

October 13, 2016

Dear Chairwoman Tandy and members of the HSAC Privatized Immigration Detention Facilities Subcommittee,

Thank you for the opportunity to present information to the Subcommittee. We are submitting this additional material in response to your request for a bullet-point list of the best ways to either eliminate or continue the use of private prison companies by DHS to detain immigrants.

At the outset, we reiterate our opposition to the continued use of private prisons by DHS. Those reasons are based on a number of factors that characterize ICE's detention outsourcing, including: the structural impediments to accountability and transparency, unacceptable conditions of confinement, the penal approach to detention, revolving door problems, and influence-peddling by contractors.

Our answer to the question posed is that no matter what the HSAC recommends with respect to the continued use of private prisons, no reforms to the broader detention system can truly be effective unless and until DHS becomes less dependent on detention itself and less dependent on any one type of contractor (for example private prisons). The fact that so many people are detained on any given day makes it exceedingly difficult for ICE to conduct effective oversight of these facilities, especially given the current ICE and DHS management, oversight, and accountability structure. And the fact that so few private prison contractors hold so many detained immigrants throughout the country means that DHS lacks meaningful leverage over these providers when negotiating contracts or attempting to take corrective actions.

We are aware that ICE Director Saldaña has publicly stated that the congressional mandate to maintain 34,000 beds prevents ICE from reducing private facility use. However, we do not agree that the bed mandate prevents DHS from dramatically reducing the use of private facilities. Given that ICE now appears to have an overall capacity of 44,453 beds, ICE can end contracts for thousands of private beds without violating the bed mandate. Furthermore, stating as fact that the government currently depends on a model that is woefully inadequate, should not prevent change to a more efficient, humane and fiscally responsible model. We therefore strongly urge you to recommend that DHS take a more forceful position in opposing the congressional bed mandate and state clearly that the mandate restricts, rather than strengthens, the Department's ability to effectively manage immigration enforcement and detention operations.

At the Subcommittee meeting, you clarified that the scope of your inquiry is limited to examining the specific question of whether to eliminate private facilities for immigration detention. We believe that effectively addressing the question you've been given requires an examination of DHS's dependence on private prisons within the context of the Department's dependence on detention itself, in addition to any one type of detention. To the degree that the Subcommittee finds itself limited by any existing constraints, we ask you to state explicitly in your report how these constraints narrowed the scope of your inquiry so that the Department and the public understand the basis for your recommendations.

Key recommendations:

- ICE should immediately begin to reduce its reliance on private prisons by closing contracts as they come up for renewal or re-bid. Terminated or expired contracts should not be replaced with new or expanded contracts with local jails.
 - The contracts for the GEO-operated South Texas Detention Complex in Pearsall, TX, a facility with well documented problems, ends on November 30, 2016. ICE's first action should be to decline to renew this contract.
 - ICE should proactively move to end the numerous indefinite contracts for facilities operated by private prison companies.¹
- ICE should move quickly to decrease its detention capacity by at least 10,000 beds, prioritizing ending contracts with private prison companies. ICE should decrease the number of people currently held in detention by:
 - Ending the use of family detention, in line with the recent recommendations of the DHS Advisory Committee on Family Residential Centers;
 - Ending the excessive and often lengthy detention of asylum-seekers;
 - Ending prolonged detention without bond hearings;
 - Interpreting the mandatory custody statute to permit a range of custody options (including alternatives to detention), and apply the mandatory custody statute only to immigrants recently convicted of serious crimes who lack meritorious immigration cases; and
 - Stopping the imposition of exorbitant bonds on indigent immigrants that keep individuals detained solely due to their inability to pay.
- DHS should publicly oppose the congressional bed mandate, and make clear the ways in which the mandate limits ICE's ability to make smarter choices about detention or negotiate with its contractors (either private prison companies or local governments).
- DHS should immediately transform ICE's inspections and accountability processes by:
 - Ending the use of sub-contracting; all contracts must be with the facility operator to mitigate blame-shifting as an obstacle to accountability;
 - Including in all contracts robust financial penalty and termination clauses; and
 - Including in the inspection regimen not simply scheduled inspections, but also unannounced inspections, conducted by a truly independent qualified entity, that include interviews with detained people and local stakeholders serving the facility, consider outcomes and not just the existence of policy, and are made publicly available.

Thank you again for the opportunity to present information to the Subcommittee. Many of our organizations are submitting additional information that we hope will be of use. As a group or individually, we would be glad to provide you with any additional information or clarification that you may need.

¹ According to the most recent information we have from ICE, this includes: Caldwell County Detention Center, East Hidalgo Detention Center, Eloy Detention Center, Irwin County Detention Center, Jack Harwell Detention Center, Jena/LaSalle Detention Facility, Polk County Adult Detention Facility, Rolling Plains Detention Center, and Stewart Detention Center.

Sincerely,

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American Immigration Council (contact Royce Murray at RMurray@immcouncil.org)

American Immigration Lawyers Association (contact Greg Chen at gchen@aila.org)

Center for American Progress (contact Tom Jawetz at tjawetz@americanprogress.org)

Detention Watch Network (contact Mary Small at msmall@detentionwatchnetwork.org)

Grassroots Leadership (contact Bob Libal at blibal@grassrootsleadership.org)

Human Rights First (contact Eleanor Acer at AcerE@humanrightsfirst.org)

National Immigrant Justice Center (contact Heidi Altman at haltman@heartlandalliance.org)

Women's Refugee Commission (contact Michelle Brané at michellebrane@wrcommission.org)