

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JEFF FLAKE, ARIZONA
MIKE CRAPO, IDAHO
THOM TILLIS, NORTH CAROLINA
JOHN KENNEDY, LOUISIANA

DIANNE FEINSTEIN, CALIFORNIA
PATRICK J. LEAHY, VERMONT
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

February 22, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Thomas R. Kane
Acting Director
Federal Bureau of Prisons
320 First Street, NW
Washington, D.C. 20534

Dear Acting Director Kane:

In a 2014 news article, the Bureau of Prisons (BOP) admitted having mistakenly held a federal prisoner 13 months beyond his release date.¹ This egregious deprivation of liberty prompted a 2016 inquiry by the Department of Justice (Department) Office of Inspector General (OIG) into the “BOP’s process for ensuring federal inmates are released on their correct release dates and the incidences of releases before or after the correct release date due to staff error between 2009 and 2014.”²

During the course of that review, the OIG discovered that BOP released 157 inmates on the incorrect release date due to staff error.³ The OIG also confirmed that 152 of these inmates were released after their sentence ended, resulting in these inmates “over-serv[ing] a total of 8,917 days due to staff error, at an estimated total cost of nearly \$669,814, exclusive of litigation and settlement costs.”⁴ Three of the late releases were 928, 541, and 406 days beyond the sentence.⁵ As an added injury to the taxpayer, the Federal government paid an additional \$680,000 in settlements to four inmates as a result of untimely release.⁶

The OIG found that five inmates were released early. The OIG noted that of the five early releases, “three occurred in 2009 and were early by 955 days, 730 days, and 368 days,

¹ Paul McEnroe, *Lost in federal prison – and held 13 months too long*, Star Tribune, Oct. 11, 2014, <http://www.startribune.com/lost-in-federal-prison-and-held-13-months-too-long/278868951/>.

² Office of the Inspector General, *Review of the Federal Bureau of Prisons’ Untimely Releases of Inmates*, May 2016, <https://oig.justice.gov/reports/2016/e1603.pdf#page=1> at i.

³ *Id.* at ii.

⁴ *Id.* at 11.

⁵ *Id.* at 25.

⁶ *Id.* at 12.

respectively; one took place in 2014 and was 31 days early; and one took place in 2013 and was 7 days early.”⁷

These errors have cost the taxpayers more than \$1.3 million, not to mention the potential harm to the inmate, his or her family, and the community as a whole. While these errors represent a very small percentage of the total inmates properly released by the BOP, the cost of these unnecessary mistakes is significant. Untimely releases modify the judicial sentences mandated by the court, and the BOP “does not have in place a process to consider whether to notify the sentencing court of an untimely release.”⁸ The OIG made 6 recommendations for BOP “to ensure that appropriate notifications are made to the court in cases of untimely release” and improve the BOP’s ability to prevent and appropriately handle untimely releases.⁹ The OIG gave BOP until August 31, 2016 to provide documentation supporting these recommendations, with which BOP concurred.¹⁰

However, as of September 30, 2016, these recommendations are still open and BOP has not provided the requested documentation to the OIG.¹¹ To ensure that taxpayer dollars are used efficiently and the OIG recommendations are implemented, please answer the following:

1. The OIG evaluation listed several recommendations for BOP to take that would potentially solve cases of untimely release. Please list the steps BOP has taken to implement the following recommendations and explain why they have not been fully implemented:
 - a. Work with the ODAG to establish a policy to identify under what circumstances it is appropriate to notify the relevant U.S. Attorney’s Office, court official(s), and the affected inmate of an untimely release for any reason, and the reason therefor, and develop a process to ensure that timely notification takes place as appropriate.
 - b. Ensure that BOP staff members thoroughly and consistently describe and identify the cause of each untimely release in official documentation (such as BP 558 and 623 forms) and use this documentation to support the DSCC’s trend analysis for improving training and operations.
 - c. Implement methods and training to address communication challenges in obtaining accurate and timely jail credit information from judicial as well as other necessary sources.
 - d. To address the concerns identified in this report that conducting final release audits 12 months before an inmate’s projected release date has led to untimely

⁷ *Id.* at 8.

⁸ *Id.* at ii.

⁹ *Id.* at 26.

¹⁰ *Id.* at 35.

¹¹ Office of the Inspector General, *Recommendations Issued by the Office of the Inspector General That Were Not Closed As of September 30, 2016*, Nov. 2016, <https://oig.justice.gov/reports/2016/r161102.pdf>, Recommendations # 198-204.

releases due to BOP staff error, explore and implement sentence calculation processing or auditing strategies designed to decrease the likelihood of sentence calculation errors by BOP staff.

- e. Incorporate specific untimely release issues and possible solutions into education events, and establish a process for obtaining formal feedback from participants to ensure methods for preventing untimely releases are fully explored.
 - f. Identify and invite participation from additional non-BOP officials who do not typically participate in education events, but whose actions could help to ensure timely releases, including U.S. District Court Judges, federal Public Defenders, and U.S. Probation Office staff.
2. For each aforementioned recommendation, has the requested documentation been provided to the OIG? If not, explain and provide a date when the documentation will be provided.
 3. Have there been additional untimely releases due to staff error in 2015 and 2016? If yes, please provide the number broken down by early/late release and number of days untimely. In addition, if yes, was the sentencing court notified of the untimely release? If not, please explain why not.
 4. Have there been additional settlements with inmates alleging untimely release, other than the four in the OIG report? If yes, please provide details to include all settlement costs as well as circumstances surrounding the untimely release.

Please number your responses according to their corresponding questions. I request a response no later than March 8, 2017. If you have any questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225. Thank you for your cooperation in this important matter.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary