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FEDERAL PRISON INDUSTRIES—EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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FEDERAL PRISON INDUSTRIES—EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008

TUESDAY, MAY 6, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:55 p.m., in Room 2237, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Johnson, Sutton, Gohmert, Coble, and Lungren.

Staff present: Bobby Vassar, Majority Chief Counsel; Ameer Gopalani, Majority Counsel; Rachel King, Majority Counsel; Mario Dispenza, (Fellow) ATF Detailee; Karen Wilkinson, (Fellow) Federal Public Defender Office Detailee; Veronica Eligan, Majority Professional Staff Member; Caroline Lynch, Minority Counsel; Kimani Little, Minority Counsel; and Kelsey Whitlock, Minority Staff Assistant.

Mr. SCOTT. The Subcommittee will come to order.

I am pleased to welcome you here today to the hearing before the Subcommittee on Crime, Terrorism, and Homeland Security on the "Federal Prison Industries—Examining the Effects of Section 827 of the National Defense Authorization Act of 2008."

Last year, the senator from Michigan, Carl Levin, introduced section 827, an amendment to H.R. 1585, the "National Defense Authorization Act of 2007." This amendment passed without going through the Judiciary Committee on either the House or the Senate side. It eventually became law on January 28, 2008 as part of H.R. 4986, the "National Defense Authorization Act of 2008."

The amendment altered the mandatory source requirement which had required the Federal Government to purchase a product from the Federal Prison Industries, or FPI. FPI is the government corporation that Congress established in 1934 for the purpose of providing jobs and training opportunities to prisoners in Federal prisons by producing goods and services for Federal agencies.

FPI is administered by a six-person board of directors appointed by the president. It is self-sustaining and receives no taxpayer support for its operations. Under the new law, the Department of De-

fense is required to research products to determine if what the FPI makes is comparable to the products needed by the Department of Defense in terms of price, quality and production time.

If comparable and the FPI's Federal market share is less than 5 percent of the Federal market for that product, then the mandatory source rule applies and DOD must purchase products through FPI. If FPI's market share is greater than 5 percent, then that product must be put out for competitive bidding. FPI may take part in that process.

The Bureau of Prisons and prisoner advocate organizations believe that this amendment will have an effect of drastically reducing the number of jobs available for prisoners who work for FPI. The purpose of this hearing is to hear expert opinions on the likely effect of this change and as to the value of keeping the program vibrant and solvent.

Unfortunately, this hearing is being held after the adoption of the amendment, not before, but in any event it is important to know what the effects may be.

Besides the loss of inmates' jobs, the Levin amendment may also make it more difficult for officials to manage prison facilities. While earlier House Judiciary Committee-passed bills have made reductions in FPI operations, they were always tempered with vocational training or other work or work-related alternatives, as well as emergency authority for the attorney general or other officials to assure the job losses resulting in drastic impacts could be avoided. None of these alternatives are provided for in section 827.

FPI contributes significantly to the safety and security of Federal correctional facilities by keeping prisoners constructively occupied. Today's Federal prison population is approximately 200,000 inmates, confined in 214 Bureau of Prisons facilities. This population has been steadily increasing, up from 25,000 in 1980, 58,000 in 1990, 145,000 in 2000, and now approximately 200,000 prisoners.

All able-bodied prisoners are required by law to work. Over 80 percent of them work for menial, mostly make-work jobs which are paid 12 cents to 40 cents per hour. In comparison, Federal Prison Industry jobs are held by about 18 percent of the prisoners and they earn from 24 cents to $1.15 per hour. This additional pay is a significant financial incentive, making FPI jobs most desirable.

Also, prisoners in FPI—those on the waiting list and those seeking to be eligible for the waiting list—must have their high school diploma or a GED or show that they are making progress to obtain a GED. That is why prisoners in the FPI program are less likely to engage in institutional misconduct, thereby enhancing the safety of staff and other prisoners and lessening the management burden and expense.

More important, for citizens and taxpayers, vigorous research shows that participation in FPI and vocational training programs will have a positive effect on post-release employment and on recidivism reduction in both the short and the long run. In the short run, that is up to 1 year, prisoners who participated in FPI were 14 percent more likely to be employed and 35 percent less likely to recidivate than those who had not participated.

Following prisoners up to 12 years after release, the results were that those who participated in FPI were 24 percent less likely to

recidivate than non-program participants. In fiscal year 2004, prisoners who worked in FPI factories contributed over $3 million of their earnings toward meeting their financial obligations, that is child support restitution or court-ordered fines, so that it has the positive effect from that perspective.

I am going to now recognize the esteemed Ranking Member of the Subcommittee, the gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott.

It is interesting when we have hearings on amendments after we pass them. In the tradition of the Congress, no matter who is in the majority, our procedure is ready, fire, aim, it seems. But this is an important hearing to have, and I am glad that you are having it.

Federal Prison Industries employs offenders in a variety of manufacturing jobs to teach management skills, provide vocational training, and rehabilitate inmates within the Federal prison system. UNICOR is a government-owned corporation that employs Federal offenders to manufacture products that are then sold to executive agencies in the Federal Government. Eighteen percent or roughly 23,152 of the eligible inmates in Federal prisons were employed by UNICOR in fiscal year 2007.

UNICOR has 110 factories in Federal prisons, representing seven different industrial operations, including clothing and textiles, electronics, fleet management, vehicular operations, industrial products, office furniture, recycling and data entry, and encoding services. UNICOR is economically self-sustaining, as the Chairman mentioned, and in fiscal year 2007 did generate $852.7 million in sales.

They used the revenue to purchase raw materials and equipment, pay wages to inmates and staff, and invest in the expansion of its facilities. Inmates may earn from 23 cents per hour to a maximum of $1.15 per hour.

In addition to compensating inmates for their work, FPI also holds them accountable for their debts. Under the Bureau of Prisons' Inmate Financial Responsibility Program, all inmates with court-ordered financial obligations must use at least half of their FPI income to satisfy those debts, which accounted for $2.7 million in 2007.

I am a strong believer in the need to provide vocational skills and encourage a strong work ethic among inmates. Programs such as FPI not only prepare prisoners for life after prison, but also reduce idleness and the potential for violence in prison.

At the same time, I appreciate the argument by many that FPI prohibits full and open competition by preventing Federal agencies from purchasing products in a free enterprise market. I share their concerns that FPI's mandatory source clause has caused U.S. workers to be displaced from their jobs. FPI can set its own prices and is not subject to many of the same Federal or State regulatory laws.

I am pleased we are holding this hearing on FPI and section 827 of the fiscal year 2008 Defense Authorization Act. That provision reduces the impact of FPI's mandatory source requirement for purchases by the Department of Defense, one of the largest customers of FPI.

Prior to enactment of section 827, FPI was prohibited from applying its mandatory source requirement to products whose share of the Federal market exceeded 20 percent. Section 827 reduced this percentage to 5 percent. According to the Department of Defense, products that have a market share above 5 percent and thus require competitive procedures are laundry and dry cleaning equipment, hardware, electrical, communication equipment, office furniture and household furnishings.

Through this, we have to struggle for balance here. As a former judge who spent time going to prisons and seeing what was going on there, I know if we don't train people for jobs that are viable jobs and trades once they come out, then they are extremely more likely to re-offend once they are out, which creates vast problems for society as we have seen.

On the other hand, if we create an unfair advantage, then the result can be, as just happened in my district, where we lost a bunch of good union jobs because a prison unit was building trailers cheaper than they could. So we set up the scenario of law-abiding citizens being put out of work by law-breakers who are put into work when they are in prison.

So achieving that delicate balance of making sure we maximize rehabilitation while not putting law-abiding citizens into desperate economic situations is what we have to strive for.

I look forward to hearing from the witnesses, particularly regarding the impact of section 827, and I yield back the balance of my time.

Mr. SCOTT. Thank you.

We have a distinguished panel of witnesses today to help us consider the issues before us. Our first witness is Harley Lappin, director of the Bureau of Prisons. He is a native of Akron, Ohio, where he received his B.A. degree in forensic studies from Indiana University in 1978, and a master's in criminal justice and correctional administration from Kent State University in 1985.

In 1985, he began working in corrections. In 1996, he was promoted to warden of the Federal correctional institution in Butner, NC. He was sworn in as director of the Federal Bureau of Prisons on April 4, 2003. He is a career public administrator in the Federal Bureau of Prisons and is only the seventh director of the bureau since its establishment in 1930. He is responsible for the oversight and management of the bureau's 114 institutions, and with the safety and security of approximately more than 193,000 inmates under the agency's jurisdiction.

Joining him at the table is Paul Laird, chief operating officer of Federal Prison Industries and the assistant director of the Industries' education and vocational training division of the Bureau of Prisons.

Our next witness is John Gage, national president of the American Federation of Government Employees. He graduated from Wheeling Jesuit University and his career includes a brief stint as a professional baseball player with the Baltimore Orioles. He has been long involved with AFGE and the labor movement. He has committed over 20 years of service as president of AFGE Local 1923, and as national vice president of AFGE's Fourth District.

Under his leadership, Local 1923 experienced robust growth, making it the largest local within the federation.

Our last witness will be Marc Morial, executive director of the National Urban League. He is a graduate of the University of Pennsylvania with a degree in economics and African American studies. He also holds a law degree from Georgetown University Law Center in Washington, DC, as well as honorary degrees from Xavier University, Wilberforce, and the University of South Carolina—Upstate.

In a distinguished professional career that has spanned 25 years, he has been an entrepreneur, a lawyer, professor, legislator and the mayor of the city of New Orleans. He is now the CEO of the National Urban League, the nation's largest civil rights organization. His energetic and skilled leadership has expanded the League's work around an empowerment agenda, which is redefining civil rights in the 21st century with a renewed emphasis on closing economic gaps between Whites and Blacks, as well as rich and poor Americans.

Now, all of our witnesses' written statements will be entered into the record in their entirety. I would ask that each of the witnesses summarize their testimony within 5 minutes or less. To help you stay within that timetable, there is a lighting device there which will go from green to yellow when you have 1 minute left, and red when the 5 minutes have expired.

We have been joined by the gentleman from California, Mr. Lungren. Thank you.

Mr. Lappin?

TESTIMONY OF HARLEY G. LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC, ACCOMPANIED BY MR. PAUL LAIRD, CHIEF OPERATING OFFICER, FEDERAL PRISON INDUSTRIES

Mr. LAPPIN. Good afternoon, Chairman Scott and Members of the Subcommittee. Mr. Laird and I greatly appreciate the opportunity to appear before you today.

Mr. SCOTT. Is your mic on?

Mr. LAPPIN. Yes.

Mr. SCOTT. Okay. Can you bring it a little closer to you?

Mr. LAPPIN. Good afternoon, Chairman Scott and Members of the Subcommittee.

Can you hear now? Okay.

Mr. Laird and I greatly appreciate the opportunity to appear before you today to discuss Federal Prison Industries and the effects of section 827 of the National Defense Authorization Act of 2008.

As you have indicated, the Federal Prison Industries is one of the bureau's most important correctional management programs. The primary goals of the Federal Prison Industries program are to improve public safety and inmate reentry. The program accomplishes this by providing inmates with jobs, skills, training and work experience, thereby reducing recidivism among ex-inmates and relieving inmate idleness within our institutions.

FPI is not a business. Its main purpose is not to generate revenue. There are many ways in which FPI programs do not and should not operate as a business. The FPI program limits its adver-

tising and marketing. The program spreads its operations across multiple business areas and the FPI program is deliberately labor-intensive in order to provide job skills training to the largest possible number of inmates.

Another benefit of the FPI program is its ability to help with the effort to provide restitution to victims of crime. Inmates who work in FPI are required to contribute 50 percent of their wages to pay court-ordered fines, victim restitution, and child support. The FPI program also contributes significantly to reducing inmate idleness. Inmate idleness undermines other rehabilitation programs and increases the risk of violence and other disruptive activities. Idle inmates require more staff to monitor, which increases the cost to taxpayers.

Federal Prison Industries is unique among other inmate programs and it receives no appropriated funding. Earnings from FPI programs are used for operating costs, including the purchase of raw materials and equipment, staff salaries and benefits, and compensation to inmates.

Last year, FPI spent more than a half-billion dollars buying raw materials, equipment, and services from private vendors. As a result of these purchases, there are thousands of jobs in the private sector that are tied directly to the continued viability of the FPI program.

Recent legislation and the FPI board of director decisions, which I detail in my written statement, have had a dramatic effect on FPI's operations. Provisions in the National Defense Authorization Act of 2002 and 2003 and in two more recent omnibus appropriation bills require that Federal agencies who wish to purchase an item that is offered by the FPI program, the contractor must first conduct market research to determine if FPI's product is comparable to that offered by private sector vendors in terms of quality, price and delivery. If the buying agency determines that the product is not comparable, then competitive procurement procedures apply.

The impact of these provisions was felt primarily by FPI's office furniture program, where sales decreased by nearly 40 percent since 2002. As a result of these sales decreases, FPI has eliminated almost 2,400 jobs in office furniture factories.

More recently, the National Defense Authorization Act of 2008 included a provision that amends the process by which the Department of Defense purchases certain products from FPI. This provision requires DOD to use competitive procedures for products for which FPI has a significant market share, defined as more than 5 percent of the DOD purchases in a product category.

DOD recently issued a listing of the Federal supply classification codes in which FPI sales met this market share criteria. Based on that, we believe a minimum of $140 million in sales and commensurate 3,250 inmate jobs are potentially at risk. This would represent approximately 17 percent of the FPI program's annual sales and 14 percent of its inmate workforce.

It is difficult to say with certainty how much of the FPI program sales that are potentially affected by section 827 may be lost. While sales in some product areas may decline, the product impact of this

provision will be difficult to predict until DOD is fully aware of these procurement changes.

Modernization of the FPI program should be accomplished through a comprehensive strategy guided by Congress' judiciary Committees. As the Administration has previously articulated, any modifications of the FPI program should simultaneously provide Federal agencies with this balance that the judge and you have referenced with greater flexibility in buying products, increased access by private sector companies to government purchases, and ensure that the attorney general maintains adequate work opportunities in prisons to reduce recidivism and counter the potential dangerous effects of inmate idleness.

Chairman Scott, this concludes my formal comments. Mr. Laird and I would be pleased to answer questions for you and other Members of the Subcommittee.

[The prepared statement of Mr. Lappin follows:]

PREPARED STATEMENT OF HARLEY G. LAPPIN

Department of Justice

STATEMENT OF

HARLEY G. LAPPIN
DIRECTOR
FEDERAL BUREAU OF PRISONS
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY

CONCERNING

"FEDERAL PRISON INDUSTRIES – EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008"

PRESENTED

MAY 6, 2008

Good Afternoon Chairman Scott, and Members of the Subcommittee:

I appreciate the opportunity to appear before you today to discuss Federal Prison Industries (known as FPI or under its trade name UNICOR). As the Director of the Bureau of Prisons (BOP), I also serve as the Chief Executive Officer of FPI, a government agency program that is one of the BOP's most important correctional management programs. Currently, there are more than 22,000 inmates participating in the FPI program.

The BOP's mission is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure. We also seek to provide work and other self-improvement opportunities to assist offenders in returning to their communities as productive law-abiding citizens. In fulfilling its mission, the BOP is facing several challenges. The federal inmate population has grown from 43,000 two decades ago to more than 201,000 today. Not only are the numbers of inmates growing, but we are managing more dangerous and aggressive offenders, including more gang-affiliated inmates. In an effort to keep pace with the increasing inmate population, the Bureau has activated 15 new prisons during the last four years. Each of these new facilities is designed to confine high and medium security male inmates.

Our mission is particularly challenging because the BOP has no control over the number of offenders who come into the prison system or over the length of time they stay in prison. We

also do not control the offenders' backgrounds, including criminal histories, educational levels, substance abuse problems, etc., all of which impact their ability to adjust to prison and ultimately their ability to successfully reenter society. We do, however, have control over how inmates occupy their time while incarcerated. We also have some influence over how offenders leave our custody and the impact they will have on society, particularly public safety.

Federal Prison Industries is one of the most critical components of the BOP's efforts to prepare inmates to successfully reenter society. The goal of the FPI program is to provide inmates with job skills training and work experience, thereby reducing recidivism and undesirable inmate idleness. Inmates who work in FPI are 24 percent less likely to commit crimes for as long as 12 years after release, when compared to similar inmates who do not have FPI experience. These research findings have been favorably reviewed by nationally-respected social scientists and economists.

We focus the FPI program in higher security institutions -- those that generally have the most serious offenders. In fact, 76 percent of inmates working in the FPI program have been convicted of drug trafficking, weapons, and violent offenses. FPI provides a program of constructive industrial work, providing sound job skills and positive work habits to inmates. Even before they are released from prison, it is apparent to prison staff that inmates who work in the FPI program have made substantial adjustments in their thinking and their behavior. When compared to similar inmates without FPI experience, the FPI program inmates are substantially

less likely to violate prison rules, despite the extensive and violent criminal histories that are so common to these individuals.

Federal Prison Industries is unique among our inmate programs in that, by statute, it receives no appropriated funding for its operations. Earnings from the FPI program are used for all its operating costs, including the purchase of raw materials and equipment, staff salaries and benefits, and compensation to inmates performing in industrial work details. In addition, the FPI program pays for equipment and other start-up costs associated with activating new prison factories.

The FPI program's purpose is not to be a business that generates revenue. Rather, it is a correctional program charged with the goal of providing meaningful work opportunities for Federal offenders. There are many ways in which the FPI program does not and should not operate as a business: it does limited advertising and marketing; it spreads its operations across multiple business areas to lessen its potential impact on each of the industries in which it operates; and, currently, it is deliberately labor-intensive in order to provide job skills training to the largest possible number of inmates. Although the FPI program produces products and performs services, the real output of the FPI program is inmates who are more likely to return to society as law-abiding taxpayers because of the job skills training and work experience they received in the FPI program.

Another important benefit of the FPI program is its ability to provide inmates wages that can be used to provide restitution to victims. The FPI program mandates that 50 percent of inmate wages be used to pay fines, victim restitution, and child support obligations, which helps those outside the prison system who were affected by inmates' conduct. In FY 2007, inmates working in the FPI program paid more than $2.7 million towards these obligations, with the vast majority going to victim restitution.

The FPI program also contributes significantly to reducing inmate idleness. Inmate idleness is problematic in a number of ways -- it undermines other rehabilitation programs and increases the risk of violence, escapes, and other disruptions. Idle inmates require more staff to monitor, which increases the cost to taxpayers. Rapid growth of the inmate population has led to increased system-wide crowding, with the most significant crowding at medium and high security institutions. Our data indicates a high correlation between increasing inmate-to-staff ratios and higher rates of assaults. Thus, the FPI program is particularly important at higher security level institutions.

With regard to the FPI program's effect on the private sector, FPI attempts to go beyond its legal obligation to minimize any adverse effect, to focus on maximizing positive effects wherever possible. Last year the FPI program spent more than a half-billion dollars buying raw materials, equipment, and services from private vendors. This money represented 77 percent of the entire revenue earned by the FPI program, and more than 60 percent of this money went to small businesses, including businesses owned by women, minorities, and those who are

disadvantaged. As a result of the FPI program's purchases, there are thousands of jobs in the private sector that are tied directly to the continued viability of the FPI program.

While BOP is pleased with the FPI program's positive impact on recidivism, restitution to the victims of crime, and its support for private sector businesses, we recognize that there has been some concern about the FPI program's mandatory source authority. I would like to clarify that FPI's "mandatory source" rule does not mean that the FPI program prohibits Federal customers from purchasing from private vendors. Many of the FPI program's products are only offered as "non-mandatory" items, meaning that competitive procurement procedures apply. Finally, for those FPI program products to which mandatory source applies, it does so only in a limited way. Recent legislation and FPI Board of Directors resolutions have dramatically reduced the effect of mandatory source.

Provisions of the National Defense Authorization Acts of 2002 and 2003, and the FY 2004 and FY 2005 Omnibus Appropriations Bills, require that when Federal agencies wish to purchase an item that is offered by the FPI program, the contracting officer must first conduct market research to determine if the FPI program's product is comparable to that offered by private vendors in terms of quality, price, and delivery. If the buying agency determines that the FPI program's product is not comparable, competitive procurement procedures apply. The impact of these provisions was felt primarily by the FPI program's office furniture program, where sales decreased by nearly 40 percent since FY 2002.

Most recently, the National Defense Authorization Act of Fiscal Year 2008 (Pub. L. 110-181) included a provision that amends the process by which the Department of Defense purchases certain products from the FPI program. Section 827 of that law requires the Department of Defense (DoD) to use competitive procedures when procuring products for which the FPI program has a significant market share. The FPI program is considered to have a significant market share if its sales to DoD represent more than five percent of DoD purchases in a product category.

DoD recently issued a listing of the Federal Supply Classification (FSC) codes in which the FPI program's sales met the market share criteria as set forth in Section 827. Based on that list, we believe a minimum of $144 million of the FPI program's sales and a commensurate 3,250 inmate jobs are potentially at risk. This would represent approximately 17 percent of the FPI program's annual sales and 14 percent of its inmate workforce.

It is difficult to say with certainty how much of the FPI program's sales that are potentially affected by Section 827 may be lost. While sales in some product areas may decline, the total impact of this provision on the FPI program will be difficult to predict until it has been fully implemented. The level of impact will depend primarily on how it is interpreted and implemented by DoD contracting officers.

It may take some time until DoD's contract community is fully aware of these changes in the DoD procurement process. It is imperative the FPI program's customers be provided clear guidance on the accurate interpretation of the legislation to ensure it is implemented fairly.

We expect the FPI program's commercial items may suffer greater adverse impact than our military specification items. This is because contracting officers have substantial discretion, as they should have, to determine whether one commercial product is comparable to another. However, when comparing military specification items, such as electronics components that are produced by FPI, the items under review are identical whether manufactured by the FPI program or a private vendor, making price the critical factor for award.

We expect the impact of Section 827 on the FPI program will occur over some period of time. Language in the National Defense Authorization Acts of 2002 and 2003 and the FY 2004 and FY 2005 Omnibus Appropriations Bills, which I mentioned earlier, also mandated the use of competitive procurement procedures when buying certain items from FPI. The impact on the FPI program from those provisions was felt gradually over time.

DoD may modify its list of product categories for which the FPI program has a five percent market share. DoD is by far the FPI program's leading customer, accounting for more than $500 million in procurements, more than 60 percent of the FPI program's sales.

If the FPI program experiences a loss in sales and a resulting reduction in its inmate workforce, there are no FPI programs or other institution jobs available for inmates to move into as an alternative. The FPI program is already challenged to meet the demand for inmate jobs in light of the continuing rapid growth in the Federal inmate population. In fact, the FPI program has not kept pace with its goal of providing work opportunities for 25 percent of our work-eligible inmate population.

It has been shown that providing constructive programs, such as Federal Prison Industries, results in a more positive correctional environment whereby inmates are less likely to engage in disruptive behavior. Eliminating these opportunities for inmates may lead to higher incidents of violence inside the facilities, creating potential safety concerns for both staff and inmates.

The greater the adverse impact on the FPI program as a result of Section 827, the greater the corresponding adverse effect on the FPI program's ability to continue operating in a self-sustaining manner, as statutorily required. Should the impact be severe enough, it may jeopardize the FPI program's continued future viability as a self-sustaining entity.

And if the FPI program is not able to maintain its viability as a correctional program or is not able to maintain adequate levels of inmate enrollment, there will be a negative ripple effect. First and foremost, if fewer inmates develop the social skills of the workplace, recidivism will likely increase, at substantial future cost to taxpayers and victims of crime. Second, there will be

an economic disruption to the small businesses that currently depend on the FPI program for their continued business success, and an attendant loss of jobs. Third, opportunities to provide restitution to victims of crime will decrease. Fourth, as noted above, the risk of dramatically increased inmate idleness will threaten the safe and orderly operation of our federal correctional institutions.

While we are concerned about the potential impact of Section 827 and the future of FPI, we are also sensitive to the concerns of private vendors seeking to bid on government contract bidders. We agree that any negative impact of the FPI program on the private sector should be minimized. As the Administration has previously articulated, any modification of the FPI program should simultaneously provide federal agencies with greater flexibility in buying products, increase access by private sector companies to government purchases, and ensure that the Attorney General maintains adequate work opportunities in Federal prisons to reduce recidivism and counter the potentially dangerous effects of inmate idleness.

Efforts to modify the FPI program in a balanced manner are already underway. During the last several years, we have reduced our capacity in office furniture and electronics (two of our traditional industries) and we continue to emphasize new areas for inmate jobs, particularly service jobs that would otherwise be performed outside the United States. The FPI program's Presidentially-appointed Board of Directors has taken several significant steps in this effort, including:

- Eliminating FPI's mandatory source for purchases up to $2,500. This applies to all Federal agencies.

- Having FPI approve requests for waivers of mandatory source in all cases where a private sector vendor provides a lower price for a comparable product that the FPI program does not meet.

- Waiving the FPI program's mandatory source for products where the FPI program's share of the federal market is 20 percent or more.

- Directing that all prison-made products sold by the FPI program must have at least 20 percent of its value contributed by inmate labor.

The FPI program continues to seek ways to create new work opportunities for its inmate workforce. FPI's future growth is focused on non-mandatory areas such as fleet management, recycling, and services. The FPI program also is continuing to examine ways in which it can improve its operations and increase inmate employment, such as by increasing vertical integration. This allows the FPI program to employ more inmates without a corresponding increase in output.

While this work proceeds, we recognize that if the FPI program is no longer available to provide training to inmates, we will need to further develop alternative programs that have

important shortcomings as substitutes for FPI. The Congressional Budget Office has estimated in the past that substitutes for FPI could surpass the hundreds of millions. The BOP is receiving significantly greater numbers of federal inmates who are serving more time in prison, are unskilled, undereducated, criminally sophisticated, and physically violent. Virtually all of these inmates will be released back into our neighborhoods at some point and will need job skills (vocational training), work experience (the FPI program), and secondary education if they are to successfully reintegrate into society.

Like the FPI program, the BOP's education and vocational training programs have been shown to have a positive impact on recidivism and an inmate's ability to find and maintain employment upon release from incarceration. However, these programs operate best as a complement to the FPI program, not a substitute for it. Education and vocational training programs alone do not provide inmates with sufficient job skills training and work experience during the length of their incarceration. Most education and training programs are provided on a part-time schedule, rather than for a full day. Also, these programs are designed to run for only a limited time (vocational training typically runs 18-24 months in duration). The average sentence length for inmates in the BOP is over 9 years. In addition, unlike the FPI program, educational and vocational training programs require appropriated funding. Simply put, education and vocational training are extremely valuable programs that we utilize to the greatest possible extent. However, they are not substitutes for the extended real work experience provided by the FPI program.

The FPI program creates the opportunity for inmates to work in diversified work programs that teach work skills and a work ethic through day-to-day work experience, both of which can lead to viable employment upon release. With the Federal inmate population projected to reach 223,320 by the end of fiscal year 2011, the greatest challenge facing the FPI program in the future will be its ability to continue to generate the requisite number of new inmate jobs and thereby help prisoners prepare for a crime-free return to their community after release.

Chairman Scott, this concludes my remarks. I would be pleased to answer any questions you or other Members of the subcommittee may have.

Mr. SCOTT. Thank you.

We have been joined by the gentlelady from Ohio, Ms. Sutton.

Mr. Gage?

TESTIMONY OF JOHN GAGE, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, WASHINGTON, DC

Mr. GAGE. Thank you, Mr. Chairman.

On behalf of the more than 39,000 Federal correctional officers and staff who work in the Bureau of Prisons, thank you for the opportunity to testify today on the Federal Prisons Industries inmate work program and its critical importance to the safety and security of Federal correctional officers, Federal prison inmates, and the local communities surrounding our BOP correctional institutions.

Prison inmate overcrowding and correctional officer understaffing are creating dangerous conditions inside the walls of Federal prisons. As the Chairman noted, and I reiterate, more than 200,000 prison inmates are confined in the 114 BOP institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. By 2010, it is expected there will be 250,000 inmates incarcerated in Federal prisons.

To make matters worse, the number of Federal correctional officers and staff who work in BOP institutions is failing to keep pace with this tremendous growth in the prison inmate population. The BOP system is currently staffed at an 86.6 percent level, as contrasted with the 95 percent staffing levels in the mid-1990's.

Moreover, the current 86.6 percent staffing level, or 34,098 filled positions, is well below the 90 percent staffing level, or 35,444 filled positions, that BOP believes is the point where the safety and security of correctional officers, as well as prison inmates, could be in jeopardy.

This inmate overcrowding and correctional officer understaffing is resulting in the significant increase in Federal prison inmate assaults against correctional officers and against other inmates. In December, 2007, the BOP intelligence section of the Department of Justice issued a report documenting that inmate-on-inmate assaults in fiscal year 2007 had increased 15.5 percent over the previous year, and inmate-on-staff assaults in fiscal year 2007 had increased 6 percent over the previous year.

This unsafe work environment is the reason why we at AFGE strongly support the FPI prison inmate work program. FPI is a self-supporting government corporation that provides work opportunities and job skills training to BOP prison inmates by producing goods and performing services for Federal agencies. By statute, Federal agencies are required to purchase from FPI any product listed in the FPI schedule of products, a sole-source requirement referred to as mandatory source preference.

The FPI prison inmate work program is the essential management tool that Federal correctional officers and staff use to help deal with the huge increase in the prison inmate population. This program keeps 23,152 prison inmates, or about 18 percent of the eligible population, productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness.

It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good conduct. Unfortunately, last year Congress approved section 827 in the National Defense Authorization Act that will significantly reduce the application of the FPI mandatory source preference with regard to DOD. This reduction will necessarily result in a substantial decrease in the number of FPI prison inmate jobs.

The FPI board in 2003 adopted a resolution that ended the application of the FPI mandatory source preference for those products where FPI's share of the Federal market exceeds 20 percent. Section 827 ends the application of mandatory source preference with regard to DOD purchases for those products where FPI's share of the Federal market is greater than 5 percent.

It is estimated that this reduction from 20 percent to 5 percent will result in the potential loss of up to $241 million in FPI sales, or a 33.6 percent decrease in total FPI sales revenues. This FPI sales decrease in turn will result in a potential loss of up to 6,500 prison inmate jobs, or a 30.6 percent decrease in the number of prison inmates employed by FPI.

AFGE has long opposed any legislative attempt to eliminate the mandatory source preference for FPI-produced goods because it would seriously endanger the safety of our members, the Federal correctional officers and staff who work inside BOP institutions. However, in the past couple of years we have come to accept the idea of eliminating the FPI mandatory source if and only if a strong work-based training program is developed to supplement the FPI program. This strong work-based training program must necessarily create a sufficient number of new Federal prison inmate jobs to replace the prison inmate job positions that would be lost if the FPI mandatory source preference is eliminated.

A meritorious reform proposal was included in the May 11, 2006 discussion draft of Representative Hoekstra's H.R. 2965. The proposal would authorize a private business to train participating Federal prison inmates by producing a product or performing a service if such product or service is being currently produced or performed outside the U.S. by or for private business and has been so produced or performed for a period of 3 years.

This proposal would be intended to provide employment for the greatest number of Federal prison inmates as long as no single private industry is forced to bear an undue burden of competition from the products or services of Federal prison factories or workshops, and competition with private industry or labor is reduced to a minimum.

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

[The prepared statement of Mr. Gage follows:]

PREPARED STATEMENT OF JOHN GAGE

STATEMENT OF

JOHN GAGE
NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMLPOYEES
AFL-CIO

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

HOUSE COMMITTEE ON THE JUDICIARY

ON

FEDERAL PRISON INDUSTRIES – EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008

MAY 6, 2008

Mr. Chairman and Members of the Subcommittee –

My name is John Gage. I am the National President of the American Federation of Government Employees, AFL-CIO. On behalf of the more than 39,000 federal correctional officers and staff who work in the Bureau of Prisons (BOP) institutions, I thank you for the opportunity to testify today on the Federal Prison Industries (FPI) prison inmate work program, and its critical importance to the safety and security of federal correctional officers and staff, federal prison inmates, and the local communities surrounding our BOP institutions.

I. FPI Prison Inmate Work Program

As you probably know, the serious problems of prison inmate overcrowding and correctional officer understaffing are creating dangerous conditions inside the walls and fences of BOP correctional institutions.

More than 200,000 inmates are confined in the 114 BOP correctional institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. By 2010, it is expected there will be 215,000 prison inmates incarcerated in BOP institutions.

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

To make matters worse, the number of federal correctional officers and staff who work in BOP institutions is failing to keep pace with this tremendous growth in the prison inmate population. The BOP system is currently staffed at an 86.6% level, as contrasted with the 95% staffing levels in the mid-1990s. Moreover, the current 86.6% staffing level (or 34,098 filled positions) is <u>below</u> the 90% staffing level (or 35,444 filled positions) that BOP believes is the point where the safety and security of correctional officers and staff, as well as federal prison inmates, could be in jeopardy.

We at AFGE believe this inmate overcrowding and correctional officer understaffing is beginning to result in a significant increase in federal prison inmate assaults against correctional officers and staff, and against other federal prison inmates. On December 26, 2007, the BOP Intelligence Section of the U.S. Department of Justice issued a report documenting that a combined total of 1,780 inmate-on-inmate assaults (armed and unarmed) occurred during FY 2006, representing a 15% increase over the 1,541 reported in FY 2005. The report also documented that a combined total of 1,362 inmate-on staff assaults (armed and unarmed) occurred during FY 2006, representing a 6.0% increase over the 1,285 reported in FY 2006.

This increasingly unsafe environment in which our AFGE members work is the reason why we strongly support the FPI prison inmate work program. FPI is a self-supporting government corporation that provides work opportunities and job skills training to BOP prison inmates by producing goods and performing services for federal agencies. By statute, federal agencies are required to purchase from FPI any product listed in the FPI Schedule of Products – a sole-source requirement referred to as "mandatory source preference."

The FPI prison inmate work program is the essential management tool that federal correctional officers and correctional staff use to help deal with the huge increase in the FPI prison inmate population. This program helps keep 23,152 prison inmates – or about 18% of the eligible inmate population – productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good behavior and must have completed high school or be making steady progress toward a General Education Degree (GED).

In addition, the FPI prison inmate work program is an important rehabilitation tool that provides federal inmates an opportunity to develop job skills and values that will allow them to reenter – and remain in – our communities as productive, law-abiding citizens. The Post-Release Employment Project (PREP), a multi-year study of the FPI prison inmate work program carried out and reported upon in 1996 by William Saylor and Gerald Gaes, found that the FPI prison inmate work program had a strongly positive effect on post-release employment and recidivism. Specifically, the study results demonstrated that:

- In the short run (i.e., one year after release from a BOP institution), federal prison inmates who had participated in the FPI work program (and related vocational training programs) were: (1) 35% <u>less</u> likely to recidivate than those who had not participated, and (2) 14% <u>more</u> likely to be employed than those who had not participated.
- In the long run (i.e., up to 12 years after release from a BOP institution), federal prison inmates who participated in the FPI work program were 24% <u>less</u> likely to recidivate than those who had not participated in the FPI work program. (*PREP: Training Inmates Through Industrial Work Participation, and Vocational and Apprenticeship Instruction,* by William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 24, 1996.)

Later in 1999, Saylor and Gaes published a follow-up paper to report further analyses of the PREP data which focused on the differential effect of the FPI prison inmate work program on the post-release recidivism of four groups: (1) non-Hispanic whites, (2) non-Hispanic blacks, (3) Hispanic whites, and (4)

Hispanic blacks. Their analyses revealed that the FPI prison inmate work program provides even greater benefit to the three minority groups that are at the greatest risk for recidivism (non-Hispanic blacks, Hispanic whites, and Hispanic blacks) than it does for the non-Hispanic white group. In general, the recidivism improvement rates for minority inmates who participated in the FPI work program compared to those minority inmates who did not participate were between 37% and 147% higher than the recidivism improvement rates for non-Hispanic white inmates who participated in the FPI work program compared to those non-Hispanic white inmates who did not participate. As Saylor and Gaes concluded:

> "Regardless of whether a minority was defined on the basis of race or ethnicity, and despite their being at a higher risk of recidivism, minority groups benefited more from [FPI work program] participation than their lower risk non-minority counterparts. While the absolute differences may not appear that large, the relative improvements [in recidivism rates] indicate a much larger program effect for minority program participants who are otherwise more likely to be recommitted to prison." *(The Differential Effect of Industries Vocational Training on Post-Release Outcome for Ethnic and Racial Groups,* William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 6, 1999.)

II. Legislative and Administrative Initiatives to Modify the Application of the FPI Mandatory Source Preference – and Their Adverse Impacts on FPI Prison Inmate Employment

A. Initiatives in 2002 and 2003

FPI's statutory mission is "to provide employment to the greatest practical number of inmates confined within the Federal Bureau of Prisons" while minimizing "FPI's impact on private business and labor." Legislative and administrative initiatives to modify the application of the FPI mandatory source preference that occurred in FY 2002 and FY 2003 – the result of political pressures from private sector businesses and labor unions – have "had the effect of reducing the level of impact on the private sector (particularly in the FPI program's traditional industries of textiles and office furniture)", according to the *"Message from the Board of Directors"* in the FY 2004 FPI Annual Report.

However, in the process of "reducing the level of impact on the private sector," these legislative and administrative initiatives also have had the effect of causing the elimination of thousands of FPI prison inmate jobs in the past several years. This is a disappointing trend, especially considering the fact that the number of BOP prison inmates increased by tens of thousands during this same time period.

Legislative Initiatives

Section 811 of the National Defense Authorization Act for FY 2002 (P.L. 107-107) and Section 819 of the National Defense Authorization Act for FY 2003 (P.L. 107-772), the two sections that constitute the existing 10 U.S.C. Section 2410n, and appropriations language in both FY 2004 Consolidated Appropriations Act (P.L. 108-199) and FY 2005 Consolidated Appropriations Act (P.L. 108-447) altered the process by which DoD and civilian agencies purchase goods from FPI:

(a) Market Research:

- DoD and civilian agencies are required to conduct market research to determine whether an FPI product is comparable in terms of price, quality, and time of delivery to products offered by private sector suppliers.
- Determining comparability is a unilateral determination made at the discretion of the DoD and civilian agencies' contracting officials.

(b) Mandatory Source or Competition Procedure:

- If a contracting official determines that FPI's product *is* comparable, then FPI mandatory source procedures remain applicable. In other words, the DoD or civilian agency must purchase the product from FPI – or request an FPI waiver to procure it from private sector suppliers.
- Conversely, if a contracting official determines that FPI's product *is not* comparable, the DoD or civilian agency must implement competitive procurement procedures, and FPI must be given an opportunity to submit a competitive offer.

Administrative Initiatives

Upon its appointment in May 2002 by President Bush, the new FPI Board of Directors initiated several administrative measures "to ensure the FPI program fulfills its statutory mandate to limit competition with private industry and free labor," according to the *"Message from the Board of Directors"* in the FY 2004 FPI Annual Report. These initiatives included:

- Waiving mandatory source for all FPI products where the FPI program's share of the federal market is 20% or higher;
- Eliminating the FPI program's status as a mandatory source of federal agency supply for purchases valued at $2,500 or under;
- Granting all requests to waive FPI's mandatory source when FPI is unable or unwilling to meet the price of a comparable product offered by a private sector supplier;
- Terminating the business practice commonly referred to as "pass-through" in which the FPI program would purchase finished products

from its private sector partners for resale to its federal agency customers if circumstances prevented FPI from fulfilling an order.

- Ensuring that prison inmates in the FPI program do not have access to sensitive or personal information of any kind (such as credit card numbers, medical records, social security numbers, credit reports, or other personal information); and
- Requiring all products made by the FPI program to have at least 20% of their value added by prison inmate labor.

Initiatives Effect: Elimination of Thousands of FPI Prison Inmate Jobs

As the following table shows, at the end of FY 2000, 21,700 BOP prison inmates - or 25% of the FPI-eligible (sentenced and medically able) prison inmate population of 86,800 – worked in FPI factories. But the FPI employment situation in FY 2005 was strikingly different – a change that obviously began in FY 2002. At the end of FY 2005, 19,720 BOP prison inmates – or only 17% of the total FPI-eligible (sentenced and medically able) prison inmate population of 116,000 – worked in FPI factories. Thus, the number of BOP prison inmates working in FPI factories *decreased* by 1,980 between FY 2000 and FY 2005 while the total number of FPI-eligible (sentenced and medical able) prison inmates *increased* by 29,200 over that same time period. (The total number of BOP prison inmates *increased* by 42,120 between FY 2000 and FY 2005. The total BOP prison inmate population is larger than the more restricted "FPI-eligible" prison inmate population.)

Some FPI detractors have denied the adverse impact these legislative and administrative changes have had on the FPI prison inmate employment situation. They point to the increases in FPI's prison inmate employment that began in FY 2005 and have continued in FY 2006 and FY 2007. However, the inmate employment numbers in these three fiscal years have been temporarily inflated as FPI responded to the Defense Department's Iraq war product demands. Virtually all of FPI's electronic sales, and the vast majority of FPI's clothing/textile sales are in support of the United States' Iraq war effort, according to the FPI annual reports between FY 2005 and FY 2007. Thus, the eventual end of the Iraq war will presumably result in decreased product sales and prison inmate jobs – all while the federal inmate population and the demand for FPI jobs continue to grow.

This disappointing situation is made even worse if one considers FPI's failure since FY 2001 to meet the agency's annual goal of employing 25% of the total FPI-eligible (sentenced and medically able) prison inmate population. For example, if FPI had met its 25% employment goal in FY 2007, 32,155 prison inmates – not 23,152 – would have worked in FPI factories. If FPI had met its 25% employment goal in FY 2007, 9,003 additional prison inmates would have been: (1) productively occupied in labor-intensive work activities, thereby reducing inmate idleness and the violence associated with that idleness, and (2)

provided opportunities to develop job skills and values to help them reenter our communities as productive, law-abiding citizens.

FPI Prison Inmate Employment Data: FY 2000-2007
(data figures are as of September 30 of each fiscal year)

Fiscal Year	# of BOP prison inmates employed by FPI (actual)	% of eligible (sentenced, medically able) BOP prison inmate population employed by FPI	Total eligible (sentenced, medically able) BOP prison inmate population*	# of BOP prison inmates employed by FPI if 25% FPI employment goal had been met	# of additional BOP prison inmates needed to be employed by FPI in order to meet 25% FPI employment goal
FY 2000	21,700	25%	86,800	21,700	0
FY 2001	22,560	25%	90,240	22,560	0
FY 2002	21,778	22%	98,990	24,747	2,969
FY 2003	20,274	19%	106,705	26,676	6,402
FY 2004	19,337	18%	107,427	26,856	7,519
FY 2005	19,720	17%	116,000	29,000	9,280
FY 2006	21,205	18%	117,805	29,451	8,246
FY 2007	23,152	18%	128,622	32,155	9,003

Source: State of the Bureau, six annual BOP reports for FY 2000-2005; FPI Annual Report, seven annual FPI reports for FY 2001-2005.
* The total BOP prison inmate population is larger than the more restricted FPI-eligible (sentenced, medically able) prison inmate population: FY 2000: 145,125; FY 2001: 156,572; FY 2002: 163,436; FY 2003: 172,499; FY 2004: 179,288; FY 2005: 187,245; FY 2006: 192,584; and FY 2007: 200,052.

B. 2007 Initiative

Section 827 of the National Defense Authorization Act for FY 2008 (P.L. 110-181) recodifies the 2003 and 2004 legislative initiatives contained in 10 U.S.C. Section 2410n by using the FPI Board's "significant market share" concept to structure the process for determining whether DoD should use competitive procurement procedures or the FPI mandatory source preference.

As explained above, the FPI Board adopted in 2003 a resolution that administratively ended the application of the mandatory source preference for those products where FPI's share of the Federal market exceeds 20%. Section 827 of the FY 2008 defense authorization measure ends the application of the FPI mandatory source preference with regard to DoD's purchase of FPI-made products for those products where FPI's share of the DoD market is greater than 5%.

Here is the new DoD process for purchasing FPI goods:

(a) Products for which FPI has a "significant market share" of less than 5 percent. - When DoD is considering a product for which FPI has a "significant market share" of less than 5 percent, DOD must conduct market research to determine whether the FPI product is comparable to products available from the private sector that best meet DoD's needs in terms of price, quality, and time of delivery. If DoD determines that a FPI product *is not* comparable in price, quality, and time of delivery to products available from the private sector, DoD shall use competitive procedures for the procurement of the product. But if DoD determines that a FPI product *is* comparable in price, quality, and time of delivery to products available from the private sector, then the FPI mandatory source preference remains applicable and DoD must purchase the FPI product.

(b) Products for which FPI has a "significant market share" of greater than 5 percent. – When DoD is considering a product for which FPI has a "significant market share" of greater than 5 percent, DoD may purchase a FPI product only if DoD uses competitive procedures for the procurement of the product. In conducting such a competition, DoD shall consider a timely offer from FPI.

This seemingly benign reduction in the "significant market share" from 20% to 5% for DoD purchases of FPI-made goods will have three significantly adverse consequences for the FPI prison inmate work program:

1. The significant reduction in the applicability of the FPI mandatory source preference with regard to DoD purchases of FPI-made products would necessarily result in a substantial decrease in the number of FPI prison inmate jobs - thereby *increasing* inmate idleness and the associated risk of inmate assaults on federal correctional officers and other inmates.

(a) Potential loss of FPI sales revenues: It was estimated last year that the reduction in the "significant market share" from 20% to 5% - and therefore the reduction in the applicability of the mandatory source preference – would result in a potential loss of up to $241 million in FPI sales revenues, or a 33.6% decrease from the FY 2006 FPI sales revenues of $717 million.

(b) Potential loss of FPI prison inmate jobs: The potential FPI sales revenue decrease of $241 million, in turn, would result in a potential loss of up to 6,500 FPI prison inmate jobs, or a 30.6% decrease from 21,205, the number of prison inmates employed by FPI in FY 2006. This estimate was based on the number of FPI prison inmates producing those products – primarily from the electronics and textiles/apparel sectors - that would be adversely impacted by the market share reduction from 20% to 5%.

2. The increase in FPI prison inmate idleness and the associated increased risk of inmate assaults on federal correctional officers and staff would necessarily require a substantial increase in BOP "Salaries and Expenses" account funding to pay for additional BOP correctional officers to deal with the increased risk of inmate assaults on federal correctional officers and other inmates.

It was estimated last year that 6,500 lost FPI prison inmate jobs would result in the need for 1,300 additional BOP correctional staff (based on a 5:1 inmate/staff ratio) for security and alternative programming. These 1,300 additional BOP correctional staff would require an additional $100 million in "Salaries and Expenses" account funding (based on one additional staffer costing an additional $77,000 in average salaries and fringe benefits).

3. Section 827's substantial reduction in the applicability of the FPI mandatory source preference with regard to DoD's purchase of FPI products would have a significantly adverse impact on the many private sector companies and non-inmate employees that supply FPI with raw materials, equipment, and services.

(a) Potential loss of private sector company sales: The potential FPI sales decrease of $241 million equates to a loss of $185 million in private sector sales of materials, equipment, and services. This $185 million loss is based on 77% of FPI revenue returning to the private sector in the form of FPI purchases of materials, equipment, and services. Moreover, $137 million of the $185 million loss in private sector sales would be from small businesses, including minority-owned, women-owned, and disadvantaged businesses.

(b) Potential loss of domestic private sector jobs: The potential loss of $185 million in private sector sales of materials, equipment, and services equates to a loss of 695 jobs in the domestic private sector. This jobs loss estimate is based on the Department of Commerce data on average output per worker for manufacturing.

III. Opponents' Arguments for Eliminating the FPI Mandatory Preference

Opponents of the FPI prison inmate work program often argue that the FPI mandatory source preference must be eliminated because: (1) FPI is a federal

procurement behemoth, (2) this FPI federal procurement behemoth is adversely impacting private companies' sales and non-inmate workers' jobs, particularly in the office furniture and textile/apparel industries, and (3) therefore, eliminating the FPI mandatory source will significantly help private companies and non-inmate workers.

However, the existing evidence would seem to support the opposite arguments:

1. FPI is not a federal procurement behemoth because its total product sales, even its office furniture sales, are relatively small.

FPI opponents of FPI often contend that FPI is a federal procurement behemoth. For example, Rep. Howard Coble (R-NC), then-chairman of the House Judiciary 8Subcommittee on Crime, Terrorism, and Homeland Security, stated at his Subcommittee's July 1, 2005 hearing on H.R. 2965, an anti-FPI bill, that he is "proud to be a cosponsor of this legislation" because "[among other things] FPI is a large and growing Government-owned corporation. In 1998, FPI had total sales in excess of $534 million and employed 20,200 inmates. In 2004, [FPI] employed 19,337 inmates with total sales of $802 million."

But while Rep. Coble and others seek to portray FPI as this "large and growing" behemoth, the fact is that FPI's total sales represent only a very small percentage of the total federal procurement market. FPI's total sales in FY 2004 - $802,720,000 – were less than one quarter of 1% (.2350934% to be exact) of the total federal agency procurement market - $341,447,181,612. FPI's total sales in FY 2007 - $852,724,000 – were less than one fifth of 1% (.1926680%) of the total federal agency procurement market - $442,587,106,986. (Source: *"Federal Contract Actions and Dollars by Executive Department and Agency, FY 2004 and FY 2007"*, Federal Procurement Data System website.)

Similarly, FPI opponents who support the office furniture industry argue that the FPI office furniture business segment is an increasingly "large and growing" portion of the total U.S. office furniture market. For example, Rep. Pete Hoekstra (R-MI), the primary sponsor of H.R. 2965, the anti-FPI bill, who represents a Michigan congressional district heavily involved with the office furniture industry, testified at the July 1, 2005 House Crime Subcommittee hearing on H.R. 2965 that:

> "It [the FPI office furniture business segment] is not a minuscule part [of the U.S. furniture industry]. The furniture industry is about – probably somewhere in the neighborhood of a $12 to $14 billion industry, depending on exactly what year you're taking a look at. Office furniture in FPI was a $250 million business within the last couple of years. It was a fast growing industry. It was the fastest growing office furniture company in America as the office furniture industry was going through its tough times."

However, contrary to Rep. Hoekstra's testimony, the fact is that the FPI office furniture business segment is only a very small part of the total U.S. office furniture market. As the table shows below, FPI office furniture sales in FY 2005 (when Rep. Hoekstra testified) - $139,773,000 – were only 1.39% of the total U.S. office furniture market - $10,070,000,000. In addition, the FPI office furniture sales have been decreasing over the last couple of years, not increasing. FPI office furniture sales have decreased in absolute terms – dropping from $217,852,000 in FY 2002 to $115,993,000 in FY 2007 – and as a relative percentage of the total U.S. office furniture market – decreasing from 2.45% in FY 2002 to 1.02% in FY 2007.

FPI Office Furniture Sales and U.S. Office Furniture Market (2002-2007)

Fiscal Year	FPI Office Furniture Sales	U.S. Office Furniture Market	FPI Office Furniture Sales as % of U.S. Office Furniture Market
2002	$217,852,000	$8,890,000,000	2.45%
2003	$151,996,000	$8,505,000,000	1.79%
2004	$140,935,000	$8,935,000,000	1.58%
2005	$139,773,000	$10,070,000,000	1.39%
2006	$118,179,000	$10,820,000,000	1.09%
2007	$115,993,000	$11,420,000,000	1.02%

Sources: *"The U.S. Office Furniture Market, Statistics,"* compiled by The Business and Institutional Furniture Manufacturer's Association; FPI Annual Report, six annual FPI reports for FY 2002-2007.

(2) FPI is not the cause of the U.S. private companies' sales losses and non-inmate workers' job losses in the office furniture and textile/apparel industries. Instead these sales and job losses are being caused by foreign competition.

FPI's opponents argue the FPI mandatory source preference should be eliminated because the FPI prison inmate work program is adversely impacting private sector companies and non-inmate workers, particularly in the office furniture and textile/apparel industries. But FPI's opponents have failed to present hard evidence to substantiate their assertion that the FPI program is systemically causing such company sales losses and non-inmate worker job losses.

An example of this inability occurred at the July 1, 2005 House Crime Subcommittee hearing on H.R. 2965. then-Subcommittee Chairman Coble asked the following two questions of Mr. Paul Miller, Director of Government Affairs, Independent Office Products & Furniture Association: "A, has any member of your association experienced detrimental effects as a result of FPI programs? And B, have you had any small businesses that have been forced out of

business as a direct consequence of competing with FPI?" In response, Mr. Miller said the following:

> "Let me answer the second question first. **To our knowledge, no, there has not been. We cannot point to a direct relationship of any business going out of business because of FPI.** But we do see our industry – the economy has struggled the last few years and our industry has struggled a great deal. We lost 30,000 jobs, our companies were losing business. So we do see a correlation that had they been able to compete with that Government business they may have been able to do a little bit better. They may not have had to lay employees off, or they may not have had to close down for work periods at a time, weeks at a time. So, we have been harmed, **but I can't say that we've closed our doors directly because of FPI.** It doesn't help." (Emphasis added)

Later at the same hearing, Rep. Dan Lundgren (R-CA) asked this question of Mr. Miller:

> "Mr. Miller, with all due respect, you've got to come and show me that this [FPI prison inmate work program] is really hurting the industry. I mean, to come here and say, well, I can't show you any loss of jobs anywhere and I can't show you any particular business going out of business but we know it hurts us, frankly is insufficient to convince me that we've got to do something. **Now, if you've got some real hard data to show how this [FPI] program is really hurting your industry in a substantial way, I'd like to hear it."** (Emphasis added)

In response, Mr. Miller failed to present any "real hard data" to show how FPI is adversely impacting office furniture companies and non-inmate workers "in a substantial way." Instead, he said his office furniture association has no problem with FPI "legitimately" making office furniture with prison inmate labor but is opposed to FPI's alleged use of the business practice referred to as "pass-through" in which the FPI program would purchase finished products from its private sector partners for resale to its federal agency customers if circumstances prevented FPI from fulfilling an order. (Contrary to Mr. Miller's statement, the "pass-through" issue was resolved administratively in 2002, and there is no evidence that FPI has employed the "pass-through" practice since that time.)

The reason why Mr. Miller and other FPI opponents have failed to present hard data to show that the FPI program is systematically causing losses of business sales and non-inmate worker jobs is simple. *The FPI prison inmate work program is not causing these losses.* These sales and job losses, particularly in the office furniture and textile/apparel industries, are being caused by foreign trade competition and the outsourcing of American jobs to other countries.

The very real adverse impact of foreign competition on the office furniture and textile/apparel industries has been documented again and again in federal government and trade association analyses, the office furniture and textile/apparel companies own stock reports to the Securities and Exchange Commission, and in the business media. For example, the U.S. Department of Commerce's comprehensive analysis of the health and competitiveness of the U.S. textile and apparel industries demonstrated how rising textile and apparel imports have caused substantial reductions in U.S. textile and apparel production as measured by the value of industry shipments, job losses and reductions in the number of textile and apparel establishments. *("The U.S. Textile and Apparel Industries: An Industrial Base Assessment,"* conducted by the U.S. Department of Commerce's Bureau of Industry and Security, as requested by the Joint Statement of Managers accompanying the Conference Report on the Consolidated Appropriations Resolution, 2003 (H.Rpt. 108-10.)

An example of both the adverse impact of foreign trade and the outsourcing of American jobs to other countries is a Business Week article on Haworth Furniture, a $1.4 billion Holland, MI-based maker of office furniture, and its increasing success in China. In addition to discussing how successful Haworth has been in moving a significant part of its manufacturing capacity to Shanghai, the August 22, 2005 article points out the adverse impact of Chinese imports on U.S. office furniture companies.

> *"What's particularly impressive is that Haworth is beating many Chinese manufacturers at their own game – and doing it on the locals' turf.* ***For the past five years, U.S. furniture manufacturers have been under siege from Chinese imports. Hundreds of U.S. furniture factories have shut, unable to compete with high-quality Chinese-made furniture costing 30% to 40% less.*** *Few U.S. furniture makers have even contemplated taking the fight to China by manufacturing there and selling to the domestic market.*
>
> *[But] the family-owned company has seen its Middle Kingdom sales grow 50% annually for the past three years. From its 250,000-square-foot factory in Shanghai, Haworth is selling more than 100,000 chairs a month, priced at $250 to $2,000 apiece, and around 100,000 office work stations, which go for up to $2,500 apiece." ("Sitting Pretty in Shanghai,"* Business Week*, August 22, 2005)*

So why the anti-FPI animus? U.S. office furniture and textile/apparel companies and labor unions, who have suffered tremendous sales and job losses, and the legislators who represent the congressional districts in which these companies reside, are attempting to mitigate these losses somewhat by gaining better access to federal procurement contracts and the relatively few jobs that FPI

prison inmates perform. Mr. Miller explained this in his response to Chairman Coble when he said "We lost 30,000 jobs, our companies were losing business. So...had [we] been able to compete with [FPI, we] may have been able to do a little bit better. [We] may not have had to lay employees off..."

But it would seem to be wrong-headed, policy-wise, to legislate the elimination of the FPI mandatory source - thereby endangering a successful correctional work program that is both an essential prison management tool and an important prisoner rehabilitation tool - simply to gain a few federal contracts and jobs. It would be better public policy - and more helpful to those living in North Carolina and Michigan - to directly deal with the root causes for the tremendous losses in sales and jobs in the office furniture and textile/apparel industries – foreign trade competition and outsourcing of American jobs.

To be fair, there have occurred isolated instances over the past two decades in which the FPI prison inmate work program adversely impacted an individual business whose primary customer is the federal government. One example often presented is the Glamour Glove Company problem a decade ago, in which Glamour Glove's production of gloves for the Department of Defense was being adversely impacted by FPI's increased glove production. Glamour Glove and FPI, of course, were able to negotiate a reasonable compromise to ensure that FPI no longer threatened the company's military glove production.

But again it would seem to be wrong-headed, policy-wise, to legislate the elimination of the FPI mandatory source - thereby endangering a successful correctional work program that is both an essential prison management tool and an important prisoner rehabilitation tool - when the isolated instances where the FPI program is adversely impacting individual businesses can be resolved administratively.

3. The legislative elimination of the FPI mandatory source preference will not significantly help private companies and non-inmate workers, even in the office furniture and textile/apparel industries. But it will have a significantly adverse impact on the many private companies and non-inmate workers that supply FPI with raw materials, equipment, and other services.

FPI's opponents argue that eliminating the FPI mandatory source preference will significantly help those private companies and non-inmate workers, particularly in the office furniture and textile/apparel industries, who have suffered tremendous sales and job losses. But, since the FPI inmate work program is not a federal procurement behemoth, and the FPI program is not systemically causing the losses in U.S. business sales and non-inmate worker jobs, the elimination of the FPI mandatory source preference will *not* provide significant help to those companies and workers.

Ironically, most of the impact of the legislative elimination of the FPI mandatory source preference will be adverse and will fall on those private companies (and their non-inmate workers) that provide the materials and equipment FPI factories need to produce their products. In FY 2007, FPI spent $656 million, or 77% of its net sales revenue of $853 million, on purchases of raw materials, supplies, equipment, and services from these private sector companies. About 70% of those purchases – or $459 million – were from small businesses, including businesses owned by women, minorities, and those who are disadvantaged. In addition, FPI estimates that these contractual relationships have generated about 5,000 U.S. non-inmate worker jobs, many of which are unionized.

Each of these private companies has played by the rules, competing fair and square for the FPI contracts. They responded to solicitations issued by FPI and were awarded contracts through competitive procedures. In order to fulfill their contractual obligations, these companies often have hired law-abiding citizens as workers, added equipment, and some have opened entire new plants. These private companies and their non-inmate workers do not deserve to be on the receiving end of a wrong-headed, policy-wise, animus toward the FPI prison inmate work program.

IV. FPI Reform Proposal

AFGE has long opposed any legislative attempt to eliminate the mandatory source preference for FPI-produced goods because we believe it would result in the loss of countless numbers of FPI prison inmate jobs. This loss of inmate jobs, in turn, would seriously endanger the safety of our members – the federal correctional officers and federal correctional staff who work inside BOP institutions.

However, in the past couple of years of negotiations with the Anti-FPI Coalition and with Rep. Pete Hoekstra's staff, we have come to accept the idea of eliminating the FPI mandatory source if – and only if – a strong work-based training program is developed to supplement the FPI program. This strong work-based training program must necessarily create a sufficient number of new federal prison inmate jobs to replace the prison inmate job positions that would be lost if the FPI mandatory source preference is eliminated.

A reform proposal that we think has merit was included in the May 11, 2006 discussion draft of Rep. Hoekstra's H.R. 2965. This discussion draft established a strong work-based training program for federal inmates based on two authorities:

(1) The first authority would authorize a private business to train participating federal prison inmates by producing a product or performing a service, if such product or service is not produced or performed within the United States by non-inmate workers. However, this authority probably would not create enough new

prison inmate jobs to replace those lost FPI inmate jobs, given the harsh restriction of "not produced or performed within the United State by non-inmate workers." Thus, the need for the second authority below.

(2) The second authority would authorize a private business to train participating federal prison inmates by producing a product or performing a service, if such product or service: (a) is being currently produced or performed outside the United States by or for the private business and (b) has been so produced or performed for a period of 36 months prior to the date such private business initially submits a proposal to FPI.

This second authority, which would probably create more federal prison inmate jobs than the first, would be intended to provide employment for the greatest number of federal prison inmates as long as (a) no single private industry is forced to bear an undue burden of competition from the products or services of federal prison factories or workshops; and (b) competition with private industry or private labor is reduced to a minimum.

If I were a private sector union president, I probably would be concerned about the possible uncompetitiveness of this "second authority" proposal. However, I think we can resolve this uncompetitiveness problem in the following two ways:

(1) The FPI Board of Directors, in consultation with the Departments of Commerce and Labor, shall not approve a "second authority" agreement if the Board determines that the introduction of the products or services of the proposed agreement into the commercial market could reasonably be expected to subject non-inmate workers employed by a company within the United States to unfair competition that would result in reduced hours of available work or loss of employment for such workers.

(2) The FPI Board of Directors shall be expanded and restructured to ensure that the "second authority" program's competition with private industry and non-inmate labor is reduced to a minimum. Three Board members would represent private industry, instead of the current one member - and they shall, to the maximum extent practicable, include representation of firms producing goods and firms furnishing services, especially from those industry categories which FPI derives substantial sales – electronics and textiles/apparel. In addition, three Board members would represent labor, instead of the current one member - and they shall, to the maximum extent practicable, include representation from those labor unions whose members are likely to be most affected by the sales of FPI products and services.

This "second authority" program basically would be an expansion of the existing FPI commercial services program that repatriates back into the United States those services currently performed outside the United States for sale to domestic commercial customers. Under this program, FPI prison inmates are currently

engaged in directory assistance call centers, data entry, packaging and mailing catalogs, etc.

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

Mr. SCOTT. Thank you.
Mr. Morial?

TESTIMONY OF MARC H. MORIAL, DIRECTOR, NATIONAL URBAN LEAGUE, NEW YORK, NY

Mr. MORIAL. Thank you very much, Chairman Scott and Ranking Member Gohmert.

I am Marc Morial, president and CEO of the National Urban League. The National Urban League is the nation's largest civil rights organization, with affiliates in over 100 cities from coast to coast. Each year, we serve about 800,000 people in workforce development, youth and education programs, health and wellness initiatives, civil rights, and diversity training.

At present, we work very closely in about 30 cities with about 2,000 people who were formerly incarcerated. So we know a little bit about not only rehabilitation, but habilitation of people who have been in prison.

I come before you today to express strong support for this FPI program. I do so and ask you to consider that this program has been around since 1934 and represented an effort that long ago to rehabilitate Federal prisoners on a large scale without an appropriation of Federal dollars. Consider that this is the kind of innovation and initiative we talk about a lot in the 21st century—finding ways to confront difficult challenges without an appropriation of taxpayer dollars.

Now, the Bureau of Justice statistics tell us that six times as many Black men as White men are incarcerated in this nation's penal institutions. Without a question, for the African American community in this nation, any sensible effort which helps people who are incarcerated to get a GED, secure skills, and do something productive will go a long way in ensuring that recidivism, which is a problem in America today, is not enhanced or increased.

By the very same token, I would suggest to you that this initiative, as the statistics demonstrate, helps to reduce recidivism and help to make inmates much more productive in society. I would point out that a very important feature of this program is the idea that those who participate in it have to attain a high school diploma, and that half of the money that they earn goes to pay debts in many cases toward child support and other very important things.

I also urge this Congress to separate and not scapegoat this program because of foreign competition and failed trade policy. We should keep a focus on the fact that this is a program which works, which gets the kind of results it was intended to get, and which should remain not overly fettered and overly burdened because of some concerns that really arise out of what is happening in the global economy today.

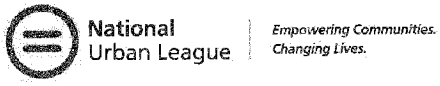
So the National Urban League supports this initiative. We support this program. I would also urge this Committee to reassert its authority and its jurisdiction, not only over this program, but over this very important issue. This problem of an increasing number of citizens in this nation who find themselves incarcerated, and in fact we lead the world in the number of citizens who are incarcerated.

The increasing number of recidivists that are preying on our communities all across the nation point to the fact that we need much more of an emphasis, much more support, and much more approaches like that embodied in this initiative in our penal institutions. I think this Congress can indeed lead the way in demonstrating support for that.

So with that, I urge your support, and I will be happy to entertain any questions you might have.

[The prepared statement of Mr. Morial follows:]

PREPARED STATEMENT OF MARC H. MORIAL



Testimony of
Marc H. Morial
President
NATIONAL URBAN LEAGUE

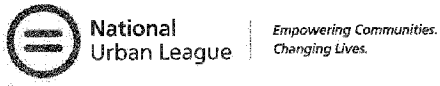
Before the
HOUSE SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY

Hearing on
"Federal Prison Industries - Examining the Effects of Section 827 of the National Defense Authorization Act of 2008"

May 6, 2008

Chairman Scott and Ranking Member Gohmert, I am Marc Morial, President of the National Urban League, and I am pleased to be with you today. With affiliates in 102 locations across the nation and over 15,000 community volunteers, the National Urban League is dedicated to the pursuit of economic self-reliance and equal opportunity for African Americans. Our 5-point empowerment agenda includes: economic empowerment, education and youth development, health and quality of life, civil rights, and racial justice and civic engagement.

One example of our commitment to this agenda and our understanding of the needs of young people at risk of falling into the cycle of criminal behavior and incarceration is the Urban Youth Empowerment Program (UYEP). This important program provides guidance to adjudicated and/or "at-risk" young adults, between the ages of 18 and 21. Through Urban League affiliates throughout the country, the UYEP program offers services to underprivileged and inadequately educated young adults, such as GED attainment and access to post-secondary education, workforce preparation through internships and community involvement and personal development to provide guidance on civic responsibility and financial management. To date the UYEP has proven to be quite successful and has produced effective results. According to a progress



report issued in December 2007, 49 percent of participants have attained employment, GEDs, post secondary education and military enlistment, upon completion of the program. Twenty-two percent of the participants have earned GED/high school diplomas, and the average participant has increased his/her reading or math level by one grade. In addition, 186 participants have entered into post-secondary schools through the program, and recidivism rate for UYEP participants who were ex-offenders is an astonishingly low 9.7 percent.

Through our work in this program we have developed some depth of understanding in what works and what does not work in the area of workforce training and development. In short, we know that workforce training and education programs work, and with specific implications for this hearing, we cannot afford to degrade or kill one of the most important federal program for federal inmates, the Federal Prison Industries program (FPI).

Mr. Chairman, from our perspective the federal prison system is broken. More often than not, our prisons reinforce criminal behavior rather than help correct it. Because rehabilitation opportunities for inmates are so limited, the system seems to doom them to being swallowed by a cycle of criminality that is devastating our communities and is crippling our nation. According to the Bureau of Justice Statistics over 60% of inmates are rearrested within three years after their release from prison. Clearly, if we grade our nation on its ability to rehabilitate inmates, we are failing miserably.

Since the 1950's, one of the nation's only large-scale efforts at rehabilitation in our federal prisons has been the Federal Prison Industries (FPI) program. Although, like any national program, it needs to be adjusted and perfected from time to time in order to accommodate new knowledge and other changing factors, FPI has demonstrated a clearly positive impact on the prison system and especially on recidivism rates. As the largest federal program aimed at rehabilitation of inmates, Congress should take extraordinary

care in changes to the program and recognize that any such changes will have major impacts on our urban communities. Changes to FPI should not be made in a piecemeal fashion, in unrelated legislation, or in the secrecy of a committee markup that is closed to the public.

The Bureau of Justice Statistics reports that the incarceration rate for black men (3,042 per 100,000) is nearly 6 times the rate for white men (487 per 100,000) and more than twice the rate for Latinos (1,261 per 100,000). Black men make up 37% of the prison population and are the largest single group in the federal and state prison systems. This disproportionate share of the inmate population causes cascading problems in African American communities and results in a major drag on our larger society as a whole. Today, there are over 200,000 inmates in federal prison. These inmates are a drain on our collective resources. They cause family and child development disruptions and they represent gaping holes in the fabric of our communities.

Unfortunately, our corrections system does little to remedy this monumental problem. For most inmates, our prison system fails to help them return from prison and become productive members of society. Prisons often do more to reinforce criminal behavior than to rehabilitate their inmates. Prisons block prisoners from fulfilling the natural compelling human need to be productive. They dehumanize and demoralize inmates and give them very few opportunities for a positive outlet of their physical and intellectual energy. Without the opportunity to do meaningful work, inmates become more dangerous and their pathway toward reconciliation with society becomes much more difficult.

Although there may not be a single solution to this problem, we must take full advantage of programs that have a proven and reliable positive impact. Federal Prison Industries (FPI) has an excellent record of success and is one of the most important and well constructed programs in the federal prison system. FPI provides federal inmates

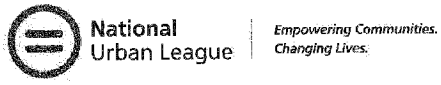
with one of the few opportunities they have to be truly productive and contribute to something larger than themselves. In short, FPI allows prisoners to maintain and in some cases regain a sense of pride and their connection to our larger society.

Inmates participating in FPI are required to achieve their high school diploma or equivalent and must remain on good behavior to remain in the program. Although FPI pays only a small wage to the inmates, it is an important source of funds for the payment of child support and other court ordered fines and fees. These payments certainly do not represent a replacement of these people from being fully contributing members of our communities, but they do help to limit the considerable damage that results from their incarceration.

We know that FPI works. The most recent comprehensive study of the program by the Bureau of Prisons found that inmates in FPI are 24% less likely to return to prison after their release and 14% more likely to maintain a job after release than those without FPI experience. Moreover, the study found that working in FPI is more important to minority inmates who are at a greater risk of recidivism.

Over the last several years, Congress has made several piecemeal changes to FPI which have resulted in a significant deterioration of the program. These changes have resulted in the closing of sixteen FPI factories and the loss of over 2,000 prison jobs. Today, less than 18% of eligible federal inmates can be accommodated by the program. Recent changes included in the 2007 National Defense Authorization Act will degrade the program even further.

Although it is possible that changes to FPI may be warranted and might even be desirable, such changes should not be made lightly. Any changes to this extremely important program should be fully and cautiously considered by this committee and should be carefully weighed against their impact on the health of our urban communities.



Any changes to the program should not be made (as were the most recent statutory changes in the National Defense Authorization Act) in unrelated legislation by committees with no jurisdiction over the prison system, and without full public hearings and open debate. The issue is simply too important to our communities and to our country for these changes to be made in the dark.

Mr. SCOTT. Thank you, and I thank all of our witnesses for your testimony.

We have been joined by the gentleman from Georgia, Mr. Johnson.

We will now begin questions, and I will recognize myself for 5 minutes.

Mr. Lappin, can you tell us how important it is to have incentive programs in prison and how that helps the administration of the prisons? Is FPI one of those incentives that is helpful?

Mr. LAPPIN. Two primary objectives: We want to run safe prisons and we want to send people home from prison. The majority of the folks in prisons are going to go home. This past year, we released about 62,000 inmates—50,000 to the United States—and we certainly want to try to send as many of those offenders home with the skills and abilities they need to be more successful in the community.

So without a doubt, incentive programs, opportunities for inmates to improve their skills and abilities during a period of incarceration, are critically important, not only in the effort to reduce recidivism, but in the effort to run safer prisons.

As you heard, we have had some challenges here in the last few years in the financial area, which has resulted in a little lower staffing than we would prefer to have. The only way to compensate for that, or one way to compensate for that, is to keep inmates productively occupied. Federal Prison Industries is one of the largest programs we have at keeping inmates productively occupied, one, and two, show the results that you have discussed of reducing recidivism upon release.

I know a lot of folks want to focus on how many inmates participate. What I tend to focus on is on how many do not participate. That is what concerns me, given the fact that here we have these folks incarcerated for a period of years sometimes, pretty much total control of their life, and we are unable sometimes to get them into a program that improves work skills.

It comes down to a number of issues, but three primary ones: literacy/education, vocational training, and work skills. Many, many of the offenders that come into our custody lack one if not all three, along with a few other skills that they need. Certainly, the education programs we provide, the vocational programs we provide, and certainly the work program we provide like Prison Industries, have a positive impact on their successfully returning to the community, as well as we see those offenders being less disruptive during that period of incarceration.

Mr. SCOTT. Does it in fact reduce recidivism?

Mr. LAPPIN. Yes, it does.

Mr. SCOTT. Does it reduce recidivism enough? The program pays for itself, is that right?

Mr. LAPPIN. There is no cost to the taxpayer in providing this program. In fact, in many ways it creates more business in many communities. Let me be real clear, though, without a doubt we want to have as little impact as we possibly can on citizens' businesses in this country. If there is anything that we can do to limit that, we are certainly open and receptive to that.

On the other hand, we want to be able to provide a work opportunity, a productive noteworthy work opportunity for offenders during this period of incarceration. I believe, with some of the authorities that have been discussed over the years, that we could strike that balance. It may not be perfect at the beginning. It may take some tweaking along the way, given the utilization that mandatory source has had for the FPI for years

So I am hesitant to say that the immediate result is to eliminate mandatory source and move into these authorities. However, I think there could be some phase-out of that in a manner that limits the impact of not only requiring mandatory source, but limits the impact on citizens' businesses in this country, as well as affords us the opportunity to ramp-up to increase our utilization of these other authorities until they compensate for what mandatory source has provided in the past.

Mr. SCOTT. Well, mandatory source gives you the ability to maintain a constant flow of work. If you were to have to bid for all of your contracts, you might win some and lose some. How would you accommodate the ups and downs of the needed level of employment?

Mr. LAPPIN. Let me ask Paul, because I think Mr. Laird will mention the fact that when you look at our entire product-to-service lines, you will find that much of what we do is not under mandatory source. We have learned a lot over the last few years about how to be competitive, how to measure the ups and downs and still afford opportunities for work. So I will turn it over to Mr. Laird.

Mr. LAIRD. Thank you, Mr. Chairman.

That is true. Our sales in fiscal year 2007 were generated from 50 percent non-mandatory sources. That is an indication that we are continuing to venture out into these areas which lessen our dependency on mandatory source and further get us out into arenas where we are competing for the work that we are receiving.

Mr. SCOTT. Well, if you had ups and downs, how would you accommodate those in terms of laying people off and bringing them back? If you changed the nature of the product in one institution, what complications arise when you cannot control the flow of work?

Mr. LAIRD. That is a very good question. As the director mentioned, our main goal is to employ as many inmates as possible. In situations where we have work that has tapered off, we have been creative in hiring inmates to work part-time, so at least we had their presence in a factory, so one inmate may work in the morning and another inmate may work in the afternoon. So we haven't really reduced the number of inmates that were working. We simply adjusted the hours. Now, that is not ideal, but nonetheless it gives us a presence in the inmate population in the exposure to the work programs that we are offering in those facilities.

Mr. LAPPIN. I think Mr. Laird would agree with the fact that we are very diverse and have I don't know how many different products and service areas. There are fluctuations that occur all the time. We are able to compensate sometimes in those areas that are very active, at those locations that may not be active, depending on their similarity to a certain product or service. So some of that can occur without huge expense. Wouldn't you agree, Paul?

Mr. LAIRD. Right.

Mr. LAPPIN. And still offer us the opportunity to provide productive work opportunities for those inmates, even though there may be some fluctuations, some peaks and valleys across a large variety of product lines and services.

Mr. SCOTT. But just very quickly, and my time has expired, but if you switch product lines, you would have to get new equipment and things of that nature. If you lose a bid in one product, how quickly can you transition to another product?

Mr. LAIRD. It would depend on the type of product line that we are placing into a factory. A perfect example would be our emphasis on recycling. Recycling does not involve a lot of overhead. It does not involve a lot of equipment. We can set up a factory relatively quickly, as opposed to, for instance, a vehicular components-type factory which requires a lot of significant equipment to be installed.

In recycling, in some services businesses where we do sorting and real hands-on work that does not require a lot of machinery, those factories can be updated relatively quickly.

Mr. SCOTT. Thank you.

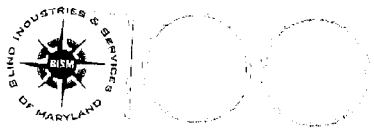
Mr. Gohmert?

Mr. GOHMERT. Thank you, Mr. Chairman.

It is a difficult issue and requires a lot of balance. Mr. Chairman, I also wanted to submit that a witness who was invited was unable to attend—Frederick Puente, president of Blind Industries and Services of Maryland. He was not able to be here, but asked if we could enter his letter-statement into the record.

Mr. SCOTT. Without objection.

[The information referred to follows:]



YEARS OF OPPORTUNITIES FOR THE BLIND

May 5, 2008

The Honorable Representative Robert Scott
Rayburn House Office Bldg
B-370-B
Washington, D.C. 20515

Dear Congressman Scott,

Please accept my apology for not providing live testimony regarding the effective partnership between UNICOR Federal Prison Industries, Inc. (FPI) and Blind Industries and Services of Maryland (BISM).

BISM has partnered with FPI for the last 9 years in acquiring and cutting fabric to their specifications. We currently have three operations committed to meeting the needs of FPI; Salisbury, Maryland, Baltimore, Maryland and Raleigh, North Carolina. These operations directly employ 95 people and indirectly create another 15 positions. We are in the process of negotiating a new facility in Phoenix, Arizona that will initially employ 12 to 15 people at start-up with a projected addition of another 20 individuals as capability grows. These jobs pay extremely competitive wages, offer benefits and create sustainable employment opportunities for people who are blind and visually impaired, many of whom would otherwise be a burden on the social service system. The satisfaction our Associates achieve cannot only be measured in dollars and cents but also in the pride felt as a result of their accomplishments and contributions to our society in a way that would not be available to them without this work.

To simply characterize the partnership between FPI and BISM as beneficial would be a gross understatement. The partnership has grown and continues to grow at all levels. We have found FPI to be a demanding yet fair partner. The requirements for a quality competitively priced product, produced and delivered on time, is equal to or greater than any commercial contractor with whom we have worked. The management of FPI is always professional yet keenly aware of the impact their decisions have on the taxpayer, consumer and inmates they serve as well as our Associates. The loss of this business would have an impact that reaches far beyond day-to-day business operations. It would negatively impact people and families all across the country.

I would encourage all other Federal departments to utilize the model developed by FPI. This model maximizes the taxpayers' dollars by creating and sustaining evolving opportunities for people who are blind or disabled. If all Federal Department's did so, social costs would be dramatically reduced. We believe our partnership has had multiple benefits for the taxpayer, the blind and disabled and the inmates. Your support of this valuable program is not only requested, but I believe it is required. I will be happy to meet with you or your staff to personally confirm our commitment to this endeavor.

Thanking you in advance for your support.

Sincerely yours,

Frederick J. Puente
President

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Mr. GOHMERT. I thank you.

Mr. Lappin, you mentioned, as I understood it, 60,000 prisoners are released, and 50,000 are released to the United States. Where to the other 10,000 go?

Mr. LAPPIN. Deported.

Mr. GOHMERT. Okay.

Mr. LAPPIN. So of our 200,000 inmates, about 26 percent are non-U.S. citizens, about 50,000 inmates. So of that 62,000, 12,000 to 14,000 are non-U.S. citizens. They are deported. The other 50,000 or 51,000 or 52,000, depending on the fluctuations from year to year, are released into the United States as U.S. citizens.

Mr. GOHMERT. Okay. So about 17 percent of the people you release, or one-sixth, are deported?

Mr. LAPPIN. Are deported.

Mr. GOHMERT. Okay. You mentioned you want to best minimize the effect on jobs in the private sector. How do you suggest that best be done?

Mr. LAPPIN. There have been a number of other authorities discussed. Some involve greater utilization of products and services that are performed offshore. There are other authorities, and Paul, if you wouldn't mind mentioning them in more detail to best inform the Committee.

Mr. LAIRD. Sure. As you mentioned, director, probably the single most important authority that we feel would be beneficial to Federal Prison Industries would be for us to have the ability to produce items that are currently being manufactured offshore. The impact we feel on the private sector, on American workers, would be minimized. In fact, we feel it would actually be beneficial to the local communities in which these factories are located because we would rely on the raw materials, the services that would need to be provided, as well as the equipment that would need to be purchased for us to engage ourselves in those types of manufacturing activities.

Mr. GOHMERT. Is there any prevention from doing that now?

Mr. LAIRD. Yes, sir.

Mr. GOHMERT. What is preventing them from doing those jobs now that are mainly done offshore?

Mr. LAIRD. Our manufacturing components that we are engaged in right now are only available to be sold to the Federal sector, to the Federal Government. This new authority that would be beneficial to us would allow us to sell outside of the Federal sector.

Mr. GOHMERT. Okay. That is really nice, and I think a lot of us would love to have a policy. I love that. That is nice.

Mr. LAPPIN. That is why I brought him along, to provide cover. [Laughter.]

Mr. GOHMERT. I need a Paul to follow me around.

Mr. LAPPIN. I have lots of Pauls in the Bureau of Prisons. [Laughter.]

Mr. GOHMERT. I am sorry, Paul. You had something else?

Mr. LAIRD. Yes, Congressman Gohmert. Another beneficial authority for us would be to allow us to participate in the Prison Industry Enhancement Program, or the PIE program, which is currently available to State correctional industries. It essentially allows outside private industry to come in and partner-up, pay in-

mates prevailing wages, and actually do the work inside the prison fences.

Mr. GOHMERT. Okay, thank you.

Mr. Morial, if you a get a sense of my heart, I understand everything you are saying. I think I really appreciated what you were saying about you weren't just rehabilitating, if I understood you. Some folks have never been habilitated in the first place, and our prisons really have to habilitate. Is that the point you were making with that comment?

Mr. MORIAL. Yes. It is very interesting. In the primary program where we work with both high school dropouts and people who were formerly incarcerated, we find that they come to us as young adults—23 years or 24 year old—one, they are reading on a fourth- or fifth-grade level; two, they have never been in any sort of regular W-2 employment. So for the first time when they come to us, we have to not only help them get basic reading skills, basic comprehension skills to get a GED, but we also have to give them what are called life skills and those sorts of things.

So there is no question that the prison system is not just called on to rehabilitate, but to habilitate people so that when they are released, they are less likely to be recidivists because they have a chance of being gainfully employed.

Mr. GOHMERT. It seems like one of the problems in prisons has been over the years like the old days of, well, they will make license plates. There is not a lot of call for license plate makers once they get out of prison. So we do need to have them learn trades, educated as you say.

And I think being more familiar with the Texas prisons as I have been, that is one of the areas that Texas has fallen down, from the old days when everybody went out and did farm work and it was completely self-sustaining for their own food, to the days after this Justice order and they couldn't go out and work like that. We never really have gotten back to where we avoid fights, avoid problems by having adequate training or education of the inmates. This is the balance we are looking for.

Mr. Morial, you surely have people that you know that have also lost their jobs because there was competition from FPI.

Mr. MORIAL. Let me say, and let me address this in this way. I think it is important to look at the loss of jobs as not scapegoating FPI. There are larger global trade and foreign competition issues at play in a lot of the businesses where they provide services. But then secondly, the effect because of the market share of FPI is so small. Has it cost a job-loss here or there? I don't think anyone can argue that it hasn't, but the benefits, the up-side is significant.

I would suggest to you that there are not a lot of initiatives out there that habilitate and give prisoners skills that don't require direct appropriations. We are spending on average on the low side probably $20,000 or $25,000 a year to incarcerate and house people. So this kind of investment is offset.

Mr. GOHMERT. That may be low, too.

Mr. MORIAL. Yes.

Mr. GOHMERT. I agree with everything you say. It is just a matter of balance.

Mr. MORIAL. It is a matter of balance, but I think it is easy to say it is FPI, but the more important thing is one just need go into any store and look at where things are manufactured.

Mr. GOHMERT. Sure. No, you are exactly right. A bunch of us went to China and were talking to the CEOs over there, why did you move from the U.S.? I expected the answer to be low labor costs, but no, quality control in the U.S. is a lot better and labor is cheaper here, but it is because they cut a deal—we have no corporate tax for 5 years and it will never go above 17 percent; we are paying 35 percent back in the U.S.; we can pay for our plant in 5 years.

So there are a lot of other factors for people losing their jobs, I agree. But if you happen to be one of those who lost your job, then it is hard not to have resentment to FPI, despite all the good this program is doing.

Mr. MORIAL. I think keep in mind, and for any worker or person who may lose their job in an industry, they would tend to want to assign blame. But the role of the Congress is to balance in a very, very difficult environment where we have too many people in jail, and too many repeat offenders. It is costing us money. It is costing lives and families. This initiative, if this could be done in some States——

Mr. GOHMERT. That is why we are having the hearing, to try to strike that balance. That is why we are asking the questions we are of those of you who deal with these issues. That is what we want to do. I appreciate your participation here today.

Mr. MORIAL. Thank you, sir.

Mr. SCOTT. Thank you.

We want to acknowledge the presence of the gentleman from North Carolina, Mr. Coble, who will have questions in just a minute.

The gentlelady from Ohio?

Ms. SUTTON. Thank you, Mr. Chairman.

Thank you all for your testimony——

I just want to address Mr. Gohmert's observation about our tax laws and that that is a contributor to the decisions to relocate, just not to get side-tracked very much here, but I would just like to point to the Bloomberg article back on December 14, shortly after we passed a trade deal with Peru. It quotes the president of Peru. The paragraph reads that mining, agriculture, fishing and manufacturing firms should now flock to this nation of 29 million people, which has a per capita income of less than $3,000 a year. Garcia said, "'Come and open your factories in my country, so we can sell your own products back to the U.S.,' Garcia told business executives today." I would be happy to enter this into the record.

Mr. SCOTT. Without objection.

[The information referred to follows:]

Bloomberg.com

Peru's Garcia Woos U.S. Investors as Trade Agreement Completed

By Mark Drajem

Dec. 14 (Bloomberg) -- Peruvian President **Alan Garcia** urged American companies to invest in his country, saying that a free- trade agreement with the U.S. to be signed today will guarantee the safety of their ventures.

"The company that acts today will reap three times as much as the one who invests tomorrow," Garcia told the U.S. Chamber of Commerce in Washington. "We are at the takeoff point."

Garcia and U.S. President **George W. Bush** are to sign a free- trade agreement between the two countries at a White House ceremony this afternoon. That deal will eliminate tariffs and set rules governing investments between the two nations.

The completion today was welcomed by companies such as Caterpillar Inc., which said the agreement could lead to a boom in U.S.-made mining equipment being sent to the Andean nation.

``It's a big market and getting bigger,'' said **Tom Gales**, vice president for Latin America at Caterpillar.

Oil, mining, agriculture, fishing and manufacturing firms should now flock to his nation of 29 million people, which has a per-capita income of less than $3,000 a year, Garcia said. "Come and open your factories in my country so we can sell your own products back to the U.S," Garcia told the business executives today.

Negotiations for the deal began in 2003, and it took two years to get the U.S. Congress to approve the accord from an initial agreement in December 2005. Garcia was forced to renegotiate the agreement this year to meet demands by Democrats in Congress to toughen labor and environmental rules and roll back provisions guaranteeing patents for medicines.

Democrats Skeptical

The Peru agreement passed the U.S. the House of Representatives and Senate within the past month after Peru acceded to the Democrats' demands. The House approved it in a 285 to 132 vote on Nov. 8, and the Senate approved it 77-18 this month.

Still, among House Democrats the vote was 109 to 116 against the Peru agreement, suggesting it will be difficult for the administration to win approval of three additional trade agreements with Colombia, Panama and South Korea, all of which are more controversial than the Peru accord.

Garcia today urged Congress to back the Panamanian and Colombian deals, saying they would aid leaders in the region who are committed to democracy and free markets.

``Peru is just the first act in a much, much longer running play,'' said **Dan Christman**, senior vice president of the U.S. Chamber of Commerce. ``Congress should support these other agreements. The logic is inescapable, even for Washington.''

Jobs and Wages

Trade between the U.S. and Peru, which totaled $8.8 billion last year, will grow by $1.5 billion once the accord is implemented as Peru ships more asparagus and apparel and American producers export more meat and grain, according to the U.S. International Trade Commission.

Critics of the agreement said they doubted the Bush administration would enforce the new provisions guaranteeing greater workers' rights. Some Democrats also said trade agreements cost U.S. workers jobs as companies move production overseas to tap cheaper labor, undercutting wages for Americans.

Peru's exports rose to a record $2.59 billion in October, spurred by surging sales of copper, zinc and natural gas.

The country is already seeing companies based in both the U.S. and in neighboring nations such as Ecuador and Bolivia set up shop in Peru as they anticipate the benefits of the free-trade agreement, said Aldo Defilippi, president of the American Chamber of Commerce in Peru.

To contact the reporter on this story: **Mark Drajem** in Washington at **mdrajem@bloomberg.net**

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Ms. SUTTON. I do think it is an interesting discussion that we are having. Mr. Laird, I begin with you on this because I am not sure I completely understood what you were saying when you were talking about the competition with perhaps offsshore jobs. Are we suggesting now that the way that we might compete with offsshoring of jobs would be through the FPI program? That that would be the adjustment that we would be making? That that is the best we could do?

Mr. LAIRD. I think it is a great opportunity for us to partner-up with American companies and offer ourselves as a labor source to keep these types of manufacturing jobs from going overseas and keeping them in the United States. It is not a cure-all for the burgeoning inmate population that is automatically going to raise us up to our goal of 25 percent, but it is one of those ideas that I think warrants consideration to help us meet our goals of employing 25 percent of the inmate population.

Ms. SUTTON. I would just say, just so you understand where I am coming from, I intend to be a supporter of the FPI program. I understand its value and I share the concern about how these things get wrapped up together, and we have problems in many directions that need to be dealt with and, as you point out, not scapegoated.

Mr. Gage, in your testimony, you talk about these issues also. You addressed the opponents' argument that FPI is not the cause of U.S. private companies' sales losses and non-inmate workers' job losses in the areas of office furniture and textiles and apparel industries, that they are being lost due to foreign competition.

Do you see the potential, then, that perhaps if we eliminate the mandatory source requirement for FPI that those jobs would go to Mexico or offsshore?

Mr. GAGE. Well, I really don't know, but I do think—and I am also a vice president with the AFL-CIO, and I have been talking with some of the unions who have brought up a lot of opposition to FPI—Unite Here, for instance, in the apparel-making industry. I think the compromise that this whole issue needs, that Mr. Lappin has been suggesting, just repatriating our work. That is work that is out of the barn and gone. It is something that could have no impact on jobs in America and still revitalize FPI.

So I think this whole issue really, when you look at the minimal impact on jobs and even some of the unions have seen that FPI is good for American workers—the Teamsters, for instance, delivering supplies, et cetera, for FPI. So there is a real balance there.

But I think my members would like to not cost anybody a job, but have certainly these inmates working and working hard at productive jobs. I think there is enough work that has gone overseas not to come back that we could really resolve this problem.

Ms. SUTTON. Okay.

Mr. Morial, you stated, and I think correctly, that the Federal prison system is broken and that the Federal Prison Industries program is one of the nation's only large-scale efforts at rehabilitation that is working at this moment in our prison system. A study that you cited in your testimony indicates that working in FPI is more important to minority inmates who are at a greater risk of recidivism, if I am not mistaken. And we heard a little bit about this discussion a few moments ago with Representative Gohmert.

The concerns that FPI takes jobs away that might otherwise be filled by non-inmate minorities is on balance still one that has you here testifying in favor of obviously maintaining the program.

Mr. MORIAL. I don't think any suggestion that this program takes jobs should be dismissed lightly, but it ought to also be put in the context of the fact that, one, FPI represents a very, very small share of overall Federal procurement. There is a lot of business that the Federal Government is doing that is available to private sector firms.

Number two, with a number of products that they produce, you cannot escape the effect of foreign competition, globalization, and trade; and then, three, we have to confront the fact that the penal system, the prison system, the systems of incarceration in the United States are broke and busted because of the great numbers of people who are in jail and the recidivism rate which is shockingly high at both the Federal and State levels.

So anything that we can do, particularly if it doesn't require direct appropriation of money, to help people gain skills, gain education, is on balance I just think something that we need to support. I think we need to confront the fact that the benefits far outweigh any costs—not to dismiss the suggestion of jobs, but also those that suggest that it has cost jobs need to be able to demonstrate that, not just suggest it.

Ms. SUTTON. I will close, but I thank you because I really do think it is important. This discussion is not the discussion about instead of reforming our trade policies, which is another issue for another day. Thank you.

Mr. SCOTT. Thank you.

The gentleman from California?

Mr. LUNGREN. Thank you very much, Mr. Chairman, and thank you for having this hearing. I am sorry we didn't have hearings and the Senate didn't have hearings on this before they passed their amendment last year with virtually no discussion whatsoever in Committees that have never studied this issue whatsoever.

I don't apologize for having a tough stance on crime, and don't apologize for the fact that we have the increase in prisoners, both at the State and the Federal level. At the same time, we have an obligation to deal with those people. I am sorry, but I keep hearing these excuses.

Mr. Lappin and Mr. Laird, I am surprised that you so easily seem to suggest that legislation that has gone into effect, that gets rid of the mandatory purchasing program is not going to affect you very well, and that you can easily do this if we just reach out to get all those jobs that we are losing overseas.

Frankly, it sounds like a bunch of rhetoric to me. Tell me how you are going to do it? We are now in a situation where in 1998, FPI employed 20,200 inmates. We now have a larger inmate population and we employ less. And you have had effort after effort in this Congress under both Democrats and Republicans in the Senate and the House to try and stop your program.

Frankly, I am disappointed because when you stand here and tell us that it is an easy thing to handle, all you do is give sustenance to those people who want to destroy this very program. So how is it so easy for you to sit there and say, well, all we have to do is

reach out and get these jobs that we lose overseas and we can do it?

Mr. LAPPIN. First of all, let me back up and apologize if my message was that it is easy to do. I don't think it will be easy to do.

Mr. LUNGREN. Well, it sure sounds like it from what I heard from both of you.

Mr. LAPPIN. Okay. Let me back up again, then. I don't think we can afford to lose mandatory source until, one, there is authority to explore these other areas, and in taking advantage of these new areas, have time to ramp those areas up to compensate for that which we lose as mandatory source is eliminated, if in fact it is eliminated.

So it won't be easy. It is going to take time. We don't invest a whole lot of time and effort in advertising and marketing. We would have to shift because in the past our advertising and marketing had primarily been driven by the mandatory source, which we ultimately would lose if they move in that direction.

So again, let me be clear. We advocate for mandatory source, the continuance of mandatory source, unless mandatory source is going to be replaced with authorities such as the ones we have mentioned.

Mr. LUNGREN. Okay, well, that is the answer I wanted. That sounds more factual, because if we lose mandatory source as we have begun to lose mandatory source, you lose members of that population that are working, thereby making it safer for the inmate population and for the prison employees, and giving them the opportunity to have a job when they get out. Honest to God, if we don't start taking this seriously, I don't know what we are going to do.

Mr. Morial, are you aware of any studies that show actual loss of jobs as a result of FPI? I asked Mr. Miller, who was testifying before us at the last hearing, representing the furniture industry, could he give me any real data to show how the FPI program is harming the industry, and he could not give it. To this day, I have not seen it. Are you aware—?

Mr. MORIAL. I am not aware of any data.

Mr. LUNGREN. See, we keep hearing this, that jobs are lost. The furniture industry in the United States, according to a Member of Congress who testified before us, is enormous compared with what FPI is doing. The furniture industry is somewhere in the neighborhood of a $12 billion to $14 billion industry. Office furniture and FPI was $250 million. Does that sound like we are really taking a huge chunk out of private industry, Mr. Morial?

Mr. MORIAL. I noticed the same figures. I mean, obviously if you get the facts out here, the effect is not significant. I am not aware of any jobs, any studies, and any data that demonstrates job loss.

Mr. LUNGREN. Here is the concern I have. When we have had an economy that has been moving along very well for 50-some months, and we have had the lowest unemployment over a sustained period of time we have ever had. We have had more people working than we ever had. In that environment, we have legislation coming here to cut FPI. And now as we are going down in an economy that is not as strong for some period of time—and I hope we are going to

recover shortly—it is much easier for people to attack FPI and use it as the reason why we are losing jobs.

As someone committed to putting people away who commit crimes, I am also committed to treating them humanely. If we don't do something to rehabilitate and habilitate these folks, it is on us.

Mr. MORIAL. And I would continue to make this point. No matter where you stand on criminal justice issues, it is in no one's interest to see people repeat offend.

Mr. LUNGREN. Absolutely.

Mr. MORIAL. One of the reasons why they repeat offend is because they come out in many cases no better educated, with no more skills, and no better ability to navigate and function in society than they had when they went before. So we see it, the National Urban League, helping people gain education and skills as being essential to eliminating recidivism in this country. That is where we are, and that is a public safety issue. It is a criminal justice issue. It is a human compassion issue. You can put any label on it. I say it just makes good common sense.

Mr. LUNGREN. Mr. Gage, since you represent the employees who work in the prisons, can you tell us, representing them, that this program does in any real way assist in reducing tension in the institutions, assist in any way making it a safer environment for prisoners and for your employees?

Mr. GAGE. Oh, yes. There is no question about it. Talking to any of our officers, they think this program is a real carrot for the inmate. It produces better behavior. You can't just get one of these jobs. You really have to have a good record. To qualify for the program, and then to get the job and to stay out of trouble to keep the job. Our officers are, to a man and woman, committed to this program.

Mr. LUNGREN. Mr. Chairman, thank you for the indulgence of the time. All I would say is if we didn't have this program, we would be falling all over ourselves to create it. We would be talking about the promise of such a program, and we would be asking these people in front of us, how can you be sure that it is going to do these things?

Maybe we ought to start a small pilot project to see if it helps inmates, if it brings down recidivism, if it actually improves the environment, if it protects the prisoners, if it protects those who are employed here. And maybe if it really worked, we could get a representative of the unions of the employees to come and testify, Mr. Chairman. But of course, it doesn't exist, so we will have to wait until they actually create the program.

Thank you very much, Mr. Chairman.

Mr. SCOTT. What you didn't add is have the program pay for itself. [Laughter.]

Mr. LUNGREN. Mr. Chairman, I am a Republican. That goes without saying. [Laughter.]

Mr. SCOTT. The gentleman from North Carolina?

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Chairman, I apologize for my belated arrival. I was on the floor with an intellectual property bill.

Mr. SCOTT. We can excuse Mr. Morial, who indicated that he would have to leave just before 3 o'clock. So thank you very much for your testimony.

Mr. COBLE. As I said, Mr. Chairman, I was on the floor with an intellectual property bill and my absence does not indicate my lack of interest in this proposal. I have worked with the Chairman, as he knows, regarding repeat offenders. I think that is a very serious problem that we need to address, and I think FPI does a good job of that.

Mr. Director, as you know, when I was elected, my bread and butter issues in my district, Mr. Chairman, were tobacco, furniture and textiles. All three are now beleaguered. I have always tried to keep a sharp lookout to the end that FPI's success would not be to the detriment of my furniture and textile folks back home. I am by no means opposed to rehabilitation. I think it is necessary. But that is where I am coming from, as you know, Harley. We have talked about this several times before.

Mr. Director, has the number of Federal inmates participating in FPI increased in recent years?

Mr. LAPPIN. The percentage has actually decreased. Probably 15 or 20 years ago, we employed 40 percent of the eligible inmates in Prison Industries. Today, we are employing about 18 percent. So we have added 150,000 inmates and we are employing actually percentage-wise far fewer than we did before.

Mr. COBLE. To what do you attribute that decrease?

Mr. LAPPIN. Pardon?

Mr. COBLE. To what do you attribute the decrease?

Mr. LAPPIN. Well, there are a couple of things I think ongoing. One, there has been a lot of debate over the legislation and what limitations there are. There have been obviously some legislative initiatives that have limited our ability to grow in some of those areas, as well as decisions made by the board to try to help strike this balance of providing opportunities for inmates, as well as being mindful of the impact these programs have on furniture and textiles and electronics in particular.

So again, I go back to the door opening for many other opportunities. I will go back to your comments, to your questions about what the options are. Let's take call centers as an example. It wasn't that long ago that call centers were not performed at all in this country. A few years ago, customers came to us—I should say providers, companies—came to us and said, listen, we would like to utilize your workforce in lieu of using the workforce on the other side of the world to provide call center work.

We took advantage of that opportunity. Now, there are seven or eight or nine call centers. They are not textile factories. They are not furniture factories. They are call centers. The more opportunity that we can take advantage of that, the more potential there is for us to reduce the impact in some of these product areas that exist on a larger scale in this country.

I think whether it is recycling or call centers or other opportunities we are taking advantage of, I think those are ways to limit or reduce the impact on those businesses that continue to operate in this country.

Mr. COBLE. How many BOP facilities offer FPI programs, approximately?

Mr. LAPPIN. Yes, about 110. We are committed to having a factory in every secure general population facility. So we exclude jails, which are short-term facilities. We exclude medical centers, which typically are short-term and many of the inmates are not able to work. We emphasize the need for these factories, especially in medium-and high-security institutions, which is a bit inconsistent with what you see sometimes in the States because this is risky business. It is risky business giving inmates tools and access to things that can assist some who misbehave in injuring others and escaping.

On the other hand, these are the inmates that need it the most, those that are in our mediums and highs. Typically, they are the more violent, the less educated, lack more of the skills we have discussed today. So we try to focus the enhancement of those skills as much, if not more so, in those facilities than others, given the fact that those inmates tend to be the ones that need it the most. So certainly all of our mediums and highs, and as many of the low-security institutions as we can. With less opportunity in camps, because a lot of those offenders are more highly educated, more skilled, white-collar offenders oftentimes, tend not to need the types of skills that they are acquiring in Prison Industries.

Mr. COBLE. I got you.

Mr. Director, section 827 lowered the threshold from 20 percent to 5 percent, but that is exclusively applicable to DOD, is it not?

Mr. LAPPIN. Yes, it is.

Mr. COBLE. So in other words, mandatory source is still available to FPI beyond the confines of DOD.

Mr. LAPPIN. Yes. Now realize, though, that over half of our sales are Department of Defense.

Mr. COBLE. I realize that is your largest customer, then.

Mr. LAPPIN. A huge portion of our business is generated by the Department of Defense. So this limits mandatory source to only the 5 percent. Again, our concern obviously is that opens the door for the 15 percent no longer protected by mandatory source for it to go elsewhere, without the ability to grow other areas to compensate for the loss of jobs potentially in those areas that we are selling to DOD.

Mr. COBLE. Mr. Chairman, again I want to reiterate the fact that I am pro-FPI, but I think we will agree that mandatory source, however, Mr. Director, does give you a leg up, does it not?

Mr. LAPPIN. It depends on how you approach it. I can argue it either way. Without a doubt, visibly to the public, it appears as though we have a preference. On the other hand, managed properly, we try to limit that preference. Again, we rely very little on advertising and marketing, I think $2 million to $3 million a year for an $800 million organization—a drop in the bucket. So we have relied on that traditionally.

So again, it will not be easy to do away with that. If it is decided we do away with it, it will certainly require us to change our operational business model. It should be done gradually as we learn more about how to take advantage of the non-mandatory services

and products. But then again, some certainly see it as, and I can understand why, an advantage.

We are not opposed to competition as long as it is a level playing field. We need to have the opportunity and the authorities to do so. Again, I want to reiterate in regard to Mr. Lungren here that it needs to be done gradually, with thought, and assessment to ensure that we are making that transition in a manner that allows us to continue to provide the number and types of jobs we need to provide in our institutions.

Mr. COBLE. Mr. Chairman, I see that infamous red light, so I will yield back.

Mr. SCOTT. Thank you.

I want to ask Mr. Gage just one other question. You indicated that we should be going after different kinds of work.

Mr. GAGE. Yes.

Mr. SCOTT. Could you give us some examples?

Mr. GAGE. Some are talking about furniture, but they say that casters—you know, the casters on furniture, there is not one made in this country. So there are niche products that I think we could convert. I think that would probably be an easy conversion on the casters.

But Mr. Chairman, if I may, just one point. The appropriation for BOP is not quite where it should be. There could be a——

Mr. SCOTT. Let me just say that I think in the next few days we are going to try to deal with that.

Mr. GAGE. You are going to try to deal with it. I just want to make this perfect storm argument that when we decrease correctional officers, and it is already a very drastic situation, but this budget as it is would cause a further significant decrease, and you add to it lessening FPI, I think you really have a formula for violence.

Mr. SCOTT. I appreciate your comments. As I indicated, we recognize that the budget as it is for the Bureau of Prisons is in a crisis situation and we are going to try to deal with that in a matter of days.

Are there other questions? If not, I want to thank our witnesses. We will keep the record open in case there are other questions which may be sent to you in writing. We would ask for you to respond to them as soon as possible so the answers can be made part of the record.

We will keep the record open for 2 weeks for other additional materials.

The gentleman from Texas?

Mr. GOHMERT. In light of the submission regarding the Peruvian invitation to come work there, I note that according to Nation's Encyclopedia, the basic corporate tax for Peru is 27 percent, and that the average in the area is normally about 5 percent to 10 percent. So there are a number of reasons that draw people in that direction, but apparently we share the same concerns about the program on both sides and the need for balance here.

Thank you.

Mr. SCOTT. Thank you.

We will now adjourn. Without objection, the Subcommittee hearing will be adjourned, and we will convene a markup of several bills at this time.

[Whereupon, at 3:07 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

U.S. Department of Justice

Office of Legislative Affairs

Assistant Attorney General

Washington, D.C. 20530

May 5, 2008

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter, dated April 1, 2008, addressed to the Attorney General from you, the Honorable Lamar S. Smith, and the Honorable Robert C. Scott, regarding the effect of Section 827 in the National Defense Authorization Act of Fiscal Year 2008 on the Federal Prison Industries (FPI) program.

FPI is the Department of Justice's most important correctional management program, providing job skills training and work experience to more than 22,000 Federal inmates. Though FPI produces products and performs services, the program's real output is inmates who are more likely to return to society as law-abiding taxpayers because of the job skills training and work experience they received in the FPI program. Inmates who work in the FPI program are 24 percent less likely to recidivate for as long as 12 years after release, compared to similar inmates without experience in the FPI program. These research findings have been favorably received by nationally-respected social scientists and economists.

The FPI program is self-sustaining, paying for all its costs and operating expenses (including wages for both staff and inmates) with the revenues it generates. Most other correctional programming (such as education, vocational training, recreation and substance abuse classes) is paid out of the Department's appropriated budget. The FPI program provides an essential prison management function while simultaneously preparing inmates for their eventual release – and does so without restricting the Department's financial resources.

In your letter, you asked how the National Defense Authorization Act of Fiscal Year 2008 (P.L. 110-181) will affect the FPI program. Section 827 requires the Department of Defense (DoD) to use competitive procedures when procuring products for which FPI has a significant market share. FPI is considered to have a significant market share if its sales to DoD represent more than five (5) percent of DoD purchases in a product category. The Department shares your concern about the potential impact of Section 827 on the FPI program.

DoD recently issued a listing of the Federal Supply Classification (FSC) codes in which FPI's sales met the market share criteria as set forth in Section 827. Based on that list, the Department believes a minimum of $144 million of the FPI program's sales and a commensurate 3,250 inmate jobs are potentially at risk. This would represent approximately 17 percent of the FPI program's annual sales and 14 percent of its inmate workforce.

It is difficult to say with certainty how much of the FPI sales that are potentially affected may be lost. While it is expected sales in some product areas may decline, the total impact of this provision on the FPI program will be difficult to predict until it has been fully implemented. The level of impact will depend primarily on how it is interpreted and implemented by DoD contracting officers.

The Department expects it may take some time until DoD's contract community is fully aware of the changes in the DoD procurement process from FPI. To mitigate potential impact, it is imperative the FPI program's customers be provided clear guidance on the accurate interpretation of the legislation to ensure it is implemented fairly.

The Department expects the FPI program's commercial items may suffer greater adverse impact than its military specification items. This is because contracting officers have substantial discretion to determine whether one commercial product is comparable to another. However, when comparing military specification items, such as electronics components that are produced by FPI, the item under review is identical whether manufactured by the FPI program or a private vendor, making price the critical factor for award.

The Department expects that the impact of Section 827 on the FPI program will occur over some period of time. Language in Sections 811 and 819 of the National Defense Authorization Acts of 2002 and 2003, and Section 637 of the FY 2004 and FY 2005 Omnibus Appropriations Bills, also mandated the use of competitive procurement procedures when buying certain items from FPI. The impact on the FPI program from Sections 811, 819, and 637 was not felt immediately, but gradually over time.

It is important to note that the potentially affected sales from the FPI program could be greater than $144 million, depending upon how DoD reports and interprets its procurement data. DoD may modify its list of product categories for which the FPI program has a five (5) percent market share. DoD is by far the FPI program's leading customer, accounting for more than $500 million in procurements, more than 60 percent of the FPI program's sales.

In regards to the impact of Section 827 on the FPI program's inmate workforce, any such reduction will be directly linked to the loss of FPI sales. The Department will have to wait for the outcome of any specific adverse sales impact, before stating what the impact may be on the inmate workforce. As a general rule, every $35,000 in sales by the FPI program equates to

approximately one inmate job. Inmates manufacturing those products affected by Section 827

currently work in 32 FPI program factories. It is premature to speculate on the number of FPI program factories, if any, that could potentially be closed due to Section 827.

Should the FPI program experience a loss in sales and a resulting reduction in its inmate workforce, there are no FPI program or other institution jobs available for inmates to move into as an alternative. The FPI program is already challenged to meet the demand for inmate jobs in light of the continuing rapid growth in the Federal inmate population. In fact, the FPI program has not kept pace with its goal of providing work opportunities for 25 percent of the Bureau of Prison's work-eligible inmate population. The Bureau of Prisons has recently had to activate new prisons without yet having the benefit of an FPI program factory.

It has been shown that providing constructive programs, such as Federal Prison Industries, results in a more positive correctional environment whereby inmates are less likely to engage in disruptive behavior. Eliminating these opportunities for inmates may lead to higher incidents of violence inside the facilities, creating potential safety concerns for both staff and inmates.

Clearly, the greater the adverse impact on the FPI program as a result of Section 827, the greater the corresponding adverse effect on the FPI program's ability to continue operating in a self-sustaining manner, as statutorily required. Should the impact be severe enough, it may jeopardize the FPI program's continued future viability as a self-sustaining entity.

We trust this is responsive to your request for information about the effect of Section 827 in the National Defense Authorization Act of Fiscal Year 2008 on the FPI program. If we may be of additional assistance, please do not hesitate to contact this office.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

U.S. Department of Justice

Office of Legislative Affairs

Assistant Attorney General

Washington, D.C. 20530

May 5, 2008

The Honorable Lamar S. Smith
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Smith:

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The FPI program is self-sustaining, paying for all its costs and operating expenses (including wages for both staff and inmates) with the revenues it generates. Most other correctional programming (such as education, vocational training, recreation and substance abuse classes) is paid out of the Department's appropriated budget. The FPI program provides an essential prison management function while simultaneously preparing inmates for their eventual release – and does so without restricting the Department's financial resources.

In your letter, you asked how the National Defense Authorization Act of Fiscal Year 2008 (P.L. 110-181) will affect the FPI program. Section 827 requires the Department of Defense (DoD) to use competitive procedures when procuring products for which FPI has a significant market share. FPI is considered to have a significant market share if its sales to DoD represent more than five (5) percent of DoD purchases in a product category. The Department shares your concern about the potential impact of Section 827 on the FPI program.

DoD recently issued a listing of the Federal Supply Classification (FSC) codes in which FPI's sales met the market share criteria as set forth in Section 827. Based on that list, the Department believes a minimum of $144 million of the FPI program's sales and a commensurate 3,250 inmate jobs are potentially at risk. This would represent approximately 17 percent of the FPI program's annual sales and 14 percent of its inmate workforce.

It is difficult to say with certainty how much of the FPI sales that are potentially affected may be lost. While it is expected sales in some product areas may decline, the total impact of this provision on the FPI program will be difficult to predict until it has been fully implemented. The level of impact will depend primarily on how it is interpreted and implemented by DoD contracting officers.

The Department expects it may take some time until DoD's contract community is fully aware of the changes in the DoD procurement process from FPI. To mitigate potential impact, it is imperative the FPI program's customers be provided clear guidance on the accurate interpretation of the legislation to ensure it is implemented fairly.

The Department expects the FPI program's commercial items may suffer greater adverse impact than its military specification items. This is because contracting officers have substantial discretion to determine whether one commercial product is comparable to another. However, when comparing military specification items, such as electronics components that are produced by FPI, the item under review is identical whether manufactured by the FPI program or a private vendor, making price the critical factor for award.

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In regards to the impact of Section 827 on the FPI program's inmate workforce, any such reduction will be directly linked to the loss of FPI sales. The Department will have to wait for the outcome of any specific adverse sales impact, before stating what the impact may be on the inmate workforce. As a general rule, every $35,000 in sales by the FPI program equates to approximately one inmate job. Inmates manufacturing those products affected by Section 827

work in 32 FPI program factories. It is premature to speculate on the number of FPI program factories, if any, that could potentially be closed due to Section 827.

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It has been shown that providing constructive programs, such as Federal Prison Industries, results in a more positive correctional environment whereby inmates are less likely to engage in disruptive behavior. Eliminating these opportunities for inmates may lead to higher incidents of violence inside the facilities, creating potential safety concerns for both staff and inmates.

Clearly, the greater the adverse impact on the FPI program as a result of Section 827, the greater the corresponding adverse effect on the FPI program's ability to continue operating in a self-sustaining manner, as statutorily required. Should the impact be severe enough, it may jeopardize the FPI program's continued future viability as a self-sustaining entity.

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Principal Deputy Assistant Attorney General

U.S. Department of Justice

Office of Legislative Affairs

Assistant Attorney General

Washington, D.C. 20530

May 5, 2008

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Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
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Washington, D.C. 20515

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