Ossoff for securing Senate passage of S. 2899, the bipartisan Prison Camera Reform Act of 2021, which was co-sponsored by Senators Durbin and Grassley. That proposed legislation brought greater visibility and urgency to the need for the BOP to transition all of its facilities from outdated analog cameras to an updated, fully digital video surveillance camera system with improved video quality, coverage, and other functionality. Although the BOP is making some progress in this area, it and the Department have not fully addressed the strategic challenges of its camera deficiencies. Action by the BOP on its camera deficiencies is absolutely critical to the BOP's ability to ensure the safety and security of its institutions for inmates as well as its employees.

In one recent case, which was described in painful detail by Ms. Delarosa, the BOP correctional officer who assaulted her and others at FCI Lexington admitted to grabbing a victim as she attempted to exit an office space and placing himself between her and the door so he could monitor the hallway through a window. The correctional officer proceeded to sexually assault the victim, knowing there were no cameras in the vicinity. Similarly, the correctional officer who sexually assaulted Ms. Richardson and others at MCC New York selected the locations for the sexual assaults based on his knowledge of the lack of video surveillance coverage in those areas.

Although these correctional officers received significant sentences for their crimes, it is possible that these tragic offenses and many other crimes committed in BOP facilities could have been avoided or deterred if the BOP prioritized updating its camera coverage at all facilities. And, although our investigations resulted in plea agreements and significant sentences in these cases, in large part due to the bravery of Ms. Delarosa, Ms. Richardson, and the other victims who aided our investigations, there have been many others where the lack of camera coverage prevented the OIG from substantiating sexual assault allegations or resulted in the Department not pursuing criminal charges. For example, as we noted in our 2021 Management Advisory Memorandum, a correctional officer was criminally charged following the OIG's investigation of allegations that the correctional officer sexually assaulted an inmate on two separate occasions. While there was some video footage that was helpful at trial, there were no cameras in the areas where the alleged assaults occurred. The correctional officer was convicted of making false statements but acquitted of four criminal charges—deprivation of rights under color of law, aggravated sexual abuse, and two counts of sexual abuse of a ward.

We continue to press these concerns with the BOP and the Department, and as our Memorandum concluded, an effective security camera system is essential for deterring misconduct at BOP facilities, including sexual assault.

**II. Internal and External Reforms to Better Position the OIG and the Department to Address the Chronic Challenge of Sexual Assault in Federal Prisons**



As we continue to investigate dozens of BOP sexual assault and misconduct cases annually, and learn from the issues that arise in these investigations, we know that we can do more to proactively identify problematic institutions and staff, and ensure consistency in our review of all incoming complaints of sexual assault. As we implement internal changes to improve our efforts to investigate and prevent sexual assaults in the BOP, it is also important to acknowledge the obstacles, primarily resource related, that prevent us from doing even more.

*We Have Modified our Internal Processes and Training to Improve our Initial Assessment of Sexual Assault Allegations*

First and foremost, we need to ensure that every allegation of sexual assault that is brought to the OIG receives full and careful consideration. To this end, I have repeatedly emphasized the importance of BOP sexual assault cases to our Investigations Division, as has our Assistant Inspector General for Investigations. In the Spring of 2022, our Investigations Division modified its process for assessing BOP sexual assault and harassment complaints by requiring OIG Field Office Special Agents in Charge (SACs) to specifically note in our case management system whether they had reviewed an incoming complaint and determined whether there had been any other complaints involving the same subject. Multiple complaints involving sexual assault perpetrated by the same subject is often an indication of a problem. And, although checking a subject's complaint history was typically done by our Field Office personnel prior to Spring 2022, this added level of accountability is the type of reform that we recommend routinely to Department components to ensure consistency and to avoid human error. Additionally, since the end of 2021, all of our criminal Special Agents have been required to take the "Investigating and Prosecuting Law Enforcement Sex Crimes" 3-part training series conducted by the Department's Civil Rights Division.

The Subcommittee flagged a series of sexual assault allegations from FCI Coleman that were reported to our office, beginning in 2011, which we referred back to the BOP for internal investigations. After discussing these cases with the Subcommittee, my senior staff and I carefully reviewed the allegations. Had we received these allegations today, because of the proactive steps we have taken and our increased prioritization of sexual assault allegations, I believe we would have opened criminal investigations in many of the cases. Because of staff turnover, we cannot reconstruct the specific reasons that these cases were referred back to the BOP rather than opened for criminal investigation by the OIG. However, there are many factors that impact our decision regarding whether to open an investigation, and resource considerations are always a factor, which I will discuss in more detail. Nevertheless, on account of the changes that we have made to our internal processes, our prioritization of BOP sexual assault cases, and the trend analysis that I describe directly below, I am confident that our review process will ensure that we accept for investigation, subject to our resource and evidentiary limitations, allegations of serial abuse by individual employees and by multiple employees at a particular institution.

*We Are in the Process of Developing a Data Analytics Tool to Help us Identify Patterns of Misconduct that May Otherwise Go Undetected*

In addition to emphasizing the importance of sexual assault cases to our Field Offices and making changes to ensure consistency in how sexual abuse allegations are assessed, we need to be able to better analyze available data to allow us to identify patterns of misconduct that may otherwise go undetected. This process is underway. I have asked our Investigations Division to work with our Office of Data Analytics to improve our database queries to identify spikes in misconduct cases at institutions and multiple allegations against the same staff member. I am confident based on my initial review of data that this tool will help our office more timely identify problems at particular institutions or with particular individuals, including the type of activity that took place at FCI Coleman. I look forward to updating the Subcommittee as we gain experience with this initiative.

In addition to our use of data analytics to identify patterns of misconduct, earlier this year, our Evaluation and Inspections Division developed new protocols, methodologies, and a site selection tool to conduct risk-based inspections of BOP facilities. Subject to the availability of additional funding, our Evaluation and Inspections Division is prepared to launch a dedicated inspections program for routine, in-person, unannounced inspections of BOP facilities to supplement our BOP investigations, evaluations, audits, and other oversight. Open staff discipline cases and misconduct complaints, in addition to Prison Rape Elimination Act compliance, will be some of the factors used to identify institutions that are most in need of inspection. As we look to move forward with this program in the next fiscal year, subject to the availability of resources, we support S. 4988, the bipartisan Federal Prison Oversight Act, introduced by Chairs Ossoff and Durbin, and Senator Braun, as well as an identical bipartisan bill introduced in the House of Representatives, H.R. 9009, which would require the OIG to establish a risk-based inspection program, and authorize appropriations for this initiative.

*Resource Considerations*

The OIG is working with our appropriators to secure additional resources to enable the OIG to devote an even greater percentage of our resources to BOP sexual assault and misconduct investigations. The OIG oversees the Department's roughly \$32 billion budget and 115,000 employees with our 500 person staff and our \$110 million budget. The BOP is the Department's largest employer, with nearly 35,000 employees, and has the second largest budget, which was \$7.8 billion in fiscal year 2021. It currently houses nearly 160,000 inmates at 122 BOP-managed federal prisons (institutions) and in contracted Residential Reentry Centers and home confinement.

The OIG already commits nearly 50% of our investigative resources to BOP oversight – even though BOP employees make up about 30% of DOJ personnel. We typically have

approximately 550 open misconduct cases at any given time across the entire Department, about half of which involve BOP misconduct. In addition to cases for which we opened an investigation, we processed and vetted over 12,500 non-frivolous complaints in fiscal year 2022, almost 9,000 of which were related to the BOP.

Currently, our Investigations Division has approximately 113 supervisory and non-supervisory criminal special agents. That means that we have the equivalent of 56 OIG agents to cover our BOP case load from the 122 BOP prisons, and 56 OIG agents to handle cases involving all other components of the Department, including the FBI, ATF, DEA, and USMS. Yet, despite this already considerable dedication of OIG resources to BOP work, we know that the BOP needs more independent investigative oversight. However, dedicating additional existing OIG resources to BOP matters would necessarily mean less OIG oversight of the FBI, ATF, DEA, USMS, and all the other DOJ components. Given the significance and importance of our non-BOP investigative work, I simply am not in a position to reduce our efforts in those areas.

To add some perspective to the OIG's capacity and the need for additional investigative resources, our Miami field office, which has FCI Coleman under its area of responsibility, covers Florida, Alabama, Georgia, Mississippi, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. This region includes 24 BOP facilities, with a total of 29,080 inmates. Our Miami Field Office has approximately 14 supervisory and non-supervisory agents to work on all of our DOJ misconduct cases in the region, and they currently have approximately 60 open BOP cases. In fiscal year 2022, the SAC in our Miami Field Office was responsible for vetting 2,000 complaints (BOP and non-BOP) that are under that office's area of responsibility. Similarly, our Dallas field office, which covers Texas, Arkansas, Louisiana, New Mexico, and Oklahoma, and includes 22 BOP facilities with a total of 27,844 inmates in its area of responsibility, has approximately 14 supervisory and non-supervisory agents to work on all of our DOJ misconduct cases in the region. The SAC of this office was responsible for vetting 2,300 complaints (BOP and non-BOP) that are under that office's area of responsibility in fiscal year 2022.

We have learned that one way to be able to meet our growing responsibility without commensurate additional resources is to leverage data analytics. As I noted earlier in my testimony, we are utilizing our analytical capabilities to identify problematic institutions and individuals to help aid our investigative efforts and our complaint processing and triage. Notwithstanding these and other efforts to be more efficient with available resources, we have requested from our appropriators an additional 16 staff to create an interdisciplinary BOP oversight team, which would increase both our capacity to conduct more BOP misconduct investigations and the effectiveness and quality of all of our BOP oversight efforts. If fully funded this year, our interdisciplinary team would enhance the OIG's existing BOP oversight by:

- increasing the number of BOP misconduct complaints, including sexual assault, that we can accept for investigation on an annual basis;
- increasing our capacity to respond to requests and inquiries from various stakeholders, including Members of Congress and Department leadership;
- allowing us to establish a proactive BOP inspection program informed by ongoing investigations, audits, risk assessments, and other related work; and
- hiring a victim-witness advocate, who would not only provide needed support to victims but would enhance our investigators' ability to work with victims and effectively conduct their investigations.

We are grateful for, and have been extremely encouraged by, the support our appropriators have given to our office over the years, and for this initiative. We also understand that the appropriations process and Congress itself is subject to important competing priorities and resource considerations that may preclude full funding of our request. With or without these additional resources, we will continue to conduct aggressive oversight of the BOP to address these significant problems.

This concludes my prepared statement, and I am pleased to answer any questions the Committee may have.



# Department of Justice

---

STATEMENT OF

COLETTE S. PETERS  
DIRECTOR  
FEDERAL BUREAU OF PRISONS

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
UNITED STATES SENATE

FOR A HEARING ON

SEXUAL ABUSE OF FEMALE INMATES IN FEDERAL PRISONS

PRESENTED  
DECEMBER 13, 2022

**Statement of Colette S. Peters  
Director, Federal Bureau of Prisons  
Before the Permanent Subcommittee on Investigations  
United States Senate**

Good morning, Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee. I am appearing before you today to discuss our commitment to combat sexual misconduct at the Bureau of Prisons (Bureau), along with the concrete steps we have taken to address these unacceptable incidents.

Stepping back, our broader mission at the Bureau is to ensure safe prisons, humane correctional practices, and evidence-based rehabilitation opportunities so that people reenter society as good neighbors. I am grateful for the opportunity to help bring greater reform, oversight, accountability, and further innovation to the Bureau. I am committed to ensuring that Bureau employees are guided by the values of respect, integrity, courage, and correctional excellence, and that we intend to carry out our mission with the highest levels of competency, transparency, and accountability as we serve our stakeholders. Operation of safe and secure institutions and employee wellness are key to the Bureau's mission. Both are critical to the success of our core function: ensuring we treat those in our care with humanity. That includes protecting them from sexual misconduct.

I am honored to serve as the 12<sup>th</sup> Director of the Bureau of Prisons, and to provide leadership to corrections professionals in the largest corrections agency in the country. Prior to being sworn in on August 2, 2022, I spent more than 30 years working in the field of public safety. My experiences spanned the continuum of public safety from victim advocacy and crisis mediation to juvenile and adult corrections. In addition to being the first woman to serve as Director of the Oregon Department of Corrections, I have also served as Chair of the National Institute of Corrections Advisory Board and as a past Vice President of the Association of State Correctional Administrators. While I was Director of the Oregon Department of Corrections, we fostered environments inside our facilities that were more humane, including by reducing the use of restrictive housing, reflected the outside community, and led to more successful outcomes upon release. I am honored to now serve as Director of the Bureau of Prisons and to work with the dedicated correctional professionals in our agency.

As I have said before, I welcome accountability and oversight; and I welcome this hearing. The Bureau cannot fully accomplish our mission unless we work with Congress, the Department of Justice (Department) leadership, the Office of Inspector General (OIG), the Government Accountability Office (GAO), the U.S. Sentencing Commission, and others. I believe in transparency and that we must come to this work ready to fix what is not working. As an agency, and through the ranks of its dedicated employees, the Bureau continuously works to ensure the safety and wellbeing of our employees, those in our care and custody, and our surrounding communities. I recognize the gravity of the alleged misconduct within some of our institutions in recent years and condemn any such conduct. Employee misconduct is always unacceptable and must never be tolerated. We continue to respond to and investigate reported misconduct, to hold individuals accountable, including by working with criminal investigators

and prosecutors to bring criminal charges where appropriate, and to foster change in culture at locations where necessary.

On July 14, 2022, the Deputy Attorney General (DAG) convened senior Department officials to review the Department's approach to rooting out and preventing sexual misconduct by Bureau employees, and to propose recommendations and reforms to address deficiencies. On November 2, 2022, this Working Group issued a written report with a series of recommendations, including that the Bureau should enhance the use of administrative actions and discipline of Bureau employees who commit sexual misconduct. The report is available at: [https://www.justice.gov/d9/pages/attachments/2022/11/03/2022.11.02\\_bop\\_sexual\\_misconduct\\_working\\_group\\_report.pdf](https://www.justice.gov/d9/pages/attachments/2022/11/03/2022.11.02_bop_sexual_misconduct_working_group_report.pdf). I am committed to implementing the recommendations in that report. Following a review of the Bureau's disciplinary system, we have a plan in place to improve the timely processing of discipline and to ensure staff who engage in sexual misconduct are held accountable. Once implemented, the Bureau will continue to review the process to ensure it is effective in addressing the issues in the report.

Stopping sexual misconduct at Bureau facilities is an issue of critical importance, and I appreciate this Committee's support in this area. I see this moment as an important opportunity to work together to make our facilities safer for the people in our custody. Let me take this opportunity to share some of the Bureau's current priorities and work aimed at reducing, and ultimately eliminating, sexual misconduct at Bureau facilities. Our work centers on five primary concepts: (1) prevention, (2) reporting, (3) investigation, (4) prosecution, and (5) discipline.

#### **ENHANCE PREVENTION OF SEXUAL MISCONDUCT**

As the Director, and the former Inspector General in Oregon, I am committed to enhancing the prevention of sexual misconduct by Bureau employees. A key objective is to make sure this misconduct does not occur in the first place.

This begins with changing the culture and environment in Bureau facilities. The Bureau's Reentry Services Division recently launched an initiative to assess culture at all women's facilities and ensure gender-responsive, trauma-informed practices are being followed. The goal of the Women's Institution Cultural (WIC) Assessments is to develop a "snapshot" of a facility's culture, and themes across the resulting reports will be used to develop new initiatives within the agency.

In the meantime, we are training Bureau employees on the importance of reporting and how to report misconduct and we will be incorporating more training in the future. For example, we are creating a video for women in our custody that provides more details on available resources and discusses sexual safety. We have identified indicators that may signal problems, such as a disproportionate number of complaints targeting a particular office or prison setting, officer tardiness following rounds, and frequent periods where officers are unaccounted for during shifts. We will be equipping, encouraging, and supporting employees to recognize and report those indicators, and stopping wrongful conduct before it occurs as a core responsibility.

Leadership is essential to creating the appropriate culture in Bureau facilities. We are examining how we select, supervise, support, and compensate wardens in women's facilities. Moving forward, we are looking at how we can improve selection of well-suited candidates to serve as wardens in female facilities. These candidates must show a strong desire to work at women's facilities and the necessary skills to address the unique issues faced in such facilities. We are also strengthening the performance criteria for all wardens and their supervisors by considering past approaches to addressing sexual misconduct.

The Bureau is also assessing how we screen candidates for positions at women's facilities. It is critical that we screen for persons who understand the challenges posed at women's facilities. We will be providing additional training to new and existing employees, including gender-responsive training, trauma-informed training, and enhanced sexual abuse prevention training.

Another important aspect of prevention is the importance of promoting a respectful environment, which helps improve the culture of the institution and, in turn, prevent instances of misconduct. We are working on highlighting existing policies that prohibit sexual harassment and updating those policies to specifically address the penalties for sexual harassment to ensure appropriate disciplinary consequences. Likewise, we are addressing sexual harassment perpetrated by people in our care against employees. Unaddressed, this behavior could impair the Bureau's ability to recruit and retain employees and contribute to a culture of acceptance of sexual harassment more generally. We are adopting these measures to ensure that employees are adequately equipped to address the unique issues faced in women's facilities.

We will also improve monitoring in Bureau facilities. I believe that detection is critical to deterrence. We will leverage both technological and human resources to better detect and prevent sexual misconduct. On the technological side, we are working on upgrading camera technology and expanding the use of cameras across facilities. We are also working on extending the time that all video footage is preserved. Further, we are looking into collaborating with formerly incarcerated individuals and using the lessons learned from their experiences. Formerly incarcerated individuals provide insight into a facility's culture, identify specific compliance problems, and offer suggestions for prevention and response. We already held two listening sessions which included formerly incarcerated individuals and we plan on continuing these important sessions, as well as looking for additional opportunities for collaboration.

#### **ENHANCE REPORTING OF SEXUAL MISCONDUCT**

The Bureau is taking steps to create and foster a culture where all stakeholders feel empowered to report misconduct and where everyone feels safe coming forward without fear of retaliation. I am confident that such reporting will result in meaningful responses. We are updating relevant policies to emphasize the obligation to report misconduct; to ensure employees and individuals in our care know how they can report allegations; and to ensure appropriate safeguards to protect victims, witnesses, and individuals who report allegations of misconduct.

I have communicated to employees across the Bureau that it is our sworn duty to protect the individuals entrusted to our care. Together, we will foster an environment where everyone



feels safe coming forward without fear of retaliation. The vast majority of Bureau employees abide by their oaths and follow the rules. The small number of employees who engage in inappropriate, egregious, and/or criminal behavior need to be held accountable and we are strengthening our processes to ensure that happens.

To enhance reporting, we have been working toward providing each person in our care with specific and detailed information on how to report misconduct. Additionally, we will be emphasizing that the reports of misconduct can be sent to a dedicated email address run by OIG and will remain confidential upon request. Moreover, we are currently exploring additional resources that could enhance sexual misconduct reporting options for people in our care and their families.

We are also continuing the effort of reducing barriers to reporting. All Bureau employees are protected by law, regulation, and policy from retaliation for making a protected report, and the Bureau will not tolerate any acts of reprisal. In fact, retaliation of this nature itself constitutes misconduct. It is likewise important that incarcerated individuals who are victims of or witnesses to misconduct do not suffer penalties or retaliation for reporting the misconduct. Additionally, the Bureau is reviewing the use of restrictive housing to safeguard people who are reported victims of sexual misconduct as part of its ongoing review of restrictive housing.

Additionally, there is no limitation on who may submit allegations of misconduct. All referrals are reviewed. Employee misconduct allegations are sometimes received from other sources like the union, those in our custody, the public, OIG, and other law enforcement agencies. The Bureau's Office of Internal Affairs (OIA) also sometimes uncovers violative additional conduct while conducting an ongoing investigation; this is also reviewed.

#### **ENHANCE INVESTIGATIONS OF EMPLOYEES WHO ARE ACCUSED OF SEXUAL MISCONDUCT**

The Bureau is committed to ensuring that allegations of sexual misconduct are thoroughly investigated, that investigators are properly trained, and that investigatory resources are appropriately aligned. The nature and complexity of the allegations, among other factors, will determine which office will investigate an allegation. Criminal allegations are investigated by the OIG, and sometimes by the Federal Bureau of Investigation. In some criminal cases, OIG will work with the local U.S. Attorney's Office for criminal prosecution. In others, OIG will refer the case back to the Bureau for administrative investigation and action. Of course, employees who are prosecuted criminally may also be subject to agency disciplinary action. Administrative investigations, including those involving Wardens, are investigated by OIA.

We are bolstering and reorganizing investigative resources and personnel to support OIA in conducting timely, thorough, and unbiased investigations. We are adding more than 40 employees to the OIA team and realigning specially trained Special Investigative Agents (SIAs) to be supervised by the Central Office OIA, instead of by local institution management. To ensure we are aware of possible concerns throughout the agency, the Deputy Director and I will also be meeting with the heads of the Bureau's OIA and Human Resources and Management Division monthly to discuss significant cases and issues.

It is important that those investigating allegations of sexual misconduct use purpose-driven, victim-centered, and trauma-informed techniques. The Bureau is incorporating training for OIA investigators on conducting interviews based on these techniques. Additionally, training will emphasize that credibility of an alleged victim, suspect, or witness is assessed on an individual basis — and not determined by whether the person is in custody or a Bureau employee. Investigators are trained to determine on a case-by-case basis the credibility of each statement they obtain. They also continue investigating — gathering additional facts from documents, other interviews, and the wide variety of evidence available.

**ENHANCE ACCOUNTABILITY FOR  
SEXUAL MISCONDUCT PERPETRATED BY EMPLOYEES  
(PROSECUTION)**

Accountability and deterrence are critical to any effective strategy to address sexual misconduct. The DAG has directed U.S. Attorney's Offices to prioritize the prosecution of criminal misconduct in the Bureau. We agree that bringing these cases is critical for rooting out criminal activity within the Bureau. We welcome the Department's focus on prosecuting those who violate their positions of public trust as correctional professionals by engaging in criminal activity and victimizing those who they are sworn to safeguard. The Department's recent prosecutions of sexual misconduct send a strong signal that unlawful conduct will not be tolerated.

Additionally, the Working Group's report recommended that the Department consider supporting statutory changes to strengthen the Department's tools to prosecute sexual misconduct against those in Bureau custody and sexual misconduct by government actors more broadly. I support these recommendations.

An important aspect of accountability occurs when an employee is convicted of sexual misconduct. In a public letter this fall, the DAG wrote to the U.S. Sentencing Commission, asking the Commission to review and strengthen the federal sentencing guideline provisions for sexual abuse committed by federal corrections employees against those in their custody, and the Commission is looking into this issue over the coming months. The letter is available at <https://www.uscc.gov/sites/default/files/pdf/amendment-process/public-comment/20221017/doj-dag.pdf>. We hope that the Commission agrees and strengthens applicable penalties.

**ENHANCE ACCOUNTABILITY FOR  
SEXUAL MISCONDUCT PERPETRATED BY EMPLOYEES  
(EMPLOYEE DISCIPLINE)**

Another aspect of accountability is appropriate use of the Bureau's administrative disciplinary process. Whenever an allegation of sexual misconduct is received, the Warden must report it to their Regional Director and to OIA, which will track all allegations of sexual misconduct and report them to my office. The Bureau has added additional personnel and resources to ensure timely review of disciplinary cases and to hold employees accountable for misconduct. Delays in processing discipline can have a detrimental impact on the secure running of institutions and on employee morale. Additionally, CEOs were recently reminded to use all

available options in employee misconduct cases, which may include administratively removing employees from the institution while an investigation is ongoing — if it is in conjunction with serious allegations of misconduct. Since all administrative misconduct assessments, investigations, and disciplinary determinations must be assessed on a case-by-case basis, these decisions will be reported to OIA, which will allow us to make sure that CEOs are making proper use of these tools to keep the populations in their institution safe when allegations of staff misconduct surface.

#### **CONCLUSION**

Chairman Ossoff, Ranking Member Johnson, and Members of the Subcommittee, I am honored to speak on behalf of the Bureau and its dedicated employees in institutions and administrative offices nationwide. Thank you for your attention to this critical priority. We are committed to protecting the safety and security of those in our care and to holding accountable those who violate the law. Every person has the right to be safe from sexual misconduct, and I am committed to combatting sexual misconduct in our facilities. I look forward to your continued support on the changes we are trying to implement in our facilities, and I thank you for the opportunity to speak to you today.

*United States Senate*  
**PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**  
*Committee on Homeland Security and Governmental Affairs*

---

*Jon Ossoff, Chair*  
*Ron Johnson, Ranking Member*

**SEXUAL ABUSE OF FEMALE INMATES IN FEDERAL PRISONS**

**STAFF REPORT**

**PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

**UNITED STATES SENATE**



**RELEASED IN CONJUNCTION WITH THE  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
DECEMBER 13, 2022 HEARING**

**SENATOR JON OSSOFF**  
Chair

**SENATOR RON JOHNSON**  
Ranking Minority Member

**PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

**SARA SCHAUMBURG**  
Staff Director

**CAITLIN WARNER**  
Chief Counsel

**DANIEL M. EISENBERG**  
Deputy Staff Director & Senior Counsel

**MEERAN AHN, BALAJI NARAIN, & LI YU**  
Senior Counsels

**TAYLOR BURNETT**  
Counsel

**DENNIS HEINRICH**  
Detaillee

**KARAZ AXAM, DANIELLE DAVIS, ISMAEL FAROOQUI, SAM KREVLIN,  
MALLORY LEOPOLD NEEDLE, MADELYN PHINNEY,  
AVERY SALINGER, NAILA SCOTT, & THOMAS WEAVER**  
Law Clerks

**BRIAN DOWNEY**  
Staff Director to the Minority

**SCOTT WITTMANN**  
Deputy Staff Director to the Minority

**KYLE BROSNAN**  
Chief Counsel to the Minority

**PATRICK HARTOBEY**  
Senior Counsel to the Minority

**CHRISTOPHER ECKHARDT, JR, VICTORIA GARRASTACHO, JAMES PRIEST**  
Law Clerks

**KATE KIELCESKI**  
Subcommittee Clerk

**Table of Contents**

EXECUTIVE SUMMARY .....	1
I. Introduction .....	6
a. Female Prisoners Are Disproportionately Vulnerable to Sexual Abuse.....	6
b. Sexual Contact Between BOP Employees and Prisoners is a Federal Crime and Also Prohibited by BOP Policy .....	6
c. The Process for Investigating Allegations of Sexual Abuse by BOP Employees .....	7
II. The Subcommittee’s Investigation .....	8
III. There Were At Least Four BOP Facilities Between 2012 and 2022 with Recurring Sexual Abuse of Female Prisoners by Male BOP Employees.....	9
a. MCC New York .....	10
b. MDC Brooklyn .....	11
c. FCC Coleman.....	11
d. FCI Dublin .....	15
e. Sexual Abuse Across Other BOP Facilities that Hold Female Prisoners .....	18
IV. BOP Does Not Systematically Analyze Key Indicators of Sexual Abuse in its Facilities	19
a. Flawed PREA Audits Failed to Detect the Culture of Sexual Abuse of Female Prisoners by Employees at FCC Coleman and FCI Dublin .....	19
b. BOP Does Not Systematically Analyze PREA Complaint Data.....	22
c. The Office of Internal Affairs Annual Reporting Is Confusing, Omits Relevant Information, and Obscures BOP’s Internal Affairs Case Backlog.....	23
V. BOP Fails to Hold Employees Accountable for Misconduct .....	24
a. BOP Internal Affairs Has a Backlog of Approximately 8,000 Misconduct Cases.....	24
b. BOP’s Inability to Timely Investigate and Close Internal Affairs Complaints Has Failed to Hold Wrongdoers Accountable.....	26
c. OIG Lacks Resources to Pursue Criminal Investigations of Most BOP Employees Accused of Crimes .....	27
VI. BOP’s Deficient Response to Sexual Abuse .....	28
VII. Conclusion .....	30

**Sexual Abuse of Female Inmates in Federal Prisons**

**EXECUTIVE SUMMARY**

In April 2022, the Permanent Subcommittee on Investigations (“PSI” or “the Subcommittee”) launched a bipartisan investigation into sexual abuse of female prisoners in custody of the Federal Bureau of Prisons (“BOP”).

The Subcommittee reviewed non-public BOP and whistleblower documents, and it conducted more than two dozen interviews with senior BOP leaders, whistleblowers, and survivors of sexual abuse. The Subcommittee found:

- BOP employees sexually abused female prisoners in at least two-thirds (19 of 29 facilities) of federal prisons that have held women over the past decade.<sup>1</sup>
- BOP has failed to successfully implement the Prison Rape Elimination Act (“PREA”). It failed to prevent, detect, and stop recurring sexual abuse in at least four federal prisons, including abuse by senior prison officials. At FCI Dublin, for example, the former Warden and Chaplain both sexually abused female prisoners.
- BOP management failures enabled continued sexual abuse of female prisoners by BOP’s own employees.
- BOP Office of Internal Affairs’ (“BOP OIA” or “OIA”) investigative practices are seriously flawed. There is currently a backlog of 8,000 internal affairs cases, including at least hundreds of sexual abuse cases.<sup>2</sup>

\* \* \*

---

<sup>1</sup> There are currently 27 female facilities where BOP holds women. Since 2012, there have been two BOP facilities that were used to hold women but no longer do: FCC Coleman and MCC New York. Thus, since 2012, there were 29 BOP facilities in total that have held women. *See* Exhibit 1; Bureau of Prisons, *Our Locations* (<https://www.bop.gov/locations/list.jsp>); Email from Congressional Research Service to PSI (Dec. 9, 2022) (on file with PSI) (confirming 29 total facilities between 2012 and 2022 held female prisoners). The Subcommittee reviewed public criminal convictions and data produced by BOP concerning substantiated sexual abuse cases of prisoners by BOP employees. *See* Exhibit 1; Staff-on-Inmate Cases by Facility (2012-2021), Production from DOJ to PSI (Nov. 4, 2022) (PSI-BOPOIA-Prod4-0001-0049). The Subcommittee found sexual abuse of female prisoners by BOP employees in 19 of 29 federal facilities that held women since 2012. Because BOP did not disclose the gender of the victim of abuse in the data that it produced to the Subcommittee, the Subcommittee did not include BOP OIA substantiated sexual abuse cases in the remaining 10 of 29 facilities holding both men and women where there was no public criminal conviction. For this reason, there were abuse cases in *at least* 19 of 29 facilities, or, two-thirds.

<sup>2</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* ([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); *Lawsuit settled in which 15 women alleged sexual abuse at Florida prison*, Tampa Bay Times (May 5, 2022) (<https://www.tampabay.com/news/florida/2021/05/05/lawsuit-settled-in-which-15-women-alleged-sexual-abuse-at-florida-prison/>).

In 2003, Congress passed PREA “to eradicate prisoner rape in all types of correctional facilities in this country” by requiring federal prisons to adopt certain policies and practices designed to mitigate the risk of sexual abuse, track allegations of sexual abuse, and protect potential victims.<sup>3</sup> Yet according to the Subcommittee’s review of court filings and non-public BOP data dating back to 2012, BOP employees have sexually abused women in their custody in at least 19 of 29—or two-thirds—of facilities where BOP incarcerates women.<sup>4</sup>

In at least four BOP facilities, multiple women endured ongoing sexual abuse for months or years.<sup>5</sup> Beginning in June 2021, the Department of Justice (“DOJ”) indicted five BOP employees at California’s Federal Correctional Institution (“FCI”) Dublin—including the Warden and the Chaplain—for repeated sexual abuse of at least eight female prisoners under their supervision.<sup>6</sup> The horrific abuse at FCI Dublin was not unique among BOP’s prisons. BOP failed to detect and prevent repeated sexual abuse in at least three other facilities before FCI Dublin.

- Starting in approximately 2012, at least two officers repeatedly sexually abused at least eight female prisoners at the Metropolitan Correctional Center (“MCC”) New York over the course of several years.<sup>7</sup>
- Starting in approximately 2016, at least two male lieutenants and one officer sexually abused at least nine female prisoners at the Metropolitan Detention Center (“MDC”) Brooklyn in New York.<sup>8</sup>

<sup>3</sup> Bureau of Justice Assistance, *Prison Rape Elimination Act (PREA): Overview* (<https://bja.ojp.gov/program/prison-rape-elimination-act-prea/overview>).

<sup>4</sup> See footnote 1. “BOP employees” in this report includes bargaining staff, mid-level managers, and supervisors.

<sup>5</sup> See, e.g., U.S. Attorney’s Office, Southern District of New York: *Correctional Officer At Metropolitan Correctional Center Sentenced To 40 Months In Prison For Engaging In Abusive Sexual Contact With Inmates* (Dec. 8, 2020) (<https://www.justice.gov/usao-sdny/pr/correctional-officer-metropolitan-correctional-center-sentenced-40-months-prison>); Office of Public Affairs, Department of Justice: *Jury Convicts Former Federal Prison Warden for Sexual Abuse of Three Female Inmates* (Dec. 8, 2022) (<https://www.justice.gov/opa/pr/jury-convicts-former-federal-prison-warden-sexual-abuse-three-female-inmates>); U.S. Attorney’s Office, Eastern District of New York: *Former Federal Bureau of Prisons Lieutenant Sentenced to 25 Years in Prison for Sexual Abuse and Violation of Civil Rights Convictions* (July 31, 2019) (<https://www.justice.gov/usao-edny/pr/former-federal-bureau-prisons-lieutenant-sentenced-25-years-prison-sexual-abuse-and>); Affidavit of Keith Vann, Production from DOJ to PSI (Oct. 18, 2022) (PSI-BOPOIA-Prod2-0135-0144).

<sup>6</sup> Lisa Fernandez, *5th officer at Dublin prison charged in widening sex abuse scandal*, KTVU FOX 2 (Mar. 24, 2022) (<https://www.ktvu.com/news/5th-guard-at-dublin-prison-charged-in-widening-sex-abuse-scandal>). *United States v. Highhouse*, No. 22-cr-000016-HSG (N.D. Cal. 2022); *United States v. Klinger*, No. 4:22-CR-00031-JSW (N.D. Cal., June 25, 2021); *United States v. Bellhouse*, No. 4:21-MJ-71905-MRGD (N.D. Cal., Nov. 30, 2021); *United States v. Chavez*, No. 4:22-CR-00104-JSW (N.D. Cal., Mar. 10, 2022); *United States v. Garcia*, No. 4:21-CR-429 (N.D. Cal. 2022).

<sup>7</sup> Benjamin Weiser, *U.S. Pays \$4.2 Million to Victims of Jail Guard’s Long-Running Sex Abuse*, New York Times (July 18, 2022) (<https://www.nytimes.com/2022/07/18/nyregion/mcc-officer-sex-abuse-victims-payout.html>); *Herrera v. United States*, 20-cv-10206 (PKC) (S.D.N.Y. Mar. 27, 2022); U.S. Attorney’s Office, Eastern District of New York: *Former Federal Correctional Officer Sentenced to Seven Years for Sexually Abusing an Inmate* (May 4, 2022) (<https://oig.justice.gov/press/2016/2016-05-04.pdf>).

<sup>8</sup> Joseph Goldstein, *Brooklyn Prison Supervisors Charged With Sexually Assaulting Inmates*, New York Times (May 25, 2017) (<https://www.nytimes.com/2017/05/25/nyregion/prison-supervisors-sex-abuse-prevention-rape->



- Starting in approximately 2012 through 2020, there were at least six male BOP employees who sexually abused at least ten female prisoners at the Federal Correctional Complex (“FCC”) Coleman in Florida.<sup>9</sup> The Subcommittee obtained copies of non-public sworn, compelled statements from officers at FCC Coleman, wherein the officers admitted to sexual abuse of female detainees in graphic detail.<sup>10</sup> DOJ’s Office of the Inspector General (“OIG”) declined to investigate these FCC Coleman officers for sexual abuse and they were never prosecuted.<sup>11</sup>

The Subcommittee found that the mechanisms that BOP employs to identify and prevent sexual abuse of female prisoners by BOP employees are ineffective. Audits intended to assess sexual abuse in prisons (known as “PREA audits”) found that FCC Coleman and FCI Dublin were compliant with every PREA standard during the time when senior BOP officials admitted to the Subcommittee that there was a “culture of abuse.”<sup>12</sup> Further, BOP failed to systematically analyze PREA data, missing a key opportunity to identify problematic facilities or employees.<sup>13</sup>

BOP OIA, the component of BOP responsible for investigating staff misconduct, has failed to timely investigate and resolve allegations of employee misconduct concerning both sexual abuse of female prisoners and other matters. The Subcommittee’s investigation uncovered that as of November 2022, BOP OIA had a backlog of approximately 8,000 cases.<sup>14</sup> Some cases have been pending for more than five years.<sup>15</sup> BOP OIA’s failures impeded BOP’s ability to hold wrongdoers accountable.

---

charges.html); *United States v. Eugenio Perez*, 1:17-cr-00280-KAM (E.D.N.Y. 2018); *United States v. Martinez*, 1:17-cr-00281-ERK (E.D.N.Y. 2019); *United States v. Armando Moronta*, 17-CR-281 (E.D.N.Y. 2017).

<sup>9</sup> See Answer at ¶ 26-29, *Beaubrun v. United States*, 5:19-CV-0615-TJC (M.D. Fl. 2020) [hereinafter *Beaubrun Answer*].

<sup>10</sup> 2019 Affidavit of Christopher Palomares, Production from DOJ to PSI (Oct. 18, 2022) (PSI-BOPOIA-Prod2-0101-0111) [hereinafter 2019 Palomares Aff.]; 2018 Affidavit of Christopher Palomares, Production from DOJ to PSI (Oct. 18, 2022) (PSI-BOPOIA-Prod2-0112-0123) [hereinafter 2018 Palomares Aff.]; Affidavit of Daniel Kuilan, Production from DOJ to PSI (Oct. 18, 2022) (PSI-BOPOIA-Prod2-0188-0196) [hereinafter Kuilan Aff.]; Affidavit of Keith Vann, Production from DOJ to PSI (Oct. 18, 2022) (PSI-BOPOIA-Prod2-0135-0144) [hereinafter Vann Aff.]; Affidavit of Tracy Laudenslager, Production from DOJ to PSI (Oct. 18, 2022) (PSI-BOPOIA-Prod2-0093-0100) [hereinafter Laudenslager Aff.]; Affidavit of Timothy Phillips, Production from DOJ to PSI (Oct. 18, 2022) (PSI-BOPOIA-Prod2-0124-0134) [hereinafter Phillips Aff.]; Affidavit of Scott Campbell Production from DOJ to PSI (Oct. 18, 2022) (PSI-BOPOIA-Prod2-0086-0092) [hereinafter Campbell Aff.].

<sup>11</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>12</sup> 2017 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022); 2022 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0262-0381); 2018 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0635-0726); 2021 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>13</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>14</sup> See Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>15</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

### Key Findings

1. **Over the past decade, female inmates in at least two-thirds (19 of 29) of federal prisons that held women were sexually abused by male BOP employees, including senior prison officials.** Multiple BOP employees sexually abused multiple female prisoners at MCC New York, MDC Brooklyn, FCC Coleman, and FCI Dublin.<sup>16</sup> Between 2012 and 2020, BOP has opened 5,415 internal affairs cases alleging sexual abuse of male or female prisoners by BOP employees.<sup>17</sup> There were at least 134 instances across 19 female facilities where BOP employees were either prosecuted for sexual abuse of female prisoners or where BOP OIA substantiated allegations that BOP employees sexually abused female prisoners.<sup>18</sup>
2. **BOP failed to detect, prevent, and respond to sexual abuse of female prisoners in its custody.** BOP failed to systematically analyze PREA complaint data and relied on flawed PREA audits that missed sexual abuse of female prisoners by male BOP employees at FCC Coleman and FCI Dublin.<sup>19</sup> At FCC Coleman, BOP transferred all female prisoners out of the prison two days before the auditor's on-site inspection at a time when multiple women were being abused.<sup>20</sup> At FCI Dublin, the former PREA compliance officer, responsible for training supervisors on the PREA requirements and coordinating the PREA audit, was convicted of sexually abusing female prisoners on December 8, 2022.<sup>21</sup>
3. **BOP failed to hold employees accountable for misconduct.** BOP has a backlog of approximately 8,000 internal affairs cases alleging employee misconduct, some of which have been pending for more than five years.<sup>22</sup> OIA's failure to clear pending cases impedes BOP's ability to hold employees accountable.
4. **BOP failed to take agency-wide action to address sexual abuse of female inmates by male BOP employees.** In interviews with the Subcommittee, BOP could not identify any agency-wide actions it had undertaken in response to sexual abuse of

<sup>16</sup> See Exhibit 1.

<sup>17</sup> Staff-on-Inmate Cases by Facility (2012-2021), Production from DOJ to PSI (Nov. 4, 2022) (PSI-BOPOIA-Prod4-0001-0049).

<sup>18</sup> See footnote 1; Exhibit 1.

<sup>19</sup> See Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022); Melissa Rios, Western Regional Director, BOP, Interview with PSI (Nov. 10, 2022); Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022); 2017 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (on file with PSI); 2022 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0262-0381); 2018 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0635-0726); 2021 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261).

<sup>20</sup> See FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261) at PSI-BOPOIA-Prod1-000136.

<sup>21</sup> Office of Public Affairs, Department of Justice: *Jury Convicts Former Federal Prison Warden for Sexual Abuse of Three Female Inmates* (Dec. 8, 2022) (<https://www.justice.gov/opa/pr/jury-convicts-former-federal-prison-warden-sexual-abuse-three-female-inmates>); 2017 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (on file with PSI).

<sup>22</sup> See Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

numerous female inmates by multiple BOP employees at MCC New York, MDC Brooklyn, and FCC Coleman. It was only after the abuse at FCI Dublin came to light that BOP began to institute agency-wide changes.<sup>23</sup>

---

<sup>23</sup> See Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022); Melissa Rios, Western Regional Director, BOP, Interview with PSI (Nov. 10, 2022); Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

## I. Introduction

BOP “is responsible for the custody and care of federal inmates.”<sup>24</sup> As of November 2022, BOP held approximately 160,000 prisoners across its 122 facilities.<sup>25</sup> Approximately 11,000 were female and incarcerated in BOP’s 27 “female facilities.”<sup>26</sup> Six of the 27 female facilities hold women exclusively, and 21 hold both men and women.<sup>27</sup> Since 2012, there were two additional federal prisons that held women but no longer do: FCC Coleman and MCC New York.<sup>28</sup>

### a. Female Prisoners Are Disproportionately Vulnerable to Sexual Abuse

Women entering prison are more likely to have experienced physical and/or sexual abuse as children and adults, as compared to men in prison.<sup>29</sup> According to a February 2020 report by the U.S. Commission on Civil Rights, research suggests that at least 50 percent of women entering prison report that they experienced physical and/or sexual abuse before their incarceration.<sup>30</sup> They are also significantly more likely to be sexually harassed and abused while incarcerated.<sup>31</sup> According to *the National Standards to Prevent, Detect, and Respond to Prison Rape: Final Rule*, women with histories of sexual abuse—including women in prisons and jails—are particularly traumatized by subsequent abuse.<sup>32</sup>

### b. Sexual Contact Between BOP Employees and Prisoners is a Federal Crime and Also Prohibited by BOP Policy

Sexual abuse of prisoners in BOP custody by employees is both a federal crime and subject to BOP administrative sanctions.

18 U.S.C. § 2243(b) makes it a felony—punishable by up to 15 years of imprisonment—for a BOP employee to “knowingly [engage] in a sexual act with another person who is—(1) in official detention; and (2) under the custodial, supervisory, or disciplinary authority of the [BOP

<sup>24</sup> Bureau of Prisons, *About Our Agency* (<https://www.bop.gov/about/agency/>).

<sup>25</sup> Bureau of Prisons, *Statistics* ([https://www.bop.gov/about/statistics/population\\_statistics.jsp](https://www.bop.gov/about/statistics/population_statistics.jsp)); Bureau of Prisons, *Locations* (<https://www.bop.gov/locations/>).

<sup>26</sup> Bureau of Prisons, *Statistics* ([https://www.bop.gov/about/statistics/statistics\\_inmate\\_gender.jsp](https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp)).

<sup>27</sup> Bureau of Prisons, *Our Locations* (<https://www.bop.gov/locations/list.jsp>).

<sup>28</sup> See Email from Congressional Research Service to PSI (Dec. 9, 2022) (on file with PSI); Bureau of Prisons, *Our Locations* (<https://www.bop.gov/locations/list.jsp>).

<sup>29</sup> U.S. Commission on Civil Rights, *Women in Prison: Seeking Justice Behind Bars* (February 2020) (<https://www.usccr.gov/files/pubs/2020/02-26-Women-in-Prison.pdf>).

<sup>30</sup> U.S. Commission on Civil Rights, *Women in Prison: Seeking Justice Behind Bars* (February 2020), (<https://www.usccr.gov/files/pubs/2020/02-26-Women-in-Prison.pdf>) (citing Nancy Wolff, Jing Shi, and Jane Siegel, *Patterns of Victimization Among Male and Female Offenders and Evidence of an Enduring Legacy*, *Violence Victimization*, Vol. 24, No. 4 (2009) at 469-84) (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3793850>).

<sup>31</sup> U.S. Commission on Civil Rights, *Women in Prison: Seeking Justice Behind Bars* (February 2020), <https://www.usccr.gov/files/pubs/2020/02-26-Women-in-Prison.pdf>.

<sup>32</sup> See Department of Justice, *National Standards to Prevent, Detect, and Respond to Prison Rape: Final Rule*, 77 Fed. Reg. 37,106, 37,132 (June 20, 2012) (the “2012 DOJ PREA Standards Final Notice”) (<https://www.govinfo.gov/content/pkg/FR-2012-06-20/html/2012-12427.htm>) (citing BJS, unpublished data, 2004 Survey of Inmates in State and Federal Correctional Facilities and 2002 Survey of Inmates in Local Jails).

employee] so engaging.” BOP “staff sexual relations with inmates is always illegal” as there is no “consent” defense to a violation of 18 U.S.C. § 2243(b).<sup>33</sup> As OIG explained in a 2005 report, this is because the “inherently unequal” relationship between BOP employees and prisoners precludes prisoners from having “the same ability as staff members to consent to a sexual relationship.”<sup>34</sup>

BOP policy has “zero tolerance toward all forms of sexual activity, including sexual abuse and sexual harassment.”<sup>35</sup> Per the policy, “Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.”<sup>36</sup>

### **c. The Process for Investigating Allegations of Sexual Abuse by BOP Employees**

As part of PREA’s standards, BOP is required to establish reporting mechanisms for inmates to raise complaints about sexual abuse.<sup>37</sup> Those standards also require prevention planning, response planning, training and education, screening for risk of sexual victimization and abusiveness, reporting, official response following an inmate report, investigation, discipline, medical and mental healthcare, data collection and review, and prison audits.<sup>38</sup>

Complaints of sexual abuse of female prisoners by BOP employees can be investigated by either BOP itself, through OIA, or by OIG.<sup>39</sup> BOP OIA refers all complaints of sexual abuse or harassment by employees to OIG. OIG—an independent entity with the authority to investigate criminal misconduct by DOJ employees—evaluates those complaints and decides whether to investigate or send them back to BOP, which can take two forms.<sup>40</sup> First, OIG can make a “management referral” for BOP to investigate at its discretion.<sup>41</sup> Second, OIG can make a “monitored referral,” whereby BOP continues the investigation and reports its determination to OIG once the investigation has concluded.<sup>42</sup>

<sup>33</sup> Department of Justice, Office of Inspector General, *Deterring Staff Sexual Abuse of Federal Inmates* (Apr. 2005) (oig.justice.gov/sites/default/files/archive/special/0504/index.htm). See also, e.g., *United States v. Martinez*, 388 F. Supp. 3d 225, 236 (E.D.N.Y. 2019) (“consent is not relevant” for “sexual abuse of a ward” violations under 18 U.S.C. § 2243(b)).

<sup>34</sup> Department of Justice, Office of Inspector General, *Deterring Staff Sexual Abuse of Federal Inmates* (Apr. 2005) (oig.justice.gov/sites/default/files/archive/special/0504/index.htm).

<sup>35</sup> BOP Program Statement 5324.06 (preamble).

<sup>36</sup> BOP Program Statement 5324.06 § 115.76(b).

<sup>37</sup> See 28 C.F.R. § 115.

<sup>38</sup> See 28 C.F.R. § 115.

<sup>39</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>40</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>41</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>42</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

BOP OIA does not investigate allegations of criminal misconduct referred to OIG before OIG has decided whether to retain the case.<sup>43</sup> If OIG declines to pursue a criminal or administrative investigation, BOP will pursue an administrative investigation.<sup>44</sup> BOP OIA has the ability to compel BOP employees, as a condition of employment, to sit for interviews about the allegations against them.<sup>45</sup> BOP OIA closes cases in one of three ways: substantiation of allegations, no substantiation of allegations, or closure for administrative reasons without reaching the merits of the allegations.<sup>46</sup>

## II. The Subcommittee's Investigation

In April 2022, the Subcommittee launched an eight-month bipartisan investigation of sexual abuse of female inmates in federal prisons. Specifically, the Subcommittee evaluated whether female prisoners in the custody of BOP were safe from sexual abuse by BOP employees. The Subcommittee did the following:

- Reviewed non-public documents and data provided by BOP, BOP whistleblowers, and OIG.
- Interviewed more than two dozen witnesses, including:
  - Four current senior officials within the BOP: Chief of BOP OIA, Beth Reese; Acting Assistant Director of Reentry Services Division, Alix McLearen, PhD; Regional Director for the Western Region with oversight of FCI Dublin, Melissa Rios; and Warden of FCI Dublin from October 2017 to November 2020, Wiley Jenkins.<sup>47</sup>
  - Twelve survivors of sexual abuse in BOP custody. These women were abused by male BOP employees in eight different BOP facilities.<sup>48</sup>

<sup>43</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022). DOJ OIG, as with all federal Inspector General Offices, has a right of first refusal among law enforcement agencies to investigate allegations of misconduct by employees of the agency overseen by the Inspector General's Office.

<sup>44</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>45</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>46</sup> See Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* (Jan. 6, 2021) ([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)).

<sup>47</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Alix McLearen, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022); Melissa Rios, Western Regional Director, BOP, Interview with PSI (Nov. 10, 2022); Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>48</sup> W.P., Interview with PSI (Sept. 8, 2022); C.R., Interview with PSI (Aug. 30, 2022); C.D., Interview with PSI (Oct. 14, 2022); K.D., Interview with PSI (Apr. 28, 2022); L.D., Interview with PSI (May 12, 2022); L.R., Interview with PSI (June 17, 2022); S.M.R., Interview with PSI (Sept. 7, 2022); B.M., Interview with PSI (Aug. 4, 2022); A.P., Interview with PSI (June 2, 2022); R.L., Interview with PSI (Oct. 12, 2022); R.D., Interview with PSI (July 5, 2022); V.M., Interview with PSI (June 14, 2022).

- Eight BOP whistleblowers who came forward to report misconduct or BOP's deficient management practices.<sup>49</sup>
- Brenda V. Smith, Esq., a law professor who studies sexual abuse in custodial settings.<sup>50</sup>
- Received briefings from:
  - The OIG Assistant Inspector General for Investigations and two OIG Senior Counsels to the Inspector General (collectively, "OIG") concerning OIG's investigations into allegations of sexual abuse at FCC Coleman, and the processes by which it coordinates investigative work with BOP and decides which cases to investigate itself.<sup>51</sup>
  - DOJ's Office of the Deputy Attorney General concerning a November 2, 2022 report issued by a Working Group convened at the direction of the Deputy Attorney General Lisa Monaco to develop recommendations for reducing sexual abuse of prisoners by BOP employees.<sup>52</sup>

### III. There Were At Least Four BOP Facilities Between 2012 and 2022 with Recurring Sexual Abuse of Female Prisoners by Male BOP Employees

The Subcommittee identified four BOP facilities over the past decade where multiple male BOP employees sexually abused multiple female prisoners under their supervision. In many instances, the women at these four facilities were abused multiple times over a period of months or years. The facilities were MCC New York, MDC Brooklyn, FCC Coleman, and FCI Dublin.<sup>53</sup> For each of them, the Subcommittee reviewed court filings, media reports, and OIA investigative materials to better understand the extent of the sexual abuse. We discuss each facility below.

<sup>49</sup> J.R., Interview with PSI (May 24, 2022); A.M., Interview with PSI (June 7, 2022); T.K., Interview with PSI (Aug. 31, 2022); F.M., Interview with PSI (Oct. 4, 2022); S.M., Interview with PSI (Aug. 11, 2022); E.C., S.C., J.L., Interview with PSI (July 28, 2022).

<sup>50</sup> Brenda V. Smith, Professor of Law, American University Washington College of Law, Interview with PSI (June 10, 2022).

<sup>51</sup> OIG Briefing to PSI (Nov. 9, 2022).

<sup>52</sup> Office of the Deputy Attorney General, Department of Justice, Briefing to PSI (Nov. 21, 2022). Bipartisan staff from the Senate Judiciary Committee also attended this briefing. Working Group of DOJ Components, *Report and Recommendations Concerning the Department of Justice's Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons* (Nov. 2, 2022).

<sup>53</sup> See, e.g., U.S. Attorney's Office, Southern District of New York: *Correctional Officer At Metropolitan Correctional Center Sentenced To 40 Months In Prison For Engaging In Abusive Sexual Contact With Inmates* (Dec. 8, 2020) (<https://www.justice.gov/usao-sdny/pr/correctional-officer-metropolitan-correctional-center-sentenced-40-months-prison>); Office of Public Affairs, Department of Justice: *Jury Convicts Former Federal Prison Warden for Sexual Abuse of Three Female Inmates* (Dec. 8, 2022) (<https://www.justice.gov/opa/pr/jury-convicts-former-federal-prison-warden-sexual-abuse-three-female-inmates>); U.S. Attorney's Office, Eastern District of New York: *Former Federal Bureau of Prisons Lieutenant Sentenced to 25 Years in Prison for Sexual Abuse and Violation of Civil Rights Convictions* (July 31, 2019) (<https://www.justice.gov/usao-edny/pr/former-federal-bureau-prisons-lieutenant-sentenced-25-years-prison-sexual-abuse-and>); Vann Aff.

### a. MCC New York

MCC New York, opened in 1975, was an administrative security facility primarily used to hold male and female detainees awaiting trial in the federal courthouses in the Southern District of New York.<sup>54</sup> On August 26, 2021, BOP announced it would shut down this facility to address unsanitary conditions, decrepit facilities, and chronic staff shortages.<sup>55</sup> Today, MCC New York is undergoing repairs and is not in use.<sup>56</sup> Prior to its closure, MCC New York housed approximately 750 prisoners, both male and female.<sup>57</sup>

Between approximately 2012 and 2018, then-MCC New York officer Colin Akparanta sexually abused at least seven female prisoners under his supervision.<sup>58</sup> On December 8, 2022, Akparanta was sentenced to 40 months imprisonment.<sup>59</sup>

In a civil suit filed in 2020, three of Akparanta's victims alleged that BOP staff at MCC New York "ignored warning signs [and] inmates' sex abuse allegations against [] Akparanta."<sup>60</sup> Warnings included a "town hall meeting" in 2017 where a BOP supervisor "told the assembled [female prisoners], in substance or effect, 'I don't want to hear nothing about my officers touching you.'"<sup>61</sup> The lawsuit further alleged that a BOP officer at MCC New York "ignored [] pleas for help" from a group of female prisoners about Akparanta's sexual advances and "quipped that [] Akparanta will 'eventually get caught.'"<sup>62</sup> Between 2021 and 2022, BOP made multiple payments totaling \$4.2 million to victims of sex abuse at MCC New York.<sup>63</sup> BOP has temporarily shut down MCC New York.<sup>64</sup>

<sup>54</sup> State Courts, *New York County Jail and Prison System* (<https://www.statecourts.org/inmate-search/new-york/new-york-county/new-york-mcc/>).

<sup>55</sup> Benjamin Weiser, *Justice Dept. to Close Troubled Jail Where Jeffrey Epstein Died*, *New York Times* (Aug. 26, 2021) (<https://www.nytimes.com/2021/08/26/nyregion/mcc-epstein-jail-closed.html>).

<sup>56</sup> See Federal Bureau of Prisons, *MCC New York* (<https://www.bop.gov/locations/institutions/ny/m/>); Benjamin Weiser, *Justice Dept. to Close Troubled Jail Where Jeffrey Epstein Died*, *New York Times* (Aug. 26, 2021) (<https://www.nytimes.com/2021/08/26/nyregion/mcc-epstein-jail-closed.html>).

<sup>57</sup> State Courts, *New York County Jail and Prison System* (<https://www.statecourts.org/inmate-search/new-york/new-york-county/new-york-mcc/>).

<sup>58</sup> U.S. Attorney's Office, Southern District of New York: *Correctional Officer At Metropolitan Correctional Center Sentenced To 40 Months In Prison For Engaging In Abusive Sexual Contact With Inmates* (Dec. 8, 2020) (<https://www.justice.gov/usao-sdny/pr/correctional-officer-metropolitan-correctional-center-sentenced-40-months-prison>); *United States v. Colin Akparanta*, 19-CR-363 (S.D.N.Y.).

<sup>59</sup> U.S. Attorney's Office, Southern District of New York: *Correctional Officer At Metropolitan Correctional Center Sentenced To 40 Months In Prison For Engaging In Abusive Sexual Contact With Inmates* (Dec. 8, 2020) (<https://www.justice.gov/usao-sdny/pr/correctional-officer-metropolitan-correctional-center-sentenced-40-months-prison>); *United States v. Colin Akparanta*, 19-CR-363 (S.D.N.Y.).

<sup>60</sup> See Complaint, Dkt. 1 ¶ 4, *Herrera v. United States*, 20 Civ. 10206 (PKC) (S.D.N.Y. 2020).

<sup>61</sup> See Complaint, Dkt. 1 ¶ 100, *Herrera v. United States*, 20 Civ. 10206 (PKC) (S.D.N.Y. 2020).

<sup>62</sup> See Complaint, Dkt. 1 ¶ 107, *Herrera v. United States*, 20 Civ. 10206 (PKC) (S.D.N.Y. 2020).

<sup>63</sup> Benjamin Weiser, *U.S. Pays \$4.2 Million to Victims of Jail Guard's Long-Running Sex Abuse*, *New York Times* (July 18, 2022) (<https://www.nytimes.com/2022/07/18/nyregion/mcc-officer-sex-abuse-victims-payout.html>).

<sup>64</sup> Jonathan Dienst, *MCC, Lower Manhattan Jail Where Jeffrey Epstein Died, Transfers Out All Inmates*, *NBC New York* (Oct. 19, 2021) (<https://www.nbcnewyork.com/news/local/mcc-lower-manhattan-jail-were-jeffrey-epstein-died-transfers-out-all-inmates/3331966/>).



Separately, DNA evidence confirmed that on February 14, 2015, then-MCC New York officer Rudell Mullings assaulted a female prisoner in one of the prison corridors.<sup>65</sup> On May 4, 2016, he was sentenced to seven years imprisonment.<sup>66</sup>

#### b. MDC Brooklyn

MDC Brooklyn is an administrative security metropolitan detention center located in Brooklyn, New York, which houses over 1,500 inmates, including men and women.<sup>67</sup>

In 2017, DOJ indicted two lieutenants (Carlos Martinez and Eugenio Perez) and one officer (Armando Moronta) at MDC Brooklyn for repeated sexual abuse of nine female prisoners during the night shift.<sup>68</sup> Martinez was convicted after a two-week jury trial, where prosecutors introduced evidence that he had brought a Plan B pill into the prison for the woman he raped.<sup>69</sup> Perez was convicted after a two-week jury trial and sentenced to 25 years imprisonment for sexually abusing five women held at MDC Brooklyn.<sup>70</sup> Moronta pleaded guilty and was sentenced to 10 years imprisonment for abusing three women held at MDC Brooklyn and smuggling narcotics into the prison.<sup>71</sup> *The New York Times* described these events as “one of the largest sexual assault investigations to confront [BOP] in at least a decade.”<sup>72</sup>

#### c. FCC Coleman

FCC Coleman is currently an all-male facility with four different components: a low security federal correctional institution with an adjacent minimum-security satellite camp (FCI Coleman Low); a medium security federal correctional institution (FCI Coleman Medium); a high security penitentiary (USP Coleman I); and another high security penitentiary (USP

<sup>65</sup> U.S. Attorney’s Office, Eastern District of New York: *Former Federal Correctional Officer Sentenced To Seven Years For Sexually Abusing An Inmate* (May 4, 2016) (<https://www.justice.gov/usao-edny/pr/former-federal-correctional-officer-sentenced-seven-years-sexually-abusing-inmate>); See *United States v. Rudell Mullings*, 15-CR-538 (E.D.N.Y.); *United States v. Colin Akparanta*, 19-CR-363 (S.D.N.Y.).

<sup>66</sup> U.S. Attorney’s Office, Eastern District of New York: *Former Federal Correctional Officer Sentenced To Seven Years For Sexually Abusing An Inmate* (May 4, 2016) (<https://www.justice.gov/usao-edny/pr/former-federal-correctional-officer-sentenced-seven-years-sexually-abusing-inmate>); See *United States v. Rudell Mullings*, 15-CR-538 (E.D.N.Y.).

<sup>67</sup> Federal Bureau of Prisons, *MDC Brooklyn* (<https://www.bop.gov/locations/institutions/bro/>).

<sup>68</sup> U.S. Attorney’s Office, Eastern District of New York: *Three Federal Correctional Officers Charged with Sexually Abusing Inmates* (May 25, 2017) (<https://oig.justice.gov/press/2017/2017-05-25.pdf>).

<sup>69</sup> Alan Feuer, *Former Lieutenant at Brooklyn Federal Jail Convicted of Raping Female Inmate*, *New York Times* (Jan. 19, 2018) (<https://www.nytimes.com/2018/01/19/nyregion/jail-guard-convicted-rape.html>).

<sup>70</sup> U.S. Attorney’s Office, Eastern District of New York: *Former Federal Bureau of Prisons Lieutenant Sentenced to 25 Years in Prison for Sexual Abuse and Violation of Civil Rights Convictions* (July 31, 2019) (<https://www.justice.gov/usao-edny/pr/former-federal-bureau-prisons-lieutenant-sentenced-25-years-prison-sexual-abuse-and>).

<sup>71</sup> U.S. Attorney’s Office, Eastern District of New York: *Former Federal Correctional Officer Sentenced to 10 Years in Prison for Sexual Abuse, Bribery and Narcotics Charges* (Oct. 24, 2018) (<https://www.justice.gov/usao-edny/pr/former-federal-correctional-officer-sentenced-10-years-prison-sexual-abuse-bribery-and>).

<sup>72</sup> Joseph Goldstein, *Federal Jail in Brooklyn Faces a String of Sexual Assault Cases*, *New York Times* (Aug. 1, 2017) (<https://www.nytimes.com/2017/08/01/nyregion/federal-jail-in-brooklyn-faces-a-string-of-sexual-assault-cases.html>).

Coleman II).<sup>73</sup> There are currently over 6,000 inmates housed across the complex.<sup>74</sup> Prior to April 2021, FCC Coleman housed both male and female prisoners.<sup>75</sup> In April 2021, BOP transferred all female prisoners out of FCC Coleman, coinciding with public allegations of sexual abuse.<sup>76</sup>

On May 5, 2021, the United States Government paid at least \$1.25 million to settle a civil lawsuit brought by 15 women currently and formerly incarcerated at FCC Coleman who accused eight BOP employees at that facility of years of sexual abuse.<sup>77</sup> During the course of the lawsuit, the United States Government, a defendant, admitted in a court filing that six of those employees had in fact engaged in sexual conduct with at least ten of the plaintiffs.<sup>78</sup> Sexual contact between BOP employees and prisoners is a federal crime and violates BOP policy.<sup>79</sup> In interviews compelled by BOP OIA during administrative investigations, prior to the United States Government's court filing, all six officers had already had admitted to sexually abusing female prisoners under their supervision.<sup>80</sup> None of these six officers was ever prosecuted.<sup>81</sup>

The Subcommittee investigated how BOP officers who admitted to crimes in sworn statements were never prosecuted.<sup>82</sup> As discussed above in Section I.C., once OIG declines to pursue a criminal or administrative investigation, BOP will conduct its own administrative investigation, either through OIA or the Special Investigative Services at the facility.<sup>83</sup> One of BOP OIA's investigative tools is requiring employees to answer questions under oath during what is known as a *Garrity* interview.<sup>84</sup>

<sup>73</sup> Federal Bureau of Prisons, *USP Coleman II* (<https://www.bop.gov/locations/institutions/clp/>).

<sup>74</sup> Federal Bureau of Prisons, *FCI Coleman Low*, (<https://www.bop.gov/locations/institutions/col/>) ; Federal Bureau of Prisons, *FCI Coleman Medium*, (<https://www.bop.gov/locations/institutions/com/>) (accessed Dec. 6, 2022); Federal Bureau of Prisons, *USP Coleman I*, (<https://www.bop.gov/locations/institutions/cop/>); Federal Bureau of Prisons, *USP Coleman II* (<https://www.bop.gov/locations/institutions/clp/>).

<sup>75</sup> 2021 Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261).

<sup>76</sup> Carl Hiasen, *Female inmates feared reprisals from prison guards who raped them*, Miami Herald (Sept. 25, 2020) (<https://www.miamiherald.com/opinion/opn-columns-blogs/carl-hiasen/article245829215.html>); 2021 Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261) at PSI-BOPOIA-Prod1-000136.

<sup>77</sup> Romy Ellenbogen, *Lawsuit settled in which 15 women alleged sexual abuse at Florida prison*, Tampa Bay Times (May 5, 2022) (<https://www.tampabay.com/news/florida/2021/05/05/lawsuit-settled-in-which-15-women-alleged-sexual-abuse-at-florida-prison/>). The settlement amount is likely much greater as eleven women did not disclose the amount of their recovery.

<sup>78</sup> See *Beaubrun Answer* at 6-8. See also 18 U.S.C. § 2243(b).

<sup>79</sup> 18 U.S.C. § 2243(b); Department of Justice, Office of Inspector General, *Deterring Staff Sexual Abuse of Federal Inmates* (Apr. 2005) (<http://oig.justice.gov/sites/default/files/archive/special/0504/index.htm>).

<sup>80</sup> 2018 Palomares Aff.; 2019 Palomares Aff.; Kuilan Aff.; Vann Aff.; Laudenslager Aff.; Phillips Aff.; Campbell Aff.

<sup>81</sup> Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022); OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>82</sup> The Subcommittee asked BOP OIA Chief Reese this question during an interview. She said, "I do not know."

<sup>83</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>84</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>84</sup> *Garrity v. New Jersey*, 385 U.S. 493 (1967).

In 1967, the United States Supreme Court held in *Garrity v. New Jersey* that when a government employer forces an employee to answer questions under oath as a condition of employment, that interview is considered “compelled,” and any inculpatory statements made by the employee during that interview cannot be used against him in a subsequent criminal prosecution.<sup>85</sup> In other words, if a BOP employee admits to sexual misconduct in a compelled interview, statements made during that interview cannot be used against him in a criminal prosecution by OIG or any other law enforcement entity.

To the extent that OIG were to pursue criminal charges after the BOP employee admitted to a crime in the BOP OIA-compelled interview, OIG would have to show that it had reasons to pursue criminal charges independent from anything disclosed in the *Garrity* interview and that none of the evidence used in the prosecution was derived from the *Garrity* interview.<sup>86</sup> These are difficult thresholds to clear in most cases.<sup>87</sup> The practical effect is that “if [the BOP employee] can be compelled, it’s a get out of jail free card” under certain circumstances, OIG told the Subcommittee.<sup>88</sup>

In the case of FCC Coleman, BOP OIA received female prisoners’ complaints of sexual misconduct by at least six officers.<sup>89</sup> BOP OIA sent the complaints to OIG.<sup>90</sup> OIG declined to investigate and referred the cases back to BOP OIA.<sup>91</sup> BOP OIA compelled each of these officers to sit for interviews.<sup>92</sup> In those interviews, the officers made sweeping admissions to misconduct, making subsequent criminal prosecution difficult.<sup>93</sup>

The following contains excerpts of affidavits that memorialize admissions from former BOP employees at FCC Coleman following BOP OIA-compelled interviews.

In an affidavit dated October 2, 2019, former BOP correctional officer, Keith Vann, admitted in his BOP OIA-compelled interview:<sup>94</sup>

I had sexual intercourse and oral sex with inmate [REDACTED] on multiple occasions while I was a staff member she an inmate at FCC Coleman. I don't know the exact number of times but it occurred on more than one occasion. *KV*

<sup>85</sup> *Garrity v. New Jersey*, 385 U.S. 493 (1967).

<sup>86</sup> OIG Briefing to PSI (Nov. 9, 2022).

<sup>87</sup> OIG Briefing to PSI (Nov. 9, 2022).

<sup>88</sup> OIG Briefing to PSI (Nov. 9, 2022).

<sup>89</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>90</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>91</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>92</sup> OIG Briefing to PSI (Nov. 9, 2022); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>93</sup> OIG Briefing to PSI (Nov. 9, 2022). *See also* Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>94</sup> Vann Aff.

I was aware at the time that engaging in any type of sexual encounter with a federal inmate was a criminal act and was not lawful. I was aware at the time I could have been held criminally liable. *LM*

In an affidavit dated June 28, 2019, former BOP correctional officer Christopher Palomares admitted in his BOP OIA-compelled interview:<sup>95</sup>

I have had a large number of sexual encounters with inmates when I was an officer at FCC Coleman. I would say there is over a 70% chance I received oral sex (blow job) from [REDACTED] in the visiting room. I have received oral sex from a number of inmates and number of times. *CP*

In an affidavit dated June 28, 2019, former BOP correctional officer Scott Campbell admitted in his BOP OIA-compelled interview:<sup>96</sup>

In December 2017, during the evening watch shift, I was making rounds at the Camp in the female living quarters. I approached [REDACTED] in her living area and no one else was around. I asked [REDACTED] if I could touch her "boob." I put my hand on her breast and squeezed it in a sexual manner for 3 seconds. Since that incident, when I worked at the Camp and made rounds I would touch and sexually squeeze [REDACTED] breasts regularly. I have sexually squeezed [REDACTED] breasts at least 8 times from December 2017, to March of 2018, when it stopped.

On Sunday, March 11, 2018, I asked [REDACTED] to come with me to the F Unit Upper storage area and I locked me and [REDACTED] in the closet. [REDACTED] was aware we were going to have a sexual encounter prior to us going to the storage area.

In an affidavit dated October 3, 2019, former BOP correctional officer Timothy Phillips admitted in his BOP OIA-compelled interview:<sup>97</sup>

Inmates [REDACTED] and [REDACTED] both worked for me on the landscape detail at FCC Coleman in 2017. I have had two sexual intercourse encounters with [REDACTED] and [REDACTED] together. The three of us had sex together while they were FCC Coleman inmates and I was a Coleman staff member. *TP*

<sup>95</sup> 2019 Palomares Aff.

<sup>96</sup> Campbell Aff.

<sup>97</sup> Phillips Aff.

After reviewing affidavits in these cases in response to the Subcommittee's request, OIG told the Subcommittee in a briefing:

There is no world in which we can say this is a good outcome. These individuals knew they have been compelled and could retire and resign and spill to [BOP] OIA and basically have immunity in some cases for engaging in sexual activity with multiple inmates. It is a terrible outcome.<sup>98</sup>

OIG has recently reformed its complaint screening practices to mitigate the risk of overlooking widespread sexual abuse in a BOP facility by employees again. Although OIA provided the FCC Coleman allegations to OIG on multiple occasions, OIG is also considering a written memorandum with OIA to memorialize BOP OIA's current practice, such that BOP OIA would have an affirmative, written responsibility to inform OIG of new evidence uncovered during OIA's administrative investigation, prior to *Garrity* interviews, that could support a criminal investigation.<sup>99</sup>

#### **d. FCI Dublin**

FCI Dublin is an all-female facility with two components: a low security federal correctional institution and an adjacent minimum-security satellite camp.<sup>100</sup> There are currently 477 female offenders housed across the prison.<sup>101</sup>

In the past eighteen months, DOJ has indicted five BOP employees for sexual abuse of at least eight female detainees at FCI Dublin.

- In June 2021, the U.S. Attorney's Office for the Northern District of California filed a criminal complaint against Ross Klinger, a former BOP correctional officer and recycling technician, with sexual abuse of a ward.<sup>102</sup> He pleaded guilty to three counts of sexual abuse of a ward.<sup>103</sup> The criminal complaint cites sexual abuse of two female prisoners.<sup>104</sup>
- In November 2021, the U.S. Attorney's Office for the Northern District of California indicted Ray J. Garcia, the former Warden of FCI Dublin, on two

<sup>98</sup> OIG Briefing to PSI (Nov. 9, 2022).

<sup>99</sup> Email from OIG to PSI (Dec. 11, 2022) (on file with PSI).

<sup>100</sup> Federal Bureau of Prisons, *FCI Dublin* (<https://www.bop.gov/locations/institutions/dub/>).

<sup>101</sup> Federal Bureau of Prisons, *FCI Dublin* (<https://www.bop.gov/locations/institutions/dub/>).

<sup>102</sup> Michael R. Sisak and Michael Balsamo, *Worker pleads guilty to abusing inmates at US women's prison*, AP News (Feb. 11, 2022) (<https://apnews.com/article/coronavirus-pandemic-health-california-oakland-prisons-5085536a92b12afa46bbfcf00cba46d9>).

<sup>103</sup> U.S. Attorney's Office Northern District of California: *Bureau Of Prisons Correctional Officer Charged With Sexual Abuse Of A Ward* (June 30, 2021) ([www.justice.gov/usao-ndca/pr/bureau-prisons-correctional-officer-charged-sexual-abuse-ward](http://www.justice.gov/usao-ndca/pr/bureau-prisons-correctional-officer-charged-sexual-abuse-ward)).

<sup>104</sup> *United States v. Klinger*, No. 4:22-CR-00031-JSW (N.D. Cal., June 25, 2021).

counts of sexual abuse of a ward.<sup>105</sup> According to the criminal complaint, Garcia knowingly had sexual contact with at least one female prisoner, asked at least two inmates to strip naked for him during rounds and took photos, and stored a “large volume of sexually graphic photographs” on his BOP issued cellphone.<sup>106</sup> In the two years prior to his arrest, Garcia was the PREA compliance officer at FCI Dublin, responsible for ensuring that the facility was adhering to PREA policies and training other employees, including new supervisors.<sup>107</sup> On December 8, 2022, Garcia was convicted by a jury of sexually abusing female prisoners.<sup>108</sup>

- On November 30, 2021, the United States Attorney’s Office for the Northern District of California filed a criminal complaint against John Bellhouse for sexual abuse of a prison ward.<sup>109</sup> Bellhouse served as a correctional officer and safety administrator at FCI Dublin before being placed on administrative leave in March 2021.<sup>110</sup> In June 2020, a prisoner identified that Bellhouse and another BOP employee were engaging in sexual interactions with several prisoners, and also providing prisoners with contraband, money and personal cellphone use.<sup>111</sup> Bellhouse pleaded not guilty and is currently awaiting trial, which is scheduled for the summer of 2023.<sup>112</sup>

<sup>105</sup> U.S. Attorney’s Office, Northern District of California: *Warden Of Federal Corrections Institute In Dublin Charged With Sexual Abuse Of A Ward* (Sept. 29, 2021) (<https://www.justice.gov/usao-ndca/pr/warden-federal-corrections-institute-dublin-charged-sexual-abuse-ward>). For the criminal complaint filed against Warden Garcia, see <https://www.documentcloud.org/documents/21408685-warden-ray-j-garcia>.

<sup>106</sup> U.S. Attorney’s Office, Northern District of California: *Warden Of Federal Corrections Institute In Dublin Charged With Sexual Abuse Of A Ward* (Sept. 29, 2021) (<https://www.justice.gov/usao-ndca/pr/warden-federal-corrections-institute-dublin-charged-sexual-abuse-ward>). For the criminal complaint filed against Warden Garcia, see <https://www.documentcloud.org/documents/21408685-warden-ray-j-garcia>.

<sup>107</sup> Michael R. Sisak and Michael Balsamo, *Abuse-clouded prison gets attention, but will things change?*, AP News (May 5, 2022) (<https://apnews.com/article/business-prisons-california-sexual-abuse-only-on-ap-3a4db9ab478bfd545ef3c7e08cd273b>); Office of Public Affairs, Department of Justice: *Jury Convicts Former Federal Prison Warden for Sexual Abuse of Three Female Inmates* (Dec. 8, 2022) (<https://www.justice.gov/opa/pr/jury-convicts-former-federal-prison-warden-sexual-abuse-three-female-inmates>);

2017 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (on file with PSI).

<sup>108</sup> Office of Public Affairs, Department of Justice: *Jury Convicts Former Federal Prison Warden for Sexual Abuse of Three Female Inmates* (Dec. 8, 2022) (<https://www.justice.gov/opa/pr/jury-convicts-former-federal-prison-warden-sexual-abuse-three-female-inmates>).

<sup>109</sup> U.S. Attorney’s Office, Northern District of California: *Federal Correctional Officer Charged With Sexual Abuse Of An Inmate* (Dec. 3, 2021) (<https://www.justice.gov/usao-ndca/pr/federal-correctional-officer-charged-sexual-abuse-inmate>). The U.S. Attorney’s Office filed a superseding indictment with additional charges against Bellhouse on September 29, 2022. See Department of Justice, *FCI Dublin Officer Faces Abuse Charges Against Two Additional Incarcerated Victims* (Sept. 29, 2022) (<https://www.justice.gov/opa/pr/fci-dublin-correctional-officer-faces-abuse-charges-against-two-additional-incarcerated>).

<sup>110</sup> U.S. Attorney’s Office, Northern District of California: *Federal Correctional Officer Charged With Sexual Abuse Of An Inmate* (Dec. 3, 2021) (<https://www.justice.gov/usao-ndca/pr/federal-correctional-officer-charged-sexual-abuse-inmate>).

<sup>111</sup> See Complaint at ¶ 114, *United States v. Bellhouse*, 4:21-mj-71905-MRGD (N.D. Cal. 2021).

<sup>112</sup> *Dublin prison guard faces more charges of sexual abuse of female inmates*, Bay City News Service (Oct. 2, 2022) (<https://www.danvillesanramon.com/news/2022/10/02/dublin-prison-guard-faces-more-charges-of-sexual-abuse-of-female-inmates>).

- In January 2022, the Criminal Section of the Civil Rights Division of DOJ filed an information against James Highhouse, a former Chaplain at FCI Dublin, on charges of sexual abuse of a ward, abusive sexual contact, and making false statements to investigators.<sup>113</sup> In February 2022, Highhouse pleaded guilty to five felonies for sexually abusing a female inmate and lying to investigators about the misconduct.<sup>114</sup> In August 2022, Highhouse was sentenced to 84 months in prison followed by five years of supervised release.<sup>115</sup>
- On March 10, 2022, Enrique Chavez, a food service foreman at FCI Dublin was indicted on two counts of abusive sexual contact with a prison inmate.<sup>116</sup> According to the indictment, Chavez touched the woman's breasts, buttocks and genitals on two separate occasions in October 2020.<sup>117</sup> Chavez pleaded guilty on October 27, 2022, to abusive sexual contact with a female prison inmate while he was employed at FCI Dublin.<sup>118</sup> The count carries a maximum statutory sentence of two years imprisonment and a \$250,000 fine, with a minimum period of supervision following release from prison of five years and a maximum of a lifetime of supervision.<sup>119</sup> Sentencing is scheduled for February 2, 2023.<sup>120</sup>

As of May 2022, OIG and/or BOP were investigating at least 17 additional current or former employees at FCI Dublin for sexual misconduct.<sup>121</sup>

The most recent indictments are not the only examples of repeated sexual abuse of female prisoners at FCI Dublin. Since the 1990s, there have been at least three additional high-profile cases of sexual abuse of female prisoners involving male BOP employees.

<sup>113</sup> *United States v. James Highhouse*, 4:22-CR-16 (N.D. Cal. 2022).

<sup>114</sup> Department of Justice, *Former Bureau of Prisons Chaplain Pleads Guilty to Sexual Assault and Lying to Federal Agents* (Feb. 23, 2022) (<https://www.justice.gov/opa/pr/former-bureau-prisons-chaplain-pleads-guilty-sexual-assault-and-lying-federal-agents>).

<sup>115</sup> Department of Justice, *Federal Prison Chaplain Sentenced for Sexual Assault and Lying to Federal Agents* (Aug. 31, 2022) (<https://www.justice.gov/opa/pr/federal-prison-chaplain-sentenced-sexual-assault-and-lying-federal-agents>).

<sup>116</sup> Department of Justice, *Correctional Officer at FCI Dublin Charged for Abusive Sexual Contact with Female Inmate* (Mar. 23, 2022) (<https://www.justice.gov/opa/pr/correctional-officer-fci-dublin-charged-abusive-sexual-contact-female-inmate>).

<sup>117</sup> *United States v. Chavez*, 4:22cr104 (N.D. Cal. 2021) (indictment filed on Mar. 10, 2022).

<sup>118</sup> U.S. Attorney's Office Northern District of California: *Former Correctional Officer Admits To Abusive Sexual Contact With Inmate* (Oct. 27, 2022) (<https://www.justice.gov/usao-ndca/pr/former-correctional-officer-admits-abusive-sexual-contact-inmate>).

<sup>119</sup> U.S. Attorney's Office Northern District of California: *Former Correctional Officer Admits To Abusive Sexual Contact With Inmate* (Oct. 27, 2022) (<https://www.justice.gov/usao-ndca/pr/former-correctional-officer-admits-abusive-sexual-contact-inmate>).

<sup>120</sup> U.S. Attorney's Office Northern District of California: *Former Correctional Officer Admits To Abusive Sexual Contact With Inmate* (Oct. 27, 2022) (<https://www.justice.gov/usao-ndca/pr/former-correctional-officer-admits-abusive-sexual-contact-inmate>).

<sup>121</sup> Lisa Fernandez, *25 Dublin prison employees under investigation for sex, drug, lying abuses*, KTVU FOX 2 (May 5, 2022) (<https://www.ktvu.com/news/25-dublin-prison-employees-under-investigation-for-sex-drug-lying-abuses>). For the full list of investigations, see <https://www.documentcloud.org/documents/21882894-dublin-prison-open-investigations>.

- In 1996, three women were brought to a male housing unit at an adjacent facility where BOP officers opened their cell doors allowing male inmates to rape them. The United States settled in 1998 and BOP promised “to adopt and implement certain policies and procedures designed to reduce the risk to female prisoners of sexual assaults.”<sup>122</sup>
- In the late 1990s and early 2000s, four male BOP employees at FCI Dublin were convicted or pleaded guilty to sexual abuse of female inmates at that facility.<sup>123</sup>
- In the early 2010s, according to media reports, approximately “a dozen Dublin employees were removed for sexually abusing inmates,” including one who videotaped himself having sex with inmates and stored those tapes in a prison locker. None were arrested.<sup>124</sup>

**e. Sexual Abuse Across Other BOP Facilities that Hold Female Prisoners**

In an attempt to understand the breadth of sexual abuse of female prisoners by male BOP employees, the Subcommittee analyzed court filings in criminal cases, civil cases, and BOP records concerning the number of substantiated allegations of sexual abuse by BOP employees. Through those efforts, PSI was able to identify that over the past decade BOP opened 5,415 cases of sexual abuse from male and female inmates by BOP employees.<sup>125</sup> Of those cases, 586 were substantiated.<sup>126</sup> There were at least 134 cases for which a BOP employee was convicted of sexually abusing a female prisoner or where BOP OIA substantiated allegations that a female prisoner was sexually abused by a BOP employee.<sup>127</sup> BOP employees sexually abused women in their custody in at least two-thirds (19 of the 29) of the facilities where BOP has held incarcerated women this past decade.<sup>128</sup>

<sup>122</sup> *Lucas v. White*, 96-cv-2905-TEH (N.D. Cal. 1997) (settlement agreement on file with PSI).

<sup>123</sup> *United States v. Accursi*, 4:97-cr-40101 (N.D. Cal.); *United States v. Hyson*, 4:99-cr-40031 (N.D. Cal.); *United States v. Hawthorne*, 4:99-cr-40051 (N.D. Cal.); *United States v. Donaldson*, 4:02-cr-40153 (N.D. Cal.); *United States v. Rodarte*, 4:02-cr-40153 (N.D. Cal.). See also Josh Richman, *Lawyer: Abuse of inmates rampant; Guard's indictment latest problem to surface at Dublin's Federal Correctional Institution*, Tri Valley Herald (Aug. 21, 2002) (on file with PSI); Josh Richman, *Ex-Dublin guard agrees to deal, admits to abuse: Plea bargain calls for 10-16 months in prison*, The Daily Review (May 17, 2003) (on file with PSI).

<sup>124</sup> Michael R. Sisak and Michael Balsamo, *Abuse-clouded prison gets attention, but will things change?*, AP News (May 5, 2022) (<https://apnews.com/article/business-prisons-california-sexual-abuse-only-on-ap-3a4db9ab478bfd545ef3c7e08cd273b>).

<sup>125</sup> Staff-on-Inmate Cases by Facility (2012-2021), Production from DOJ to PSI (Nov. 4, 2022) (PSI-BOPOIA-Prod4-0001-0049).

<sup>126</sup> Staff-on-Inmate Cases by Facility (2012-2021), Production from DOJ to PSI (Nov. 4, 2022) (PSI-BOPOIA-Prod4-0001-0049). The Subcommittee calculated the total number of substantiated cases by tabulating data produced by DOJ.

<sup>127</sup> See Exhibit 1. The Subcommittee arrived at this number by reviewing court filings and cases where BOP OIA substantiated allegations sexual abuse of female prisoners by BOP employees at the six female-only facilities.

<sup>128</sup> See footnote 1; Exhibit 1.



#### **IV. BOP Does Not Systematically Analyze Key Indicators of Sexual Abuse in its Facilities**

The Subcommittee asked BOP for the information it relies upon to monitor compliance with PREA, including the risk of BOP employees sexually abusing female prisoners. BOP witnesses, including OIA Chief Reese, Acting Assistant Director for Reentry Services Alix McLearen, PhD, Western Regional Director Rios, and former FCI Dublin Warden Wiley Jenkins identified three categories of information used to assess risk and monitor compliance: (1) PREA audits; (2) complaints filed by inmates concerning staff-initiated sexual abuse; and (3) disposition of those complaints.<sup>129</sup>

The Subcommittee determined that PREA audits of FCC Coleman and FCI Dublin failed to detect the culture of BOP employees sexually abusing female detainees at those facilities before, during, and after abuse occurred. The Subcommittee also found that BOP does not systematically analyze complaint data to detect potentially problematic employees or institutions. Finally, BOP has accrued a backlog of approximately 8,000 cases and does not report case closure rates in a way that would indicate its progress in clearing the backlog.

##### **a. Flawed PREA Audits Failed to Detect the Culture of Sexual Abuse of Female Prisoners by Employees at FCC Coleman and FCI Dublin**

PREA “is intended to make confinement facilities free from sexual abuse and its threat.”<sup>130</sup> When Congress passed PREA in 2003, it established a National Prison Rape Elimination Commission (the “NPRE Commission”) to “carry out a comprehensive legal and factual study of the penological, physical, mental, medical, social, and economic impacts of prison rape” and to issue a report with “recommended national standards for reducing prison rape[.]”<sup>131</sup> The recommendations, adopted by DOJ and binding on BOP, require periodic PREA audits of all federal correctional facilities to ensure compliance with the standards put forth in the regulations.<sup>132</sup> According to DOJ, PREA auditors “are responsible for conducting high quality, reliable, objective, and comprehensive audits that hold agencies and facilities accountable for keeping individuals in their custody and care safe from sexual abuse and sexual harassment.”<sup>133</sup>

PREA audits assess whether an institution is compliant with the 45 PREA standards by reviewing policies and practices within the institution, interviewing employees and prisoners, and reviewing documentation from the audit period, such as prisoner complaints of sexual abuse

<sup>129</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Alix McLearen, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022); Melissa Rios, Western Regional Director, BOP, Interview with PSI (Nov. 10, 2022); Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>130</sup> Bureau of Justice Assistance, *Prison Rape Elimination Act Auditors: Information and Resources* (Nov. 2021) (<https://www.prearesourcecenter.org/sites/default/files/PREA-Auditors-FS.pdf>).

<sup>131</sup> Pub. L. 108-79, § 7, codified at 34 U.S.C. § 30306.

<sup>132</sup> See 28 C.F.R. § 115.

<sup>133</sup> Bureau of Justice Assistance, *Prison Rape Elimination Act Auditors: Information and Resources* (Nov. 2021) (<https://www.prearesourcecenter.org/sites/default/files/PREA-Auditors-FS.pdf>).

or harassment.<sup>134</sup> PREA audits are one of the key tools that BOP relies upon to assess whether its facilities have implemented the standards designed to mitigate the risk of sexual abuse of prisoners.<sup>135</sup> When the Subcommittee asked the BOP Regional Director for the Western Region, Melissa Rios, the BOP official responsible for oversight of FCI Dublin among other facilities, how the regional office monitored potential sex abuse in its facilities, she explained that she relies on PREA policies to mitigate the risk of sexual assault, and PREA audits to assess compliance with the PREA policies.<sup>136</sup>

The Subcommittee reviewed PREA audits of FCC Coleman and FCI Dublin—where there were, per BOP OIA Chief Reese, “cultural issues” concerning sexual misconduct by employees—to evaluate whether the audits detected that there was a sexual abuse problem.<sup>137</sup> In other words, did the PREA audits predating and during the period of multiple BOP employees abusing multiple women find that the prison was not compliant with some or all of the PREA standards? Did the audits covering the periods of significant sexual abuse detect the cultural issues at that prison?

The Subcommittee found that BOP failed to accomplish either outcome with its PREA audits. PREA audits during all of the relevant periods for these facilities came back clean: these audits found that FCC Coleman and FCI Dublin were compliant with all PREA standards before, during, and after the multiple, documented instances of sexual abuse.<sup>138</sup> Table 1 shows the results of these audits.

---

<sup>134</sup> See, e.g., 2021 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (on file with PSI).

<sup>135</sup> Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>136</sup> 28 C.F.R. § 115 (citing BJS report); Melissa Rios, Western Regional Director, BOP, Interview with PSI (Nov. 10, 2022).

<sup>137</sup> Melissa Rios, Western Regional Director, BOP, Interview with PSI (Nov. 10, 2022). See also Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>138</sup> Melissa Rios, Western Regional Director, BOP, Interview with PSI (Nov. 10, 2022).

<sup>137</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>138</sup> Compare 2017 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (on file with PSI); 2022 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0262-0381); 2018 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0635-0726); and 2021 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261) with Section III.C., *supra*. See also Exhibit 1.

**Table 1: PREA Audits of FCC Coleman and FCI Dublin<sup>139</sup>**

Facility	PREA Audit Date	Results (Standards)
FCC Coleman	March 22, 2015	Exceeded: 4 Met: 38 Not Met: 0 Not Applicable: 1
	April 19, 2018	Exceeded: 2 Met: 43 Not Met: 0
	September 7, 2021	Exceeded: 1 Met: 44 Not Met: 0
FCI Dublin	May 16, 2014	Exceeded: 2 Met: 40 Not Met: 0 Not Applicable: 1
	June 14, 2017	Exceeded: 0 Met: 41 Not Met: 0 Not Applicable: 2
	March 12, 2022	Exceeded: 0 Met: 45 Not Met: 0

When asked in an interview with the Subcommittee whether PREA audits can help detect a culture of abuse at a facility, BOP's Acting Director of Reentry Services said, "it is clear the PREA audit did not do that at Coleman."<sup>140</sup>

The Subcommittee has concerns about PREA audits of FCC Coleman and FCI Dublin. PREA auditors seek to interview a representative sample of prisoners incarcerated at a facility.<sup>141</sup> For the FCC Coleman PREA audit of 2021, BOP transferred all female prisoners out of the prison two days before the auditor arrived for on-site interviews.<sup>142</sup> The auditor did not interview any female prisoners.<sup>143</sup>

<sup>139</sup> 2017 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (on file with PSI); 2022 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0262-0381); 2018 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0635-0726); 2021 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261).

<sup>140</sup> Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>141</sup> See 2021 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261).

<sup>142</sup> See 2021 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261).

<sup>143</sup> See 2021 FCC Coleman PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (PSI-BOPOIA-Prod1-0125-0261).

The PREA audit of FCI Dublin from 2017 identifies the then-Associate Warden, Ray J. Garcia, as the facility’s PREA compliance officer—the individual responsible for ensuring that the facility was compliant with the PREA standards, training new supervisors on PREA procedures and policies, and coordinating the PREA audit.<sup>144</sup> After Garcia was promoted to Warden, he was indicted for sexually abusing multiple female prisoners under his supervision for a period of years, and convicted by a jury on December 8, 2022.<sup>145</sup>

#### **b. BOP Does Not Systematically Analyze PREA Complaint Data**

In 2009, the National Prison Rape Elimination Commission (the “NPRE Commission”)—a bipartisan Commission that Congress created through PREA to study policies and practices related to the prevention, detection, response, and monitoring of sexual abuse in correction and detention facilities in the United States—issued a report underscoring the importance of analyzing data trends to identify and prevent prison rape and sexual abuse.<sup>146</sup> The NPRE’s 2009 report noted that “data are especially useful in documenting patterns and trends and in measuring performance within facilities and throughout entire correctional systems.”<sup>147</sup> Based on recommendations in NPRE Commission’s 2009 report, DOJ finalized the National Standards to Prevent, Detect, and Respond to Prison Rape (the “National PREA Standards”) in 2012.<sup>148</sup> In relevant parts, the National PREA Standards promulgated by DOJ require BOP to “collect accurate, uniform data for every allegation of sexual abuse” and “review[the] data collected ... [to] identify[] problem areas [and] tak[e] corrective action on an ongoing basis.”<sup>149</sup>

Complaint data, which is collected and stored by BOP OIA, is one of the primary indicators that BOP could use to detect sexual abuse in a specific facility or by a specific staff member.<sup>150</sup> During an interview with the Subcommittee, BOP OIA Chief Reese explained that

<sup>144</sup> See 2017 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (on file with PSI); Michael R. Sisak and Michael Balsamo, *Abuse-clouded prison gets attention, but will things change?*, AP News (May 5, 2022) (apnews.com/article/government-and-politics-prisons-california-bf66f02f8d21137461497d26c38c6ac5).

<sup>145</sup> Office of Public Affairs, Department of Justice: *Jury Convicts Former Federal Prison Warden for Sexual Abuse of Three Female Inmates* (Dec. 8, 2022) (<https://www.justice.gov/opa/pr/jury-convicts-former-federal-prison-warden-sexual-abuse-three-female-inmates>); 2017 FCI Dublin PREA Audit, Production from DOJ to PSI (Oct. 4, 2022) (on file with PSI).

<sup>146</sup> National Prison Rape Elimination Commission, *National Rape Elimination Commission Report* at 85 (June 2009). The value of analyzing data trends was made clear to BOP two decades prior. In 1999, the Government Accountability Office (“GAO”) issued a report that examined BOP’s policies, practices, and systems for preventing and addressing BOP employee-initiated sexual abuse of female prisoners. See Government Accountability Office, *Women in Prison: Sexual Misconduct by Correctional Staff*, GAO-GGD-99-104 (1999) (<https://www.gao.gov/products/ggd-99-104>). GAO identified deficiencies with BOP OIA’s informational systems for “tracking . . . allegations of staff-on-inmate sexual misconduct in federal prisons” since “information on all allegations were not readily available from [that] system.” Based on that finding, GAO issued a recommendation to the BOP Director to “develop systems and procedures to monitor and analyze allegations of staff sexual misconduct in federal prisons and periodically report results to [DOJ OIG] and to appropriate BOP officials (e.g., senior managers and wardens).”

<sup>147</sup> National Prison Rape Elimination Commission, *National Rape Elimination Commission Report* at 85 (June 2009).

<sup>148</sup> See Department of Justice, *2012 DOJ PREA Standards Final Notice*, 77 Fed. Reg. 37,106 (2012).

<sup>149</sup> 28 C.F.R. § 115.88.

<sup>150</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

OIA is the entity within BOP that has primary responsibility for tracking and overseeing employee misconduct.<sup>151</sup> OIA maintains a database that contains information about all of the complaints it receives, including type of misconduct, facility, identity of employee, date, and other related information.<sup>152</sup>

In the Subcommittee's interviews of Chief Reese, Dr. McLearn, and Regional Director Rios, these witnesses described how complaints of sexual abuse against BOP employees can suggest whether a region, group of facilities, individual facility, or employee merits additional scrutiny.<sup>153</sup> The absence of complaints can also be probative: if female prisoners do not feel safe filing a complaint, the number of complaints at a particular institution may be artificially suppressed, meriting further scrutiny.<sup>154</sup>

Yet while BOP is required by law to collect and analyze complaint data, it does not systematically use it to prevent and/or detect sexual abuse of female prisoners by employees.<sup>155</sup> In other words, it does not have a practice of analyzing this data to identify facilities with an outlier number of complaints or broader system-wide issues.<sup>156</sup> Although BOP may be aware of multiple complaints against individual employees, it does not appear that BOP analyzes this data to specifically identify BOP employees accused of abusing multiple women who merit additional scrutiny.<sup>157</sup> BOP OIA does not, in the ordinary course of business, report any complaint data to BOP leadership in the Central Office in Washington, D.C., the Regional Offices, or Wardens.<sup>158</sup> Indeed, as DOJ acknowledged to the Subcommittee, "the system used [by BOP] to track staff-initiated incidents was designed primarily for individual case tracking and not for trend analysis of data across matters."<sup>159</sup> Therefore, save for an *ad hoc* review, BOP does not ascertain whether the number of sexual abuse allegations at a specific facility or region is trending or part of a larger pattern.<sup>160</sup>

**c. The Office of Internal Affairs Annual Reporting Is Confusing, Omits Relevant Information, and Obscures BOP's Internal Affairs Case Backlog**

BOP OIA generates an annual report for each fiscal year, intended to provide "information concerning the types and frequency of misconduct that occurs within [BOP]. The report is intended for managers and supervisors to address any trends and to identify any need for training to prevent misconduct from occurring."<sup>161</sup>

<sup>151</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>152</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>153</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022); Melissa Rios, Western Regional Director, BOP, Interview with PSI (Nov. 10, 2022).

<sup>154</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>155</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>156</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>157</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>158</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>159</sup> See Email from DOJ to PSI (Oct. 18, 2022) (on file with PSI).

<sup>160</sup> See Email from DOJ to PSI (Oct. 18, 2022) (on file with PSI).

<sup>161</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* (Jan. 6, 2021)

([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)).

The report identifies how many cases BOP OIA closed by category of alleged misconduct.<sup>162</sup> However, BOP OIA does not report out critical categories of information, such as the facilities where misconduct was alleged, the type of facility where misconduct was alleged (*i.e.*, whether it was a female facility), the gender of the complainant in sexual abuse cases (except for the most recent report, in FY 2020), the identity of the BOP employee accused of abuse, and whether the employee was named in other complaints over time.<sup>163</sup>

Additionally, its presentation of case closure data is confusing, obscuring how long cases have been pending and the total case backlog.<sup>164</sup> Each year, OIA reports the total number of cases it closed according to the year that the case was opened. In other words, cases that were opened in one fiscal year but closed in another fiscal year are reported under the fiscal year they were originally opened. This method of presenting data obscures how long cases have been pending and the extent of the case backlog.<sup>165</sup> Further, the report does not disclose what portion of the backlog is comprised of sexual abuse or any other category of case.<sup>166</sup>

## V. BOP Fails to Hold Employees Accountable for Misconduct

*“Obviously there [was] a cultural issue and a sense of permissiveness with staff having too much time with inmates [at FCC Coleman]. There [was] also a belief that staff [would] engage in this behavior without repercussions.”*

-BOP OIA Chief Reese<sup>167</sup>

### a. BOP Internal Affairs Has a Backlog of Approximately 8,000 Misconduct Cases

Per BOP guidelines, OIA should resolve complaints of employee misconduct within 180 days.<sup>168</sup> Local investigators at each institution should resolve complaints within 120 days.<sup>169</sup> The Subcommittee found that BOP’s past and current practices violate these guidelines.<sup>170</sup>

<sup>162</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* (Jan. 6, 2021) ([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)).

<sup>163</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* (Jan. 6, 2021) ([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)).

<sup>164</sup> See Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* (Jan. 6, 2021) ([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)).

<sup>165</sup> See Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Office of Internal Affairs BOP, *Report for Fiscal Year 2020*; Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>166</sup> See Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Office of Internal Affairs BOP, *Report for Fiscal Year 2020*.

<sup>167</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>168</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>169</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>170</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022). Chief Reese told the Subcommittee that the Warden involved in the incident she recalled was later investigated for failure to report.

During FY 2020, the latest data that BOP OIA has analyzed and reported, BOP OIA opened 5,270 cases of allegations of employee misconduct—not limited to sexual misconduct—involving 6,593 of BOP's 37,000 employees.<sup>171</sup> More than 1,100 of these cases alleged violations of Classification 1 offenses, the most serious misconduct, including sexual abuse or sexual harassment of female detainees.<sup>172</sup> Yet as of March 17, 2021, BOP OIA had only closed 1,663 cases, or 31.6%.<sup>173</sup> Of cases opened in FY 2020, 3,607 cases, or 68.4%, remained open.<sup>174</sup>

For FY 2020, there were 554 allegations of BOP employees and contractors sexually abusing prisoners reported to BOP OIA or detected during an open BOP OIA investigation.<sup>175</sup> As of March 17, 2021, BOP substantiated five allegations of sexual abuse reported that year, which involved two BOP employees, two contract/residential reentry employees, and one employee working in a privatized facility.<sup>176</sup> BOP did not sustain 215 allegations, and 304 were still pending.<sup>177</sup>

Failure to timely clear cases adds up. During the course of its investigation, the Subcommittee uncovered that as of October 28, 2022, OIA had a backlog of approximately 8,000 cases, with some cases pending for more than five years.<sup>178</sup> During an interview with the Subcommittee, BOP OIA Chief Reese said that BOP does not expect to be able to clear the backlog for another two years, at the earliest.<sup>179</sup>

<sup>171</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* at 8 ([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>172</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* at 8 ([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)); Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022). Classification 1 cases are defined as allegations, which, if substantiated, would constitute a prosecutable offense (other than offenses such as misdemeanor arrests). Classification 1 cases, which include sex abuse, bribery, trafficking of contraband, and inappropriate use of a firearm, must be reported to OIA immediately and referred to OIG immediately. Bureau of Prisons, *Program Statement* (May 20, 2003) ([https://www.bop.gov/policy/progstat/1210\\_024.pdf](https://www.bop.gov/policy/progstat/1210_024.pdf)).

<sup>173</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* at 11 (Jan. 6, 2021) ([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)).

<sup>174</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* at 11 (Jan. 6, 2021)

([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)).

<sup>175</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* at 32 (Jan. 6, 2021)

([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)).

<sup>176</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* at 12 (Jan. 6, 2021)

([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)).

<sup>177</sup> Office of Internal Affairs, BOP, *Report for Fiscal Year 2020* at 32 (Jan. 6, 2021)

([https://www.bop.gov/foia/docs/FY\\_2020\\_Annual\\_OIA\\_Report.pdf](https://www.bop.gov/foia/docs/FY_2020_Annual_OIA_Report.pdf)). The Subcommittee took these figures directly from BOP OIA's FY 2020 annual report. The Subcommittee notes that they do not add up. BOP OIA reports that there were 554 allegations of BOP employees sexually abusing prisoners, and that it sustained 5, did not sustain 215, and had 304 pending—a total of 524. The report does not expressly account for 30 of these allegations (554 minus 524). This is another example of BOP OIA's confusing presentation of data.

<sup>178</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>179</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

**b. BOP's Inability to Timely Investigate and Close Internal Affairs Complaints Has Failed to Hold Wrongdoers Accountable**

There are significant consequences to BOP OIA's failure to timely investigate and resolve allegations of staff misconduct. First, as BOP OIA Chief Reese explained to the Subcommittee in an interview, the longer cases drag on, the harder it can be to sustain allegations of misconduct.<sup>180</sup> "[E]vidence can go missing and memories are not as clear," she said.<sup>181</sup> Second, Chief Reese said that BOP OIA's inability to close cases "could create a perception that staff is not being held accountable."<sup>182</sup>

The lack of accountability has significant consequences across the culture of BOP facilities nationwide. As a preliminary concern, it makes prisons less safe. As Chief Reese explained, when inmates feel that prison employees can break the rules with impunity, inmates may feel less safe, increasing the likelihood that they will break the rules themselves.<sup>183</sup>

In an interview with the Subcommittee, Wiley Jenkins, current Warden at the Metropolitan Detention Center Los Angeles (California) and former Warden at FCI Dublin who left his post there just prior to DOJ's indictments of five BOP employees there for sexual abuse of female prisoners, told the Subcommittee that in his view, the BOP OIA investigative process takes too long, even for sex abuse cases that can be more complicated.<sup>184</sup> In his recollection, it has been this way for the entirety of his 20-plus year career with BOP.<sup>185</sup> He described the consequences of lengthy delays in resolving internal affairs cases as preventing managers from holding staff accountable, staff perceiving that their concerns are not addressed, and administrative investigations are not just.<sup>186</sup> "[P]eople [can] lose faith in the process," he said.<sup>187</sup>

Loss of faith in the internal disciplinary process is exacerbated by vulnerabilities in the design of the internal affairs system. For example, when complaints of BOP employees' sexual abuse are submitted to the Warden, he is obligated to refer them onto BOP OIA. However, if the Warden does not do so, there is no way for BOP OIA to know that he had received the complaints at all. BOP OIA has no record of complaints that do not leave the Warden's office.<sup>188</sup> Indeed, in an interview with the Subcommittee, the BOP OIA Chief Reese recalled at least one instance where she learned that this had happened and noted that "there may be more."<sup>189</sup>

<sup>180</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>181</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>182</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>183</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>184</sup> Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>185</sup> Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>186</sup> Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>187</sup> Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>188</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>189</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022). Reese noted that the warden in the one instance she could recall was investigated for his failure to report.



Per Chief Reese, BOP OIA is aware of the risk that senior managers within an institution could pressure investigators to close a case prematurely.<sup>190</sup> She told PSI that there are vulnerabilities in any human system, and that part of the ongoing conversation at BOP OIA is making sure that no one is working on anything where they have a personal connection.<sup>191</sup>

**c. OIG Lacks Resources to Pursue Criminal Investigations of Most BOP Employees Accused of Crimes**

OIG has the primary responsibility for criminal investigations into allegations of misconduct by current BOP employees. Due to capacity constraints, OIG is only able to pursue a fraction of the allegations of criminal misconduct, including sexual abuse of female prisoners by employees.

For the past decade, OIG's staff of approximately 80 non-supervisory criminal special agents reviewed approximately 700 cases per year that could implicate sexual abuse or harassment, and thousands more per year of various other employee misconduct.<sup>192</sup> Last year, the OIG Special Agent in Charge ("SAC") of the Miami office reviewed 2,000 BOP complaints alone, and the SAC of the Dallas Office reviewed 2,300 complaints.<sup>193</sup> Because OIG is only able to fully investigate a fraction of allegations of misconduct by BOP employees, it sends the vast majority of cases back to BOP OIA as a management referral for BOP to investigate or as a "monitored referral" by which BOP OIA conducts the investigation and then sends a report of its findings back to OIG.

The referral process triages investigations, but can reduce the deterrent of criminal sanctions, cause delay, and preclude fully independent investigations of allegations of misconduct from outside the agency. It can also lead to perverse outcomes like the one uncovered by the Subcommittee's investigation with respect to sex abuse at FCC Coleman. There, BOP OIA investigated allegations of sexual abuse and compelled the subjects of the investigation to sit for interviews under oath; then, the subjects of the investigation admitted to crimes and were effectively immunized from criminal prosecution under the *Garrity* standard.

In the past year, OIG has taken steps to institute reforms to address the potential difficulties in investigating sexual abuse of female prisoners. OIG has prioritized investigations of sexual misconduct cases, sought additional resources to be able to investigate a higher percentage of sexual misconduct allegations it receives, required its SACs to specifically note whether they had determined if the subject of an incoming complaint had previously been accused of misconduct, and is proactively analyzing case information in its database to identify "hot spots" by individual and institution.<sup>194</sup>

---

<sup>190</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>191</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>192</sup> OIG Briefing to PSI (Nov. 9, 2022).

<sup>193</sup> OIG Briefing to PSI (Nov. 9, 2022).

<sup>194</sup> OIG Briefing to PSI (Nov. 9, 2022).

## VI. BOP's Deficient Response to Sexual Abuse

BOP failed to take agency-wide action to address sexual abuse of female inmates by male BOP employees. While BOP's and DOJ's recent focus on sexual abuse prevention and deterrence represents progress, it comes years after significant incidents of abuse came to light.

During interviews with the Subcommittee, BOP articulated two opposing views concerning how it viewed BOP employees' sexual abuse of prisoners at these four facilities. On the one hand, BOP OIA Chief Reese and Acting Assistant Director for Reentry Services, Alix McLearn, PhD, described abuse, at least with respect to FCC Coleman and FCI Dublin, as partially attributable to the culture of those institutions at the time.<sup>195</sup>

But Regional Director Rios and Warden Jenkins viewed abuse at these four facilities as individual misconduct, even when there were multiple employees abusing multiple female prisoners in the same facility over the same period of time.<sup>196</sup> When asked in an interview with the Subcommittee whether there was a culture of abuse at FCI Dublin evidenced by the five criminal prosecutions of BOP employees there, all within a two-year period, Warden Jenkins replied, "no."<sup>197</sup> In his view, sex abuse by BOP employees at FCI Dublin did not reflect broader issues at the prison.<sup>198</sup> His remedy for BOP employee sexual abuse of female prisoners at the scale of FCI Dublin would be the same as his remedy to a one-off cases of sexual abuse.<sup>199</sup> "It goes back to individual choices of people making poor decisions," he said.<sup>200</sup>

On November 4, 2022, the Subcommittee interviewed Dr. McLearn appearing on behalf of BOP to address the actions that BOP has taken in response to sexual abuse cases at MCC New York, MDC Brooklyn, FCC Coleman, and FCI Dublin. In response to the abuse at MCC New York, MDC Brooklyn, and FCC Coleman, it does not appear that BOP took any agency-wide actions to prevent abuse from occurring at other facilities in the future. BOP informed the Subcommittee that in response to sexual abuse by BOP employees at these three facilities, it conducted additional oversight of those facilities and changed leadership.<sup>201</sup> For example, following revelations of abuse at MDC Brooklyn, BOP removed the Warden and implemented additional PREA compliance training at that facility.<sup>202</sup> However, BOP appears to have made no changes to its policies or practices across its network of 122 prisons.<sup>203</sup>

<sup>195</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022); Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>196</sup> Melissa Rios, Regional Director for the Western Region, BOP, Interview with PSI (Nov. 10, 2022); Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>197</sup> Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>198</sup> Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>199</sup> Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>200</sup> Wiley Jenkins, Former Warden at FCI Dublin, BOP, Interview with PSI (Nov. 16, 2022).

<sup>201</sup> Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>202</sup> Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>203</sup> Alix McLearn, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

It appears BOP only reevaluated the way that it responded to BOP employee sexual abuse of female prisoners last year, following sexual abuse at FCI Dublin.<sup>204</sup> Last year, BOP did the following:

- Updated language in its employee handbook pertaining to sexual abuse prevention for clarity.<sup>205</sup>
- Updated language in the standardized PREA poster hung in all BOP institutions that provides resources for prisoners concerning sexual abuse or harassment for clarity.<sup>206</sup>
- Updated and standardized the script of the orientation training for inmates upon arrival to a new facility concerning how to report sexual abuse. BOP also created an informational video to be played at orientation where employees explained in “short, clear, and direct statements” that there is zero tolerance for sexual abuse.”<sup>207</sup>
- Retained a contractor to train OIA investigators on how to interview inmate victims of sexual abuse.<sup>208</sup>

In addition to BOP implementing reforms, DOJ and BOP leadership have taken steps—coinciding with the Subcommittee’s investigation—to address the issue of sexual abuse of female prisoners by male employees.

In October 2022, BOP informed the Subcommittee that it planned to reorganize the chain of command for internal affairs investigators so that those stationed to work in individual facilities report up to the OIA Chief in the Central Office in Washington D.C. instead of the facility’s Warden.<sup>209</sup> BOP also informed the Subcommittee that it will hire additional OIA investigators and BOP will conduct Women’s Institution Cultural Assessment for facilities holding women, which include on-site inspections and interviews with detainees designed to increase BOP’s awareness of conditions at those facilities.<sup>210</sup>

A July 14, 2022 memorandum from the Deputy Attorney General called on DOJ to convene a group of senior DOJ officials (the “Working Group”) to “review the Department’s approach to rooting out and preventing sexual misconduct by BOP employees.”<sup>211</sup> On

---

<sup>204</sup> Alix McLearen, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>205</sup> Alix McLearen, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>206</sup> Alix McLearen, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>207</sup> Alix McLearen, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>208</sup> Alix McLearen, PhD, Acting Director of Reentry Services, BOP, Interview with PSI (Nov. 4, 2022).

<sup>209</sup> Beth Reese, Chief of the Office of Internal Affairs, BOP, Interview with PSI (Oct. 28, 2022).

<sup>210</sup> Alix McLearen, PhD, Acting Director Beth Reese, Chief of Reentry Services the Office of Internal Affairs, BOP, Interview with PSI (Nov. 4 Oct. 28, 2022).

<sup>211</sup> Working Group of DOJ Components, *Report and Recommendations Concerning the Department of Justice’s Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons* (Nov. 2, 2022).

November 2, 2022, the Working Group issued its report of recommendations for both BOP and DOJ.<sup>212</sup>

The Working Group recommended that BOP improve reporting mechanisms for BOP employees who commit sexual misconduct; DOJ prioritize investigations of BOP employees accused of misconduct; and BOP enhance the use of administrative actions and discipline of BOP employees who are found to have committed sexual misconduct.<sup>213</sup> The Subcommittee notes that it is difficult to evaluate the Working Group's recommendations because the Working Group did not establish the basis for them. It did not discuss the scope of sexual abuse in BOP facilities, whether it viewed the problem as specific to particular institutions or systemic across BOP facilities, or how long these issues may have persisted. The Working Group did not posit the cause of these problems or include a comprehensive analysis of historical data that it had obtained from DOJ and BOP that might identify relevant trends or patterns.<sup>214</sup>

## VII. Conclusion

BOP failed to detect or prevent sexual abuse of incarcerated women by male BOP employees. The agency's poor implementation of the audit program and reporting mechanisms required by PREA allowed serious, repeated sexual abuse in at least four facilities to go undetected. BOP's internal affairs practices have failed to hold employees accountable, and multiple admitted sexual abusers were not criminally prosecuted as a result. Further, for a decade, BOP failed to respond to this abuse or implement agency-wide reforms. Moving forward, BOP should consider the Subcommittee's findings as it works to implement changes to how it handles sexual abuse of female prisoners by male BOP employees.

---

<sup>212</sup> Working Group of DOJ Components, *Report and Recommendations Concerning the Department of Justice's Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons* (Nov. 2, 2022).

<sup>213</sup> Working Group of DOJ Components, *Report and Recommendations Concerning the Department of Justice's Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons* (Nov. 2, 2022); Office of the Deputy Attorney General, Department of Justice, Briefing to PSI (Nov. 21, 2022).

<sup>214</sup> Working Group of DOJ Components, *Report and Recommendations Concerning the Department of Justice's Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons* (Nov. 2, 2022); Office of the Deputy Attorney General, Department of Justice, Briefing to PSI (Nov. 21, 2022). Such data analysis, required by the PREA standards, could inform BOP's own surveillance systems. The Working Group planned for this work to happen in the future, recommending that BOP create a standing Advisory Group to oversee BOP data collection and analysis.

# Exhibit 1

Sexual Abuse of Female Prisoners by BOP Employees from 2012 to 2022 <sup>1</sup>		
Facility	Source	Number of Women Abused
<b>FCI Alderson</b>	<i>United States v. Jeffrey Walton</i> , 5:14-CR-64 (S.D. W. Va.)	1
	<i>United States v. Richard Canterbury</i> , 5:14-CR-281 (S.D. W. Va.)	1
	<i>United States v. Jarrod Grimes</i> , 5:18-CR-69 (S.D. W. Va.)	6
	OIA Substantiated Cases <sup>2</sup>	5
<b>FCI Aliceville</b>	<i>United States v. Jesse Bailey</i> , 7:17-CR-504 (N.D. Ala.)	1
	<i>United States v. Adrian Stargell</i> , 7:20-CR-56 (N.D. Ala.)	2
	<i>United States v. Eric Ellis</i> , 7:21-CR-167 (N.D. Ala.)	1
	OIA Substantiated Cases <sup>3</sup>	5
<b>MDC Brooklyn</b>	<i>United States v. Armando Moronta</i> , 17-CR-281 (E.D.N.Y.)	3
	<i>United States v. Eugenio Perez</i> , 17-CR-280 (E.D.N.Y.)	5
	<i>United States v. Carlos Martinez</i> , 17-CR-2790 (E.D.N.Y.)	1
<b>FPC Bryan</b>	<i>United States v. James Graves</i> , 1:20-CR-287 (S.D. Tex.)	2
	<i>United States v. Marshall Thomas</i> , 4:15-CR-535 (S.D. Tex.)	2
	<i>United States v. Kendrick Brooks</i> , 4:15-CR-00536 (S.D. Tex.)	1
	OIA Substantiated Cases <sup>4</sup>	6

<sup>1</sup> This table lists cases of sexual abuse of female prisoners by BOP employees. Data from the table was derived from two sources. First, cases where a male BOP employee pleaded guilty or was convicted of sexually abusing a female prisoner. Second, cases where BOP OIA substantiated allegations of sexual abuse by male BOP employees at one of the six female-only BOP facilities. The Subcommittee did not include cases where OIA substantiated cases of sexual abuse by BOP employees at any of the non-female-only facilities because the data that BOP produced to the Subcommittee did not identify the gender of the complaint(s).

<sup>2</sup> Staff-on-Inmate Sex Abuse Sustained Cases from 2012-Present, Production from DOJ to PSI (Nov. 10, 2022) (PSI-BOPOIA-Prod4-001-049).

<sup>3</sup> Staff-on-Inmate Sex Abuse Sustained Cases from 2012-Present, Production from DOJ to PSI (Nov. 10, 2022) (PSI-BOPOIA-Prod4-001-049).

<sup>4</sup> Staff-on-Inmate Sex Abuse Sustained Cases from 2012-Present, Production from DOJ to PSI (Nov. 10, 2022) (PSI-BOPOIA-Prod4-001-049).

<b>FMC Carswell</b>	<i>United States v. Brady Green</i> <sup>5</sup> 4u:r1t4-cr-00145-O (N.D. Tex.)	1
	<i>United States v. Yvonne Marrufo</i> , 4:15-cr-00205-A (N.D. Tex.)	1
	<i>United States v. Matthew McGaugh</i> , 4:17-cr-00105-O (N.D. Tex.)	1
	<i>United States v. Luise Curiel</i> , 4:22-cr-00132-P (N.D. Tex.)	3
	OIA Substantiated Cases <sup>6</sup>	16
<b>FCC Coleman</b>	<i>Beaubrun v. United States</i> , <sup>7</sup> 5:19-cv-00615-TJC-PRL (M.D. Fla. 2022).	10
<b>FCI Danbury</b>	<i>United States v. Carlos Sanchez</i> , 3:18-cr-00320	1
<b>FCI Dublin</b>	<i>Peterson v. Martinez, et al.</i> , 3:19-cv-01447 (N.D. Cal.)	1
	<i>United States v. Ray Garcia</i> , 4:21-CR-429 (N.D. Cal.)	2
	<i>United States v. John Bellhouse</i> , 4:21-MJ-71905 (N.D. Cal.)	1
	<i>United States v. James Highhouse</i> , 4:22-CR-16 (N.D. Cal.)	1
	<i>United States v. Ross Klingler</i> , 4:22-CR-31 (N.D. Cal.)	3
	<i>United States v. Enrique Chavez</i> , 4:22-CR-104 (N.D. Cal.)	1
	OIA Substantiated Cases <sup>8</sup>	10
<b>FCI Hazelton</b>	<i>United States v. Scott Born</i> , 1:20-CR-99 (N.D. W.Va.)	1
<b>FDC Houston</b>	<i>United States v. Samuel Hawkins</i> , 4:16-CR-153 (S.D. Tex.)	1
<b>FMC Lexington</b>	<i>United States v. Christopher Goodwin</i> , 5:21-CR-85 (E.D. Ky.)	4
	<i>United States v. Hosea Lee</i> , 5:21-CR-84 (E.D. Ky.)	4

<sup>5</sup> Green was charged with and pleaded guilty to falsely denying that he had sex with a ward.

<sup>6</sup> Staff-on-Inmate Sex Abuse Sustained Cases from 2012-Present, Production from DOJ to PSI (Nov. 10, 2022) (PSI-BOPOIA-Prod4-001-049).

<sup>7</sup> Fifteen plaintiffs alleged that they were sexually abused by eight officers. Defendant United States answered plaintiffs' pleading by admitting allegations that six of the eight officers had sexual interactions with ten of the plaintiffs. See *Beaubrun Answer*.

<sup>8</sup> Staff-on-Inmate Sex Abuse Sustained Cases from 2012-Present, Production from DOJ to PSI (Nov. 10, 2022) (PSI-BOPOIA-Prod4-001-049).

<b>MDC Los Angeles</b>	<i>United States v. Abel Concho</i> , 2:21-CR-446 (C.D. Cal.)	1
	<i>United States v. Jose Viera</i> , 2:22-CR-211 (C.D. Cal.)	1
<b>MCC New York</b>	<i>United States v. Rudell Mullings</i> , 15-CR-538 (E.D.N.Y.)	1
	<i>United States v. Colin Akparanta</i> , 19-CR-363 (S.D.N.Y.)	7
<b>FDC Miami</b>	<i>United States v. Damon Coleman</i> , 3:19-CR-104 (E.D. Va.)	1
<b>FCI Phoenix</b>	<i>United States v. James Toadvine</i> , 2:15-CR-1535 (D. Ariz.)	1
	<i>United States v. Edward Mendoza</i> , 2:15-CR-1325 (D. Ariz.)	1
	<i>United States v. Darrell McCoy</i> , CR-2:17-cr-01410-DLR-1 (D. Ariz.)	1
	<i>United States v. Irvin Anglin</i> , 2020-CR-00625-JJT	1
<b>MDC San Diego</b>	<i>United States v. Brandon McKinney</i> , 3:11-CR-1020 (S.D. Cal.)	1
<b>FCI Tallahassee</b>	<i>United States v. Jimmy Highsmith</i> , 4:21-CR-008 (N.D. Fla.)	2
	<i>United States v. Phillip Golightly</i> , 4:20-cr-032 (N.D. Fla.)	
<b>FCC Victorville</b>	<i>United States v. Apolonio Gamez</i> , 5:18-CR-100 (C.D. Cal.)	3
<b>FCI-Waseca</b>	<i>United States v. Mark McShane</i> , 18-CR-109 (D. Minn.)	1
	OIA Substantiated Cases <sup>9</sup>	8

<sup>9</sup> Staff-on-Inmate Sex Abuse Sustained Cases from 2012-Present, Production from DOJ to PSI (Nov. 10, 2022) (PSI-BOPOIA-Prod4-001-049).



## Exhibit 2

2012 Staff-on-Inmate  
Opened Between 01/01/2012 to 12/31/2012

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Adams County Corr CTR (CI) - ACC	1	0	1	0	0
Alderson (FPC) - ALD	4	0	4	0	0
Allenwood (FCC) - ALX	12	0	12	0	0
Annapolis Junction (CCM) - CBR	2	0	1	1	0
Ashland (FCI) - ASH	2	0	2	0	0
Atlanta (CCM) - CAT	2	0	2	0	0
Atlanta (USP) - ATL	9	2	7	0	0
Atwater (USP) - ATW	3	0	3	0	0
Bastrop (FCI) - BAS	1	0	1	0	0
Beaumont (FCC) - BMX	8	3	5	0	0
Beckley (FCI) - BEC	2	1	1	0	0
Bennettsville (FCI) - BEN	6	0	6	0	0
Big Spring (CI) - BSC	3	1	2	0	0
Big Spring (FCI) - BIG	1	0	1	0	0
Brooklyn (MDC) - BRO	7	2	5	0	0
Bryan (FPC) - BRY	3	1	2	0	0
Butner (FCC) - BUX	10	3	5	2	0
Canaan (USP) - CAA	9	0	8	1	0
Carswell (FMC) - CRW	8	1	7	0	0
Chicago (CCM) - CCH	5	0	3	2	0
Chicago (MCC) - CCC	4	0	4	0	0
Cibola County (CI) - CIB	1	1	0	0	0
Cincinnati (CCM) - CCN	2	0	2	0	0
Coleman (FCC) - COX	30	2	28	0	0
Cumberland (FCI) - CUM	1	0	1	0	0
D. Ray James Correctional Fac - DRJ	3	0	3	0	0
Dalby (CI) - DAL	1	0	1	0	0
Dallas (CCM) - CDA	7	0	5	2	0
Danbury (FCI) - DAN	6	0	3	3	0
Devens (FMC) - DEV	2	0	2	0	0
Dublin (FCI) - DUB	3	0	3	0	0
Duluth (FPC) - DTH	1	0	1	0	0
Eden Denton Center (CI) - EDN	2	0	2	0	0
Edgefield (FCI) - EDG	1	0	1	0	0
El Paso (CCM) - CEP	1	0	1	0	0
El Reno (FCI) - ERE	1	0	1	0	0
Elkton (FCI) - ELK	3	0	3	0	0
Englewood (FCI) - ENG	3	0	3	0	0
Estill (FCI) - EST	2	0	2	0	0
Fairton (FCI) - FAI	6	0	6	0	0
Florence (FCC) - FLX	24	1	22	1	0
Forrest City (FCC) - FOX	3	0	3	0	0
Fort Dix (FCI) - FTD	6	0	6	0	0
Fort Worth (FCI) - FTW	3	1	2	0	0
Gilmer (FCI) - GIL	1	0	1	0	0

2012 Staff-on-Inmate  
Opened Between 01/01/2012 to 12/31/2012

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Greenville (FCI) - GRE	4	0	4	0	0
Guaynabo (MDC) - GUA	2	2	0	0	0
Hazleton (FCC) - HAX	7	0	6	1	0
Herlong (FCI) - HER	3	1	2	0	0
Honolulu (FDC) - HON	3	1	2	0	0
Houston (CCM) - CHN	2	0	0	2	0
Houston (FDC) - HOU	2	2	0	0	0
Jesup (FCI) - JES	2	0	2	0	0
Kansas City (CCM) - CKC	2	0	0	2	0
La Tuna (FCI) - LAT	6	0	6	0	0
Leavenworth (USP) - LVN	4	2	2	0	0
Lewisburg (USP) - LEW	22	1	21	0	0
Lexington (FMC) - LEX	5	2	3	0	0
Lompoc (FCC) - LOX	3	0	2	1	0
Long Beach (CCM) - CLB	2	1	0	1	0
Loretto (FCI) - LOR	4	1	2	1	0
Marianna (FCI) - MNA	6	1	4	1	0
Marion (USP) - MAR	3	0	3	0	0
McCreary (USP) - MCR	12	0	12	0	0
McDowell (FCI) - MCD	2	0	2	0	0
McKean (FCI) - MCK	4	0	4	0	0
McRae (CI) - MCA	1	0	1	0	0
Mendota (FCI) - MEN	1	1	0	0	0
Miami (CCM) - CMM	4	0	1	0	0
Miami (FDC) - MIM	1	0	1	0	0
Milan (FCI) - MIL	4	0	4	0	0
Montgomery (CCM) - CMY	1	0	1	0	0
Montgomery (FPC) - MON	4	0	4	0	0
Morgantown (FCI) - MRG	3	0	3	0	0
Moshannon Valley (CI) - MVC	1	0	1	0	0
Nashville (CCM) - CNV	6	0	5	1	0
NE Ohio Corr Ctr (CI) - NOC	1	0	0	1	0
New York (MCC) - NYM	3	1	2	0	0
Oakdale (FCC) - OAX	9	0	9	0	0
Oklahoma City (FTC) - OKL	5	0	3	2	0
Orlando (CCM) - COR	1	0	1	0	0
Otisville (FCI) - OTV	3	1	2	0	0
Oxford (FCI) - OXF	1	0	0	1	0
Pekin (FCI) - PEK	3	1	1	1	0
Pensacola (FPC) - PEN	2	2	0	0	0
Petersburg (FCC) - PEX	5	0	4	1	0
Philadelphia (CCM) - CPA	2	0	0	2	0
Philadelphia (FDC) - PHL	3	1	2	0	0
Phoenix (CCM) - CPH	4	0	2	2	0
Phoenix (FCI) - PHX	6	2	3	1	0

2012 Staff-on-Inmate  
Opened Between 01/01/2012 to 12/31/2012

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Pittsburgh (CCM) - CPG	7	0	5	2	0
Pollock (FCC) - POX	3	1	2	0	0
Raleigh (CCM) - CRL	1	0	0	1	0
Ray Brook (FCI) - RBK	1	0	1	0	0
Reeves I and II (CI) - REE	5	4	1	0	0
Rivers (CI) - RIV	2	1	1	0	0
Rochester (FMC) - RCH	3	1	2	0	0
Safford (FCI) - SAF	3	0	3	0	0
San Diego (MCC) - SDC	2	0	2	0	0
Sandstone (FCI) - SST	2	0	2	0	0
Sheridan (FCI) - SHE	3	1	2	0	0
Springfield (MCFP) - SPG	9	1	8	0	0
Taft (CI) - TAF	2	0	1	1	0
Talladega (FCI) - TDG	8	0	7	1	0
Tallahassee (FCI) - TAL	26	1	23	2	0
Terminal Island (FCI) - TRM	2	0	2	0	0
Terre Haute (FCC) - THX	14	0	14	0	0
Texarkana (FCI) - TEX	1	0	1	0	0
Tucson (FCC) - TCX	10	0	10	0	0
Victorville (FCC) - VIX	23	1	19	3	0
Waseca (FCI) - WAS	6	1	3	2	0
Willacy County Corr. Ctr (CI) - WLC	2	1	0	1	0
Williamsburg (FCI) - WIL	3	1	1	1	0
Yazoo City (FCC) - YAX	17	2	12	3	0

2013 Staff-on-Inmate  
Opened Between 01/01/2013 to 12/31/2013

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Adams County Corr CTR (CI) - ACC	2	0	2	0	0
Alderson (FPC) - ALD	3	1	2	0	0
Aliceville (FCI) - ALI	1	0	1	0	0
Allenwood (FCC) - ALX	18	1	17	0	0
Annapolis Junction (CCM) - CBR	1	0	0	1	0
Atlanta (CCM) - CAT	1	0	0	1	0
Atlanta (USP) - ATL	8	0	6	2	0
Atwater (USP) - ATW	2	0	2	0	0
Bastrop (FCI) - BAS	1	0	1	0	0
Beaumont (FCC) - BMX	9	0	9	0	0
Beckley (FCI) - BEC	7	1	5	1	0
Bennettsville (FCI) - BEN	1	0	1	0	0
Berlin (FCI) - BER	2	0	2	0	0
Big Sandy (USP) - BSY	3	1	2	0	0
Big Spring (CI) - BSC	8	3	4	1	0
Big Spring (FCI) - BIG	7	0	7	0	0
Brooklyn (MDC) - BRO	6	1	5	0	0
Bryan (FPC) - BRY	3	1	2	0	0
Butner (FCC) - BUX	14	2	11	1	0
Canaan (USP) - CAA	16	0	16	0	0
Carswell (FMC) - CRW	8	1	7	0	0
Chicago (MCC) - CCC	3	0	3	0	0
Cibola County (CI) - CIB	2	0	1	1	0
Cincinnati (CCM) - CCN	1	0	0	1	0
Coleman (FCC) - COX	28	2	25	1	0
Cumberland (FCI) - CUM	1	0	0	1	0
D. Ray James Correctional Fac - DRJ	2	0	2	0	0
Dalby (CI) - DAL	4	1	2	1	0
Dallas (CCM) - CDA	9	1	2	6	0
Danbury (FCI) - DAN	3	1	1	1	0
Detroit (CCM) - CDT	1	0	1	0	0
Devens (FMC) - DEV	5	0	4	1	0
Dublin (FCI) - DUB	4	0	4	0	0
Eden Denton Center (CI) - EDN	1	0	0	1	0
Edgefield (FCI) - EDG	3	0	1	2	0
El Paso (CCM) - CEP	2	0	2	0	0
El Reno (FCI) - ERE	4	0	4	0	0
Elkton (FCI) - ELK	1	0	1	0	0
Englewood (FCI) - ENG	8	1	7	0	0
Estill (FCI) - EST	8	2	6	0	0
Fairton (FCI) - FAI	7	0	7	0	0
Florence (FCC) - FLX	42	1	40	1	0
Forrest City (FCC) - FOX	5	0	5	0	0
Fort Dix (FCI) - FTD	10	0	10	0	0
Fort Worth (FCI) - FTW	7	0	6	1	0

2013 Staff-on-Inmate  
Opened Between 01/01/2013 to 12/31/2013

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Gilmer (FCI) - GIL	9	1	8	0	0
Greenville (FCI) - GRE	1	0	1	0	0
Guaynabo (MDC) - GUA	2	1	1	0	0
Hazelton (FCC) - HAX	13	4	9	0	0
Herlong (FCI) - HER	11	3	8	0	0
Honolulu (FDC) - HON	1	1	0	0	0
Houston (CCM) - CHN	1	1	0	0	0
Houston (FDC) - HOU	3	1	2	0	0
Jesup (FCI) - JES	11	1	10	0	0
Kansas City (CCM) - CKC	2	1	0	1	0
La Tuna (FCI) - LAT	7	0	6	1	0
Leavenworth (USP) - LVN	2	0	2	0	0
Lee (USP) - LEE	4	1	3	0	0
Lewisburg (USP) - LEW	24	1	23	0	0
Lexington (FMC) - LEX	5	1	3	1	0
Lompoc (FCC) - LOX	6	0	4	2	0
Long Beach (CCM) - CLB	2	0	0	2	0
Loretto (FCI) - LOR	3	0	2	1	0
Los Angeles (MDC) - LOS	2	0	1	1	0
Marianna (FCI) - MNA	8	1	7	0	0
Marion (USP) - MAR	5	1	4	0	0
McCreary (USP) - MCR	14	1	13	0	0
McDowell (FCI) - MCD	5	0	5	0	0
Memphis (FCI) - MEM	2	0	2	0	0
Mendota (FCI) - MEN	6	0	5	1	0
Miami (FDC) - MIM	2	0	2	0	0
Milan (FCI) - MIL	2	0	2	0	0
Minneapolis (CCM) - CMS	3	0	2	1	0
Montgomery (CCM) - CMY	2	0	1	1	0
Montgomery (FPC) - MON	1	0	1	0	0
Morgantown (FCI) - MRG	3	0	3	0	0
Moshannon Valley (CI) - MVC	1	0	1	0	0
Nashville (CCM) - CNV	3	0	3	0	0
NE Ohio Corr Ctr (CI) - NOC	2	1	0	1	0
New Orleans (CCM) - CNO	1	0	1	0	0
New York (CCM) - CNK	3	1	0	2	0
New York (MCC) - NYM	1	0	1	0	0
Oakdale (FCC) - OAX	7	2	5	0	0
Oklahoma City (FTC) - OKL	6	1	5	0	0
Otisville (FCI) - OTV	1	0	1	0	0
Oxford (FCI) - OXF	3	3	0	0	0
Pekin (FCI) - PEK	2	1	1	0	0
Pensacola (FPC) - PEN	1	0	0	1	0
Petersburg (FCC) - PEX	4	0	3	1	0
Phoenix (CCM) - CPH	2	0	1	1	0

2013 Staff-on-Inmate  
Opened Between 01/01/2013 to 12/31/2013

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Phoenix (FCI) - PHX	2	1	1	0	0
Pollock (FCC) - POX	8	0	8	0	0
Ray Brook (FCI) - RBK	3	0	3	0	0
Reeves I and II (CI) - REE	1	1	0	0	0
Reeves III (CI) - RVS	2	0	2	0	0
Rivers (CI) - RIV	2	0	2	0	0
Rochester (FMC) - RCH	2	1	1	0	0
Sacramento (CCM) - CSC	1	0	0	1	0
San Antonio (CCM) - CSA	2	0	0	2	0
Sandstone (FCI) - SST	2	0	2	0	0
Schuylkill (FCI) - SCH	3	0	3	0	0
Seagoville (FCI) - SEA	3	1	2	0	0
SeaTac (FDC) - SET	1	0	1	0	0
Seattle (CCM) - CSE	1	0	0	1	0
Sheridan (FCI) - SHE	7	0	7	0	0
Springfield (MCFP) - SPG	5	0	4	1	0
St Louis (CCM) - CST	1	0	0	1	0
Taft (CI) - TAF	2	0	2	0	0
Talladega (FCI) - TDG	2	0	2	0	0
Tallahassee (FCI) - TAL	29	5	22	2	0
Terminal Island (FCI) - TRM	3	1	2	0	0
Terre Haute (FCC) - THX	9	0	9	0	0
Texarkana (FCI) - TEX	1	0	1	0	0
Three Rivers (FCI) - TRV	5	0	5	0	0
Tucson (FCC) - TCX	7	0	7	0	0
Victorville (FCC) - VIX	42	2	34	6	0
Waseca (FCI) - WAS	7	2	5	0	0
Willacy County Corr. Ctr (CI) - WLC	1	1	0	0	0
Williamsburg (FCI) - WIL	1	0	1	0	0
Yazoo City (FCC) - YAX	7	2	5	0	0

2014 Staff-on-Inmate  
Opened Between 01/01/2014 to 12/31/2014

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Adams County Corr CTR (CI) - ACC	1	0	1	0	0
Alderson (FPC) - ALD	3	2	0	1	0
Aliceville (FCI) - ALI	4	0	4	0	0
Allenwood (FCC) - ALX	11	2	8	0	1
Annapolis Junction (CCM) - CBR	2	0	1	1	0
Ashland (FCI) - ASH	3	0	3	0	0
Atlanta (CCM) - CAT	1	0	0	1	0
Atlanta (USP) - ATL	17	0	11	6	0
Atwater (USP) - ATW	2	0	2	0	0
Beaumont (FCC) - BMX	8	0	7	1	0
Beckley (FCI) - BEC	5	0	5	0	0
Bennettsville (FCI) - BEN	2	0	2	0	0
Berlin (FCI) - BER	5	1	4	0	0
Big Sandy (USP) - BSY	1	1	0	0	0
Big Spring (CI) - BSC	3	2	1	0	0
Big Spring (FCI) - BIG	5	0	5	0	0
Brooklyn (MDC) - BRO	8	0	7	1	0
Bryan (FPC) - BRY	4	2	2	0	0
Butner (FCC) - BUX	6	1	5	0	0
Canaan (USP) - CAA	8	0	8	0	0
Carswell (FMC) - CRW	11	2	7	2	0
Chicago (CCM) - CCH	2	0	2	0	0
Chicago (MCC) - CCC	3	0	2	1	0
Cincinnati (CCM) - CCN	1	0	0	1	0
Coleman (FCC) - COX	18	3	14	1	0
Cumberland (FCI) - CUM	1	0	0	1	0
D. Ray James Correctional Fac - DRJ	1	0	1	0	0
Dalby (CI) - DAL	2	1	1	0	0
Dallas (CCM) - CDA	5	0	1	4	0
Danbury (FCI) - DAN	3	0	3	0	0
Devens (FMC) - DEV	2	1	1	0	0
Dublin (FCI) - DUB	7	3	2	2	0
Duluth (FPC) - DTH	2	0	2	0	0
Eden Denton Center (CI) - EDN	3	2	1	0	0
Edgefield (FCI) - EDG	6	1	5	0	0
El Reno (FCI) - ERE	1	0	1	0	0
Elkton (FCI) - ELK	4	1	3	0	0
Englewood (FCI) - ENG	3	1	2	0	0
Estill (FCI) - EST	9	1	8	0	0
Fairton (FCI) - FAI	1	0	1	0	0
Florence (FCC) - FLX	46	0	44	2	0
Forrest City (FCC) - FOX	2	0	2	0	0
Fort Dix (FCI) - FTD	6	1	5	0	0
Fort Worth (FCI) - FTW	2	0	2	0	0
Gilmer (FCI) - GIL	8	1	7	0	0



2014 Staff-on-Inmate  
Opened Between 01/01/2014 to 12/31/2014

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Hazelton (FCC) - HAX	10	2	7	1	0
Herlong (FCI) - HER	2	2	0	0	0
Honolulu (FDC) - HON	1	1	0	0	0
Houston (CCM) - CHN	2	0	2	0	0
Jesup (FCI) - JES	6	1	5	0	0
Kansas City (CCM) - CKC	1	0	0	1	0
La Tuna (FCI) - LAT	4	0	4	0	0
Leavenworth (USP) - LVN	1	0	1	0	0
Lee (USP) - LEE	1	0	1	0	0
Lewisburg (USP) - LEW	17	0	17	0	0
Lompoc (FCC) - LOX	4	1	3	0	0
Long Beach (CCM) - CLB	1	0	0	1	0
Loretto (FCI) - LOR	4	0	2	2	0
Los Angeles (MDC) - LOS	3	0	2	1	0
Marianna (FCI) - MNA	3	0	3	0	0
Marion (USP) - MAR	4	0	2	2	0
McCreary (USP) - MCR	5	2	3	0	0
McKean (FCI) - MCK	1	0	0	1	0
McRae (CI) - MCA	1	1	0	0	0
Memphis (FCI) - MEM	2	0	2	0	0
Mendota (FCI) - MEN	2	0	2	0	0
Miami (CCM) - CMM	4	0	2	2	0
Miami (FCI) - MIA	2	0	1	0	1
Miami (FDC) - MIM	9	2	3	4	0
Milan (FCI) - MIL	1	0	1	0	0
Minneapolis (CCM) - CMS	2	0	2	0	0
Montgomery (CCM) - CMY	4	0	0	4	0
Montgomery (FPC) - MON	1	1	0	0	0
Morgantown (FCI) - MRG	2	1	1	0	0
Moshannon Valley (CI) - MVC	1	1	0	0	0
Nashville (CCM) - CNV	3	0	0	3	0
NE Ohio Corr Ctr (CI) - NOC	2	1	0	1	0
New York (CCM) - CNK	1	0	0	1	0
New York (MCC) - NYM	3	0	3	0	0
Oakdale (FCC) - OAX	1	0	1	0	0
Oklahoma City (FTC) - OKL	2	1	1	0	0
Orlando (CCM) - COR	1	0	1	0	0
Otisville (FCI) - OTV	2	0	2	0	0
Oxford (FCI) - OXF	1	0	1	0	0
Pekin (FCI) - PEK	1	0	1	0	0
Petersburg (FCC) - PEX	3	1	2	0	0
Philadelphia (CCM) - CPA	2	0	1	1	0
Philadelphia (FDC) - PHL	7	0	7	0	0
Phoenix (FCI) - PHX	1	0	0	0	1
Pittsburgh (CCM) - CPG	6	0	5	1	0

2014 Staff-on-Inmate  
Opened Between 01/01/2014 to 12/31/2014

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Pollock (FCC) - POX	8	1	6	1	0
Raleigh (CCM) - CRL	2	0	0	2	0
Ray Brook (FCI) - RBK	2	0	2	0	0
Reeves I and II (CI) - REE	2	2	0	0	0
Reeves III (CI) - RVS	2	0	2	0	0
Rivers (CI) - RIV	4	1	3	0	0
Rochester (FMC) - RCH	3	1	2	0	0
Sacramento (CCM) - CSC	2	0	0	2	0
Safford (FCI) - SAF	2	1	1	0	0
San Antonio (CCM) - CSA	3	1	1	1	0
San Diego (MCC) - SDC	3	1	1	1	0
Sandstone (FCI) - SST	1	0	1	0	0
Schuykill (FCI) - SCH	2	0	2	0	0
Seagoville (FCI) - SEA	1	0	1	0	0
Seattle (CCM) - CSE	2	0	1	1	0
Sheridan (FCI) - SHE	3	0	2	1	0
Springfield (MCFP) - SPG	9	1	6	2	0
St Louis (CCM) - CST	1	0	0	1	0
Taft (CI) - TAF	2	0	2	0	0
Talladega (FCI) - TDG	2	0	2	0	0
Tallahassee (FCI) - TAL	14	2	10	2	0
Terre Haute (FCC) - THX	10	0	8	2	0
Texarkana (FCI) - TEX	4	2	2	0	0
Tucson (FCC) - TCX	9	1	7	1	0
Victorville (FCC) - VIX	14	0	11	0	3
Waseca (FCI) - WAS	7	3	4	0	0
Willacy County Corr. Ctr (CI) - WLC	2	1	0	1	0
Williamsburg (FCI) - WIL	1	0	1	0	0
Yankton (FPC) - YAN	2	0	2	0	0
Yazoo City (FCC) - YAX	6	2	4	0	0

2015 Staff-on-Inmate  
Opened Between 01/01/2015 to 12/31/2015

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Adams County Corr CTR (CI) - ACC	3	1	2	0	0
Aliceville (FCI) - ALI	6	0	5	0	1
Allenwood (FCC) - ALX	12	1	11	0	0
Annapolis Junction (CCM) - CBR	2	0	0	2	0
Ashland (FCI) - ASH	2	0	2	0	0
Atlanta (CCM) - CAT	1	0	0	1	0
Atlanta (USP) - ATL	5	1	3	1	0
Atwater (USP) - ATW	1	0	1	0	0
Baltimore (CCM) closed - CDR	4	1	1	2	0
Bastrop (FCI) - BAS	2	0	2	0	0
Beaumont (FCC) - BMX	7	1	6	0	0
Beckley (FCI) - BEC	2	1	1	0	0
Bennettsville (FCI) - BEN	5	1	4	0	0
Berlin (FCI) - BER	3	0	1	1	1
Big Sandy (USP) - BSY	1	1	0	0	0
Big Spring (CI) - BSC	6	3	3	0	0
Big Spring (FCI) - BIG	3	2	1	0	0
Brooklyn (MDC) - BRO	5	1	4	0	0
Bryan (FPC) - BRY	4	1	3	0	0
Butner (FCC) - BUX	3	0	3	0	0
Canaan (USP) - CAA	3	0	3	0	0
Carswell (FMC) - CRW	8	2	5	1	0
Chicago (CCM) - CCH	4	2	2	0	0
Chicago (MCC) - CCC	2	0	2	0	0
Cibola County (CI) - CIB	1	0	1	0	0
Cincinnati (CCM) - CCN	5	0	2	3	0
Coleman (FCC) - COX	16	5	10	1	0
Cumberland (FCI) - CUM	5	1	4	0	0
D. Ray James Correctional Fac - DRJ	4	2	1	1	0
Dalby (CI) - DAL	2	0	2	0	0
Dallas (CCM) - CDA	1	0	0	1	0
Danbury (FCI) - DAN	4	1	2	0	1
Detroit (CCM) - CDT	1	0	0	1	0
Devens (FMC) - DEV	1	0	1	0	0
Dublin (FCI) - DUB	5	1	4	0	0
Eden Denton Center (CI) - EDN	1	1	0	0	0
El Reno (FCI) - ERE	2	2	0	0	0
Elkton (FCI) - ELK	1	0	1	0	0
Englewood (FCI) - ENG	2	1	1	0	0
Estill (FCI) - EST	8	1	7	0	0
Fairton (FCI) - FAI	2	0	2	0	0
Florence (FCC) - FLX	44	1	42	1	0
Forrest City (FCC) - FOX	2	0	2	0	0
Fort Dix (FCI) - FTD	3	0	3	0	0
Fort Worth (FCI) - FTW	4	1	3	0	0

2015 Staff-on-Inmate  
Opened Between 01/01/2015 to 12/31/2015

<b>Institution/Facility</b>	<b>Total No. Opened</b>	<b>Closed, Sustained</b>	<b>Closed, Not Sustained</b>	<b>Admin. Closure</b>	<b>Currently Open</b>
Gilmer (FCI) - GIL	5	3	2	0	0
Great Plains Correc. Facility (GPC)	3	1	0	2	0
Greenville (FCI) - GRE	2	0	2	0	0
Guaynabo (MDC) - GUA	2	1	1	0	0
Hazelton (FCC) - HAX	11	1	10	0	0
Herlong (FCI) - HER	4	0	3	1	0
Honolulu (FDC) - HON	1	0	1	0	0
Houston (FDC) - HOU	2	1	1	0	0
Jesup (FCI) - JES	1	0	0	1	0
Kansas City (CCM) - CKC	1	0	0	1	0
La Tuna (FCI) - LAT	5	1	4	0	0
Leavenworth (USP) - LVN	5	0	5	0	0
Lewisburg (USP) - LEW	14	1	13	0	0
Lexington (FMC) - LEX	5	2	3	0	0
Lompoc (FCC) - LOX	4	0	3	1	0
Loretto (FCI) - LOR	3	1	2	0	0
Los Angeles (MDC) - LOS	2	0	1	1	0
Manchester (FCI) - MAN	2	0	2	0	0
Marianna (FCI) - MNA	2	0	2	0	0
Marion (USP) - MAR	3	0	1	1	1
McCreary (USP) - MCR	4	0	4	0	0
McDowell (FCI) - MCD	3	0	3	0	0
McKean (FCI) - MCK	1	0	1	0	0
McRae (CI) - MCA	1	0	1	0	0
Memphis (FCI) - MEM	1	0	1	0	0
Menota (FCI) - MEN	1	0	1	0	0
Miami (FCI) - MIA	1	0	1	0	0
Miami (FDC) - MIM	7	1	5	1	0
Minneapolis (CCM) - CMS	1	0	0	1	0
Montgomery (CCM) - CMY	2	0	0	2	0
Montgomery (FPC) - MON	2	1	1	0	0
Morgantown (FCI) - MRG	1	0	1	0	0
Moshannon Valley (CI) - MVC	5	0	5	0	0
Nashville (CCM) - CNV	1	0	1	0	0
NE Ohio Corr Ctr (CI) - NOC	1	0	0	1	0
New Orleans (CCM) - CNO	2	0	2	0	0
New York (CCM) - CNK	1	0	0	1	0
New York (MCC) - NYM	1	1	0	0	0
Oakdale (FCC) - OAX	2	0	2	0	0
Oklahoma City (FTC) - OKL	2	0	2	0	0
Orlando (CCM) - COR	1	0	1	0	0
Otisville (FCI) - OTV	4	1	3	0	0
Oxford (FCI) - OXF	1	0	1	0	0
Pekin (FCI) - PEK	1	0	1	0	0
Petersburg (FCC) - PEX	2	0	2	0	0

2015 Staff-on-Inmate  
Opened Between 01/01/2015 to 12/31/2015

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Philadelphia (CCM) - CPA	1	1	0	0	0
Philadelphia (FDC) - PHL	2	0	2	0	0
Phoenix (FCI) - PHX	6	3	3	0	0
Pittsburgh (CCM) - CPG	2	0	1	1	0
Pollock (FCC) - POX	5	0	4	1	0
Raleigh (CCM) - CRL	1	0	1	0	0
Ray Brook (FCI) - RBK	2	0	2	0	0
Sacramento (CCM) - CSC	1	0	1	0	0
Safford (FCI) - SAF	1	0	1	0	0
San Antonio (CCM) - CSA	2	1	0	1	0
Sandstone (FCI) - SST	2	0	2	0	0
Schuylkill (FCI) - SCH	2	0	2	0	0
Seagoville (FCI) - SEA	1	0	1	0	0
SeaTac (FDC) - SET	2	1	1	0	0
Seattle (CCM) - CSE	1	0	0	1	0
Springfield (MCFP) - SPG	5	1	3	1	0
St Louis (CCM) - CST	3	1	0	2	0
Taft (CI) - TAF	2	0	2	0	0
Talladega (FCI) - TDG	3	1	2	0	0
Tallahassee (FCI) - TAL	10	0	8	2	0
Terminal Island (FCI) - TRM	3	0	2	1	0
Terre Haute (FCC) - THX	7	1	6	0	0
Texarkana (FCI) - TEX	6	1	5	0	0
Tucson (FCC) - TCX	11	1	10	0	0
Victorville (FCC) - VIX	19	0	8	1	10
Waseca (FCI) - WAS	3	0	2	1	0
Willacy County Corr. Ctr (CI) - WLC	1	0	0	1	0
Williamsburg (FCI) - WIL	1	0	1	0	0
Yazoo City (FCC) - YAX	2	0	2	0	0

2016 Staff-on-Inmate  
Opened Between 01/01/2016 to 12/31/2016

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Adams County Corr CTR (CI) - ACC	3	1	1	1	0
Alderson (FPC) - ALD	1	1	0	0	0
Aliceville (FCI) - ALI	6	1	3	2	0
Allenwood (FCC) - ALX	20	1	18	1	0
Annapolis Junction (CCM) - CBR	4	0	0	4	0
Ashland (FCI) - ASH	4	0	4	0	0
Atlanta (USP) - ATL	10	0	10	0	0
Atwater (USP) - ATW	3	0	2	1	0
Baltimore (CCM) closed - CDR	1	0	0	1	0
Bastrop (FCI) - BAS	2	0	2	0	0
Beaumont (FCC) - BMX	14	4	10	0	0
Beckley (FCI) - BEC	4	2	1	1	0
Bennettsville (FCI) - BEN	8	1	6	0	1
Berlin (FCI) - BER	6	1	4	1	0
Big Sandy (USP) - BSY	2	0	2	0	0
Big Spring (CI) - BSC	7	0	5	2	0
Big Spring (FCI) - BIG	4	2	2	0	0
Brooklyn (MDC) - BRO	7	2	3	2	0
Bryan (FPC) - BRY	1	0	1	0	0
Butner (FCC) - BUX	9	2	5	2	0
Canaan (USP) - CAA	6	1	5	0	0
Carswell (FMC) - CRW	7	2	4	1	0
Chicago (CCM) - CCH	1	0	1	0	0
Chicago (MCC) - CCC	2	0	2	0	0
Cibola County (CI) - CIB	1	0	1	0	0
Cincinnati (CCM) - CCN	2	0	2	0	0
Coleman (FCC) - COX	22	2	20	0	0
Cumberland (FCI) - CUM	2	0	2	0	0
D. Ray James Correctional Fac - DRJ	1	0	0	1	0
Dallas (CCM) - CDA	6	1	3	2	0
Danbury (FCI) - DAN	4	0	2	1	1
Devens (FMC) - DEV	2	0	2	0	0
Dublin (FCI) - DUB	6	1	3	1	1
Edgefield (FCI) - EDG	3	0	3	0	0
El Reno (FCI) - ERE	3	0	3	0	0
Elkton (FCI) - ELK	5	1	4	0	0
Englewood (FCI) - ENG	3	1	2	0	0
Fairton (FCI) - FAI	3	0	3	0	0
Florence (FCC) - FLX	30	1	28	1	0
Forrest City (FCC) - FOX	10	2	8	0	0
Fort Dix (FCI) - FTD	6	2	4	0	0
Fort Worth (FCI) - FTW	9	0	7	2	0
Gilmer (FCI) - GIL	7	0	7	0	0
Great Plains Correc.Facility (GPC)	3	0	2	1	0
Greenville (FCI) - GRE	3	0	3	0	0

2016 Staff-on-Inmate  
Opened Between 01/01/2016 to 12/31/2016

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Guaynabo (MDC) - GUA	2	0	1	1	0
Hazelton (FCC) - HAX	16	2	12	2	0
Herlong (FCI) - HER	1	1	0	0	0
Honolulu (FDC) - HON	3	2	1	0	0
Houston (FDC) - HOU	1	0	1	0	0
Jesup (FCI) - JES	3	0	3	0	0
La Tuna (FCI) - LAT	4	0	3	1	0
Leavenworth (USP) - LVN	2	0	2	0	0
Lee (USP) - LEE	3	0	3	0	0
Lewisburg (USP) - LEW	9	0	9	0	0
Lexington (FMC) - LEX	12	1	8	3	0
Lompoc (FCC) - LOX	2	0	2	0	0
Loretto (FCI) - LOR	1	0	1	0	0
Manchester (FCI) - MAN	2	0	2	0	0
Marianna (FCI) - MNA	7	1	6	0	0
Marion (USP) - MAR	2	0	2	0	0
McCreary (USP) - MCR	5	0	4	1	0
McDowell (FCI) - MCD	1	1	0	0	0
McKean (FCI) - MCK	1	0	1	0	0
Memphis (FCI) - MEM	3	0	3	0	0
Miami (CCM) - CMM	1	0	0	1	0
Miami (FCI) - MIA	3	0	2	0	1
Miami (FDC) - MIM	11	7	4	0	0
Milan (FCI) - MIL	1	0	1	0	0
Montgomery (CCM) - CMY	3	1	0	2	0
Montgomery (FPC) - MON	3	0	3	0	0
Morgantown (FCI) - MRG	2	0	2	0	0
Moshannon Valley (CI) - MVC	6	0	4	2	0
Nashville (CCM) - CNV	3	0	1	2	0
New York (CCM) - CNK	1	0	0	1	0
New York (MCC) - NYM	3	0	3	0	0
Oakdale (FCC) - OAX	2	0	2	0	0
Oklahoma City (FTC) - OKL	4	0	4	0	0
Orlando (CCM) - COR	4	0	2	2	0
Oxford (FCI) - OXF	1	0	1	0	0
Petersburg (FCC) - PEX	11	2	8	0	1
Philadelphia (CCM) - CPA	2	1	0	1	0
Philadelphia (FDC) - PHL	1	0	1	0	0
Phoenix (FCI) - PHX	1	0	1	0	0
Pittsburgh (CCM) - CPG	5	0	5	0	0
Pollock (FCC) - POX	6	1	5	0	0
Raleigh (CCM) - CRL	3	1	1	1	0
Ray Brook (FCI) - RBK	2	0	2	0	0
Reeves I and II (CI) - REE	3	1	2	0	0
Reeves III (CI) - RVS	5	2	3	0	0

2016 Staff-on-Inmate  
Opened Between 01/01/2016 to 12/31/2016

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Rivers (CI) - RIV	6	0	6	0	0
Rochester (FMC) - RCH	2	0	2	0	0
Sacramento (CCM) - CSC	3	1	1	1	0
Safford (FCI) - SAF	1	0	1	0	0
San Antonio (CCM) - CSA	2	0	2	0	0
San Diego (MCC) - SDC	3	0	3	0	0
Schuylkill (FCI) - SCH	1	0	1	0	0
Seagoville (FCI) - SEA	5	0	5	0	0
SeaTac (FDC) - SET	1	0	1	0	0
Sheridan (FCI) - SHE	1	0	0	1	0
Springfield (MCFP) - SPG	3	0	2	1	0
St Louis (CCM) - CST	1	0	0	1	0
Taft (CI) - TAF	3	1	1	1	0
Talladega (FCI) - TDG	3	0	3	0	0
Tallahassee (FCI) - TAL	9	1	5	2	1
Terminal Island (FCI) - TRM	6	0	3	1	2
Terre Haute (FCC) - THX	5	1	4	0	0
Texarkana (FCI) - TEX	5	2	3	0	0
Thomson (AUSP) - TOM	1	1	0	0	0
Three Rivers (FCI) - TRV	1	0	1	0	0
Tucson (FCC) - TCX	11	0	11	0	0
Victorville (FCC) - VIX	16	0	11	1	4
Waseca (FCI) - WAS	5	1	3	1	0
Williamsburg (FCI) - WIL	1	0	1	0	0
Yazoo City (FCC) - YAX	9	1	8	0	0



2017 Staff-on-Inmate  
Opened Between 01/01/2017 to 12/31/2017

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Adams County Corr CTR (CI) - ACC	4	1	1	2	0
Alderson (FPC) - ALD	3	0	2	0	1
Aliceville (FCI) - ALI	4	3	0	0	1
Allenwood (FCC) - ALX	12	0	11	1	0
Annapolis Junction (CCM) - CBR	2	1	0	1	0
Ashland (FCI) - ASH	3	0	3	0	0
Atlanta (CCM) - CAT	4	1	0	3	0
Atlanta (USP) - ATL	8	1	5	0	2
Atwater (USP) - ATW	3	0	3	0	0
Bastrop (FCI) - BAS	1	0	1	0	0
Beaumont (FCC) - BMX	18	3	14	1	0
Beckley (FCI) - BEC	6	1	5	0	0
Bennettsville (FCI) - BEN	4	0	3	1	0
Berlin (FCI) - BER	2	0	2	0	0
Big Sandy (USP) - BSY	5	1	4	0	0
Big Spring (CI) - BSC	7	2	5	0	0
Big Spring (CI) - BSF	1	0	1	0	0
Big Spring (FCI) - BIG	1	0	1	0	0
Brooklyn (MDC) - BRO	8	1	6	1	0
Bryan (FPC) - BRY	5	0	4	0	1
Butner (FCC) - BUX	12	0	10	2	0
Canaan (USP) - CAA	7	0	6	0	1
Carswell (FMC) - CRW	10	3	6	1	0
Chicago (CCM) - CCH	2	0	0	2	0
Chicago (MCC) - CCC	3	0	3	0	0
Coleman (FCC) - COX	28	3	21	4	0
Cumberland (FCI) - CUM	1	0	1	0	0
D. Ray James Correctional Fac - DRJ	2	2	0	0	0
Dalby (CI) - DAL	3	1	2	0	0
Dallas (CCM) - CDA	7	1	1	5	0
Danbury (FCI) - DAN	6	0	3	0	3
Devens (FMC) - DEV	5	0	5	0	0
Dublin (FCI) - DUB	3	2	1	0	0
Eden Denton Center (CI) - EDN	1	1	0	0	0
Edgefield (FCI) - EDG	2	0	2	0	0
El Reno (FCI) - ERE	5	0	4	1	0
Elkton (FCI) - ELK	3	1	2	0	0
Englewood (FCI) - ENG	4	3	1	0	0
Fairton (FCI) - FAI	4	0	4	0	0
Florence (FCC) - FLX	24	6	17	1	0
Forrest City (FCC) - FOX	5	2	3	0	0
Fort Dix (FCI) - FTD	7	0	4	3	0
Gilmer (FCI) - GIL	6	1	5	0	0
Great Plains Correc.Facility (GPC)	2	1	1	0	0
Greenville (FCI) - GRE	2	0	2	0	0

2017 Staff-on-Inmate  
Opened Between 01/01/2017 to 12/31/2017

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Guaynabo (MDC) - GUA	2	1	0	1	0
Hazelton (FCC) - HAX	20	1	17	0	2
Herlong (FCI) - HER	4	0	3	1	0
Honolulu (FDC) - HON	2	0	2	0	0
Houston (CCM) - CHN	2	0	1	1	0
Houston (FDC) - HOU	4	3	1	0	0
Jesup (FCI) - JES	1	0	1	0	0
Kansas City (CCM) - CKC	2	1	0	1	0
La Tuna (FCI) - LAT	3	1	2	0	0
Leavenworth (USP) - LVN	1	0	0	1	0
Lee (USP) - LEE	8	0	8	0	0
Lewisburg (USP) - LEW	6	0	6	0	0
Lexington (FMC) - LEX	20	2	9	7	2
Lompoc (FCC) - LOX	1	0	1	0	0
Los Angeles (MDC) - LOS	2	1	1	0	0
Manchester (FCI) - MAN	5	2	2	1	0
Marianna (FCI) - MNA	3	1	2	0	0
Marion (USP) - MAR	10	0	10	0	0
McCreary (USP) - MCR	9	0	9	0	0
McDowell (FCI) - MCD	4	1	3	0	0
McKean (FCI) - MCK	3	0	2	1	0
Memphis (FCI) - MEM	3	1	1	1	0
Mendota (FCI) - MEN	4	2	2	0	0
Miami (CCM) - CMM	2	0	1	1	0
Miami (FCI) - MIA	1	1	0	0	0
Miami (FDC) - MIM	5	0	5	0	0
Milan (FCI) - MIL	6	2	4	0	0
Minneapolis (CCM) - CMS	1	0	0	1	0
Montgomery (CCM) - CMY	1	0	0	1	0
Montgomery (FPC) - MON	1	0	1	0	0
Morgantown (FCI) - MRG	1	0	1	0	0
Nashville (CCM) - CNV	6	0	2	4	0
New York (MCC) - NYM	4	0	4	0	0
Oakdale (FCC) - OAX	6	0	5	1	0
Oklahoma City (FTC) - OKL	1	1	0	0	0
Orlando (CCM) - COR	3	0	1	2	0
Otisville (FCI) - OTV	5	1	4	0	0
Oxford (FCI) - OXF	4	0	2	2	0
Pekin (FCI) - PEK	3	0	3	0	0
Petersburg (FCC) - PEX	3	0	2	0	1
Philadelphia (CCM) - CPA	2	0	1	1	0
Philadelphia (FDC) - PHL	3	1	2	0	0
Phoenix (FCI) - PHX	7	2	3	2	0
Pittsburgh (CCM) - CPG	4	0	3	1	0
Pollock (FCC) - POX	7	0	7	0	0

2017 Staff-on-Inmate  
Opened Between 01/01/2017 to 12/31/2017

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Raleigh (CCM) - CRL	1	0	0	1	0
Ray Brook (FCI) - RBK	4	0	3	1	0
Reeves I and II (CI) - REE	1	1	0	0	0
Reeves III (CI) - RVS	4	4	0	0	0
Rivers (CI) - RIV	1	0	1	0	0
Rochester (FMC) - RCH	1	0	1	0	0
Sacramento (CCM) - CSC	2	1	0	1	0
Safford (FCI) - SAF	3	0	3	0	0
San Antonio (CCM) - CSA	4	0	1	3	0
San Diego (MCC) - SDC	1	0	0	1	0
Sandstone (FCI) - SST	2	1	1	0	0
Schuylkill (FCI) - SCH	4	2	2	0	0
Seagoville (FCI) - SEA	4	2	2	0	0
Sheridan (FCI) - SHE	3	0	3	0	0
Springfield (MCFP) - SPG	3	0	3	0	0
St Louis (CCM) - CST	2	1	0	1	0
Taft (CI) - TAF	1	1	0	0	0
Talladega (FCI) - TDG	1	0	0	1	0
Tallahassee (FCI) - TAL	11	1	6	2	2
Terminal Island (FCI) - TRM	1	0	0	1	0
Terre Haute (FCC) - THX	7	0	7	0	0
Tucson (FCC) - TCX	15	2	13	0	0
Victorville (FCC) - VIX	10	1	6	1	2
Waseca (FCI) - WAS	2	0	1	0	1
Western Regional Office - WYO	1	0	1	0	0
Williamsburg (FCI) - WIL	5	0	4	0	1
Yankton (FPC) - YAN	1	0	1	0	0
Yazoo City (FCC) - YAX	7	2	4	1	0

2018 Staff-on-Inmate  
Opened Between 01/01/2018 to 12/31/2018

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Adams County Corr CTR (CI) - ACC	6	3	3	0	0
Alderson (FPC) - ALD	3	0	1	0	2
Aliceville (FCI) - ALI	3	0	2	0	1
Allenwood (FCC) - ALX	14	2	11	0	1
Annapolis Junction (CCM) - CBR	3	1	1	1	0
Ashland (FCI) - ASH	2	0	2	0	0
Atlanta (CCM) - CAT	1	1	0	0	0
Atlanta (USP) - ATL	9	0	5	1	3
Atwater (USP) - ATW	4	0	4	0	0
Bastrop (FCI) - BAS	2	0	2	0	0
Beaumont (FCC) - BMX	17	1	16	0	0
Beckley (FCI) - BEC	4	1	3	0	0
Bennettsville (FCI) - BEN	3	0	3	0	0
Berlin (FCI) - BER	4	1	2	1	0
Big Sandy (USP) - BSY	5	0	3	2	0
Big Spring (CI) - BSC	1	0	1	0	0
Big Spring (FCI) - BIG	5	0	4	1	0
Brooklyn (MDC) - BRO	7	1	2	0	4
Bryan (FPC) - BRY	4	0	0	0	4
Butner (FCC) - BUX	21	2	18	1	0
Canaan (USP) - CAA	16	1	14	0	1
Carswell (FMC) - CRW	8	1	6	1	0
Central Office - COF	1	1	0	0	0
Chicago (MCC) - CCC	2	1	1	0	0
Coleman (FCC) - COX	34	7	20	5	2
Cumberland (FCI) - CUM	3	0	3	0	0
D. Ray James Correctional Fac - DRJ	2	2	0	0	0
Dalby (CI) - DAL	2	0	0	2	0
Dallas (CCM) - CDA	4	0	2	2	0
Danbury (FCI) - DAN	7	1	3	0	3
Detroit (CCM) - CDT	1	0	0	1	0
Devens (FMC) - DEV	2	1	1	0	0
Dublin (FCI) - DUB	4	1	1	0	2
Duluth (FPC) - DTH	3	0	3	0	0
Edgefield (FCI) - EDG	11	0	8	1	2
El Reno (FCI) - ERE	2	1	1	0	0
Elkton (FCI) - ELK	5	1	3	1	0
Estill (FCI) - EST	1	0	0	0	1
Fairton (FCI) - FAI	3	2	1	0	0
Florence (FCC) - FLX	15	2	13	0	0
Forrest City (FCC) - FOX	7	2	4	0	1
Fort Dix (FCI) - FTD	18	0	14	3	1
Fort Worth (FCI) - FTW	1	0	0	1	0
Fort Worth (FMC) - FTW	2	1	1	0	0
Gilmer (FCI) - GIL	4	1	3	0	0

2018 Staff-on-Inmate  
Opened Between 01/01/2018 to 12/31/2018

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Greenville (FCI) - GRE	5	0	4	1	0
Guaynabo (MDC) - GUA	2	0	2	0	0
Hazelton (FCC) - HAX	14	3	8	3	0
Herlong (FCI) - HER	5	0	1	2	2
Honolulu (FDC) - HON	2	1	0	0	1
Houston (CCM) - CHN	3	0	2	1	0
Houston (FDC) - HOU	1	0	1	0	0
Jesup (FCI) - JES	5	0	3	0	2
La Tuna (FCI) - LAT	1	0	1	0	0
Leavenworth (USP) - LVN	8	0	8	0	0
Lee (USP) - LEE	3	0	3	0	0
Lewisburg (USP) - LEW	12	0	12	0	0
Lexington (FMC) - LEX	21	3	12	4	2
Long Beach (CCM) - CLB	1	0	0	1	0
Loretto (FCI) - LOR	1	0	1	0	0
Los Angeles (MDC) - LOS	1	0	0	0	1
Manchester (FCI) - MAN	1	0	1	0	0
Marianna (FCI) - MNA	2	0	2	0	0
Marion (USP) - MAR	7	0	7	0	0
McCreary (USP) - MCR	16	0	16	0	0
McDowell (FCI) - MCD	3	0	3	0	0
McKean (FCI) - MCK	10	1	9	0	0
McRae (CI) - MCA	2	0	1	1	0
Memphis (FCI) - MEM	9	1	6	0	2
Mendota (FCI) - MEN	1	0	0	1	0
Miami (FCI) - MIA	2	1	1	0	0
Miami (FDC) - MIM	2	1	1	0	0
Minneapolis (CCM) - CMS	3	0	2	1	0
Montgomery (CCM) - CMY	1	0	0	1	0
Montgomery (FPC) - MON	1	0	1	0	0
Morgantown (FCI) - MRG	2	0	2	0	0
Moshannon Valley (CI) - MVC	1	0	1	0	0
New York (CCM) - CNK	3	1	1	1	0
New York (MCC) - NYM	2	1	1	0	0
Oakdale (FCC) - OAX	3	0	2	0	1
Oklahoma City (FTC) - OKL	3	1	2	0	0
Orlando (CCM) - COR	2	0	1	1	0
Otisville (FCI) - OTV	4	1	0	2	1
Oxford (FCI) - OXF	3	0	3	0	0
Pekin (FCI) - PEK	8	0	6	2	0
Petersburg (FCC) - PEX	7	1	4	0	2
Philadelphia (FDC) - PHL	3	1	2	0	0
Phoenix (CCM) - CPH	5	0	4	1	0
Phoenix (FCI) - PHX	1	0	1	0	0
Pittsburgh (CCM) - CPG	2	0	1	1	0

2018 Staff-on-Inmate  
Opened Between 01/01/2018 to 12/31/2018

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Pollock (FCC) - POX	10	1	9	0	0
Ray Brook (FCI) - RBK	8	0	7	1	0
Reeves III (CI) - RVS	3	0	3	0	0
Rivers (CI) - RIV	4	0	3	1	0
Rochester (FMC) - RCH	6	1	4	1	0
Sacramento (CCM) - CSC	4	0	0	4	0
Safford (FCI) - SAF	5	0	4	1	0
San Antonio (CCM) - CSA	3	0	0	3	0
San Diego (MCC) - SDC	4	1	2	1	0
Sandstone (FCI) - SST	1	0	1	0	0
Schuylkill (FCI) - SCH	2	1	0	0	1
Seagoville (FCI) - SEA	3	1	2	0	0
Sheridan (FCI) - SHE	8	0	8	0	0
South Central Regional Office - SCO	1	0	1	0	0
Springfield (MCFP) - SPG	11	0	11	0	0
St Louis (CCM) - CST	1	0	0	1	0
Taft (CI) - TAF	2	0	2	0	0
Talladega (FCI) - TDG	1	0	1	0	0
Tallahassee (FCI) - TAL	11	0	6	1	4
Terminal Island (FCI) - TRM	2	0	1	0	1
Terre Haute (FCC) - THX	8	0	6	1	1
Texarkana (FCI) - TEX	5	1	4	0	0
Three Rivers (FCI) - TRV	4	0	3	1	0
Tucson (FCC) - TCX	21	1	19	1	0
Victorville (FCC) - VIX	6	2	1	0	3
Waseca (FCI) - WAS	2	0	1	1	0
Williamsburg (FCI) - WIL	2	0	2	0	0
Yankton (FPC) - YAN	1	1	0	0	0
Yazoo City (FCC) - YAX	13	0	12	0	1

2019 Staff-on-Inmate  
Opened Between 01/01/2019 to 12/31/2019

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Adams County Corr CTR (CI) - ACC	2	0	0	2	0
Alderson (FPC) - ALD	2	0	2	0	0
Aliceville (FCI) - ALI	8	0	0	0	8
Allenwood (FCC) - ALX	13	0	13	0	0
Annapolis Junction (CCM) - CBR	1	0	0	1	0
Ashland (FCI) - ASH	5	0	5	0	0
Atlanta (CCM) - CAT	1	0	0	1	0
Atlanta (USP) - ATL	7	0	4	1	2
Atwater (USP) - ATW	3	0	1	1	1
Bastrop (FCI) - BAS	3	0	3	0	0
Beaumont (FCC) - BMX	16	0	11	4	1
Beckley (FCI) - BEC	8	1	7	0	0
Bennettsville (FCI) - BEN	1	0	1	0	0
Berlin (FCI) - BER	6	0	4	0	2
Big Sandy (USP) - BSY	4	0	4	0	0
Big Spring (CI) - BSC	4	1	0	3	0
Big Spring (CI) - BSF	2	0	1	1	0
Big Spring (FCI) - BIG	1	0	1	0	0
Brooklyn (MDC) - BRO	13	1	4	1	7
Bryan (FPC) - BRY	2	0	2	0	0
Butner (FCC) - BUX	13	1	9	2	1
Canaan (USP) - CAA	5	2	2	0	1
Carswell (FMC) - CRW	5	0	4	1	0
Central Office - COF	1	1	0	0	0
Chicago (MCC) - CCC	1	1	0	0	0
Coleman (FCC) - COX	40	5	21	7	7
Cumberland (FCI) - CUM	1	0	1	0	0
D. Ray James Correctional Fac - DRJ	2	0	0	2	0
Dallas (CCM) - CDA	1	0	0	0	1
Danbury (FCI) - DAN	4	0	2	0	2
Devens (FMC) - DEV	4	0	1	2	1
Dublin (FCI) - DUB	3	0	1	0	2
Duluth (FPC) - DTH	1	0	1	0	0
Edgefield (FCI) - EDG	2	1	0	1	0
El Reno (FCI) - ERE	1	0	1	0	0
Elkton (FCI) - ELK	4	1	3	0	0
Englewood (FCI) - ENG	3	0	3	0	0
Estill (FCI) - EST	3	0	2	0	1
Fairton (FCI) - FAI	3	1	1	1	0
Florence (FCC) - FLX	10	0	9	1	0
Forrest City (FCC) - FOX	8	0	8	0	0
Fort Dix (FCI) - FTD	7	2	1	2	2
Fort Worth (FCI) - FTW	1	0	1	0	0
Fort Worth (FMC) - FTW	3	1	2	0	0
Gilmer (FCI) - GIL	9	0	9	0	0

2019 Staff-on-Inmate  
Opened Between 01/01/2019 to 12/31/2019

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Great Plains Correc.Facility (GPC)	3	0	0	3	0
Greenville (FCI) - GRE	3	0	3	0	0
Guaynabo (MDC) - GUA	1	0	0	0	1
Hazelton (FCC) - HAX	13	1	10	0	2
Herlong (FCI) - HER	3	0	0	2	1
Honolulu (FDC) - HON	2	0	2	0	0
Houston (CCM) - CHN	3	0	2	1	0
Houston (FDC) - HOU	4	0	2	1	1
Jesup (FCI) - JES	6	0	4	0	2
Kansas City (CCM) - CKC	1	0	1	0	0
Lee (USP) - LEE	8	0	7	0	1
Lewisburg (USP) - LEW	12	0	11	0	1
Lexington (FMC) - LEX	7	2	4	0	1
Lompoc (FCC) - LOX	8	0	8	0	0
Long Beach (CCM) - CLB	2	0	0	1	1
Loretto (FCI) - LOR	5	0	4	0	1
Manchester (FCI) - MAN	2	0	2	0	0
Marianna (FCI) - MNA	2	2	0	0	0
Marion (USP) - MAR	6	0	6	0	0
McCreary (USP) - MCR	20	0	12	1	7
McDowell (FCI) - MCD	1	1	0	0	0
McKean (FCI) - MCK	1	0	1	0	0
Memphis (FCI) - MEM	5	1	2	0	2
Mendota (FCI) - MEN	3	0	1	2	0
Miami (FCI) - MIA	2	0	1	0	1
Miami (FDC) - MIM	3	0	1	2	0
Milan (FCI) - MIL	1	0	0	0	1
Minneapolis (CCM) - CMS	2	1	0	1	0
Montgomery (FPC) - MON	2	0	1	0	1
Morgantown (FCI) - MRG	3	0	2	1	0
New York (MCC) - NYM	1	0	0	1	0
Oakdale (FCC) - OAX	2	0	2	0	0
Oklahoma City (FTC) - OKL	1	0	1	0	0
Orlando (CCM) - COR	4	0	1	3	0
Otisville (FCI) - OTV	1	0	1	0	0
Oxford (FCI) - OXF	5	2	2	1	0
Pekin (FCI) - PEK	3	1	2	0	0
Petersburg (FCC) - PEX	2	0	1	0	1
Philadelphia (CCM) - CPA	1	0	0	1	0
Philadelphia (FDC) - PHL	5	0	4	1	0
Phoenix (CCM) - CPH	3	2	1	0	0
Phoenix (FCI) - PHX	7	2	1	2	2
Pittsburgh (CCM) - CPG	5	0	1	4	0
Pollock (FCC) - POX	3	0	1	2	0
Raleigh (CCM) - CRL	1	0	0	1	0



2019 Staff-on-Inmate  
Opened Between 01/01/2019 to 12/31/2019

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Ray Brook (FCI) - RBK	4	0	3	0	1
Reeves III (CI) - RVS	3	1	2	0	0
Rivers (CI) - RIV	5	1	1	3	0
Rochester (FMC) - RCH	4	0	3	1	0
Sacramento (CCM) - CSC	2	0	1	1	0
Safford (FCI) - SAF	7	0	4	0	3
San Antonio (CCM) - CSA	1	0	0	1	0
San Diego (MCC) - SDC	2	1	1	0	0
Sandstone (FCI) - SST	1	0	1	0	0
Schuykill (FCI) - SCH	7	0	3	0	4
Seagoville (FCI) - SEA	6	0	3	0	3
SeaTac (FDC) - SET	6	1	5	0	0
Seattle (CCM) - CSE	3	0	1	2	0
Sheridan (FCI) - SHE	4	0	4	0	0
Springfield (MCFP) - SPG	2	1	1	0	0
Taft (CI) - TAF	2	0	1	1	0
Talladega (FCI) - TDG	9	0	4	0	5
Tallahassee (FCI) - TAL	13	3	5	2	3
Terminal Island (FCI) - TRM	1	1	0	0	0
Terre Haute (FCC) - THX	5	1	2	0	2
Texarkana (FCI) - TEX	7	1	6	0	0
Thomson (AUSP) - TOM	11	0	10	1	0
Three Rivers (FCI) - TRV	2	0	1	1	0
Tucson (FCC) - TCX	15	0	14	1	0
Victorville (FCC) - VIX	15	1	2	1	11
Waseca (FCI) - WAS	2	0	2	0	0
Williamsburg (FCI) - WIL	5	0	2	1	2
Yankton (FPC) - YAN	4	0	4	0	0
Yazoo City (FCC) - YAX	9	1	6	2	0

2020 Staff-on-Inmate  
Opened Between 01/01/2020 to 12/31/2020

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Alderson (FPC) - ALD	1	0	1	0	0
Aliceville (FCI) - ALI	10	0	3	0	7
Allenwood (FCC) - ALX	12	2	5	1	4
Annapolis Junction (CCM) - CBR	1	0	1	0	0
Ashland (FCI) - ASH	2	0	2	0	0
Atlanta (CCM) - CAT	4	0	0	3	1
Atlanta (USP) - ATL	7	1	3	1	2
Atwater (USP) - ATW	2	1	1	0	0
Bastrop (FCI) - BAS	7	1	6	0	0
Beaumont (FCC) - BMX	6	0	3	0	3
Beckley (FCI) - BEC	3	0	3	0	0
Bennettsville (FCI) - BEN	1	0	1	0	0
Big Sandy (USP) - BSY	5	0	1	0	4
Big Spring (CI) - BSC	7	2	0	3	2
Big Spring (FCI) - BIG	1	0	0	0	1
Brooklyn (MDC) - BRO	20	0	3	2	15
Bryan (FPC) - BRY	4	0	2	0	2
Butner (FCC) - BUX	6	1	3	0	2
Canaan (USP) - CAA	2	0	1	0	1
Carswell (FMC) - CRW	5	0	0	3	2
Chicago (MCC) - CCC	4	1	1	2	0
Cincinnati (CCM) - CCN	5	0	1	4	0
Coleman (FCC) - COX	43	1	23	3	16
D. Ray James Correctional Fac - DRJ	1	0	1	0	0
Dalby (CI) - DAL	5	0	4	1	0
Dallas (CCM) - CDA	7	0	1	3	3
Danbury (FCI) - DAN	7	0	1	0	6
Detroit (CCM) - CDT	2	1	0	0	1
Devens (FMC) - DEV	3	0	3	0	0
Dublin (FCI) - DUB	3	0	0	0	3
Eden Denton Center (CI) - EDN	1	0	1	0	0
Edgefield (FCI) - EDG	2	1	0	0	1
El Reno (FCI) - ERE	5	0	2	0	3
Elkton (FCI) - ELK	3	0	0	0	3
Englewood (FCI) - ENG	2	0	1	1	0
Estill (FCI) - EST	1	0	1	0	0
Fairton (FCI) - FAI	5	0	4	1	0
Florence (FCC) - FLX	17	0	14	1	2
Forrest City (FCC) - FOX	4	0	3	1	0
Fort Dix (FCI) - FTD	3	0	2	0	1
Fort Worth (FCI) - FTW	2	0	2	0	0
Fort Worth (FMC) - FTW	3	1	1	0	1
Gilmer (FCI) - GIL	2	0	1	0	1
Great Plains Correc.Facility (GPC)	4	1	0	3	0
Greenville (FCI) - GRE	9	2	5	1	1

2020 Staff-on-Inmate  
Opened Between 01/01/2020 to 12/31/2020

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Hazelton (FCC) - HAX	11	2	4	0	5
Herlong (FCI) - HER	3	2	0	1	0
Honolulu (FDC) - HON	2	1	0	0	1
Houston (CCM) - CHN	2	1	0	0	1
Houston (FDC) - HOU	3	0	0	0	3
Jesup (FCI) - JES	6	0	5	0	1
Kansas City (CCM) - CKC	2	0	0	2	0
La Tuna (FCI) - LAT	3	0	2	0	1
Leavenworth (USP) - LVN	3	0	3	0	0
Lee (USP) - LEE	3	0	3	0	0
Lewisburg (USP) - LEW	1	0	1	0	0
Lexington (FMC) - LEX	4	1	2	0	1
Lompoc (FCC) - LOX	2	0	2	0	0
Long Beach (CCM) - CLB	4	0	0	3	1
Loretto (FCI) - LOR	3	0	3	0	0
Los Angeles (MDC) - LOS	2	1	1	0	0
Manchester (FCI) - MAN	5	0	5	0	0
Marianna (FCI) - MNA	2	2	0	0	0
Marion (USP) - MAR	8	0	6	0	2
McCreary (USP) - MCR	4	0	3	0	1
McDowell (FCI) - MCD	2	0	2	0	0
McKean (FCI) - MCK	5	0	3	1	1
McRae (CI) - MCA	3	1	1	0	1
Memphis (FCI) - MEM	5	0	1	0	4
Miami (FCI) - MIA	1	0	0	0	1
Miami (FDC) - MIM	2	1	0	0	1
Minneapolis (CCM) - CMS	4	0	1	3	0
Morgantown (FCI) - MRG	1	0	1	0	0
Moshannon Valley (CI) - MVC	4	1	2	1	0
Nashville (CCM) - CNV	3	0	0	3	0
New York (CCM) - CNK	3	2	0	1	0
New York (MCC) - NYM	2	0	0	1	1
North Lake Corr. Ctr (CI) - NLK	2	0	0	2	0
Oakdale (FCC) - OAX	3	0	2	0	1
Oklahoma City (FTC) - OKL	2	0	2	0	0
Orlando (CCM) - COR	3	1	1	1	0
Otisville (FCI) - OTV	1	1	0	0	0
Oxford (FCI) - OXF	2	0	1	1	0
Pekin (FCI) - PEK	2	0	1	0	1
Petersburg (FCC) - PEX	11	3	1	0	7
Philadelphia (CCM) - CPA	3	0	0	3	0
Philadelphia (FDC) - PHL	7	1	6	0	0
Phoenix (FCI) - PHX	2	2	0	0	0
Pittsburgh (CCM) - CPG	2	1	0	1	0
Pollock (FCC) - POX	3	1	2	0	0

2020 Staff-on-Inmate  
Opened Between 01/01/2020 to 12/31/2020

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Raleigh (CCM) - CRL	1	0	1	0	0
Reeves I and II (CI) - REE	2	1	0	1	0
Reeves III (CI) - RVS	4	0	3	1	0
Rivers (CI) - RIV	7	0	4	3	0
Rochester (FMC) - RCH	2	0	2	0	0
Sacramento (CCM) - CSC	2	2	0	0	0
Safford (FCI) - SAF	3	2	1	0	0
San Antonio (CCM) - CSA	1	0	0	0	1
Sandstone (FCI) - SST	2	0	0	2	0
Schuylkill (FCI) - SCH	7	0	0	0	7
Seagoville (FCI) - SEA	5	0	1	0	4
SeaTac (FDC) - SET	3	0	2	0	1
Seattle (CCM) - CSE	1	0	0	1	0
Sheridan (FCI) - SHE	3	0	0	2	1
Springfield (MCFP) - SPG	9	1	8	0	0
St Louis (CCM) - CST	1	0	0	1	0
Taft (CI) - TAF	1	0	0	1	0
Talladega (FCI) - TDG	5	0	2	0	3
Tallahassee (FCI) - TAL	6	0	0	2	4
Terre Haute (FCC) - THX	10	0	4	0	6
Texarkana (FCI) - TEX	3	0	3	0	0
Thomson (AUSP) - TOM	18	0	10	3	5
Three Rivers (FCI) - TRV	2	2	0	0	0
Tucson (FCC) - TCX	12	0	12	0	0
Victorville (FCC) - VIX	11	0	0	0	11
Waseca (FCI) - WAS	3	0	3	0	0
Williamsburg (FCI) - WIL	3	0	2	0	1
Yazoo City (FCC) - YAX	11	0	5	1	5

2021 Staff-on-Inmate  
Opened Between 01/01/2021 to 12/31/2021

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Alderson (FPC) - ALD	6	0	4	0	2
Aliceville (FCI) - ALI	8	0	4	0	4
Allenwood (FCC) - ALX	5	0	1	1	3
Ashland (FCI) - ASH	2	0	2	0	0
Atlanta (CCM) - CAT	1	0	1	0	0
Atlanta (USP) - ATL	26	0	7	1	18
Atwater (USP) - ATW	3	0	0	1	2
Baltimore (CCM) closed - CDR	1	0	0	1	0
Bastrop (FCI) - BAS	3	0	1	1	1
Beaumont (FCC) - BMX	14	1	1	1	11
Beckley (FCI) - BEC	7	1	5	0	1
Bennettsville (FCI) - BEN	4	0	2	0	2
Berlin (FCI) - BER	8	0	4	0	4
Big Sandy (USP) - BSY	1	0	1	0	0
Big Spring (CI) - BSC	5	0	5	0	0
Big Spring (CI) - BSF	1	0	1	0	0
Big Spring (FCI) - BIG	3	0	1	0	2
Brooklyn (MDC) - BRO	15	0	4	0	11
Bryan (FPC) - BRY	2	0	1	0	1
Butner (FCC) - BUX	5	0	2	0	3
Canaan (USP) - CAA	4	0	0	0	4
Carswell (FMC) - CRW	7	1	1	1	4
Central Office - COF	1	0	0	1	0
Chicago (CCM) - CCH	3	0	0	3	0
Chicago (MCC) - CCC	6	0	5	0	1
Cincinnati (CCM) - CCN	6	0	0	6	0
Coleman (FCC) - COX	23	0	8	3	12
Dalby (CI) - DAL	5	0	2	1	2
Dallas (CCM) - CDA	5	0	2	3	0
Danbury (FCI) - DAN	3	0	0	0	3
Detroit (CCM) - CDT	1	0	0	0	1
Dublin (FCI) - DUB	5	0	0	0	5
Edgefield (FCI) - EDG	6	2	0	0	4
El Reno (FCI) - ERE	4	0	0	0	4
Englewood (FCI) - ENG	3	0	2	0	1
Fairton (FCI) - FAI	1	0	1	0	0
Florence (FCC) - FLX	6	0	6	0	0
Forrest City (FCC) - FOX	1	0	0	1	0
Fort Dix (FCI) - FTD	6	1	0	0	5
Fort Worth (FMC) - FTW	2	0	0	1	1
Gilmer (FCI) - GIL	6	1	3	2	0
Greenville (FCI) - GRE	1	0	1	0	0
Hazelton (FCC) - HAX	5	0	4	0	1
Honolulu (FDC) - HON	2	0	2	0	0
Houston (FDC) - HOU	4	0	3	0	1

2021 Staff-on-Inmate  
Opened Between 01/01/2021 to 12/31/2021

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
Jesup (FCI) - JES	3	0	2	0	1
Kansas City (CCM) - CKC	2	0	0	2	0
La Tuna (FCI) - LAT	3	0	1	0	2
Leavenworth (USP) - LVN	2	0	2	0	0
Lee (USP) - LEE	2	0	1	0	1
Lewisburg (USP) - LEW	3	1	1	0	1
Lexington (FMC) - LEX	5	1	0	0	4
Lompoc (FCC) - LOX	3	0	2	1	0
Long Beach (CCM) - CLB	2	0	0	2	0
Los Angeles (MDC) - LOS	2	0	0	0	2
Marianna (FCI) - MNA	1	0	1	0	0
Marion (USP) - MAR	1	0	0	0	1
McCreary (USP) - MCR	3	0	2	0	1
McKean (FCI) - MCK	1	0	0	0	1
McRae (CI) - MCA	1	0	0	1	0
Memphis (FCI) - MEM	4	0	0	0	4
Mendota (FCI) - MEN	4	0	2	0	2
Miami (FCI) - MIA	3	0	3	0	0
Miami (FDC) - MIIM	4	0	0	0	4
Minneapolis (CCM) - CMS	1	0	0	1	0
Montgomery (CCM) - CMY	8	0	2	6	0
Montgomery (FPC) - MON	1	0	1	0	0
Nashville (CCM) - CNV	1	0	0	1	0
New York (CCM) - CNK	2	0	1	1	0
New York (MCC) - NYM	3	0	1	0	2
North Lake Corr. Ctr (CI) - NLK	6	0	4	2	0
Oakdale (FCC) - OAX	1	0	1	0	0
Oklahoma City (FTC) - OKL	3	0	1	0	2
Orlando (CCM) - COR	5	0	0	4	1
Otisville (FCI) - OTV	1	0	0	0	1
Oxford (FCI) - OXF	1	0	0	1	0
Pekin (FCI) - PEK	2	0	0	1	1
Pensacola (FPC) - PEN	1	0	0	0	1
Petersburg (FCC) - PEX	7	0	1	0	6
Philadelphia (FDC) - PHL	5	2	2	0	1
Phoenix (CCM) - CPH	3	0	1	2	0
Phoenix (FCI) - PHX	3	1	1	0	1
Pittsburgh (CCM) - CPG	2	0	0	2	0
Pollock (FCC) - POX	2	0	1	0	1
Raleigh (CCM) - CRL	2	0	0	2	0
Ray Brook (FCI) - RBK	3	1	0	0	2
Reeves I and II (CI) - REE	1	0	0	1	0
Sacramento (CCM) - CSC	2	0	0	2	0
Safford (FCI) - SAF	2	1	0	0	1
San Antonio (CCM) - CSA	4	0	2	2	0

2021 Staff-on-Inmate  
Opened Between 01/01/2021 to 12/31/2021

<u>Institution/Facility</u>	<u>Total No. Opened</u>	<u>Closed, Sustained</u>	<u>Closed, Not Sustained</u>	<u>Admin. Closure</u>	<u>Currently Open</u>
San Diego (MCC) - SDC	5	0	3	1	1
Sandstone (FCI) - SST	4	0	1	2	1
Schuykill (FCI) - SCH	5	0	1	0	4
Seagoville (FCI) - SEA	6	0	1	0	5
SeaTac (FDC) - SET	3	0	0	1	2
Seattle (CCM) - CSE	3	1	0	2	0
Sheridan (FCI) - SHE	5	0	0	0	5
Springfield (MCFP) - SPG	3	0	2	0	1
St Louis (CCM) - CST	2	0	0	2	0
Talladega (FCI) - TDG	4	0	0	0	4
Tallahassee (FCI) - TAL	8	0	3	1	4
Terminal Island (FCI) - TRM	1	0	0	0	1
Terre Haute (FCC) - THX	8	0	0	0	8
Texarkana (FCI) - TEX	5	2	2	0	1
Thomson (AUSP) - TOM	13	0	4	0	9
Tucson (FCC) - TCX	6	0	4	0	2
Victorville (FCC) - VIX	14	0	1	1	12
Waseca (FCI) - WAS	1	0	0	1	0
Williamsburg (FCI) - WIL	2	0	0	0	2
Yazoo City (FCC) - YAX	4	0	1	0	3



**Statement of Kevin Ring, President, FAMM**  
Senate Permanent Subcommittee on Investigations, Hearing on  
“Sexual Abuse of Female Inmates in Federal Prisons”  
December 13, 2022

On behalf of the board, staff, and members of FAMM (formerly known as Families Against Mandatory Minimums), I am grateful to the leadership of this subcommittee for holding a hearing on one of the most pressing issues facing the federal Bureau of Prisons (BOP). Exposing the horrifying truth of sexual abuse against incarcerated people is the necessary first step to ending such conduct and mitigating the harm it has inflicted. Much attention has been paid to prosecuting abusers but too little to making whole the survivors. We write with some ways to address that failure: securing release for victims of abuse and implementing independent oversight of federal prisons to prevent others from being abused.

Founded in 1991, FAMM’s mission is to create a more fair and effective justice system that respects our American values of individual accountability and dignity while keeping our communities safe. We work with incarcerated persons and their families to educate policymakers and the public about the harm caused by counterproductive sentencing laws and prison policies. We are in touch with 43,000 people in federal prison weekly. We are acutely aware of the challenges they face. We believe sexual abuse should not be one of them.

The Department of Justice (DOJ) is holding certain BOP personnel accountable by bringing criminal prosecutions against the culpable FCI Dublin staff. The Department has secured four convictions so far, and additional indictments, including that of FCI Dublin’s former warden, Ray Garcia, whose jury trial ended last week. It also responded to the galling accounts of abuse at FCI Dublin by creating a task force to examine the situation there and in other facilities. While we commend these measures, we have urged the DOJ to do more.<sup>1</sup> Many of the women who have survived abuse remained incarcerated, surrounded by the colleagues of their abusers, with little to no opportunity to heal.

None of the survivors were sentenced to endure sexual abuse and violence. The government has failed to protect these women, who were in their care and custody. These women should be sent home to heal, so long as they do not present a threat to public safety. The

---

<sup>1</sup> FAMM has sent two letters to the Deputy Attorney General, urging the DOJ to use the tools at its disposal -- including compassionate release, Rule 35 motions, and U visas -- to provide relief to women who have been abused while under the care and custody of the United States government.



DOJ can move for their release in one of two ways: (1) compassionate release or (2) Federal Rule of Criminal Procedure, Rule 35.

The BOP can refer compassionate release motions to the U.S. Attorney for filing when it finds extraordinary and compelling reasons warrant a reduction in sentence.<sup>2</sup> The Sentencing Commission policy statement on compassionate release describes certain grounds, such as terminal or serious illness, that constitute such extraordinary and compelling reasons.<sup>3</sup> The program statement also affords the BOP the authority to identify “other reasons” beyond those that alone or in combination with described criteria merit compassionate release.<sup>4</sup> It is hard to imagine a circumstance more extraordinary and compelling than the abuse of an incarcerated individual by people charged to protect her and control her movements. Holding perpetrators accountable and removing survivors from immediate danger are important, but not sufficient. Forcing women to remain incarcerated means they revisit their trauma daily.

The BOP should recognize that known survivors have extraordinary and compelling reasons for release. But to date, the BOP has not referred a single case for compassionate release to the U.S. Attorney based on sexual violence.

Many survivors of sexual abuse at FCI Dublin and elsewhere have bravely cooperated with U.S. Attorney offices to help DOJ hold their abusers accountable. These prosecutions are a priority of DOJ leadership. The information and testimony provided by survivors has been essential to the successful prosecutions of BOP personnel who broke the law. And yet, the women whose testimony was chief evidence in DOJ’s criminal investigation and prosecution remain behind bars in a setting that only exacerbates their trauma. Let there be no doubt: Contributing to a criminal prosecution as a victim of sexual abuse comes at great expense; many survivors have reported retaliation from prison officials for assisting the government in the investigation, prosecution, and sentencing in the cases of BOP officials. One survivor who testified in the Garcia trial explained the consequences:

It's a death sentence to report (on an officer) . . . I have been tormented there. I live in fear every single day because of this. People are telling me all this is my fault. Getting sentenced to 15 years is nothing compared to [t]his. Nobody in this room could understand the fear unless you've worn these clothes. These guards, they play God with your life.<sup>5</sup>

---

<sup>2</sup> 18 U.S.C. § 3582(c)(1)(A)(i).

<sup>3</sup> USSG § 1B1.13.

<sup>4</sup> USSG § 1B1.13, comment (n.1 (D)).

<sup>5</sup> Lisa Fernandez & Cristina Rendon, KTVU FOX, *Ex-FCI Dublin prison warden went from 'sweet to pornographic,' victim says at sex abuse trial*, (Nov. 28, 2022), <https://www.ktvu.com/news/ex-fci-dublin-prison-warden-went-from-sweet-to-pornographic-victim-says-at-sex-abuse-trial>.

Only the DOJ can bring a motion for a reduction of sentence for substantial assistance on behalf of survivors of sexual abuse whose cooperation has assisted the government's effort to prosecute perpetrators. Bringing forward such a motion would recognize the brave contribution of cooperating survivors and perhaps encourage other similarly situated individuals to reach out.

To date, we are not aware of any Rule 35 motions filed by the government on behalf of survivors of sexual violence, even though four FCI Dublin BOP officials have been criminally convicted in the past few months.<sup>6</sup> Legal action by the Department of Justice on behalf of these women is the best opportunity to secure their emotional and physical safety. We hope that this hearing today, the testimony and evidence that has been gathered, and the questions that have been asked of government officials, will embolden the Department of Justice to use the tools at its disposal to grant relief to the survivors of abuse perpetrated by BOP staff and officials responsible for caring for and protecting them.

While the DOJ has a responsibility to help those who have been abused in its custody to heal, it also should do everything in its power to prevent anyone else from being abused. Passing independent prison oversight, such as has been proposed by Chairman Ossoff and Senator Braun in their Federal Prison Oversight Act, would help.

Oversight can help change the BOP's culture of concealment and shed light on the problems to be solved. The Federal Prison Oversight Act would give the DOJ's Office of the Inspector General the power to do routine inspections of prison facilities, recommend improvements, and re-inspect to see if changes were made. These inspections can be unannounced, which means the BOP won't have time to clean up and hide problems before the inspectors arrive.

The bill also creates an ombudsman who can investigate complaints received from staff, incarcerated people, or their loved ones. The ombudsman gets full access to the BOP's records and facilities, and can have confidential conversations with both incarcerated people and prison staff. The ombudsman can recommend actions for the BOP to take and follow up to see if the BOP has acted.

Notably, the Federal Prison Oversight Act has the support of the Council of Prison Locals, the union for correctional officers. Staff members trying to do the right thing also need a place to go when, for whatever reason, their complaints go unheeded by BOP administrators. Consider the case of FCI Dublin. One must believe that there were good officers who were

---

<sup>6</sup> See, e.g., Justice Department, Office of Public Affairs, *Federal Prison Chaplain Sentenced for Sexual Assault and Lying to Federal Agents*, Press Release (Aug. 31, 2022), [https://oig.justice.gov/sites/default/files/2022-09/08-31-2022\\_0.pdf](https://oig.justice.gov/sites/default/files/2022-09/08-31-2022_0.pdf); Justice Department, United States Attorney's Office N.D. Cal, *Warden of Federal Corrections Institute in Dublin Charged with Sexual Abuse of a Ward*, Press Release (Sept. 29, 2021).

aware of what was happening – the “rape club” was an open secret – but felt they had nowhere to turn and feared retaliation if they reported any of their colleagues. Testimony from this subcommittee’s hearing on corruption and abuse at U.S. Penitentiary Atlanta underscored the lack of reporting mechanisms for BOP staff and the need for independent oversight. We know that incarcerated people and their families also fear retaliation for speaking out.

A recent FAMM poll found that 82 percent of Americans believe there should be a system of independent oversight of our federal prisons. Support was high across all political parties. Not surprisingly, the Federal Prison Oversight Act also enjoys support from criminal justice advocacy groups from across the political spectrum.

The stories and statistics we expect to hear at today’s hearing will be shocking, enraging, and heartbreaking. But we should not succumb to despair when there are actions that the Department of Justice and Congress can take to reduce, if not eliminate, sexual abuse of women – and all people – in our federal prisons.

Thank you for considering our views.

