



An Open Letter To William Marshall III, Director, Federal Bureau of Prisons

Greetings,

It has now been 2,689 days since the enactment of the First Step Act. During this period, the Bureau of Prisons (“BOP”) has been under a clear, non-discretionary statutory mandate to implement and administer the provisions of the Act in accordance with its plain language. Despite this obligation, the BOP has engaged in a pattern and practice of inconsistent and, at times, legally deficient application of the statute.

The First Step Act imposes affirmative duties upon the BOP, including but not limited to: (1) the timely release of eligible inmates; (2) the accurate calculation and application of earned time credits; and (3) the provision of appropriate prerelease custody placements, including Residential Reentry Center placement. These obligations arise directly from statute and are not subject to agency discretion or reinterpretation through sub-regulatory mechanisms.

Rather than adhering to the unambiguous text of the statute, the BOP promulgated regulations codified in the Code of Federal Regulations (“CFR”) that, in multiple respects, attempt to narrow or otherwise modify statutory requirements. Historically, the BOP has defended these regulations under principles of judicial deference to agency interpretation. However, in application, these positions have repeatedly failed to withstand judicial scrutiny. In numerous cases, the BOP has rendered claims moot by conceding and applying the statute as written, thereby avoiding adverse judicial determinations. Such outcomes do not constitute substantive legal success but instead reflect an implicit acknowledgment of statutory misapplication.

The governing legal framework has now materially shifted. In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, the Supreme Court expressly curtailed the doctrine of Chevron deference, eliminating the presumption that courts must defer to agency interpretations of ambiguous statutes. In light of this decision, continued reliance on agency-promulgated regulations that conflict with or narrow statutory mandates is legally indefensible.

Recent appellate authority confirms this conclusion. In *Miles v. Bowers*, No. 25-1291 (1st Cir.), the United States Court of Appeals for the First Circuit rejected the BOP’s reliance on its own regulations, policy statements, and program statements where such authorities conflicted with the First Step Act. The court reaffirmed the fundamental principle that duly enacted statutes control over inconsistent agency interpretations. The BOP, as an executive agency, lacks authority to revise, limit, or otherwise alter statutory requirements through regulatory or policy instruments.



In view of the foregoing, continued enforcement of CFR provisions, policy statements, or program statements that are inconsistent with the First Step Act exposes the agency to ongoing legal challenge, unnecessary expenditure of public funds, and continued judicial rebuke.

Accordingly, corrective action is warranted and overdue. Specifically, the BOP should:

1. Immediately cease reliance on any CFR provisions that conflict with the First Step Act;
2. Initiate formal rule-making to amend existing regulations to conform fully with statutory requirements;
3. Review and revise all policy statements and program statements for consistency with the Act; and
4. Ensure uniform, accurate, and legally compliant application of earned time credits and release determinations.

Failure to take such action perpetuates a system in which agency practice diverges from governing law, undermining both institutional integrity and the rule of law. The First Step Act is binding federal law. Its implementation is not discretionary, nor is it subject to modification through administrative convenience.

The BOP is obligated to comply with the statute as enacted by Congress. Immediate steps should be taken to ensure full and faithful execution of that mandate.

Sincerely,

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