

September 18, 2023

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Via email

Re: President Biden’s Commitment to Phasing Out Privatized Immigrant Detention

Dear Secretary Mayorkas,

Thank you for your continued commitment to bringing fairness and humanity to the nation’s immigration enforcement system.

We write to follow up on the Biden Administration’s response to a National Public Radio (NPR) investigation into abuse and neglect at Immigration and Customs Enforcement (ICE) detention facilities across the nation.¹

NPR obtained more than 1,600 pages of previously undisclosed government records regarding Department of Homeland Security civil rights investigations. In August 2023, NPR reported several accounts of negligence and abuse in ICE detention based on these civil rights inspections.² In some cases, the conduct NPR describes likely amounted to cruel, inhuman, and degrading treatment in violation of federal law and U.S. obligations under international law.³

We appreciate that, in response to NPR’s findings, the White House issued a statement affirming that “President Biden continues to support moving away from the use of private detention facilities in the immigration detention system.”⁴ Indeed, during his campaign President Biden promised to “end for-profit detention centers” and in

¹ See Tom Dreisbach, “Government’s own experts found ‘barbaric’ and ‘negligent’ conditions in ICE detention,” Aug. 16, 2023, <https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions>.

² *Id.*

³ See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

⁴ See Tom Dreisbach, “A ‘shocking’ 911 call and other key takeaways from NPR’s ICE detention investigation,” Aug. 24, 2023, <https://www.npr.org/2023/08/24/1195264716/a-shocking-911-call-and-other-key-takeaways-from-nprs-ice-detention-investigatio>.





April 2021 he told activists in Georgia, “[p]rivate detention centers: they should not exist, and we are working to close all of them.”⁵

However, a recent ACLU analysis found that to the contrary, under the Biden administration the share of people in ICE custody who are held in privately owned or operated detention sites has grown to 90.8 percent—surpassing the Trump administration.⁶

In response to NPR, the White House also stated: “We could be making a lot more progress if Congress would give us the necessary funds and reforms that we’ve been asking for since day one.”

While Congress has an important role to play in reforming our nation’s immigration system, it is well within the Biden administration’s power to move forward on realizing President Biden’s commitment to phasing out privatized immigrant detention.

First, ICE should suspend negotiations with private prison corporations for any new facility or facility expansion.

Second, ICE should let contracts with private prison operators expire, rather than negotiate renewals.

Third, ICE should terminate contracts and close facilities with serious records of inhumane treatment and medical neglect, or which are in remote locations that effectively limit access to legal counsel or medical care—as we requested in 2021 and again in a letter we sent one year ago.⁷ Among these facilities should be Torrance County Detention Facility in Estancia, New Mexico (run by CoreCivic), where negligent medical care, physical assaults by guards, and retaliation by staff persist despite repeated calls for closure.⁸

Finally, ICE should develop a plan to phase out its outsourcing of detention to both private prison companies and local government actors—both of which have records of committing human rights abuses against people in ICE custody with impunity. A glaring example is

⁵ See Naureen Shah, “The New ICE Chief Should (Finally) Make Good on Biden’s Immigration Promises,” July 6, 2023, <https://www.aclu.org/news/immigrants-rights/the-new-ice-chief-should-finally-make-good-on-bidens-immigration-promises>.

⁶ Eunice Cho, “Unchecked Growth: Private Prison Corporations and Immigration Detention, Three Years Into the Biden Administration,” Aug. 7, 2023, <https://www.aclu.org/news/immigrants-rights/unchecked-growth-private-prison-corporations-and-immigration-detention-three-years-into-the-biden-administration>.

⁷ Letter from ACLU to DHS Sec. Mayorkas, Apr. 29, 2021, <https://www.aclu.org/letter/letter-dhs-secretary-mayorkas-regarding-ice-detention>

⁸ See ACLU of New Mexico, “Leading Advocacy Organizations Submit Federal Complaint Regarding Ongoing Human Rights Violations at Torrance County Detention Facility,” Aug. 23, 2023, <https://www.aclu-nm.org/en/press-releases/leading-advocacy-organizations-submit-federal-complaint-regarding-ongoing-human>.



Baker County Detention Center in Macclenny, Florida (operated by the Baker County Sheriff's Office), where the ACLU of Florida has documented sexual voyeurism by facility staff, denial of sanitary napkins to women as punishment, medical neglect, and beatings.⁹

Ending wasteful government contracts for immigrant detention would be in line with your vision for a more fair and humane immigration enforcement system.¹⁰

Mass immigrant detention is not necessary. Most individuals in ICE detention are locked up pending removal proceedings, which means they have *not* been ordered deported and in fact very well may have the legal right to remain in the United States. Many languish in detention for months and years for no reason, only to win their cases. Even people who have won their cases sometimes continue to be detained pending appeals by the Department of Homeland Security, during proceedings that can last for years.

We fully appreciate that the number of people entering the United States has grown and outpaced the government's ability to efficiently process and house immigrants, given current resources. But the solution cannot be to rely on private, for-profit detention contractors. The COVID-19 pandemic showed that a different way is possible. ICE reduced the average daily population by nearly 70 percent from its peak level under the Trump administration—underscoring that the vast majority of detained immigrants could be released.¹¹

At the same time, the COVID-19 pandemic illustrated the life-threatening dangers of ICE detention. The death toll in ICE custody reached levels not seen in 15 years, and the use of force, including

⁹ See ACLU of Florida, "Egregious Patterns of Medical Neglect Found at Florida ICE Detention Center," May 5, 2023, <https://www.aclufl.org/en/press-releases/egregious-patterns-medical-neglect-found-florida-ice-detention-center>.

¹⁰ Eunice Cho, "More of the Same: Private Prison Corporations and Immigration Detention Under the Biden Administration," ACLU, Oct. 5, 2021, <https://www.aclu.org/news/immigrants-rights/more-of-the-same-private-prison-corporations-and-immigration-detention-under-the-biden-administration>.

¹¹ For example, the ACLU recently filed a habeas petition on behalf of Jessica Patricia Barahona-Martinez, an LGBTQ+ asylum seeker who has been in ICE detention for more than 6 years after winning asylum twice before an immigration judge. She is currently detained at South Louisiana ICE Processing Center, run by GEO Group, where she is experiencing severe symptoms of mental illness and post-traumatic stress disorder, discrimination and threats based on her sexual orientation, and serious medical issues. See ACLU of Louisiana, "ACLU Challenges Six Year Detention of Salvadoran Asylum Seeker," Sept. 6, 2023, <https://www.aclu.org/press-releases/aclu-challenges-six-year-detention-of-salvadoran-asylum-seeker>.

pepper spray, physical force, and rubber bullets, also increased.¹² It is vital that the Biden Administration make substantial progress on reducing ICE's detention infrastructure overall. A future anti-immigrant administration could use private prison contracts to massively expand the scale of immigrant detention, while tolerating or even encouraging horrific detention conditions as a weapon to deter migration and punish immigrants.

Thank you for your continued consideration of these important issues. If you have any questions or need further detail, please contact National Political Advocacy Department senior legislative counsel Naureen Shah (nshah@aclu.org).



Sincerely,

A handwritten signature in black ink, appearing to read "Deirdre Schifeling".

Deirdre Schifeling
National Political Director

A handwritten signature in black ink, appearing to read "Christopher Anders".

Christopher Anders
Federal Policy Director

A handwritten signature in black ink, appearing to read "Naureen Shah".

Naureen Shah
Senior Legislative Counsel

¹² See ACLU, "Ending ICE's Mass Detention System," https://www.aclu.org/wp-content/uploads/document/ICE_Detention_System_Final.pdf.