

# FEDERAL BUREAU OF PRISONS

## Supplemental Information

### BOP LOCATIONS



### INMATES

**Total Federal Inmates (8/24/2023): 158,058**

**Custody (8/24/2023):**

**91% (143,465) federal inmates in BOP Custody**

**9% (14,593) federal inmates in other facilities**

**First Step Act Releases (8/28/2023): 22,365**

## Gender (8/19/2023):

**Female - 10,808 (6.9%)**

**Male - 146,973 (93.1%)**

## Offenses (8/19/2023):

Offense	# of Inmates	% of Inmates
Banking and Insurance, Counterfeit, Embezzlement	187	0.1%
Burglary, Larceny, Property Offenses	7,267	4.9%
Continuing Criminal Enterprise	241	0.2%
Courts or Corrections	592	0.4%
Drug Offenses	65,545	44.5%
Extortion, Fraud, Bribery	6,297	4.3%
Homicide, Aggravated Assault, and Kidnapping Offenses	4,763	3.2%
Immigration	7,485	5.1%
Miscellaneous	819	0.6%
National Security	42	0.0%
Robbery	3,938	2.7%
Sex Offenses	18,023	12.2%
Weapons, Explosives, Arson	32,103	21.8%

## Security Levels (8/19/2023):

Security Level	# of Inmates	% of Inmates
<b>Minimum</b>	<b>23,395</b>	<b>14.8%</b>
<b>Low</b>	<b>55,851</b>	<b>35.4%</b>
<b>Medium</b>	<b>53,615</b>	<b>34.0%</b>
<b>High</b>	<b>19,353</b>	<b>12.3%</b>
<b>Unclassified</b>	<b>5,567</b>	<b>3.5%</b>

# LAW AND CITATIONS

## Primary Jurisdiction - Definition

“The power that a court has over a criminal defendant who is being criminally charged elsewhere on the same or different charges, when that court (e.g., state or federal) was the first in which the defendant appeared. Primary jurisdiction may affect how a defendant’s time in custody is credited to any sentences ultimately imposed, as well as where the defendant will first serve prison time.”

Black’s Law Dictionary (10th ed. 2014)

## Primary Jurisdiction – Origin

*Ponzi v. Fessenden*, 258 U.S. 254, 260 (1922)

Ponzi established that the decision of who exercises custodial jurisdiction over an individual charged with crimes against two sovereigns was a matter of comity between the sovereigns. “The chief rule which preserves our two systems of courts from actual conflict of jurisdiction is that the court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its purpose.”

## Related Cases

*Thomas v. Brewer*, 923 F.2d 1361, 1365 (9th Cir. 1991)

“As a general rule, the first sovereign to arrest a defendant has priority of jurisdiction for trial, sentencing, and incarceration.”

*Loewe v. Cross*, 589 Fed.Appx. 788, 789 (7th Cir. 2014)

“Only after primary jurisdiction has shifted to the federal government does a federal sentence commence.”

## Related Cases – Writ of Habeas Corpus

*Rios v. Wiley*, 201 F.3d 257, 274 (3d Cir. 2000)

“[A] prisoner detained pursuant to a writ of habeas corpus ad prosequendum remains in the primary custody of the first jurisdiction unless and until the first sovereign relinquishes jurisdiction over the prisoner.”

*United States v. Cole*, 416 F.3d 894, 897 (8th Cir. 2005)

“Primary jurisdiction continues until the first sovereign relinquishes its priority in some way. Generally, a sovereign can only relinquish primary jurisdiction in one of four ways:

1. Release of Bail,
2. Dismissal of Charges,
3. Release on Parole, or
4. Expiration of Sentence”

## Commencement of a Sentence

*Setser v. United States*, 566 U.S. 231, 244 (2012)

- District Courts have the discretion to order a federal sentence to run consecutively to an anticipated state sentence
- There will often be late-onset facts that materially alter a prisoner's position and that make it difficult, or even impossible, to implement his sentence."

If two or more federal sentences conflict, the BOP honors the most recently imposed.

## Jail Credit- Related Cases

*United States v. Wilson*, 503 U.S. 329, 333–34 (1992)

U.S. Supreme Court explicitly rejected the argument that § 3585(b) authorizes a district court to award credit at sentencing and held that the Attorney General, through the BOP, "must continue to compute the credit under § 3585(b)."

*In re U.S. Bureau of Prisons*, 918 F3d. 431, 439 (5th Cir. 2019)

"If the court determines that the BOP will not credit a defendant's prior time served, the court can reduce the defendant's sentence under § 5G1.3(b) or § 5K2.23 of the U.S. Sentencing Guidelines. But the district court must calculate the defendant's final sentence itself; it cannot simply order the BOP to award credit."

## USSG § 5G1.3(b) Use and Language

If statute prohibits BOP from crediting pre-trial time, the Court may take this into account when fashioning a sentence. For example, if a defendant was on writ for a federal prosecution but was in primary state custody, all time spent in custody prior to the imposition of the federal sentence, whether at a state or federal facility, would be credited to his state sentence, and would therefore not be creditable to his federal sentence as prior custody credit pursuant to 18 U.S.C. § 3585(b).

The Court may take this into account in fashioning a fair and equitable sentence pursuant to USSG § 5G1.3(b). Pursuant to this guideline, when an undischarged state sentence resulted from an offense which is "Relevant Conduct" to the federal offense:

- (1) the court shall adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and
- (2) the sentence for the instant offense shall be imposed to run concurrently to the remainder of the undischarged term of imprisonment.

In order to do so, the Court should make this clear on the Judgment and Commitment Order.

Sample language:

**"Pursuant to U.S.S.G. § 5G1.3(b), the imposed term is 48 months, adjusted from 60 months, to account for defendant's confinement from [DATE] until [DATE], in relation to [State case and docket number], that would not otherwise be credited by the Bureau of Prisons."**

(Obviously, the 48 months and 60 months are just "placeholders" for whatever term the court actually imposes. It is important to make sure that the Court makes clear on the judgment as to whether the imposed term had already been adjusted or not. BOP needs to understand clearly in reference to 5G1.3(b), whether the term is the original term or the adjusted term. This language also corresponds with the admonishment from *In re BOP*, 918 F.3d 431, 439 (5th Cir. 2019): "the district court must calculate the defendant's final sentence itself; it cannot simply order the BOP to award credit.")

## Definitions

### **"Official detention" - jail-like conditions.**

- *Reno v. Koray*, 515 U.S. 50 (1995): time spent in community treatment center while on restrictive conditions of bail was not "official detention"
- Any part of a day in custody is calculated as a full day of service on the sentence.
- Official detention can include time spent in custody in foreign country.

### **"Time served" - all time spent in official detention as a result of offense for which sentence is imposed.**

The BOP does not award jail credit for time in custody:

- While inmate was held in civil contempt of court
- While detained by ICE under 8 U.S.C. § 1252 for civil deportation proceedings
- While on writ, unless the sovereign with primary jurisdiction does not apply credit
- As a condition of probation