

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: Support of 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 organizations write in support of a formal review of the implementation of President Biden's Executive Order 14006 phasing out the use of private prisons by the Department of Justice (DOJ). As advocates and members of Congress warned, implementation of the executive order (EO) has been inconsistent and allowed private prison corporations to circumvent the intent and spirit of the EO by courting local governments and other federal agencies, including the Department of Homeland Security (DHS). We urge you to conduct a comprehensive inquiry into the implementation and report your findings publicly as requested.

The order has now been in effect for over a year and the DOJ has requested \$75.0 million<sup>1</sup> for fiscal year 2022 for the transportation of incarcerated people out of privately operated facilities making this an ideal time to evaluate the implementation of EO 14006. Advocates have documented instances in which 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.<sup>2</sup> 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, despite the EO's clear language that "privately operated" facilities should be phased out.<sup>3</sup>

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<sup>1</sup> Department of Justice Fiscal Year 2022 Funding Request, May 28, 2021 available here: <https://www.justice.gov/opa/pr/departments-justice-fiscal-year-2022-funding-request>.

<sup>2</sup> 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>.

<sup>3</sup> 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>.

Notably, in September 2021 Immigration and Customs Enforcement (ICE) announced the reopening of Moshannon Valley Correctional Center, a BOP jail in Clearfield County, Pennsylvania which closed in March 2021 after the DOJ declined to renew its contract with GEO.<sup>4</sup> Despite the jail's history of abuse and neglect, the facility is now operating as an ICE detention center.<sup>5</sup> Reports also confirm that GEO has signed an agreement to expand the Folkston ICE Processing Center into the part of its prison complex that closed in September 2021 due to the end of a BOP contract.<sup>6</sup> The expansion would increase ICE detention capacity by at least 1800 beds to make it the largest immigration detention center in the country.<sup>7</sup> Similar negotiations between ICE and private prison companies regarding closed prisons have been reported around the country, including in Tipton County, Tennessee,<sup>8</sup> Leavenworth, Kansas,<sup>9</sup> and Howard County, Texas.<sup>10</sup> Additionally, U.S. Marshal services extended its contract with GEO Group for the Western Regional Detention Facility in San Diego, CA, allowing GEO time to negotiate a pass-through contract with the city of McFarland in an attempt to keep the facility open.<sup>11</sup>

In October 2021, over 200 organizations signed a letter to the administration expressing deep disappointment regarding ICE expansion and calling for a halt to all expansion

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<sup>4</sup> 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>.

<sup>5</sup> Detention Watch Network et. al., Letter to President Biden and DHS Secretary Mayorkas, October 8, 2021, [https://www.detentionwatchnetwork.org/sites/default/files/Stop%20ICE%20Expansion%20Org%20Sign%20On\\_10.8.21.pdf](https://www.detentionwatchnetwork.org/sites/default/files/Stop%20ICE%20Expansion%20Org%20Sign%20On_10.8.21.pdf).

<sup>6</sup> 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>.

<sup>7</sup> 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>.

<sup>8</sup> 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>.

<sup>9</sup> 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>.

<sup>10</sup> 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>.

<sup>11</sup> 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>.

efforts and the cancellation of ICE contracts as a first step towards phasing out ICE detention. In response to the letter, ICE indicated that it has actually requested proposals for several former DOJ facilities.<sup>12</sup> In fact, ICE has conducted pre-occupancy inspections and participated in negotiations for several facilities. This shifting of private prisons from one federal agency to another clearly undermines the spirit and intent of the EO 14006 and requires review.

As the order notes, “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 fail to reduce incarceration levels or the federal government’s reliance on privately operated facilities. Instead, President Biden’s executive order should be extended to include DHS contracts with private prison corporations and local governments as a first step. Given the extensive history of abuse and neglect in ICE detention and the fact that 79% of people in ICE custody are held in private detention facilities, your review and public report is sorely needed to guard against further expansion that will come at great economic and human cost.<sup>13</sup>

Sincerely,

Government Accountability Project  
National Education Association  
National Immigration Law Center  
Service Employees International Union (SEIU)  
Project On Government Oversight  
Hispanic Federation  
Southern Poverty Law Center  
Bend the Arc: Jewish Action  
Black Alliance for Just Immigration (BAJI)  
Northwest Immigrant Rights Project  
Oxfam America  
UndocuBlack Network  
Immigrant Legal Resource Center  
Lutheran Immigration and Refugee Service

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<sup>12</sup> Detention Watch Network, Detention Watch Network Blasts ICE’s Intention, Disclosed in Private Letter, To Expand Immigration Detention, <https://www.detentionwatchnetwork.org/pressroom/releases/2021/detention-watch-network-blasts-ice-s-intention-disclosed-private-letter>.

<sup>13</sup> 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>.

Mijente  
United We Dream  
Make the Road New York  
American Friends Service Committee (AFSC)  
Brooklyn Defender Services  
Center for Gender & Refugee Studies  
Center for Law and Social Policy (CLASP)  
Centro Legal de la Raza  
Church World Service  
Fair Immigration Reform Movement (FIRM) Action  
Women's Refugee Commission  
Young Center for Immigrant Children's Rights  
Americans for Immigrant Justice  
Bend the Arc, Jewish Action, Maryland  
Advance Law Office PLLC  
Advocate Visitors with Immigrants in Detention (AVID) in the Chihuahuan Desert  
Amend Law  
Bridges Faith Initiative  
Civil Rights Education and Enforcement Center (CREEC)  
Community Change Action  
Comunidad Maya Pixan Ixim  
Congregation of Divine Providence, Texas  
#DetentionKills  
Doctors for Camp Closure  
Envision Freedom Fund  
Evangelical Lutheran Church in America  
Faith in Public Life  
Families for Freedom  
Florence Immigrant & Refugee Rights Project  
Franciscan Action Network  
Friends Committee on National Legislation  
Friends Meeting of Washington Committee on Peace & Social Concerns  
Garifuna community services  
Illinois Coalition for Immigrant and Refugee Rights  
Immigration Working Group, SWPA Synod, ELCA  
JAMAAT - Jews and Muslims and Allies Acting Together  
Jewish Activists for Immigration Justice of Western Massachusetts  
Justice Action Center  
La Resistencia  
Law Office of Helen Lawrence

Legal Aid Justice Center  
Louisiana Advocates for Immigrants in Detention (LA-Aid)  
Mariposa Legal  
Maryknoll Office for Global Concerns  
Muslim Voices Coalition  
National Network for Immigrant and Refugee Rights  
NETWORK Lobby for Catholic Social Justice  
Never Again Action DC  
New York Immigration Coalition  
North American Climate, Conservation and Environment (NACCE)  
PG ChangeMakers  
Progress Virginia  
Quixote Center  
Rainbow Beginnings  
Rocky Mountain Immigrant Advocacy Network  
Sanctuary DMV  
Services, Immigrant Rights and Education Network (SIREN)  
Sisters of Mercy of the Americas Justice Team  
Social Justice Committee of St. Andrew's Presbyterian Church, Austin TX  
South Asian Americans Leading Together (SAALT)  
Southeast Asia Resource Action Center (SEARAC)  
Takoma Park Mobilization, Equal Justice  
The Advocates for Human Rights  
The Bronx Defenders  
Union for Reform Judaism  
Unitarian Universalists for Social Justice  
UnLocal  
VECINA  
Virginia Coalition for Immigrant Rights  
Washington Defender Association  
Wind of the Spirit Immigrant Resource Center