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Chairman Wolf, Ranking Member Fattah, and Members of the Subcommittee –

My name is Gary Mills. I am the National Legislative Coordinator of the Council of Prison Locals, American Federation of Government Employees, AFL-CIO. On behalf of the over 36,000 federal correctional workers who work at the 117 Federal Bureau of Prisons (BOP) correctional institutions, I want to thank you for the opportunity to testify today on two BOP issues that are critically important to the safety and security of federal correctional workers, federal prison inmates, and the local communities surrounding federal prisons.

This year, AFGE strongly urges the House Appropriations Subcommittee on Commerce-Justice-Science (CJS) to:

- 1. Provide \$187,055,000 above the Obama FY 2013 budget for the BOP Salaries & Expenses account to allow BOP to hire an additional 1,969 correctional workers in FY 2013, thereby achieving a 95% base staffing level at existing BOP-operated institutions.**

More than 217,000 prison inmates are incarcerated in BOP correctional institutions today, up from 25,000 in FY1980, 58,000 in FY1990, and 145,000 in FY 2000. About 81% - or 176,540 - of the inmate population are confined in BOP-operated institutions while 19% - or 40,612 - are managed in residential reentry centers and private prisons. By the end of FY 2013, it is expected there will be 229,268 prison inmate incarcerated in BOP correctional institutions.

This explosion in the federal prison inmate population is the direct result of Congress approving stricter anti-drug enforcement laws involving mandatory minimum sentences in the 1980s, as documented in the *History of Mandatory Minimums*, a study produced by the Families Against Mandatory Minimums (FAMM).

The number of federal correctional workers who work in BOP-operated prisons, however, is failing to keep pace with this tremendous growth in the prison inmate populations. As of December 31, 2011, the BOP-operated institutions were staffed at an 88% level (36,172 of 41,104 authorized positions filled), as contrasted with the 95% staffing levels in the mid-1990s. This 88% staffing level is *below* the 90% staffing level that BOP believes to be the minimum level for maintaining the safety and security of BOP prisons.

In addition, while the number of prison inmates in the 117 BOP-operated institutions has grown from 125,560 in FY 2000 to 176,540 prison inmates now, the number of BOP correctional workers has only increased from 30,382 in FY 2000 to 36,172 now. As a result, the BOP inmate-to-worker ratio has increased from 4.13 to 1 in FY 2000 to 4.96 to 1 now. This significant increase in the inmate-to-worker ratio adversely impacts BOP's ability to effectively supervise prison inmates and provide inmate programs.

At the same time, prison inmate overcrowding is an increasing problem at BOP institutions despite the activation of new prisons over the past few years. BOP-operated institutions at the end of FY 2011 were operating at 39% above rated capacity, with 55% overcrowding at high security prisons and 51% at medium security prisons. By the end of FY 2013, it is estimated the BOP system will be overcrowded by 43%.

These serious correctional worker understaffing and prison inmate overcrowding problems are resulting in significant increases in prison inmate assaults against correctional workers. Hundreds of inmate-on-worker assaults have occurred at various BOP prisons since the brutal murder of Correctional Officer Jose Rivera on June 20, 2008, by two prison inmates at the United States Penitentiary in Atwater, CA. These aggressive acts by inmates against correctional workers illustrate a daily reality facing staff at their workplaces.

Indeed, rigorous research by the BOP's Office of Research and Evaluation has confirmed that increases in both the inmate-to-worker ratio and the rate of inmate overcrowding at an institution are related to increases in the rate of serious assaults on correctional workers by prison inmates. (*The Effects of Changing Crowding on Inmate Violence and Administrative Remedies Granted (2010)*, Office of Research and Evaluation, Federal Bureau of Prisons, Washington, DC.)

### Obama administration's FY 2013 Budget for BOP Salaries and Expenses

The Obama administration's FY 2013 budget provides \$6,820,217,000 for the BOP Salaries and Expenses account – a \$268,936,000 increase above FY 2012. The BOP Salaries & Expenses account funds correctional worker staffing, as well as other management and administration activities, inmate care and programs, institution care and programs, and contract confinement activities.

According to the FY 2013 Congressional Budget Submission for BOP Salaries and Expenses, the President is requesting 37,839 correctional workers and 41,904 authorized positions – an increase of 1667 correctional workers and 800 authorized positions – for a 90.3% staffing level. (As noted above, BOP considers this to be the staffing level minimum for maintaining the safety and security of BOP institutions.)

## More Funding Needed to Hire Additional Correctional Workers

AFGE is pleased that the Obama FY 2013 budget provides enough additional funding so that BOP can achieve the minimum staffing level for maintaining the safety and security of BOP-operated institutions. However, years of chronic underfunding of the Salaries and Expenses account has forced BOP to rely excessively on correctional officer overtime and the diversion of program staff instead of hiring additional correctional officers – leaving the workforce spread dangerously thin and compromising BOP's ability to operate in a safe and efficient manner.

And so, AFGE strongly urges the House CJS Appropriations Subcommittee to provide \$187,055,000 above the Obama FY 2013 budget for the BOP Salaries and Expenses account to allow BOP to hire an additional 1,969 correctional workers in FY 2013, thereby achieving a 95% base staffing level at existing BOP-operated institutions

### **2. Direct BOP to allow correctional officers who work in highly dangerous areas of BOP prisons to routinely carry pepper spray in case situations arise where they must defend themselves if physically attacked by dangerously violent inmates.**

For several years, AFGE has been urging BOP to institute a new pepper spray policy that would allow federal correctional officers who work in highly dangerous housing units and other high security areas of BOP prisons to routinely carry pepper spray in case situations arise where they must defend themselves if physically attacked by dangerously violent inmates.

Under current BOP policy, federal correctional officers are not allowed to routinely carry pepper spray in BOP prisons. Instead, prison wardens (or designated officials) must authorize pepper spray utilization before correctional officers can use it to quell an emergency situation. Pepper spray is stored in specific locations throughout the prisons, such as in secure control rooms, watchtowers in the prisons' yards, or in the prisons' armories outside the secure perimeter.

The problem, however, is that in situations where aggressively dangerous inmates, who often have home-made lethal weapons, are physically attacking correctional officers, there is little or no time for the warden to authorize the use of pepper spray and get it to the endangered officers so they can protect themselves. The correctional officers are left to defend themselves with the two things they are authorized to carry: keys and a walkie-talkie radio.

Unfortunately, BOP management continues to refuse to allow correctional officers to carry pepper spray while on duty, relying on the following three arguments – arguments with which AFGE strongly disagrees.

(1) Communication argument: According to BOP officials, correctional officers are not allowed to routinely carry pepper spray because BOP believes in the importance of officers communicating with inmates to ensure officer safety. The agency believes that carrying pepper spray would impede officers' communication with inmates – and increase the level of prison violence - because (a) the officers would be more likely to use the pepper spray to prevent an inmate from engaging in dangerous misconduct than talk with the inmate, or (b) the inmate would perceive correctional officers carrying pepper spray as more threatening and therefore would be less willing to engage in communication with officers.

AFGE, however, believes this “officer-inmate communication” policy totally ignores the current reality at BOP institutions. The level of violence inside BOP institutions is already increasing – and not because correctional officers are not attempting to communicate with prison inmates. The violence level is increasing because of the serious correctional officer understaffing and prison inmate overcrowding problems – and because correctional officers are being asked to control offenders who are deliberately non-communicative, more aggressively violent, and often gang-affiliated.

In addition, AFGE believes this “officer-inmate communication” policy ignores the information in a BOP Executive Staff Paper, dated March 7, 2003. According to that paper, the Colorado, Illinois, and Texas State Departments of Corrections - three of the many states that allow their prison staff to routinely carry pepper spray - reported to BOP in 2003 that the ability of their staff to immediately use pepper spray decreased the need for physical restraint techniques, enhanced inmate compliance to staff warnings and commands, and resulted in an overall and significant reduction in injuries to both staff and inmates.

(2) “Used against officer” argument: BOP argues that correctional officers should not routinely carry pepper spray because it could be taken from the officer by an inmate and then used against him or her by that inmate.

AFGE believes this “used against officer” argument ignores one of the reasons why the BOP Executive Staff Paper (March 7, 2003) recommended providing correctional officers with pepper spray rather than expandable batons. One of the advantages of pepper spray use that was detailed in that paper was: “If an inmate gains control of the [pepper spray] and uses it on staff, there is no permanent harm to the staff member.” By contrast, “if an inmate gains control of the expandable baton and uses it on staff, there could be serious permanent physical harm to the staff member.”

(3) Cost argument: BOP argues that the agency cannot afford the cost of providing pepper spray to its correctional officers because the White House and Congress failed during the FY 2001- 2009 time period to provide BOP with sufficient funding. As a

result, BOP's principal focus now is on dealing with the correctional worker understaffing and prison inmate overcrowding problems – not providing pepper spray to its correctional officers.

AFGE is totally cognizant of the BOP's funding problems. We have been actively lobbying the Obama Administration and the Congress to substantially increase funding for BOP.

However, AFGE believes the argument that BOP cannot afford the cost of supplying pepper spray to its correctional officers is a bit overdone. A brief perusal of the Internet reveals that pepper spray devices cost only between \$10 and \$15. Thus,

- The cost of providing pepper spray to the 630 correctional officers who work in the dangerous housing units (including the segregation units) and compound areas at the 21 high-security United States Penitentiaries would range between \$6,300 and \$9,450.
- The cost of providing pepper spray to the 6,300 correctional officers and staff who work at the 21 high-security United States Penitentiaries would range between \$63,000 and \$94,500.
- The cost of providing pepper spray to the approximately 20,000 correctional officers who work in the BOP-operated prison system would range between \$200,000 and \$300,000.

In addition, it should be noted that the total number of pepper spray devices that must be purchased – and the attendant costs – would be greatly reduced by the number of such devices already stored today in BOP prisons' armories.

Therefore, AFGE strongly urges the House CJS Appropriations Subcommittee to direct BOP to allow correctional officers who work in highly dangerous areas of BOP prisons to routinely carry pepper spray in case situations arise where they must defend themselves if physically attacked by dangerously violent inmates.

This concludes my statement. I thank you for your attention and will be happy to answer any of your questions.