

By Email and Fax

February 9, 2022

The Honorable Michael E. Horowitz
Inspector General
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC

The Honorable Joseph V. Cuffari
Inspector General
Office of the Inspector General
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC

Re: Request For A Formal Review into the Implementation of Executive Order 14006 and Immigration & Customs Enforcement Acquisition of Closed Facilities

Dear Inspectors General Horowitz and Cuffari,

We, the undersigned national advocacy organizations, legal service providers, and bar associations write to request that your offices conduct a formal review of the implementation of Executive Order 14006 (“the order”) entitled, “Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities.”¹ Under the order, certain contracts with privately operated criminal detention facilities are to be phased out in recognition of the dangers presented by the profit-based incentives of mass incarceration. As advocates and 75 members of Congress² warned soon after the order was issued, its language has, either by oversight or by design, allowed the Department of Homeland Security (DHS) to breathe new life into the same contracts the DOJ is ending. This state of affairs runs contrary to the order in spirit and in purpose. As such, a comprehensive inquiry and public report is warranted.

This is an opportune time to review the Department of Justice (DOJ)’s work in implementing the order. The order has now been in effect for over a year and the DOJ has requested \$75.0 million³ for fiscal year 2022 for the transportation of incarcerated people out of privately operated facilities. In January 2022, the Federal Bureau of Prisons (BOP) Director Michael Carvajal

¹ Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities, [86 Fed. Reg. 7483](#) (01/20/2021).

² Reps. Crow, Jayapal, Ruiz et al., Letter to Acting DHS Secretary David Pekoske (Jan. 28, 2021), available here: <https://tinyurl.com/89pt3sj>.

³ Department of Justice Fiscal Year 2022 Funding Request, May 28, 2001 available here: <https://www.justice.gov/opa/pr/department-justice-fiscal-year-2022-funding-request>.

announced his retirement amid criticism of his management of the agency,⁴ including regarding the implementation of the order.

Despite the order, the federal government has allowed for the creation of “work-around” or “pass-through” third-party contracts to extend the life of private detention facilities.⁵ These work-arounds have included new contracts with DHS as well as new DOJ intergovernmental service agreements (IGA) with county governments who then contract with private prison corporations for operations.⁶ The U.S. Governmental Accountability Office (GAO) warned about this type of contract in a report on Immigration & Customs Enforcement (ICE)’s detention space acquisition practices.⁷ The GAO found that the ICE officers who oversaw many of these contracts reported feeling hindered in their ability to independently and effectively oversee them. For example, when it came to issuing discrepancy reports over a private detention facility’s performance, they reported that ICE Enforcement & Removal Operations field office managers preferred to handle violations informally or were hesitant to issue reports because they did not want to damage their relationship with the detention facility operator.⁸

Advocates have documented several troubling events in the first year of the order’s implementation. GEO Group (GEO) Executive Chairman George Zoley has admitted that the company is working to reopen closed prisons as ICE detention centers, and ICE has admitted that it has sought proposals for several DOJ facilities with contracts expiring pursuant to the order.⁹ Moshannon Valley Correctional Center, a BOP jail in Clearfield County, Pennsylvania closed in late March 2021 after the DOJ declined to renew its contract with GEO in January 2021.¹⁰ Despite the jail’s history of abuse and neglect, in September 2021, GEO and ICE announced the

⁴ Corene Kendrick, “A new Bureau of Prisons director gives administration a chance to live up to promises,” *The Hill*, January 18, 2022 available here: <https://thehill.com/blogs/congress-blog/politics/590114-a-new-bureau-of-prisons-director-gives-administration-a-chance>.

⁵ Detention Watch Network and Project South, *Broken Promises: Limits of Biden’s Executive Order on Private Prisons*, December 2, 2021, available here: <https://bit.ly/BrokenPromisesReport>.

⁶ Max Rivlin-Nadler, “Private Prison Companies Pursue Creative Workarounds to Biden Executive Order,” *The Intercept*, October 22, 2021, available here: <https://theintercept.com/2021/10/22/private-prisons-jails-geo-group-biden>.

⁷ “Immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts,” January 13, 2021, available here: <https://www.gao.gov/products/gao-21-149>.

⁸ *Id* at p. 39.

⁹ Casey Tolan, “Biden vowed to close federal private prisons, but prison companies are finding loopholes to keep them open,” *CNN*, November 12, 2021, available here: <https://www.cnn.com/2021/11/12/politics/biden-private-prisons-immigration-detention-centers-invs/index.html>; see also Chris Geidner, “A year after Biden’s executive order on private prisons, business is still booming,” *GRID*, January 26, 2022, <https://www.grid.news/story/politics/2022/01/26/a-year-after-bidens-executive-order-on-private-prisons-business-is-still-booming>.

¹⁰ Morgan Simon, “A Marine Celebrates, and Markets Flinch as Pennsylvania’s First Private Prison Loses \$42M Annual Contract,” *Forbes*, January 26, 2021, <https://www.forbes.com/sites/morgansimon/2021/01/26/a-marine-celebrates-and-markets-flinch-as-pennsylvanias-first-private-prison-loses-42m-annual-contract/?sh=177fd0ec16a8>.

reopening of the facility as an ICE detention center and it currently has over a 100 people in its custody.¹¹

Just this month, the public learned that GEO signed an agreement to expand the Folkston ICE Processing Center into part of a prison complex that closed in September 2021 due to the end of a BOP contract.¹² The expansion increases ICE's detention capacity by at least 1800 beds; making it the largest immigration detention center in the country. Similar back-door negotiations between ICE and private prison companies regarding closed prisons have been reported around the country, including in Tipton County, Tennessee,¹³ Leavenworth, Kansas,¹⁴ and Howard County, Texas.¹⁵

Given that 79% of people in ICE custody are being held in private detention facilities, your review and public report is a sorely needed guardrail against further expansion that will come at great economic and human cost.¹⁶ CoreCivic and GEO, the two largest private prison companies in the U.S., have in recent years earned approximately the same amount of revenue from both DHS and DOJ contracts, with each making up about 25% of their total revenue.¹⁷ As documented in recently published Securities and Exchange Commission filings, GEO is unfazed by the order, boldly laying out a plan to convert DOJ private prisons and jails into ICE detention centers.¹⁸

¹¹ Detention Watch Network et. al., Letter to President Biden and DHS Secretary Mayorkas, October 8, 2021, https://www.americanimmigrationcouncil.org/sites/default/files/research/biden_to_end_private_and_local_detention_contracts_and_dismantle_detention_system_letter.pdf.

¹² Jeremy Redmon and Lautaro Grinspan, "Exclusive: Ga. immigration facility to become one of the nation's largest," *The Atlanta Journal-Constitution*, February 4, 2022, <https://www.ajc.com/news/exclusive-south-georgia-immigration-detention-complex-aims-to-expand/QN5G2BFOPREQHEBDOPPAX2PSVI/>; see also Project South et. al., "Biden to Break More Promises by Making Georgia the Private Prison Capital of the U.S. with GEO Mega Immigrant Detention Center," December 17, 2021, <https://www.advancingjustice-atlanta.org/news/closefolkston>.

¹³ Maria Sacchetti, "ICE holds growing numbers of immigrants at private facilities despite Biden campaign promise to end practice," *The Washington Post*, December 1, 2021, <https://www.washingtonpost.com/national-security/2021/12/01/ice-country-jails-migrants>.

¹⁴ Carrie Johnson, "Biden Ended Contracts with Private Prisons. So One May Turn to House Immigrants," *NPR*, September 15, 2021, <https://www.npr.org/2021/09/13/1036576308/biden-ended-contracts-with-private-prisons-so-one-may-turn-to-house-immigrants>.

¹⁵ Casey Tolan, "Biden vowed to close federal private prisons, but prison companies are finding loopholes to keep them open," *CNN*, November 12, 2021, <https://www.cnn.com/2021/11/12/politics/biden-private-prisons-immigration-detention-centers-invs/index.html>.

¹⁶ Eunice Cho, "More of the Same: Private Prison Corporations and Immigration Detention Under the Biden Administration," *ACLU*, October 5, 2021, <https://www.aclu.org/news/immigrants-rights/more-of-the-same-private-prison-corporations-and-immigration-detention-under-the-biden-administration>.

¹⁷ *Id.*

¹⁸ Chris Geidner, "A year after Biden's executive order on private prisons, business is still booming," *GRID*, January 26, 2022, <https://www.grid.news/story/politics/2022/01/26/a-year-after-bidens-executive-order-on-private-prisons-business-is-still-booming>.

As part of your review, we propose the following areas of inquiry and submit that a temporary pause in signing of new contracts or expansion of current contracts by the DOJ and DHS is prudent pending review:

- Require DHS to provide a list of contract solicitations, finalized contracts, or contracts currently under negotiation for immigration detention, including solicitations, proposals, or contracts that include proposals for facilities whose DOJ contracts were terminated since the issuance of the order; and review whether these contracts and negotiations violate the spirit and substance of the order.
- Request that the DOJ leadership and staff charged with implementing the order provide a detailed explanation of what coordination or communication, if any, they have had with all relevant DHS/ICE procurement offices and all relevant state, local or county governments regarding facilities subject to the order.
- Require the DOJ to provide a complete and accurate list of all private DOJ facilities set to close as a result of the order including, at minimum, contract end dates. For contracts without an end date, require the DOJ to provide an explanation for this circumstance.
- Require the DOJ to provide and conduct a review of current USMS “pass-through” contracts with local governments that subcontract the operation of a DOJ facility to private companies to determine if they have violated the spirit and substance of the executive order.

As noted in the order, “There is broad consensus that our current system of mass incarceration imposes significant costs and hardships on our society and communities and does not make us safer. To decrease incarceration levels, we must reduce profit-based incentives to incarcerate.” Pass-through contracts and the conversion of facilities from the DOJ to DHS do not reduce the federal government's reliance on privately operated facilities and fail to reduce incarceration levels. Our organizations stand ready to provide any additional information to support our request. Please contact Jennifer Ibanez Whitlock (jwhitlock@aila.org) and Setareh Ghandehari (sghandehari@detentionwatchnetwork.org) for further questions. Thank you for your kind attention to this important oversight matter.

Sincerely,

American Immigration Lawyers Association
Detention Watch Network
American Immigration Council
American Civil Liberties Union (ACLU)
Amnesty International USA
National Immigration Project (NIPNLG)
National Immigrant Justice Center
The Leadership Conference on Civil and Human Rights

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