

Congress of the United States
Washington, DC 20515

May 11, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2801 Nebraska Ave., NW
Washington, DC 20528

The Honorable Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, DC 20536

Dear Secretary Mayorkas and Acting Director Johnson:

On February 12, 2021, the U.S. Government Accountability Office (GAO) released a new report on immigration detention contracting practices.¹ The report documents extensive mismanagement and failure by Immigration and Customs Enforcement (ICE) as it opened dozens of new detention facilities between 2017 and 2020, detaining thousands of immigrants in locations known to be unsafe and remote, and wasting millions of dollars in taxpayer money with irregular contracting terms. We write today to ask you to act on these findings by closing immigration detention facilities throughout the country as part of the agency's 100-day review of immigration enforcement policies.² Closures should, at a minimum, include facilities in remote locations; those that were opened without clear justification; and those with clear records of abuse.

I. The GAO's Findings: ICE Expanded Immigration Detention in Dangerous and Remote Locations.

In the last four years, ICE opened dozens of immigration detention centers in locations known to be unsafe and remote, and opened these facilities without clear justification. As the GAO reported, from FY 2017 to May 11, 2020, ICE entered into 40 contracts for detention space, 24 of which were for new facilities. The GAO found that officials at ICE Headquarters often entered into these contracts with local counties and third-party contractors (most often private prison corporations) without coordination or input from ICE Field Offices or other stakeholders, who raised serious concerns with many of these facilities. The report found that:

- **New immigration detention facilities are located in remote locations, making them difficult to staff and requiring expensive changes to transportation networks.** For example, ICE Field Office staff raised issue with one facility that lacked specialized medical care resources nearby, requiring significant logistical support for detainees with chronic care issues. However, ICE Headquarters directed the Field Office to open the facility, which ICE Headquarters had already approved with minimal justification.³

¹ U.S. Gov't and Accountability Office, *Immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts* [hereinafter *Immigration Detention*], Jan. 13, 2021, <https://www.gao.gov/products/GAO-21-149>.

² Memorandum from David Pekoske, Acting Secretary, Department of Homeland Security, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, Jan. 20, 2021, <https://bit.ly/3bidvXD>.

³ *Immigration Detention* at 21.

- **New facilities had well-established histories of dangerous conditions and lacked sufficient regional medical infrastructure. ICE Headquarters opened facilities over the clear objection of Field Office staff.**
 - ICE Headquarters signed a new detention contract at the Adams County Correctional Center in Natchez, Mississippi, operated by CoreCivic, Inc., after the Federal Bureau of Prisons (BOP) canceled its contract in light of the facility’s poor conditions, including chronic understaffing and a deadly riot. ICE Headquarters paid contractors a nearly \$4 million monthly guaranteed payment for 1,100 detention beds. ICE Field Officials were then instructed to retroactively write a white paper in support of the facility, which Field Office staff instead used to express disagreement with the decision.⁴
 - **ICE Field Office staff also objected to Headquarters’ instructions to open facilities in remote locations in facilities known to be unsafe or with limited on-site medical care resources.** In one instance, ICE Headquarters opened a facility that Field Office staff believed was unsafe, as the layout had challenges ensuring lines of sight, lacked sufficient staff, and had a hardened design and perimeter, including an electrified fence, which is inappropriate for detention. ICE Field Offices also raised concerns that some facilities approved by Headquarters would require expensive renovations for which ICE would have to pay in order to bring them into compliance with ICE standards.⁵

Other investigations corroborate concerns raised in the GAO Report. A recent report by the ACLU, Human Rights Watch, and the National Immigrant Justice Center on detention facilities opened after 2017 found that people had far less access to attorneys, with less than one-quarter the number of immigration attorneys in a 100-mile radius in new compared to pre-existing facilities.⁶ New facilities suffered from understaffing and cost-cutting measures that could endanger the health of people in detention, including significant delays to care, failure to receive necessary medication, and facilities lacking basic infrastructure to treat critically ill people.⁷ Detained people at new facilities also reported disturbing uses of physical force, tear gas, pepper spray, and solitary confinement. One man at Richwood Detention Center reported watching an officer yell “mother fucker” at a Guatemalan immigrant, then grab him by the neck. Researchers reported that officers at these facilities placed people into solitary confinement for as long as 60 days for minor incidents, including a man at Richwood who was placed in solitary confinement for 90 days after asking an officer to “give him his commissary.” Another detained person reported that officers at the Winn Correctional Center placed him in solitary confinement for eight days after attempting to speak with reporters during a tour of the facility.⁸

II. The GAO’s Findings: ICE Expanded Detention with Wasteful Contract Terms Largely Benefiting Private Prison Corporations.

⁴ *Id.* at 22.

⁵ *Id.* at 21-22.

⁶ ACLU, Human Rights Watch, National Immigrant Justice Center, *Justice Free Zones: U.S. Immigration Detention Under the Trump Administration* 5-6 (2020), <https://bit.ly/2O3tYGr> [hereinafter *Justice Free Zones*].

⁷ *Id.* at 4, 6-7.

⁸ *Id.* at 7.

During the last four years, ICE Headquarters wasted millions of taxpayer dollars opening new detention centers with unusual contract terms. The GAO found that new detention contracts included a high number of “guaranteed minimum” payments to contractors for a fixed number of beds each month, whether or not they are occupied. Several field officials, moreover, reported that “many of these guaranteed minimums were not supportable by current detainee populations.”⁹

Between FY 2017 and 2019, ICE Headquarters increased the number of contracts with guaranteed minimums by 38 percent, from 19,342 beds in FY 2017 to 28,043 beds by May 2020. However, many of these guaranteed beds—both in 2017 and in 2020—were not even used, belying ICE’s justification for these new contracts. According to the GAO, **due to these guaranteed minimum contracts, ICE paid for an average 12,027 empty beds a day, at a cost of \$20.5 million a month.** This total does not account for facilities with a guaranteed flat rate, which would lead to even higher numbers of empty beds paid for by the federal government.¹⁰

These figures undermine ICE’s argument for increased detention funds. In FY 2018 and FY 2019, congressional appropriators instructed ICE to reduce its daily detained population.¹¹ But by the end of 2019, ICE did the exact opposite, overspent appropriated funds for detention, and requested increased funding. For that reason, under the 2020 DHS Appropriations Act, ICE received \$3.14 billion to operate the immigration detention system, and detained 33,724 people on average per day.¹² On average, ICE currently detains approximately 14,247 people nationwide.¹³

These new contracts have largely benefitted private prison corporations like CoreCivic, the GEO Group, Inc., LaSalle Corrections, and the Management and Training Corporation (MTC). At this time last year, 81 percent of people detained in ICE custody nationwide were held in facilities owned or operated by private prison companies. Of the people detained in immigration detention facilities that opened after 2017, 91 percent were held in facilities run by private prison corporations.¹⁴ ICE’s irresponsible spending on unnecessary and harmful detention facilities must be reversed.

III. ICE Has Failed to Ensure Proper Oversight of Detention Facilities, Including at Facilities with Histories of Negligent Deaths, Use of Force, and Other Abuses.

ICE’s failure to ensure safe conditions in detention facilities is well documented. The Department of Homeland Security’s Office of Inspector General have released multiple studies documenting the need for improved oversight of these facilities.¹⁵ In FY 2020, 21 people in ICE

⁹ *Immigration Detention* at 21.

¹⁰ *Id.* at 21, 24-27.

¹¹ Rep. Nita Lowey, U.S. House of Representatives Committee on Appropriations, “FY2018 Omnibus Appropriations Act: Summary of Appropriations Provisions,” <https://bit.ly/3rkSmSa>.

¹² See Explanatory Statement, 165 Cong. Rec. H10613, H11033 (daily ed. Dec. 17, 2019), accompanying Division D—DHS Appropriations Act, 2020, Pub. L. No. 116-93, div. D, 1333 Stat. 2371 (2019); U.S. ICE, Fiscal Year 2020 Enforcement Operations Report 6 (2020), <https://bit.ly/3rdRUoV>.

¹³ Immigration and Customs Enforcement, *COVID-19 ICE Detainee Statistics by Facility* (Feb. 25, 2021), <https://www.ice.gov/coronavirus#detStat>.

¹⁴ *Justice Free Zones* at 5.

¹⁵ Dep’t of Homeland Security Office of Inspector General [hereinafter “DHS-OIG”], *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, Jun. 26, 2018, <https://bit.ly/3bgrFsk>. See also DHS-OIG, *ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility*, Dec. 18, 2020, <https://bit.ly/3qlBAkC>;

detention facilities died in custody, the highest number of deaths in 15 years.¹⁶ ICE detention has been plagued by repeated instances of sexual assault, routine physical force, and poor medical care across the country.¹⁷ The use of force in immigration detention facilities has increased significantly during the COVID-19 pandemic.¹⁸

As ICE conducts its review of detention space, the agency should also make plans to close facilities with clear records of abuse against detained people. These factors should include: instances of negligent deaths; egregious abuse against detained people; demonstrated failure to ensure safe conditions during the COVID-19 pandemic; and family detention centers. For example, twenty people have died at five detention facilities since 2017: Stewart Detention Center (CoreCivic: 6 deaths); Adelanto Detention Center (GEO: 4 deaths); Krome Detention Center (Akal Security: 4 deaths); Otay Mesa Detention Center (CoreCivic: 3 deaths); Baker County Jail (Baker County: 3 deaths).¹⁹ Other facilities have well-established histories of egregious abuse,²⁰ or have failed to ensure safe conditions during the COVID-19 pandemic, resulting in several deaths and thousands of infections.²¹

Thank you for your attention to this important matter, and we look forward to your response.

Sincerely,



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DHS-OIG, *ICE Needs to Address Concerns About Detainee Care and Treatment at the Howard County Detention Center*, Oct. 28, 2020, <https://bit.ly/3kOalxT>; DHS-OIG, *Concerns About ICE Detainee Treatment and Care at Four Detention Facilities*, Jun. 3, 2019, <https://bit.ly/2MOhK3X>.

¹⁶ Catherine Shoichet, *The Death Toll in ICE Custody Is the Highest It's Been in 15 Years*, CNN.com, Sept. 30, 2020, <https://cnn.it/2OsA2Ic>.

¹⁷ Monsy Alvarado et al., *Deaths in Custody. Sexual Violence. Hunger Strikes. What We Uncovered inside ICE Facilities Across the U.S.*, Dec. 19, 2019, <https://bit.ly/3sRABKU>; Hamed Aleaziz, *A Child's Forehead Partially Removed, Four Deaths, The Wrong Medicine: A Secret Report Exposes Health Care for Jailed Immigrants*, BuzzFeed News, Dec. 12, 2019, <https://bit.ly/2PpCXC3>.

¹⁸ Hamed Aleaziz, *There's Been a Major Increase in the Use of Force Against Immigrants at ICE Detention Centers During the Pandemic*, BuzzFeed News, Aug. 5, 2020, <https://bit.ly/3riCm3p>.

¹⁹ See generally ICE, *Detainee Death Reporting* (2021), <https://bit.ly/3sOtCCi>.

²⁰ See, e.g. Ellen Eldridge, *Congressional Members Describe 'Horror Show' at Georgia ICE Detention Center*, GPB News (Sept. 26, 2020) <https://bit.ly/3qcMTvu> (Irwin County Detention Center); DHS Office of Civil Rights and Civil Liberties, *Fiscal Year 2015 Report to Congress* 28-29, 36 (Jun. 2016), <https://bit.ly/3uW0w5N> (discussing "super-recommendations memorandum for closure of Etowah County Detention Center"); Office of the Massachusetts Attorney General Civil Rights Division (Dec. 15, 2020), <https://bit.ly/3bfE8fN> (Bristol County Detention Center).

²¹ See generally ICE, *Detainee Death Reporting* (2021), <https://bit.ly/3sOtCCi>.

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