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## United States Senate

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The Honorable Merrick Garland  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Attorney General Garland:

I am writing to request updated information on your plans to address the staffing shortages and augmentation processes within the Federal Bureau of Prisons (BOP) system. Over the last few months, several BOP employees from across the country have raised the alarm that these facilities, despite increased congressional appropriations, remain dangerously understaffed. The conditions described to my office lead me to believe that the system is courting disaster and cannot be allowed to operate at the current staffing levels.

Among the many issues staffing shortages cause, I am most concerned with a decrease in safety for staff and inmates, in addition to a decline in morale among correctional officers. Mandatory overtime and the practice of augmentation make the difficult work of BOP personnel even more challenging, and the BOP should be taking every possible step to ensure each federal prison is fully staffed, as soon as possible.

As you know, on April 15, 2021, BOP Director Michael Carvajal stated before the Senate Judiciary Committee that a key priority is to fully staff all of the BOP's institutions. While he noted the multiple steps the Bureau was taking to increase staffing levels, including recruitment incentives for new staff and retention incentives for staff eligible for retirement, over a year later federal prisons are still experiencing significant staffing shortages throughout the country.<sup>1</sup>

Additionally, the Bureau's method of assessing staffing levels by comparing "filled" positions against "authorized" positions raises concerns for the reliability of BOP data related to staffing. A 2021 GAO report found that the BOP can remove authorized positions to manipulate data, regardless of a change in circumstances within an institution.<sup>2</sup> As a result, I am concerned that instead of increasing the positions to safe levels, thousands of posts have been completely cut. Staffing levels are critical to the safety of correctional officers and inmates, and the arbitrary removal of authorized positions decreases safety within our federal prisons.

<sup>1</sup> Statement of Michael D. Carvajal, Director, Federal Bureau of Prisons, S. Comm. On the Judiciary, 117 Cong., Hearing on "Oversight of the Federal Bureau of Prisons" (April 15, 2021)

<https://www.judiciary.senate.gov/imo/media/doc/BOP%20Director%20-%20%20Written%20Statement%202021-04-15%20SJC%20Hearing%20.pdf>

<sup>2</sup> U.S. Gov't Accountability Office, GAO-21-123, Bureau of Prisons, Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs (Feb. 2021) <https://www.gao.gov/assets/gao-21-123.pdf>.

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The augmentation practice of forcing non-correctional officer personnel, such as counselors, administrative staff, and medical staff, to take on the role of security also reduces the overall functionality of a prison. According to staff reports, augmentation has only intensified during the COVID-19 pandemic. Most concerning, consistent augmentation of staff hired to facilitate the programming required in the First Step Act hinders the prison system's ability to facilitate the rehabilitation and re-entry of inmates into society.<sup>3</sup>

Due to the lack of staff, both in terms of sheer numbers and augmentation practices, I have heard that correctional officers are mandated to work overtime. While working overtime on a voluntary and occasionally mandatory basis is common in many careers, I am particularly concerned with testimony that the BOP's mandated overtime is oftentimes used as an abusive or punitive practice. BOP staff should not be working to the point of exhaustion, nor should mandatory overtime be used so extensively it becomes a deterrent to normal family life. While the above referenced 2021 GAO Report did not assess the risks associated with the growing use of augmentation and overtime, I can certainly tell you it is contributing to the low morale, and thus retention, of your staff.<sup>4</sup>

Moreover, it appears these staffing shortages are only set to get worse. On April 26, 2022, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas released the agency's plan for the southwest border once Title 42 is rescinded next week, on May 23.<sup>5</sup> The plan details the use of BOP law enforcement personnel to provide transportation support between DHS facilities for an indefinite amount of time. BOP staff appear to already be stretched to their limits. Therefore, it is unclear and questionable how the BOP has the manpower to execute DHS' plan while ensuring safe facilities and fully addressing all of its congressionally-delegated requirements, while not implementing abusive staffing practices.

In light of these concerns, I request that you answer the following questions by June 1, 2022.

- Has the BOP ever removed an authorized position to manipulate a report on staffing levels?
- How has the BOP altered its staffing practices to make them safer since the murders of Officer Jose Rivera (2008 USP Atwater, CA) and Eric Williams (2013 USP Canaan, PA)?
- Is the BOP staffing more than one officer in all housing units at a time? If not, why?
- How many assaults have been reported against BOP staff in the last year? How does this compare to the previous 5 years?
- How has the practice of augmenting staff impacted the implementation of the First Step Act?
- How has the issue of understaffed prisons impacted the safety of BOP personnel and inmates inside the prison?

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<sup>3</sup> Walter Pavlo, *Bureau of Prisons is Overworking Its Most Critical Staff Positions During First Step Act Implementation*, FORBES (Mar. 31, 2022), <https://www.forbes.com/sites/walterpavlo/2022/03/31/bureau-of-prisons-is-overworking-its-most-critical-staff-positions-during-first-step-act-implementation/?sh=7e7ead0759e5>.

<sup>4</sup> *Id.*

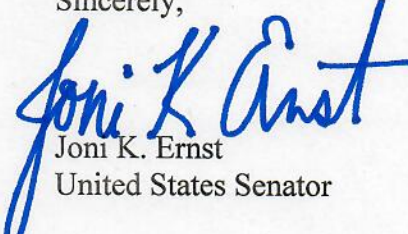
<sup>5</sup> Dep't Homeland Security Plan for Southwest Border Security and Preparedness Memorandum (April 26, 2022) <https://drive.google.com/file/d/1vfw1F2s21kW9FYwYT-7A09QJDClu4i2K/view>.



- How does the BOP intend to increase staffing to the level necessary for safety and full implementation of the First Step Act?
- What is the BOP doing to combat the use of abusive or punitive mandatory overtime?
- How will the use of BOP resources to transport illegal immigrants between DHS facilities impact the BOP's operations?
- How does the BOP plan to cover the positions of those called to assist DHS in combatting the influx of illegal immigrants due to the rescission of Title 42?

I share Director Carvajal's view that increasing the staffing levels at BOP institutions is a key priority. The Bureau's current "fix" of eliminating positions to appear fully staffed and augmenting staff to cover vacancies equates to nothing more than sticking your finger in a breaking dam. I implore you to take swift action to ensure each facility has the appropriate number of staff and that current staff are not being augmented within BOP facilities or other agencies. Without decisive action, you leave your staff and inmates at risk on a daily basis. I look forward to your prompt reply.

Sincerely,



Joni K. Ernst  
United States Senator

cc: The Honorable Michael Carvajal, Director, Federal Bureau of Prisons