



March 5, 2019

Mr. Hugh J. Hurwitz
Acting Director
Federal Bureau of Prisons
320 First Street, N.W.
Washington, D.C. 20534

The Honorable J. Rod Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Acting Director Hurwitz and Deputy Attorney General Rosenstein:

Seventy-four days ago, President Donald J. Trump signed the First Step Act, bipartisan legislation to reform federal sentencing laws and prison policies. The new law includes provisions to establish an elderly offender home detention program, require the Bureau of Prisons (BOP) to keep incarcerated individuals closer to their families, and increase the amount of good time from 47 days to 54 days per year, among others. We are writing to urge you to implement these changes as expansively and quickly as possible.

FAMM is a national sentencing and prison reform organization with deep ties to people who are incarcerated and their loved ones. FAMM regularly writes to nearly 40,000 federal prisoners and their families and loved ones with news about legal, legislative, and policy developments that could affect them. And, we hear from many prisoners about their experiences.

We have heard from dozens of individuals who believe their incarcerated loved ones qualify for home detention under the Elderly Offender/Terminally Ill Offender Pilot Program. Section 603 of the First Step Act reauthorized and expanded the pilot program initially provided for in Section 231(g) of the Second Chance Act. Under this program, certain elderly and elderly terminally ill prisoners may be released from prison early if they are at least 60 years old, have served two-thirds of their sentences, and meet various other requirements. We believe Congress intended that this program take effect immediately upon passage of the First Step Act and be available in all BOP institutions.

To date, however, we are not aware that anyone has been released or even that the program has been established. This delay stands in sharp contrast to the Bureau's timely release of program guidance for the expanded compassionate release program, also a product of the First Step Act. The failure to implement the law in this area has been extremely frustrating for families who are

anxious to welcome their elderly and terminally ill loved ones home to serve their sentences. We urge you to immediately begin implementing Section 603 in all BOP facilities.

Second, Section 601 of the First Step Act amends the BOP's existing policy on placing prisoners within 500 air miles of their families. The new law requires the BOP to place incarcerated individuals "in a facility within 500 *driving* miles of that residence" (emphasis added). The law further states, "The Bureau shall, subject to consideration of the factors described in the preceding sentence and the prisoner's preference for staying at his or her current facility or being transferred, transfer prisoners to facilities that are closer to the prisoner's primary residence *even if the prisoner is already in a facility within 500 driving miles of that residence*" (emphasis added). Congress was smart to include this reform because maintaining family ties is a proven way to reduce recidivism. When family members are incarcerated far away from home, visits become difficult and expensive. The emotional burden on children is heavy, as some go for years without seeing a parent. To date, we have not heard from any families who have benefited from this part of the new law. Given the importance of keeping incarcerated family members close to home, we are interested in knowing what steps the BOP has taken to implement this provision. We encourage you to quickly begin the process of identifying prisoners who will benefit from this change and planning their move.

Finally, we would like your insight on the law's provision related to good time credit. As you know, the First Step Act increases the amount of annual good time federal prisoners can receive from 47 days to 54 days. In addition, the provision provides that this increase apply retroactively. Congress intended to make this provision effective immediately. However, the provision was inadvertently included in a section of the bill that prevents immediate implementation.

The good time provision was added by the House to a subsection of the bill – 102(b) – which sets forth the implementation of the risk and needs assessment system that the attorney general is required to create in Section 101 of the Act. Section 102(b)(2) then includes the following:

Effective Date.-- The amendments made by this subsection **shall take effect on the date** that the Attorney General completes and releases the risk and needs assessment system under subchapter D of chapter 229 of title 18, United States Code, as added by section 101(a) of this Act. (emphasis added)

The BOP, the Justice Department, and at least one federal district court judge have interpreted 102(b)(2) to mean that all of the changes made in that subsection, including the good time credit reform, cannot take effect until the attorney general completes and releases the risk and needs assessment system, which the law elsewhere gives the attorney general 210 days to finish. Although we believe this placement was inadvertent, we recognize that this mistake can only be fixed with corrective legislation.

As you might imagine, the delay in implementing this section of the law has been very disappointing to thousands of families whose loved ones would have been released immediately if the law were written and interpreted as intended. Many began calling BOP's Grand Prairie office the day after the bill passed to find out their loved one's new release date. The fact that

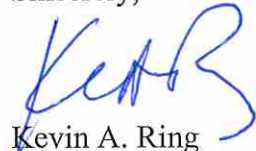
this drafting mistake was unintentional does not make the frustration and profound disappointment experienced by these families any less real.

We have worked with members of Congress on a legislative fix to this problem and will continue to press for its approval. Our purpose in writing about this matter is to seek clarification on one point. We have heard from family members throughout the country that prison staff have been telling the individuals in their facilities that the good time credit would be recalculated in 210 days—that is, sometime in July, per the text of the law. We are concerned, however, that the law directs the BOP to recalculate good time credits “on the date that the Attorney General completes and releases the risk and needs assessment.” This date could be much later than July if the attorney general fails to meet the 210-day timeline set forth in the bill. In that event, families who have been forced to wait an extra seven months might have to wait even longer for a loved one’s return.

So that Congress is fully aware what inaction on a legislative fix would mean for these families, can you please let us know how the BOP interprets Section 102(b)(2), specifically whether it plans to recalculate good time credits in: (1) 210 days or (2) when the attorney general completes and releases the risk and needs assessment, even if that date comes more than 210 days after the law’s enactment?

Thank you very much for your attention to these important issues. Please do not hesitate to contact us if we can be of any assistance.

Sincerely,



Kevin A. Ring
President
FAMM