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PRISONS and JAILS

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Mr. Issac Gaston
Site Selection Specialist
320 First Street NW
Washington, DC 20534

sent via email: IGaston@bop.gov

Re: Federal Bureau of Prisons Proposed United States Penitentiary Letcher County Kentucky

Dear Mr. Gaston:

I have been retained by the Abolitionist Law Center and the Fight Toxic Prisons Campaign to provide insights and information concerning the proposed United States Penitentiary (USP) and Satellite Prison Camp (SPC) in Letcher County Kentucky. I am a twenty-year corrections veteran and retired from the Federal Bureau of Prisons. Post retirement I have stayed active in the corrections industry doing audits, becoming a DOJ certified PREA auditor and doing consulting for agencies and attorneys nationwide. The following two paragraphs also contain a summary of my qualifications which I relied on to present my opinions concerning the Letcher County proposal.

I. Qualifications and Experience

My career assignments included work as a Correctional Officer at the Federal Correctional Institution in Talladega, Alabama from June 1990 until October 1993. Lieutenant at the Federal Detention Center and the Metropolitan Correctional Center in Miami, Florida and Lieutenant at the Federal Correctional Institution in Estill, South Carolina. I was a Lieutenant from October 1993 until December 1997. I was a Captain at the Federal Detention Center in Oakdale, Louisiana and at the Federal Correctional Institution in Edgefield, South Carolina. My tenure as a Captain was from December 1997 until November of 2001. My assignments as Associate Warden were from November of 2001 until my retirement in June 2010. My assignments were

at the Federal Correctional Institution Talladega, Alabama, the Federal Correctional Complex in Beaumont, Texas and at the Federal Correctional Institution in Three Rivers, Texas. During my assignment at the Federal Correctional Complex in Beaumont I was assigned to the medium security facility for two years, as the Associate Warden at the Central Administration Building for a period of five months and to the United States Penitentiary for my final seven months. When my career began as a Correctional Officer I was assigned in the inmate housing units, as a compound patrol officer, and to various other duties assigned where I had direct supervision of the inmate population. As a Lieutenant, I would make rounds throughout the facility as part of my daily duties and interact with the inmate population in their assigned units, work assignments and leisure time activities. Additional assignments during my time as a Lieutenant included being assigned as the Special Housing Unit Lieutenant at the Federal Detention Center in Miami, Florida and at the Federal Correctional Institution in Estill, South Carolina.

As an Associate Warden I had the responsibility to oversee and direct staff in the performance of their daily duties. I wrote and critiqued local policy and made decisions which affected the safety, security and orderly running of the facility to which I was assigned. The policies were written using the principles of sound and proven correctional management, Federal law and standards provided by the American Correctional Association (ACA). I wrote lesson plans, taught classes and wrote performance appraisals for our staff. I have commanded and been involved in incidents of emergency response for medical emergencies, inmate disturbances, hostage situations, assaults, suicides, homicides and attempted escapes. Additional assignments during my nine years as an Associate Warden included the supervision of the Administrative component at the Federal Correctional Complex in Beaumont, Texas. This assignment included responsibilities for the Financial Services Department, Facilities Department, Human Resources Department, Food Service Department, Safety Department and Computer Services Department.

II The BOP's Stated Purpose and Need is Inaccurate

A. Congressional Hearing and FBOP FY2018 Budget Request

The most glaring information I have seen concerning this proposal is an FY 2018 Performance Budget from the Federal Bureau of Prisons (Exhibit 1) and Congressional testimony by the Deputy Attorney General Rod Rosenstein. Both the report and the testimony of Mr. Rosenstein indicate there is no need to build a new USP in Letcher County at a cost of \$444 million at the expense of the taxpayers when the funds could be allocated and used in other ways to be better stewards of the taxpayer's money.

The testimony concerning the USP is at the 34-minute mark in the video with the Congressman from the 5th District of Kentucky questioning Mr. Rosenstein about the Department of Justice's proposed budget that called for a rescission of the \$444 slated to build the USP in Letcher County. There, Mr. Rosenstein stated "the FBOP population has precipitously declined over the

last years 30,000 inmates or 14% over the last four years. So, the decision of where we need future prisons is made based on information we receive from the FBOP. The FY2018 budget does request 80 million dollars to open a prison that has already been built and this will add 2500 high-security beds. So, what we are doing Congressman is prioritizing or spending given the tight budget. But, we would certainly be open to working with the committee in the future if there were a need for additional bed-space. Given the projections and needs the FBOP just didn't feel that we needed that facility at this time."

Congressman Harold Rogers goes on to tell Mr. Rosenstein the decision to build the prison had been made and the funding had been appropriated and we expect for it to be built.

While I understand that Representative Rogers is looking out for his constituents and trying to do what he thinks is right, his advocacy is either misinformed or apathetic to the reality that the Federal Bureau of Prisons (FBOP) does not need nor want \$444 million to build a new facility in Letcher County. As Mr. Rosenstein stated in his testimony the decision to add or not to add a new Federal Prison should be made by the FBOP, and not at the political whims of Congress.

In my experience, I believe that the FBOP's statisticians and fiscal planners understand what is needed to handle the inmate populations both current and future. The FY2018 Performance Budget from the FBOP states the inmate population has been declining in the last few years and that a new prison in Letcher County is not needed.

Based on my personal experience, I know that the building, staffing and activation of a new FBOP facility would take a minimum of four-six years, which further reduces the need for a new facility, as inmate population trends continue to decline.

B. Classification and Compassionate Release of Elderly Inmates

The FBOP has an inmate designation and classification policy that is 11 years old. Program Statement P5100.08 Inmate Security and Custody Classification is dated 09/12/2006. (Exhibit 2) This policy chapter 4, page 4, 12 shows how the FBOP assigns inmates points for their security classification based on age and these points decrease with age. 24 or younger = 8 points, 25-35 = 4 points, 36-54 = 2 points with inmates age 55 and over given 0 points. Based on my experience and as evident in this policy the older inmates have a lessened propensity for violent behavior and violations of rules and regulations.

There have been many changes to the inmate population and the overall climate in corrections and incarceration during the past 10 years. For instance, the inmate population in the FBOP is aging. The number of elderly inmates in FBOP custody as of 09/23/2017 (Exhibit 3) who are age 56 and older was 19,787, which equates to roughly the population of 16 USP's the size of the

USP Big Sandy Kentucky. The population in the FBOP of inmates 65 years or older is 4,770. Alternatives to accommodate inmates above the age of 55 needs to be addressed. The building of a new high-security facility will not help to reach this goal as bed-space for older inmates should be in lower security facilities where it is safer, and their needs can be addressed without the constant distractions that are common in a high-security facility.

The FBOP has a compassionate release program for elderly and ill inmates that is underutilized. The policy was changed in 2015. (Exhibit 4 FBOP policy 5050.49, CN1 is dated 03/25/2015. Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. 3582(C)(1)(A) and 4205(g). (Exhibit 4).

There are three examples in this new policy where BOP can use its discretion to significantly lessen the population burden by filing motions with a sentencing court:

- Inmates with a medical condition that is 65 years or older and has served 50% of his sentence.
- Inmates sentenced for an offense that occurred on or after November 1, 1987 (e.g., “new law”), who are age 70 years or older and have served 30 years or more of their term of imprisonment.
- Inmate without a medical condition who is at least 70 years old or older and has served 10 years or 75% of his sentence.

From my personal experience I know inmates who have reached the ages to qualify for release and in most cases, have already been a significant burden to their assigned facility in medical costs and the cost of security personnel to take them to outside medical facilities for care. However, the FBOP can and needs to take more proactive measures to reduce its population of elderly and aging inmates who fit into these categories.

III. Other Facilities Have Significant Capacity for High Security Inmates

The FBOP assertion that it does not have the capacity to house high security inmates is inaccurate. First, the AUSP in Thomson, Illinois is now housing (See Exhibit 5 10/23/2017 the FBOP webpage indicates 108 inmates at the USP and 136 inmates at the Federal Prison Camp at that location). Thompson has been in the possession of the FBOP for years and the Correctional News reported on October 26, 2016, (Exhibit 6) Senator Dick Durbin stated the project and retrofit would be complete by the end of 2017. The facility will be able to house 1900 high-security inmates and an additional 200 minimum-security inmates. The opening of AUSP calls into question the veracity of the FBOP EIS’s statement that it needs a new high security facility because of overpopulation issues.

In addition, the following United States Penitentiaries (USP) are not at capacity for high security inmates:

- USP Canaan in Waymart, Pennsylvania has bed space for 1,340 high security inmates, but is housing 1,200
- USP Lee in Pennington Gap, Virginia has bed space for 1,451 high security inmates, but is housing 1,285
- USP Lewisburg in Lewisburg, Virginia has bed space for 1,400 high security inmates, but is housing 794
- USP McCreary in Pine Knot, Kentucky has bed space for 1,500 high security inmates, but is housing 1,295 inmates
- USP Pollock in Pollock, Louisiana has bed space for a total of 2,369 inmates, but is currently housing 1,199 total inmates (949 inmates at the USP and 250 inmates at the Camp)
- USP Yazoo City, in Yazoo City, Mississippi has bed space for a total of 1,500 high security inmates, but is housing 1,315.

These numbers are based on stated inmate populations on the FBOP's webpage, and the most recent PREA report also listed at the FBOP's webpage.

In addition, the FBOP has in recent years removed the high-security designations from 4 USP's and they are now medium-security facilities. Those facilities are USP Lompoc in California, USP Atlanta in Georgia, USP Marion in Illinois and USP Leavenworth in Kansas. The FBOP has stated it is in need of a new high-security facility, but an option would be to retrofit one of those existing facilities and once again use the facility or a portion of the facility as a USP for high-security inmates.

IV. Staffing Problems Delays Proper Classification of Inmates

During my career, the FBOP used staff augmentation to replace correctional services staff during annual training which took place once per year. The augmentation took place over several weeks and was anticipated by the staff and plenty of notice was given. However, the present day FBOP now routinely augments correctional services staff with non-custody staff on an ever-increasing basis. From my interaction with staff after I have retired and now through a closed group social media page (Exhibits 7,8,9,10,11 and 12) used by current FBOP staff and retirees I see evidence of departments being closed for the day to allow their staff to go and work a correctional services post.

For instance, there is an example at the Federal Transfer Center in Oklahoma City, Oklahoma where the facility closed inmate work areas in order for the staff who generally supervise these areas to go and work a correctional post. It was noted the areas closed were the warehouse, food service warehouse, unit team locations and the commissary. Inmates who are not allowed to work at their assigned jobs, which led to inmate idleness and contributed to inmate acts of

violent behavior. At the Federal Correctional Complex in Butner, North Carolina, when its Facilities Department was short of staff due to augmentation, there was a significant delay in completing work projects and routine maintenance. Another problem that greatly impacts work production among staff is when they are removed from their assigned area to work correctional services posts. When this occurs, tasks specific to particular staff members does not get done in a timely fashion. For instance, during a recent tour at the Federal Correctional Complex in Beaumont, Texas, the new Director of the FBOP, Mr. Inch questioned how can it be cost effective for a GS-11 paygrade Case Manager to replace a correctional officer? (Exhibit 10)

Augmenting case manager time for correctional services posts is directly relevant to alternatives assessment that FBOP must do when considering its decision to build a new facility in Letcher County. Case Managers' duties are to maintain and address their assigned inmate's central file, which contains all the information related to the inmate. An inmate's central file contains information concerning his/her release and preparation for re-entry, the inmates' current classification and plans for the inmate to attend institution programs like educational opportunities to better prepare for release. Completion of such programming directly more weighs into an inmate's classification and movement to a lower security facility; as well any decision to seek sentencing reduction.

With that said, when Case Managers are augmented from their assigned duties and instead tasked to cover a correctional officers post, their jobs are not getting done. Consequently, because these staff members are covering correctional officer posts, there is no pre-release preparation for their assigned inmates or any other work done to ensure that the inmates case file is up to date and accurate. With the lack of work being put into the classification and programming needs for their assigned inmates, the issues such as the re-classification of inmates to lower security facilities is not being efficiently and timely addressed to reduce the high-security populations in the FBOP.

As a former correctional officer in the FBOP system, I was saddened to see that the Final Revised Supplemental Environmental Impact Statement did not address this significant issue in its alternatives analysis. Any discussion concerning overpopulation of any particular classification group of inmates needs to include a through analysis and audit of FBOP's augmentation practices. I believe that if FBOP properly staffed its facilities so that Case Managers and Classification Officers were not working correctional posts, then the classification of FBOP's inmates would be more accurate.

The consideration to build a new facility in Letcher County would be counter-productive. From the information I provided above it appears the FBOP does not have the funding to operate what they already have and spending another \$444 million will only add to the problems they are

facing. The \$444 million is just to get the facility built and operational, then you must fund it annually to keep it open and staff it.

Conclusion

The Department of Justice, The Federal Bureau of Prisons and Congress all have a responsibility to appropriate funding as needed and use this money wisely as stewards of the American taxpayers. Consequently, the appropriation of money should be premised upon a demonstrated need by the FBOP. However, the FBOP's stated need to build a new USP in Letcher County, Kentucky and thus appropriate \$444 million dollars is inaccurate.

As a former FBOP employee, I support my agency in whatever is needed. It was taught to me in the 1990's by former FBOP Director Kathleen Hawk Sawyer, that as a FBOP employee, my colleagues and I were to be good stewards of the taxpayer's money. This was in part due to the emergence of the private prison industry and the FBOP and its employees wanted to show Congress and the Administration we could compete with private industry and do a better job. I do not think those values have changed. Consequently, when the DOJ indicates that building a new USP in Letcher County is not necessary, those in Congress should respect that decision.

This comment provides sufficient evidence and analysis demonstrating that the FBOP's stated purpose and need in its FRSEIS is inaccurate, which calls into question the veracity of the entire FEIS.



R. Tim Gravette