

United States Senate

WASHINGTON, DC 20510

September 26, 2016

The Honorable Jeh Johnson
Secretary of the Department of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

In August, the Department of Justice (DOJ) announced plans to curtail and ultimately end the Bureau of Prisons' use of private prisons. We applaud that effort and are encouraged that you have asked a subcommittee of the Homeland Security Advisory Council (HSAC) to review the Department of Homeland Security's (DHS) use of private immigration detention and to determine whether DHS should follow suit. We strongly oppose the use of for-profit prison companies in immigration detention, whether through direct contracting with Immigration and Customs Enforcement (ICE) or through subcontracting involving a locality or the U.S. Marshals Service (USMS) as the middleman. We are also concerned about the detention conditions in state and local facilities with which DHS contracts and expect the Department to improve oversight over those facilities as part of this review process.

While we are encouraged by the HSAC review, we are concerned that testimony by a senior leader at the Department suggests that the review will be conducted with a limited expectation of reform. Specifically, ICE Director Sarah Saldaña testified last week before the House Judiciary Committee that ICE's prisons are "almost completely contractor run" and closing them would "turn our system upside down." Her testimony, coming before HSAC has prepared its report, calls into question whether the HSAC review process will be a genuine, meaningful process, or whether the outcome is already predetermined. While ending private detention would fundamentally reshape the detention system, we believe that such a change is needed.

Given the significant taxpayer dollars involved and the troubled history of contract facilities, we ask that you take the following steps while conducting your review: 1) halt all new and pending detention facility procurements, including RFIs, RFPs, solicitations, new contracts, long-term contract renewals, and expansions of existing contracts; 2) include in the review the Department's contracts where other government entities (such as local governments and USMS) have subcontracted to a private prison company; 3) include in the review the Department's contracts with publicly run facilities, such as state and locally managed prisons and jails; 4) provide Congress with the specific information, enumerated below, about the costs and conditions of confinement in these facilities and commit to providing that information to Congress in the future on a regular basis; and 5) commit to a HSAC review process that is transparent and includes input from outside experts.

For far too long, the contracting process and the management of contract facilities housing immigrant detainees have been opaque. The lack of transparency has led to a lack of

accountability. Unlike federally-run institutions, these facilities are not obligated to provide to DHS or Congress information about their cost, operational efficiency, or ability to provide adequate detention conditions. And the results are unacceptable. They include exorbitantly expensive contracts like that seen with the family detention facility in Dilley, Texas, run by the Corrections Corporation of America (“CCA”), which costs American taxpayers more than \$700,000 a day or \$260 million a year to detain fewer than 2,400 mothers and children per day. We also see conditions in other facilities giving rise to detainee complaints of sexual assault and abuse by detention staff, as well as reports of woefully inadequate medical care.

In addition to the record profits the private prison industry is reaping from American taxpayers, we are troubled by the pivotal role the industry has played in institutionalizing mass family detention and increasing detention of asylum seekers. Starting in 2014, mass family detention facilities were erected in a matter of months, in order to detain children and mothers fleeing brutal violence and persecution in Central America. ICE managed to stand up these mass detention facilities with alarming speed because the nation’s two largest private prison companies were ready and eager to make this happen through no-bid, fixed-price contracts that were negotiated without Congressional or public input, resulting in an enormous windfall to the prison industry.

In addition, during this administration the number of detained asylum seekers has increased exponentially from 10,742 in fiscal year 2009 to 44,270 in fiscal year 2014. Many asylum seekers are detained in privately-owned or privately-run facilities for prolonged periods of time. It is extremely troubling that private prison companies are reaping profits from detaining the most vulnerable immigrants in our country, including children, asylum seekers, rape victims, and torture survivors.

Given the above mentioned concerns and in an effort to increase transparency in the HSAC review process as well as future contracts, please provide the following information regarding each contract the Department has for immigration detention with a non-federal facility by November 1:

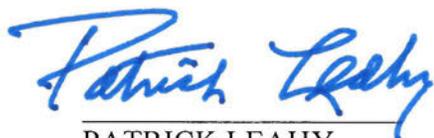
1. Documentation adequately establishing that the rates charged by the non-Federal detention facility to the agency are justified on the basis of actual costs associated with the operation of the facility with respect to Federal detainees, and that those costs are necessary and reasonable (taking into account all applicable credits that may reduce the contractor’s net costs).
2. All medical and mental health policies in use at the facility, including—
 - (A) the training and certification required for medical and mental healthcare professionals treating detainees at the facility; complete staffing patterns for medical and mental health staff, including any variations for different shifts, weekends, and holidays; and policy and procedure manuals.

- (B) The certifications and credentials held by each medical and mental health care professional treating detainees in the facility, how medical and mental health services are accessed by detainees who do not speak English, the number of detainees attended to by medical and mental healthcare professionals on-site, and, for each such detainee, a description of the detainee's illness or injury, and how any injuries were caused.
- 3. For each detainee who has died within the past two years, any death review conducted by the ICE Office of Detention Oversight (ODO) or DHS Office of Inspector General (OIG), and any corrective action plans developed in response to the ODO or OIG death review.
- 4. The design capacity, rated capacity, and operational capacity of the facility.
- 5. Reports describing—
 - (A) the number of incidents of detainee misconduct and the nature of the misconduct, which shall include assaults on staff of the facility by detainees and assaults on detainees by other prisoners/detainees; and
 - (B) the policy on placement in segregated housing units, the total number of detainees placed in segregated housing units in the facility per month, the reason for placement in such units, and the length of stay for each detainee in segregated housing.
- 6. If applicable, the annual cost of contracts for facilities with guaranteed minimum bed space and fixed-price contracts.

Please also note how much of the above-described information DHS already collects as a condition of its contracts with non-federal facilities.

DHS's decision to conduct this review is an important step, and we expect the findings will support a decision to promote greater accountability of non-federal facilities and ultimately put an end to the government's reliance on for-profit prison companies. We look forward to the subcommittee's report on November 30, 2016 and to working with you to improve our immigration detention system.

Sincerely,



PATRICK LEAHY
United States Senator



RICHARD J. DURBIN
United States Senator


PATTY MURRAY
United States Senator


AL FRANKEN
United States Senator


ROBERT MENENDEZ
United States Senator


KIRSTEN GILLIBRAND
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