IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JONATHAN BLADES, *et al.*

Plaintiffs,

v.

MERRICK GARLAND, *in his official capacity as Attorney General, et al.*,

Defendants.

No. 22-CV-279 (ABJ)

BRIEF OF *AMICI CURIAE* THE WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS AND OTHER GROUPS IN SUPPORT OF PLAINTIFFS

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INTEREST OF THE *AMICI CURIAE*[1]

Amici Curiae are organizations committed to equal justice and racial equality in the prison context. *Amici* are experts in sentencing, prison policy, civil rights, and the disproportionate impact of American prison policy on people of color. Many of them have a particular stake in the Washington, D.C. community.

Amicus Washington Lawyers' Committee for Civil Rights and Urban Affairs is a nonprofit civil rights organization established to eradicate racial discrimination and poverty by enforcing civil rights laws through litigation and public policy advocacy in the District of Columbia, Virginia, and Maryland. Since its founding in 1968, the Washington Lawyers' Committee has worked to reform the criminal justice system, including an active docket of prisoners' rights litigation.

Amicus DC Justice Lab researches and advocates for large-scale changes to D.C.'s criminal legal system. It develops smarter safety solutions that are evidence-driven, community-rooted, and racially just. It supports more equitable and humane treatment of people serving time in federal custody for convictions under District law.

Amicus Justice Policy Institute ("JPI") is a national nonprofit organization that seeks to change the conversation around justice reform and advances policies that promote well-being and justice for all people and communities. JPI's research and analyses identify effective programs and policies with the goal of reducing the use of incarceration in the justice system. JPI has worked extensively in the District of Colombia on efforts to reform D.C.'s justice

[1] Counsel for Plaintiffs consent to the filing of this brief, and Defendants, through counsel, take no position. No party's counsel authored this brief in whole or in part. No entity or person—other than amici curiae, their members and their counsel—made any monetary contribution intended to fund the preparation or submission of this brief.

system, including on issues related to improving release decision-making and parole particularly for people serving long prison terms; enhancing services, supports and opportunities for justice involved emerging adults (ages 18-25 years old); and overall improvements to the D.C. Criminal Code.

Amicus More Than Our Crimes ("MTOC") is a nonprofit initiative under the umbrella of the Justice Policy Institute that gives a platform to, and advocates for, incarcerated residents of the District of Columbia. Since D.C. does not operate its own prison, thus sending its residents into the federal system, MTOC also advocates more broadly for better conditions in, and accountability for, the Bureau of Prisons.

Amicus The Sentencing Project is a national nonprofit organization established in 1986 to engage in public policy research and education on criminal justice reform. The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. Through research, education, advocacy, and participating as an amicus in court cases, The Sentencing Project advances fair and effective sentencing policies.

Amici are committed to ending policies that disproportionately harm people of color and District residents. Collectively, *amici* have a strong interest in objecting to the Bureau of Prisons' arbitrary policy of assigning more criminal history points to individuals sentenced by D.C. courts than to others in the custody of the Bureau of Prisons.

INTRODUCTION

For sixteen years, the federal Bureau of Prisons ("BOP") has discriminated against individuals convicted of D.C. Code offenses—District residents who are overwhelmingly Black and male.[2] Under Program Statement 5100.08, BOP calculates the criminal history scores of persons convicted of a D.C. Code offense by a different, harsher formula than it does the same score for other similarly situated persons. They therefore are subject to BOP assessments that deem them more likely to reoffend than their similarly situated peers merely because they were convicted of an offense within the four corners of the District of Columbia.

The results of this policy are severe, exacting a disparate impact on the overwhelmingly Black population of persons convicted of a D.C. Code offense. These individuals serve longer sentences under worse conditions than persons with identical conviction histories sentenced by the United States District Courts. Far from the "reasoned decisionmaking" the Administrative Procedure Act requires of federal agencies, BOP's unequal policy is a sorry chapter in a longer story of racialized discrimination against incarcerated persons from the District of Columbia. Such disparate treatment based on stereotypes of where someone comes from have no place in a justice system founded on the principal of "equal justice under law." BOP's two-track policy is arbitrary and capricious, and this Court should grant Plaintiffs' motion for summary judgment.

ARGUMENT

It is a "fundamental norm of administrative procedure" that agencies must "treat like cases alike." *Westar Energy Inc. v. Federal Energy Regulation Commission*, 473 F.3d 1239,

[2] District of Columbia Sentencing Commission, *2020 Annual Report* 37-38 (2021) https://scdc.dc.gov/sites/default/files/dc/sites/scdc/service_content/attachments/Annual_Report_2020.pdf.

1242 (D.C. Cir. 2007). BOP, however, effectively operates two different security and recidivism classification regimes for the persons in their custody: one for those convicted in federal court, and another for those sentenced under the D.C. Code. Under BOP Program Statement 5100.08, those convicted of D.C. Code offenses are subjected to more severe criminal history score calculations which, unlike the United States Sentencing Commission's rigorous guidelines, do not discount certain offenses that are petty, stale, or reflect youthful misconduct.

A BOP criminal history score is the most crucial determinant of the security classification of a person in BOP custody. Accordingly, incarcerated persons with a higher criminal history score are held in more restrictive and dangerous conditions, with less access to programming and fewer opportunities for rehabilitation. The BOP criminal history score is also a core component of PATTERN scores under the First Step Act, and thus can extend an individual's period of incarceration by rendering them ineligible for certain forms of early release.

The administrative record in this case does not reflect any effort by BOP to justify these disparities. Rather, it shows that BOP has simply ignored these "important aspect[s] of the problem." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Nor could BOP justify making a critical determination about how to treat incarcerated individuals simply on the basis that they were unfortunate enough to be convicted in the District of Columbia's local court—the "dissimilar treatment of evidently identical cases" is "the quintessence of arbitrariness and caprice." *Colorado Interstate Gas Co. v. Federal Energy Regulatory Commission*, 850 F.2d 769, 774 (D.C. Cir. 1988) (holding agency action that "distinguished irrationally between . . . two states" unlawful).

BOP's arbitrary decision to calculate heightened criminal history scores for persons convicted of D.C. code offenses reflects and reinforces the historically biased treatment of

District residents in the federal prison system. And it raises concerns that BOP's classification of District residents is based on nothing more than outdated, racially charged stereotypes of the District as an especially dangerous urban jurisdiction with a uniquely violent population. Indeed, the historical context surrounding Program Statement 5100.08 and the policy's disproportionate effect on Black persons firmly underscore Plaintiffs' Fifth Amendment concerns. At a minimum, BOP's two-track approach is an arbitrary and capricious agency action, which this Court must "hold unlawful and set aside." 5 U.S.C. § 706(2)(a).

I. The Pervasive History of Bias Against Persons Convicted of D.C. Code Offenses

While the administrative record fails to justify the BOP policy, an examination of the history and context of persons convicted by D.C. Courts but incarcerated in the federal system demonstrates that this policy was not a mere oversight occurring in a vacuum. Viewed in context, it is clear that BOP's disparate treatment reflects longstanding racist stereotypes of D.C. as a haven for crime and of the city's historically majority-Black population as uniquely violent.

A. The "Murder Capital" and the District's Fiscal Crisis

Apart from its status as the nation's capital, Washington, D.C. was characterized in the national consciousness for much of the twentieth century as "the most lawless and dangerous city in the country."[3] U.S. Attorney Homer Stille Cummings reportedly called D.C. "the crime capital of the world" as early as 1936.[4] Journalists Jack Lait and Lee Mortimer asserted in their 1951 bestseller *Washington Confidential* that D.C. had an "apex rate of crime" and that "[t]he waterfront of Marseilles, the alleys of Singapore's Chinatown, the sailor's deadfalls of Port Said

[3] Debbie M. Price, *'Murder Capital' Label Has Long Stalked D.C.*, Wash. Post (Apr. 4, 1989), https://www.washingtonpost.com/archive/politics/1989/04/04/murder-capital-label-has-long-stalked-dc/06a3c715-5888-4c26-b6c7-64ef290b305d/.

[4] *Id.*

have nothing on it."[5] In the wake of the April 1968 riots following Martin Luther King, Jr.'s assassination, Richard Nixon described D.C. as "one of the crime capitals of the nation" and called "the crime and violence that are now commonplace in Washington . . . more than a national disgrace."[6]

This reputation was often implicitly, if not explicitly, described in racial terms, and mentioned alongside the fact that D.C. had a disproportionately Black population. Lait and Mortimer, for example, described anecdotally in their 1951 bestseller that "[y]oung colored hoodlums of both sexes, adept at mugging and knifing, prey on strangers. The white man who comes here for pastime will find his luck all bad. The best he can hope for is a beating and maiming."[7] Shortly after his inauguration in 1969, Richard Nixon explicitly connected crime in D.C. with the city's majority Black population, who had come to the city as part of the Great Migration. Nixon described how D.C. was experiencing "raw, vicious violence" because "Washington today is reaping a whirlwind sown long since by rural poverty in the south . . . by racial prejudice, and by the sometimes explosive strains of rapid social readjustments."[8]

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[5] Jack Lait and Lee Mortimer, Washington Confidential (1951), available at https://www.gutenberg.org/files/63469/63469-h/63469-h.htm#chap_1.

[6] Price *supra* note 3.

[7] Lait and Mortimer, *supra* note 5.

[8] Richard Nixon, *Presidential Statement Outlining Actions and Recommendations for the District of Columbia* (Jan. 31, 1969), available at: https://www.presidency.ucsb.edu/documents/statement-outlining-actions-and-recommendations-for-the-district-columbia. Counsel and Assistant to the President John Ehrlichmann explicitly stated that Nixon's anti-crime push was part of a larger strategy to disrupt and demonize the Black community. Tom LoBianco, *Report: Aide Says Nixon's War on Drugs Targeted Blacks, Hippies*, CNN (Mar. 24, 2016) https://www.cnn.com/2016/03/23/politics/john-ehrlichman-richard-nixon-drug-war-blacks-hippie/index.html ("The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. . . . You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but

The 1980s and early 1990s saw a dramatic uptick in crime, both in the District and the country at large, and with it, D.C.'s place in the public imagination as a city marred by violent crime and drugs increased. The District famously made headlines in the early 1990s when it led the country's most populous cities in homicides per capita for the first time, earning the nickname of the "murder capital" of the country.[9] The Los Angeles Times labeled the city as "under seige" from violent drug crime coming from the "blighted brick housing projects and row houses just minutes from the grand marble buildings that represent the seat of national government"—crime that it described as "rooted in the numbing despair of ghetto life."[10]

At the same time, the District experienced a major fiscal crisis in the early 1990s. D.C. finished fiscal year 1990 with a $93 million budget shortfall, which Mayor Marion Barry described as "a financial crisis as never before."[11] By 1995, the District's deficit had ballooned to $722 million, and the city lost control over its finances to a federally managed control board.[12] D.C. lost 63,000 jobs (9.1 percent of total employment) and 75,000 residents (12 percent of its

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by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities.") (quotation marks omitted).

[9] *See* David Ashenfelter, *Washington Is Murder Capital for Second Year*, Baltimore Sun (Apr. 29, 1991), https://www.baltimoresun.com/news/bs-xpm-1991-04-29-1991119021-story.html.

[10] Bob Baker & Douglas Jehl, *Battling for Customers: Crack Wars Leave D.C. Under Siege*, L.A. Times (Mar. 26, 1989), https://www.latimes.com/archives/la-xpm-1989-03-26-mn-939-story.html.

[11] Michael Abromowitz, *Biggest D.C. Deficit in 10 Years Looms Amid Region's Economic Downturn*, Wash. Post (Sept. 5, 1990), https://www.washingtonpost.com/archive/politics/1990/09/05/biggest-dc-deficit-in-10-years-looms-amid-regions-economic-downturn/1b524712-527b-4f56-8c13-191a0d74a7b7/.

[12] Thomas W. Waldron, *U.S. Capital on the Verge of Running out of Money: Washington, D.C.'s Fiscal Crisis*, Baltimore Sun, (June 16, 1995), https://www.baltimoresun.com/news/bs-xpm-1995-06-16-1995167107-story.html; *see* Mike DeBonis, *After 10 years, D.C. Control Board is Gone but not Forgotten*, Wash. Post (Jan. 30, 2011), https://www.washingtonpost.com/wp-dyn/content/article/2011/01/30/AR2011013003901.html.

population) between 1990 and 1997.[13] Because of this "virtual fiscal meltdown"[14] that left city services and the city's agencies on the brink of collapse, Barry and the city government attempted to persuade the federal government to assume more financial responsibility for city agencies that the District could not afford, including its overburdened corrections system.[15]

B. Lorton Reformatory and D.C. Prisoners in the Federal System

For much of the twentieth century, most individuals sentenced in D.C. courts under the D.C. Code were sent to the Lorton Reformatory ("Lorton"), a prison complex located in Fairfax County, Virginia that was specially constructed by the Theodore Roosevelt administration to house incarcerated persons from D.C. During the H.W. Bush and Clinton administrations, 98% of Lorton's population was comprised of Black men.[16]

From the 1970s through the 1990s, Lorton gained a reputation as uniquely dangerous. During the "War on Drugs" in the 1980s and 1990s, a massive influx of people convicted of drug offenses at Lorton "created a population that . . . overwhelmed the place."[17] Overcrowding and

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[13] Yesim Taylor, *Twenty Years After the Revitalization Act, the District of Columbia Is a Different City*, D.C. Policy Center (Dec. 19, 2017), https://www.dcpolicycenter.org/publications/twenty-years-revitalization-act-district-columbia-different-city/.

[14] Alice M. Rivlin, Brookings Inst., The Fiscal Problem of Being Washington, D.C. 23 (2016), available at https://www.brookings.edu/wp-content/uploads/2016/07/chapter_1.pdf.

[15] Waldron, *supra* note 12.

[16] Jason Deparle, *42% of Young Black Males Go Through Capital's Courts*, N.Y. Times (Apr. 18, 1992), https://www.nytimes.com/1992/04/18/us/42-of-young-black-males-go-through-capital-s-courts.html.

[17] Eddie Dean, *Maximum Insecurity*, Wash. City Paper (June 6, 1997), https://washingtoncitypaper.com/article/282743/maximum-insecurity/.

the lack of adequate funds and facilities resulted in "several large-scale riots,"[18] including an incident in 1986 where fourteen buildings were set on fire.[19]

By the 1990s, there was a widespread belief that the persons incarcerated in Lorton, and therefore incarcerated persons from D.C. at large, represented an inherently and uniquely dangerous and hardened type of criminal—despite the fact that about one-third were incarcerated for drug distribution.[20] Contemporary journalists described the young men detained at Lorton as "cold teen killers" who were "growing up at Lorton . . . the way children move through a school system" and that Lorton had become "a rite of passage for adolescent males in Washington, a feather in the baseball cap."[21] One Lorton Guard noted that "there is a breed of convict in the '90s who lives beyond remorse . . . a different animal . . . Lorton is a badge of courage."[22] D.C. Corrections Director Margaret Moore described her department as "one of the most dangerous prison systems in the nation,"[23] and described the incarcerated persons in her custody as

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[18] *Id*.

[19] United Press International, *Prison Set Ablaze During Riot*, Chicago Tribune (July 11, 1986) https://www.chicagotribune.com/news/ct-xpm-1986-07-11-8602190174-story.html. For a thorough list of incidents at Lorton before this 1986 riot, see *Chronology of Major Incidents at Lorton*, Wash. Post (July 11, 1986), https://www.washingtonpost.com/archive/politics/1986/07/11/chronology-of-major-incidents-at-lorton/c67c6094-fd74-42b5-857a-58040a2c31e0/.

[20] *Oversight of the District of Columbia Department of Corrections National Institute on Corrections Study: Hearing Before the Subcomm. on District of Columbia of the H. Comm. on Govt. Reform and Oversight*, (hereinafter "NIC Study Hearing") 104th Cong. 31, 35 (1996) (statement of Dr. James Austin, Executive Vice President, National Council on Crime and Delinquency).

[21] Dean, *supra* note 17.

[22] *Id*.

[23] Marcia Slacum Greene, *An Alarming Evolution in Detention*, Wash. Post (Sept. 8, 1996), https://www.washingtonpost.com/archive/politics/1996/09/08/an-alarming-evolution-in-detention/06f8110f-9d60-4ec0-a4a5-2c47a4b4225e/?utm_term=.110c8654a119.

"violence-prone" and "aggressive gang-bangers" who "don't change; they just take out [their] aggressions here."[24]

Due to the District's inability to adequately fund the Department of Corrections, D.C. and the federal government began designating some persons convicted of a D.C. Code offense to BOP custody, rather than to Lorton, in the late 1980s.[25] *See United States v. District of Columbia*, 703 F.Supp. 982, 986 (D.D.C. 1988). Historically, federal prisons detained a significantly higher percentage of white incarcerated persons than the D.C. prison population. In 1980 the federal prison system held nearly twice as many white individuals as Black individuals,[26] and even in 1991, after the initiation of the War on Drugs, white individuals represented 38% of all federally incarcerated persons while Black individuals represented just 30%.[27] During the period between August 1985 and January 1986, 1,707 new individuals convicted in D.C. Superior Court —nearly all of whom were Black—were placed in BOP custody.[28] These prisoners from D.C. became known as the "D.C. Blacks," and had a reputation, as a "single ethnic group from [a] single city," as being "well-schooled in violence" and among the "most difficult groups . . . for guards to control."[29] The "D.C. Blacks" were classified as a

[24] Dean, *supra* note 17.

[25] *See* Statement of D. Lowell Jensen, Deputy Att'y General, Before the Subcomm. on District of Columbia of the S. Comm. on Appropriations 7 (Apr. 16, 1986), available at https://www.ojp.gov/pdffiles1/Digitization/101551NCJRS.pdf.

[26] Bureau of Justice Statistics, *Prisoners in State and Federal Institutions on December 31, 1980*, 18 Table 6 (1982), https://bjs.ojp.gov/content/pub/pdf/psfi80.pdf.

[27] Bureau of Justice Statistics, *Comparing Federal and State Prison Inmates*, 1991 (1994), https://bjs.ojp.gov/content/pub/pdf/cfspi91.pdf.

[28] Jensen, *supra* note 25, at 13-14; *see* Deparle, *supra* note 16.

[29] Pete Earley, The Hot House: Life Inside Leavenworth Prison 105 (1992).

prison gang,[30] and "[f]or the purposes of classification in [one maximum security prison], if you were from the District of Columbia, they classified you as if you were in a gang, and there was an automatic classification with the other District prisoners."[31]

C. The Revitalization Act and the Closure of Lorton

Despite the federal government beginning to house a portion of D.C.'s prison population, by the mid-1990s it became obvious that the situation at Lorton was no longer tenable. By 1995 Lorton was holding about 7,300 people, 44% more than originally intended.[32] That same year, a Virginia woman who lived near Lorton recounted the deteriorating conditions at the underfunded prison, describing "crumbling perimeter walls, abandoned guard towers, malfunctioning security systems, escapes, riots, inadequate maintenance of facilities, murder within its confines, gross personnel shortages, inadequately trained staff, and readily available drugs [that] paint a picture of a prison facility that is no longer serving the public interest."[33] One member of Congress noted in a hearing on the District's prison system that "Lorton has been plagued by systemic neglect for a long time. The infrastructure has deteriorated to the point where no degree of repair can rehabilitate it. . . . [W]e are going to have to tear down the entire facility and remake, as well, the District's correction system; and this time we are going to have to do it right."[34]

To rescue D.C. from its financial straits , Congress ultimately passed the National Capital Revitalization and Self-Government Improvement Act of 1997 (the "Revitalization Act"). Pub.

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[30] *Id.* at 229, 308 (describing members of the "D.C. Blacks prison gang.").

[31] *H.R. 461, Closing of Lorton Correctional Complex: Hearings Before the Subcomm. on District of Columbia of the H. Comm. on Govt. Reform and Oversight*, (hereinafter "Lorton Closing Hearing") 104th Cong. 131 (1995) (statement of Jonathan M. Smith, Executive Director, D.C. Prisoners Legal Services Project).

[32] *Id*. at 2 (statement of Rep. Tom Davis, Chairman, Subcomm. on District of Columbia)

[33] *Id.* at 143 (statement of Laurie Frost, President of the Federation of Lorton Communities).

[34] NIC Study Hearing at 7 (statement of Rep. James Moran).

L. No. 105-33, 111 Stat. 251, 712 (1997). The main thrust of the act was that the District gave up the yearly payment it received from the federal government in lieu of property taxes, and in return, the federal government assumed the responsibility for the city's debts, its pre-1997 employee pensions, and, critically, the management of the District's courts and prisons.

Leading up to the passage of the Revitalization Act in 1997, House and Senate committees held a number of hearings to determine the magnitude of the District's problems and weigh potential solutions. These hearings were replete with statements focusing on the District's out-of-control crime and the supposedly dangerous nature of its population. Congressman Frank Wolf, the lead sponsor of a 1995 bill to close Lorton, proclaimed that "the nation's capital is a battleground" and that it was "time to take back the streets of the nation's capital."[35] He also railed against the situation at Lorton as a large part of the problem, labeling it as a "finishing school for criminals."[36] Senator Sam Brownback, Chairman of the Senate Subcommittee on the District of Columbia, described the "chronic problem" of crime in the city, recounting that three of his own staff members had had their homes burglarized over the last year and a half.[37]

The committees examining the Lorton issue also included a number of members from northern Virginia who faced political pressure from their mostly white suburban districts to close the prison and relocate the persons incarcerated there, who they felt were a dangerous nuisance

[35] Lorton Closing Hearing at 10 (statement of Rep. Frank Wolf).

[36] *Id.* at 11.

[37] *Hearing Before the Subcomm. on Oversight of Government Management, Restructuring, and the District of Columbia of the Senate Comm. on Governmental Affairs*, (hereinafter "Senate Subcomm. Hearing") 105th Cong. 2 (1997) (statement of Sen. Sam Brownback, Chairman, Subcomm. on Oversight of Government Management, Restructuring, and the District of Columbia).

that had been unfairly dumped in their backyard.[38] Virginia Attorney General Jim Gilmore, for example, called Lorton and its population "an infectious disease" threatening the health of Virginia.[39] In the hearings, Chairman Tom Davis repudiated the notion that Lorton should be viewed as a regional issue: "[I]n Northern Virginia, the crime rates are so much lower than in the District. It's night and day, in terms of the types of crimes committed, and the number."[40] Congressman Jim Moran declared that "[o]ur communities in Fairfax County have a right to be free of crime, and certainly not subject to criminals who continue to move in and out of the system within their neighborhood."[41]

Despite the political pressure for Congress to act swiftly, there was doubt as to whether the federal government could absorb the full burden of D.C.'s prison population. Vice Chairman of the D.C. Control Board Stephen Harlan recounted that "the Bureau [of Prisons] maintains that transferring D.C. inmates from Lorton to the Federal system would create several operational problems for the Federal prison system, including mixing inmates with greatly disparate sentencing, good time, parole structures, and the like. Moreover the Federal prisons are already operating at 125 percent of capacity."[42] There were also concerns about the security classifications of some individuals coming from DOC, because "[m]odifications in the DOC

[38] Lorton Closing Hearing at 19 (statement of Del. Eleanor Holmes Norton) (noting the "desire of many Virginia officials and residents to close Lorton").

[39] Dean, *supra* note 17; *see also* Lorton Closing Hearing at 26 (statement of Jim Gilmore, Attorney General of Virginia).

[40] Lorton Closing Hearing at 130 (statement of Rep. Tom Davis, Chairman, Subcomm. on District of Columbia).

[41] *Id.* at 14 (statement of Rep. Jim Moran).

[42] NIC Study Hearing at 42 (statement of Stephen Harlan, Vice Chairman of the D.C. Financial Responsibility and Management Assistance Authority)

classification system have resulted in . . . too many medium custody inmates being classified as minimum custody and being housed in minimum security beds."[43]

There were also concerns about BOP absorbing the District's prison population without sentencing reform that would ensure parity between persons convicted in District and federal courts.[44] The Controller of the Office of Financial Management noted that the federal government had "always been concerned . . . that if the Bureau of Prisons is going to absorb 3,000 or 4,000 or 5,000 inmates into the Bureau of Prisons' system or 7,000 inmates in some circumstances into the system, that there would [have to] be comparable sentences developed."[45] Indeed, all of these officials seemed to recognize that the differential treatment of individuals confined in BOP facilities was a condition to be avoided.

Ultimately, the perceived need for urgency in addressing the situation in the District and at Lorton overrode BOP's logistical concerns, as BOP began assuming responsibility for more persons convicted in D.C. Superior Court after the passage of the Revitalization Act. Lorton's population dwindled before the facility finally closed in 2001. But while Lorton shut its doors, the attitudes about D.C. and its population that underlay the decision for the federal government to assume responsibility for persons convicted under the D.C. Code remained. Today, those attitudes are reflected in the discriminatory treatment that incarcerated persons from D.C. still experience in the federal system—including as a result of BOP Program Statement 5100.08.

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[43] *Id.* at 35 (statement of Dr. James Austin, Executive Vice President, National Council on Crime and Delinquency).

[44] *White House Proposal for the District of Columbia*, *Hearing Before the Subcomm. on District of Columbia of the H. Comm. on Gov't Reform and Oversight*, 105th Cong. 25 (1997) (statement of Frank Raines, Director, Office of Management and Budget).

[45] Senate Subcomm. Hearing at 9 (statement of G. Edward DeSeve, Controller, Office of Financial Management, U.S. Office of Management and Budget).

II. The Severe and Racially Disparate Impact of BOP Program Statement 5100.08 on Incarcerated Persons from D.C.

Because BOP calculates systematically higher criminal history scores for persons convicted of D.C. offenses, they are more likely to serve their sentences in higher-security prisons—at a greater risk of violence, with limited programming, and farther from home. They also have higher PATTERN scores, limiting their eligibility for early release under the First Step Act. BOP's arbitrary policy subjects the overwhelmingly Black population of persons convicted of D.C. Code offenses to worse and longer imprisonment than their federal counterparts.

A. Persons Convicted of D.C. Code Offenses Receive Higher Security Classifications, Worsening Their Conditions of Confinement.

BOP operates prisons of varying security levels and assigns the individuals in its custody to those prisons based on a scoring system, of which a criminal history score is the most heavily weighed component. *See* Bureau of Prisons Prog. Statement 5100.08, Ch. 1 p. 2, Ch. 4 p. 16. Because persons convicted in the D.C. Superior Court receive systematically higher criminal history scores than similarly situated federally-sentenced individuals, they also receive higher security classifications. Persons convicted of a D.C. Code offense are more than three times as likely to be incarcerated in high-security prisons as the BOP population at large; at the same time, persons *not* convicted of a D.C. Code offense are more than twice as likely to be incarcerated in low security institutions and *over sixteen times* more likely to be incarcerated at a minimum security facility.[46] The higher security classifications that BOP has imposed on

[46] *See* Council for Court Excellence, *Analysis of BOP Data Snapshot from July 4, 2020 for the District Task Force on Jails & Justice* 4 fig. 6 (Sep. 30, 2020), http://www.courtexcellence.org/uploads/publications/Analysis_of_BOP_Data_Snapshot_from_7420.pdf

persons convicted of D.C. Code offenses substantially worsen their conditions of confinement in several respects.[47]

First, life in a high security institution is significantly more restrictive than in medium or low security institutions. Where persons in low and minimum security prisons have access to dormitory style housing, medium and high security federal prisons have almost exclusively cell housing.[48] The higher a prison's security level, the more complete control it has over the population's movement. Incarcerated individuals in lower security settings may freely congregate and socialize, but individuals in higher security prisons are subject to "close control of inmate movement" by large numbers of correctional officers.[49] Indeed, incarcerated individuals in U.S. Penitentiaries, which are among the highest security prisons, spend nearly 24 hours a day locked in cells six feet by ten feet, an area smaller than a parking space.[50]

Second, prisoners subject to higher levels of security have progressively less access to rehabilitative programming as a consequence of crowding, extensive controls on prisoner movement, and the inability of prisoners to work in a high-security setting.[51] While low security

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[47] *See* Pam Bailey, *The Injustice of Being a 'State' Prisoner in the Federal System*, MORE THAN OUR CRIMES (Mar. 27, 2022), https://morethanourcrimes.medium.com/the-injustice-of-being-a-state-prisoner-in-the-federal-system-d11193c8421c.

[48] *See* Bureau of Prisons, *About Our Facilities* (last accessed Apr. 8, 2022), https://www.bop.gov/about/facilities/federal_prisons.jsp.

[49] *Compare id.*, *with* Helena Andrews-Dyer & Emily Heil, *What It's Really Like Inside "Club Fed" Prisons*, Wash. Post (Jan. 5, 2015) https://www.washingtonpost.com/news/reliable-source/wp/2015/01/05/what-its-really-like-inside-club-fed-prisons/ (describing federal prison camps as "like a junior college setting"), *and* Joseph Shapiro & Christi Thompson, *Inside Lewisburg Prison: A Choice Between a Violent Cellmate or Shackles*, NPR (Oct. 26, 2016), https://www.npr.org/2016/10/26/498582706/inside-lewisburg-prison-a-choice-between-a-violent-cellmate-or-shackles (describing federal high security prison).

[50] Shapiro & Thompson, *supra* note 49.

[51] *See* Alan Ellis *et al.*, Federal Prison Guidebook § 2:20.1 (2015) (noting "strong work and program components" in lower security prisons and less availability in higher-security settings).

prisons often have "strong work and program components,"[52] such programming is incompatible with the practices of higher security institutions where incarcerated individuals "get a brief reprieve from the closetlike conditions every week for medical care, three showers and five hours in a 'recreation cage.'"[53] In light of these limitations and BOP's two-tier system of calculating criminal history scores, it is no surprise that BOP's data shows that persons convicted of a D.C. Code offense have overall low levels of participation in BOP programming.[54]

This programming loss directly impacts an incarcerated individual's well-being and opportunity for rehabilitation. Furthermore, it limits their ability to earn time credits that can reduce the length of their sentence pursuant to the First Step Act. *See* 18 U.S.C. § 3632(d)(4); 28 C.F.R. §§ 523.40, 523.41. And studies show that participation in BOP programs substantially reduce rates of recidivism,[55] as they help incarcerated individuals acquire skills and re-enter society upon their release.[56]

Third, as BOP itself has acknowledged, "[v]iolent events are more likely to occur at higher security prisons."[57] BOP research bears this out: the rate of serious assaults on incarcerated persons is higher by several times in the highest-security BOP facilities than in the

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[52] *See* Bureau of Prisons, *About Our Facilities*, *supra* note 48.

[53] Shapiro & Thompson, *supra* note 49.

[54] *See* Council for Court Excellence, *supra* note 46, at 9-11.

[55] *See* James Byrne, *The Effectiveness of Prison Programming: A Review of the Research Literature Examining the Impact of Federal, State, and Local Inmate Programming on Post-Release Recidivism*, 84 Federal Probation J. 3, 4 (2020); *see generally* Grant Duwe, *The Use and Impact of Correctional Programming for Inmates on Pre- and Post-Release Outcomes*, National Institute of Justice (2017), https://www.ojp.gov/pdffiles1/nij/250476.pdf.

[56] *See* Bailey, *supra* note 47.

[57] *See* Walter Pavlo, *Maximum Security Federal Prisons Have 'Minimum' Security Inmates*, Forbes (July 14, 2016), https://www.forbes.com/sites/walterpavlo/2016/07/14/maximum-security-federal-prisons-have-minimum-security-inmates/?sh=1df0d8585b2b.

lowest security BOP facilities.[58] Individuals convicted of a D.C. Code offense are therefore more likely to be victims of serious assaults in prison.

Fourth, the Bureau's own research has found that medium and higher security facilities face issues of overcrowding that are not present in minimum and low security facilities.[59] This overcrowding impacts incarcerated individuals' health and well-being in several ways. For example, researchers have found that COVID-19 spreads more easily within those prison facilities that suffer from worse overcrowding.[60] Crowding also creates worse conditions for persons aging within the system because, as the Department of Justice ("DOJ") Inspector General has explained that "[a]ging inmates often require lower bunks or handicapped-accessible cells, but overcrowding . . . limits these types of living spaces."[61]

Ultimately, the environment in higher security facilities—more crowded, more dangerous, and less connected to society—results in measurably higher rates of recidivism. In the context of state prisons, researchers have found that individuals with similar risk profiles are more likely to reoffend if assigned to a higher security facility.[62] By arbitrarily and

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[58] *See* Bureau of Prisons Office of Research and Evaluation, *Serious Assaults on Inmates* (last accessed Apr. 8, 2022) https://www.bop.gov/resources/research_projects/assaults/archive/2021-Dec-code101-inmates.pdf.

[59] Federal Bureau of Prisons, *Program Fact Sheet* (Jan. 31, 2022) https://www.bop.gov/about/statistics/docs/program_fact_sheet_20220331.pdf (finding overcrowding at 22% of medium-security facilities and 17% of high-security facilities).

[60] Abigail Liebowitz, *et al.*, *Association Between Prison Crowding and COVID-19 Incidence Rates in Massachusetts Prisons, April 2020-January 2021*, JAMA Intern. Med. (Aug. 2021), https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2782809.

[61] Department of Justice, Office of the Inspector General, *Top Management and Performance Challenges Facing the Department of Justice—2019*, 5 (Nov. 2019) https://oig.justice.gov/sites/default/files/reports/2019.pdf.

[62] *See generally* Gerald Gaes & Scott Camp, *Unintended Consequences: Experimental Evidence for the Criminogenic Effect of Prison Security Level Placement on Post-release Recidivism*, 5 J. of Experimental Criminology 139 (2009).

unnecessarily increasing the likelihood that D.C. residents will reoffend, BOP is failing the most basic charge of a *correctional* system—instead creating harms that fall disproportionately on an overwhelmingly Black and politically underrepresented group of incarcerated persons.

B. Persons Convicted of D.C. Code Offenses Receive Higher PATTERN Scores, Arbitrarily Prolonging Their Imprisonment.

Pursuant to the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018) (codified in scattered sections of 18 U.S.C. and 34 U.S.C.), DOJ recently developed a risk assessment tool for incarcerated persons called PATTERN—the "Prisoner Assessment Tool Targeting Estimated Risk and Needs"—that assigns scores used in part to determine eligibility for certain benefits under the Act. Because the most heavily weighted component of a PATTERN score is an individual's criminal history score, those convicted of a D.C. Code offense receive systematically higher PATTERN scores, making them less able to access the benefits of the Act. A single PATTERN point can mean the difference between eligibility for release or continued imprisonment—and the criminal history score is worth as many as 40 PATTERN points.[63]

1. High PATTERN Scores Preclude Eligibility for Early Release Under the First Step Act.

The First Step Act allows individuals in BOP custody to earn credits towards reducing their sentences by engaging in a wide variety of programming the Bureau considers relevant to reducing the risk of reoffending. *See* 18 U.S.C. § 3632(d)(4); 28 C.F.R. §§ 523.40, 523.41 (defining qualifying programming to include, *inter alia*, "[c]lasses on morals or ethics," "[v]ocational training," "[c]ivic engagement and reintigrative community services," and "work and employment opportunities.") But while any individual can *earn* credits for these activities,

[63] Bureau of Prisons, *Male PATTERN Risk Score*, https://www.bop.gov/inmates/fsa/docs/male_pattern_form.pdf.

the First Step Act entitles only persons judged to be at "minimum or low risk" of recidivism by BOP to early supervised release as a result. *See* 18 U.S.C. § 3624 (g)(1)(D)(ii). And the Act generally imposes more onerous requirements on those with higher risk classifications for other forms of release. *See id.* § 3624 (g)(1)(D)(i). Individuals must therefore have a sufficiently low PATTERN score to benefit from some of the Act's key provisions. *See Markley v. James*, No. 21-3067, 2021 WL 1736859 at *1, 3 (D. Kan., May 3, 2021).

Under current BOP policy, the threshold for "minimum or low risk" to recidivate is 30 PATTERN points for men[64] and 31 for women.[65] A criminal history score of ten points, standing alone, is enough to foreclose a minimum risk designation—by awarding 32 PATTERN points.[66] For context, a person convicted of a D.C. Code offense may earn as many as four criminal history points for petty offenses and further points for stale and juvenile offenses—points that they would not earn if sentenced through the federal system.[67] *See generally* U.S. Sent'g Guidelines Manual § 4A1.2 (U.S. Sent'g Comm'n 2021) (significantly limiting consideration of juvenile, petty, and older offenses in calculation of criminal history score for federally-sentenced individuals). Thus, the effect of BOP's two-tier system of calculating

[64] *Id.*

[65] *See* Bureau of Prisons, *Female PATTERN Risk Score*, https://www.bop.gov/inmates/fsa/docs/female_pattern_form.pdf.

[66] *Id.*; *Male PATTERN Risk Score*, *supra* note 63.

[67] BOP Program Statement 5100.08, at Ch. 4 pp. 8-9, attributes two points for *each* "prior sentence of imprisonment of at least sixty days" but less than one year and one month; three points for *each* "prior sentence of imprisonment exceeding one year and one month"; one point for *each* other "prior conviction" (up to four points); and an additional two points if the most recent offense occurred while subject to "incarceration, probation, parole, or supervised release." The Statement does not differentiate stale or juvenile offenses.

criminal history scores is to impose arbitrarily prolonged terms of imprisonment on persons convicted by D.C. courts.

2. High PATTERN Scores Result in Serious Collateral Consequences.

The importance of PATTERN is not limited to its application under the First Step Act. PATTERN has become a metric of choice in determining which individuals to release to alleviate problems like public health and prison overcrowding.

In response to initial outbreaks of COVID-19 in the United States, then-Attorney General William Barr directed BOP to "prioritize the use of . . . home confinement for inmates."[68] The Attorney General directed BOP to consider "[the] inmate's score under PATTERN" in determining whether to grant home confinement, "with inmates who have anything above a minimum score not receiving priority."[69] For some individuals, a single point in their PATTERN score made the difference between home release and continued confinement—even as BOP has registered over 53,000 COVID cases (and hundreds of deaths) despite housing fewer than 150,000 prisoners.[70] Because a criminal history score can be worth as many as 40 points under PATTERN, persons convicted of a D.C. Code offense are significantly less likely to be

[68] Memorandum from Attorney General William Barr to Director, Bureau of Prisons (Mar. 26, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf.

[69] *Id*.

[70] See Ian MacDougall, *Bill Barr Promised to Release Prisoners Threatened by Coronavirus—Even as the Feds Secretly Made It Harder for Them to Get Out*, ProPublica (May. 26, 2020), https://www.propublica.org/article/bill-barr-promised-to-release-prisoners-threatened-by-coronavirus-even-as-the-feds-secretly-made-it-harder-for-them-to-get-out (describing the case of an individual incarcerated in Louisiana—Blayne Davis—who was denied release because he had a PATTERN score of seven and not six); *see also* Bureau of Prisons, *COVID-19 Coronavirus*, https://www.bop.gov/coronavirus/ (last accessed Apr. 8, 2022) (noting, as of April 7, 2022, 135,909 individuals incarcerated in BOP managed institutions, 13,215 in "community-based facilities," and 53,257 recoveries from COVID-19).

eligible for release, thus left to languish in prison even though they might be eligible for release had they been federally sentenced.

Additionally, PATTERN influences the ability of individuals to secure their release in less formal ways. Where federally sentenced individuals seek compassionate release, courts now often rely on PATTERN scores to determine the propriety of release. *See* 18 U.S.C. §§ 3582(c)(1)(A), 3553(a) (together requiring a court considering a sentencing modification to consider whether an incarcerated individual poses a continuing danger to the public). Some courts have relied on low PATTERN scores as a basis for granting compassionate release or sentencing reduction. *United States v. Greene*, 516 F.Supp.3d 1, 10, 25 (D.D.C. 2021) (Brown Jackson, J.) (citing Mr. Greene's PATTERN score for proposition that "BOP has determined that Greene has a minimal risk of recidivism"); *see also United States v. Rodriguez*, No. 05-CR-960, 2022 WL 158685, *5 (S.D.N.Y. Jan. 18, 2022); *United States v. Poole*, 472 F.Supp.3d 450, 460 (W.D. Tenn. 2020); *United States v. Maher*, No. 04-CR-93, 2020 WL 5535005, at *2 (D. Me. Sep. 15, 2020). Other courts have treated high PATTERN scores as a persuasive reason to deny release. *See e.g. United States v. Miller*, No. 18-CR-60345, 2020 WL 7320938, *7 (S.D. Fla. Dec. 11, 2020); *Richardson v. United States*, No. 13-CR-43, 2020 WL 6929059, at *2-3 (E.D. Va. Nov. 24, 2020).

III. The Lasting Disparate Treatment of Incarcerated Persons from D.C. in The Federal System

At the confluence of this history, policy, and praxis are people—over 3,000 District residents serving sentences in the custody of BOP. Their stories[71] outline the stark consequences of having an arbitrarily higher security classification based solely on where you come from.

[71] All testimonials in this section come from interviews conducted by *amicus* More than Our Crimes. Bailey, *supra* note 47.

James Parker, for example, described that "[w]hen I came into the BOP system as a first-time offender in April 1994, I was placed in a maximum-security facility and locked down for 26 months for no reason other than who I was (a D.C. resident) and the length of my sentence (life)." Because of this lockdown, Mr. Parker missed valuable filing deadlines in his case, which he said "haunts [him] to this day."

Similarly, Kevone Newsome described being placed in a "more violent" prison which resulted in his being "locked down a lot more" even though his points should have classified him as medium risk under the federal guidelines. Newsome was told he was placed in a high-security facility because of his 48 year sentence, yet he "saw inmates in on federal charges who had life sentences and *they* were placed in medium-security facilities." He noted how persons convicted of a D.C. Code offense, like himself, are not eligible for certain credits under the First Step Act or prison programs including vocational and educational programming. He shared frustration at being "penalized like everyone else if we do anything they don't like," but being ineligible for "the same benefits for participating in educational classes and 'productive activities' (like certain jobs)."

Robert Barton has described the blatant disparate treatment he receives in federal prison as a person convicted of a D.C. Code offense:

> Being in for a D.C. [C]ode offense has stopped me from getting good jobs . . . . One such blatant example occurred when I applied for a vacant orderly job . . . . [W]hen I met with the lead supervisor, he flat out told me I would not be hired. Since I met or exceeded the qualifications for the position and had not been in any trouble for years, I asked him why I wouldn't be considered for the job. He blatantly told me that he hadn't known I was from D.C. and he didn't hire D.C. inmates for "these types of positions."

Other individuals convicted in D.C. described how federal corrections officials stereotype District residents as being uniquely violent or dangerous. Michael Boone explained that when he told his supervisor in the commissary that he was from D.C., the supervisor told Boone he should

never have been hired, because people from D.C. "kill people, you're rapists, you rob people and start trouble. They shouldn't have brought you guys into the federal system."

Calvin Sumler described this persisting stigma in similar terms. "Those of us from Washington, D.C., are definitely treated differently throughout the BOP." He recounted how "[i]f you're from D.C, it feels like we have a target on our backs. It really adds to the stress of being incarcerated." He said that prison officers have even told him to his face that "they can't stand incarcerated individuals from the District of Columbia. It's almost a personal hatred."

Mr. Barton detailed that this animosity, fueled by stereotypes, permeates relationships within the prison population as well. He described how prison staff "always tell us that we're the worst of the worst and they don't like to deal with us. They encourage other inmates to be hostile to us, by putting in their heads that we're aggressive and will try to take advantage of them." He noted that this makes the prison experience that much more stressful: "[w]e not only have to be on guard against the COs, but with people from other places as well."

These testimonials of incarcerated individuals from D.C. underscore the lasting perception of the District and its residents as uniquely violent. As Dominique Outlaw put it, "the main reason we're scored worse than federal prisoners is that we're [here on] contract. It's like they want to set the 'tone' for us, especially the inmates who came from Lorton. Lorton had a stigma, and the people who came from there acquired a reputation of being among the worst." Mr. Sumler shares this view, recounting that he has faced animosity as someone convicted of a D.C. Code offense as far back as he can remember: "It's been this way at least since 1996, when I first entered the system. I believe it's because there's a stereotype about individuals from Washington . . . we're stereotyped as being more violent."

There is no justification for BOP's official policy to effectively codify these unfounded and discriminatory stereotypes. Consistent with the APA and the basic principles of fair and reasoned decision-making it embodies, the Bureau may not employ metrics that continue to harm District residents by assuming they are more dangerous and more likely to recidivate for no reason other than the place of their conviction.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for summary judgment should be granted.

DATED: April 8, 2022

Respectfully submitted,

By: _____

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JONATHAN BLADES, *et al.*

Plaintiffs,

v.

MERRICK GARLAND, *in his official capacity at Attorney General, et al.*

Defendants,

No. 22-cv-279 (ABJ)

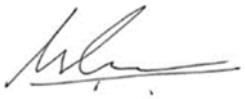
LCvR 26.1 CERTIFICATE

Pursuant to Local Civil Rule 26.1:

I, the undersigned, counsel of record for *Amici* the Washington Lawyers' Committee for Civil Rights and Urban Affairs, DC Justice Lab, Justice Policy Institute, More than Our Crimes, and The Sentencing Project, certify to the best of my knowledge and belief that the following are parent companies, subsidiaries, affiliates, or companies which own at least 10% of the stock of *amici curiae* which have any outstanding securities in the hands of the public: **None**.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record



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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JONATHAN BLADES, *et al.*

Plaintiffs,

v.

MERRICK GARLAND, *in his official capacity at Attorney General, et al.*

Defendants,

No. 22-cv-279 (ABJ)

[PROPOSED] ORDER GRANTING LEAVE TO FILE BRIEF *AMICI CURIAE*

Upon consideration of the Motion of the Washington Lawyers' Committee for Civil Rights and Urban Affairs and Other Groups for Leave to Participate as *Amici Curiae* in Support of Plaintiffs, it is hereby ORDERED that the motion is granted and that Movant's Brief *Amici Curiae* shall be filed.

SO ORDERED

Dated: _____

JUDGE AMY BERMAN JACKSON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JONATHAN BLADES, *et al.* *Plaintiffs*, v. MERRICK GARLAND, *in his official capacity at Attorney General, et al.* *Defendants*,	No. 22-cv-279 (ABJ)

MOTION OF THE WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS AND OTHER GROUPS FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS

Amici the Washington Lawyers' Committee for Civil Rights and Urban Affairs, DC Justice Lab, Justice Policy Institute, More than Our Crimes, and The Sentencing Project respectfully request leave to file the attached brief as *amici curiae* in support of Plaintiffs. Counsel for Plaintiffs have consented to this Motion and the filing of the attached brief, pursuant to Local Civil Rule 7(o)(2). Through counsel, Defendants have declined to take any position on this Motion. This brief is timely filed within seven days of Plaintiffs' Motion for Summary Judgement, *see* Fed. R. App. Pro. 29(a)(6), and will not unduly delay this Court's ability to rule on Plaintiffs' motion.

As the proposed brief explains, *amici* have a strong interest in this case. As District-based and national organizations committed to eradicating racial inequality, ensuring fairness in the criminal justice system, and securing equal treatment under law, they have an important stake in ensuring that the Federal Bureau of Prisons does not arbitrarily confine District residents under worse and longer conditions of incarceration than it does other individuals in its custody.

If the Bureau's policy of calculating systematically higher criminal history scores for individuals convicted by the D.C. Superior Court is allowed to stand, the efforts of *amici* will be frustrated.

Amicus the Washington Lawyers' Committee for Civil Rights and Urban Affairs is a nonprofit civil rights organization established to eradicate racial discrimination and poverty by enforcing civil rights laws through litigation and public policy advocacy in the District of Columbia, Virginia, and Maryland. Since its founding in 1968, the Washington Lawyers' Committee has worked to reform the criminal justice system, including an active docket of prisoners' rights litigation.

Amicus DC Justice Lab researches and advocates for large-scale changes to D.C.'s criminal legal system. It develops smarter safety solutions that are evidence-driven, community-rooted, and racially just. It supports more equitable and humane treatment of people serving time in federal custody for convictions under District law.

Amicus Justice Policy Institute ("JPI") is a national nonprofit organization that seeks to change the conversation around justice reform and advances policies that promote well-being and justice for all people and communities. JPI's research and analyses identify effective programs and policies with the goal of reducing the use of incarceration and the justice system. JPI has worked extensively in the District of Colombia on efforts to reform D.C.'s justice system, including on issues related to improving release decision-making and parole particularly for people serving long prison terms; enhancing services, supports and opportunities for justice involved emerging adults (ages 18-25 years old); and overall improvements to the D.C. Criminal Code.

Amicus More than Our Crimes ("MTOC") is a nonprofit initiative under the umbrella of the Justice Policy Institute that gives a platform to, and advocates for, incarcerated residents of

the District of Columbia. Since D.C. does not operate its own prison, thus sending its residents into the federal system, MTOC also advocates more broadly for better conditions in and accountability for the Bureau of Prisons.

Amicus The Sentencing Project is a national nonprofit organization established in 1986 to engage in public policy research and education on criminal justice reform. The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. Through research, education, advocacy, and participating as an amicus in court cases, The Sentencing Project advances fair and effective sentencing policies.

The proposed brief offers the distinct perspectives and expertise of *amici* to assist this Court in resolving this important case. *See*, *Ellsworth Assocs. Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (permitting amicus participation where "the non-party movants have a special interest in this litigation as well as a familiarity and knowledge of the issues raised therein."). For the foregoing reasons—and those included in the proposed brief—*amici* respectfully request that this Court grant this Motion for Leave to Participate as *Amici Curiae*. A proposed Order is attached.

DATED: April 8, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on April 8, 2022, I caused the foregoing document to be filed with the Clerk of the Court of the United States District Court for the District of Columbia using the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATED: April 8, 2022

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