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December 27, 2024

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Sent via email

Dear President Biden:

On behalf of MALDEF (Mexican American Legal Defense and Educational Fund), I write to urge you to close down all private, for-profit immigration detention centers prior to January 20, 2025. With the time remaining in your term, you are well positioned to fulfill this early campaign promise that you made to the American public, and to reverse a troubling trend toward an expansion of private, for-profit immigration detention centers.

Over 90% of immigration detainees are currently held in private detention facilities.¹ You have the authority to direct the federal government to end the use of private, for-profit immigration detention centers now. Regardless of the expiration date of the contract between the federal government and a private detention center operator, the federal government retains the right to end a contract at any time for convenience when in the “government’s interest.”² The history of mistreatment, poor conditions, and lack of proper oversight over these facilities makes clear that it is in the government’s interest to end these contracts.

Founded in 1968, MALDEF is the nation’s leading Latino legal civil rights law firm. Described as the “law firm of the Latino community,” MALDEF promotes social change in the areas of immigrant rights, employment, education, voting rights, and access to justice. MALDEF has long advocated to end the use of private, for-profit immigration detention centers by the federal government, as these facilities raise many civil rights and human rights concerns.

During your presidential campaign and at the beginning of your presidency, you promised to end the use of private, for-profit immigration detention, in order to

¹ Eunice Hyunhye Cho, *Unchecked Growth: Private Prison Corporations and Immigration Detention, Three Years Into The Biden Administration*, ACLU (Aug. 7, 2023), <https://www.aclu.org/news/immigrants-rights/unchecked-growth-private-prison-corporations-and-immigration-detention-three-years-into-the-biden-administration>.

² CONG. RSCH. SERV., TERMINATING CONTRACTS FOR THE GOVERNMENT’S CONVENIENCE: ANSWERS TO FREQUENTLY ASKED QUESTIONS 5-6 (2015), <https://sgp.fas.org/crs/misc/R43055.pdf>.

“[s]top corporations from profiteering off of incarceration” and “desperate people fleeing violence.”³ Now, four years later, your administration’s use of these facilities has reached record highs and Congress has appropriated a record amount of funds for these centers. As a result, private corporations profited millions of dollars at the expense of the dignity, safety, and human and civil rights of the individuals detained by Immigration & Customs Enforcement (ICE). MALDEF strongly urges you to fulfill your promise and do what is right by closing down all private, for-profit detention centers prior to January 20, 2025. MALDEF believes that private profit should not play a role in the detention or incarceration of human beings.

You undertook the courageous step of ending the use of private facilities for criminal detention early in your administration through Executive Order No. 14006.⁴ You maintain the same authority to end contracts with private immigration detention center operators.

Since the beginning of your term, the number of individuals detained by ICE has nearly tripled to 37,395.⁵ The percentage held in private detention facilities is now 10% higher than it was under the Trump Administration.⁶ Furthermore, your administration recently issued multiple requests for information for new detention facilities in Arizona, California, Kentucky, Kansas, Idaho, Illinois, Indiana, Missouri, Montana, Nevada, New Jersey, Texas, Utah, Washington, and Wisconsin. Your administration has set the federal government on a troubling track to drastically expand the use of private immigration detention facilities nationwide. However, your administration has time to correct this course.

Immigration Detention Misuses Taxpayer Funds

ICE operates detention facilities across the nation.⁷ Two companies dominate in operating private detention facilities: the GEO Group and CoreCivic. Both of these companies receive the majority of their billions of dollars of revenue from contracts with ICE,⁸ which constitute an increasing source of their revenue over the last two decades.⁹

Yet, ICE wastes millions of taxpayer dollars each year on these unnecessary contracts, while private detention operators lack oversight and accountability. The Government Accountability Office found that ICE often did not follow its own processes for acquiring new detention space. As a result, ICE has no

³ *The Biden Plan For Securing Our Values As A Nation Of Immigrants*, BIDEN HARRIS CAMPAIGN, <https://web.archive.org/web/20201122062835/https://joebiden.com/immigration/#> (last visited Dec. 9, 2024); *The Biden Plan For Strengthening America’s Commitment To Justice*, BIDEN HARRIS CAMPAIGN, <https://saportareport.com/wp-content/uploads/2020/12/Joe-Bidens-Criminal-Justice-Policy-Joe-Biden.pdf> (last visited Dec. 9, 2024)

⁴ Exec. Order No. 14006, 86 Fed. Reg. 7483 (Jan. 26, 2021).

⁵ *ICE Detainees*, TRACIMMIGRATION, https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html (last visited Dec. 9, 2024).

⁶ Cho, *supra* note 1.

⁷ *ICE Detention Facilities*, IMMIGR. AND CUSTOMS ENF’T, (Mar. 30, 2023), <https://www.ice.gov/detention-facilities>.

⁸ Dario McCarty, *Private prison industry shifts focus to immigrant detention centers, funding immigration hawks*, OPEN SECRETS (June 21, 2022), <https://www.opensecrets.org/news/2022/06/private-prison-industry-shifts-focus-to-immigrant-detention-centers-funding-immigration-hawks/>.

⁹ Brett C. Burkhardt, *From Private Prisons to Private Detention: Visualizing the Business of Immigration Enforcement*, SOCIUS, Sept. 2021, <https://journals.sagepub.com/doi/10.1177/23780231241277106>.

“reasonable assurance that it is making cost-effective decisions that best meet its operational needs.”¹⁰ Additionally, ICE wastes taxpayer funds through its increased use of guaranteed minimum payments in its contracts and agreements. The government loses millions of dollars a month on unused detention space. For example, as part of an inspection of Stewart Detention Center in Lumpkin, Georgia in 2023 the ICE Office of Inspector General (OIG) determined that ICE paid \$12.6 million for unused bed space in a one-year time frame.¹¹ Likewise, the ICE OIG similarly determined that ICE paid \$25.3 million for unused bed space at Golden State Annex in McFarland, California in just a one-year period beginning April 2022.¹²

Civil Rights and Safety Issues in Immigration Detention Persist

While courts treat immigration detention as a “civil” matter and therefore, in theory, “non-punitive,”¹³ the U.S. civil immigration detention system, as discussed below, is commensurate with criminal detention. This is not surprising because the GEO Group & CoreCivic also operate many private prisons at the federal and state levels. Even the standards ICE developed for immigration detention, named the Performance-Based National Detention Standards, were based on standards from the American Correctional Association (ACA) for criminal detention facilities.¹⁴ The GEO Group and CoreCivic have also sought accreditation from the ACA for their immigration detention facilities.¹⁵ The resulting conditions and purpose of immigration detention is in fact a punitive system, modeled on our criminal incarceration system.¹⁶ The conditions of immigration detention are extremely dangerous for detained immigrants, the vast majority of whom are detained in these privately operated facilities. Multiple reports, both by government agencies and non-profit organizations, have laid bare the risks that individuals face in immigration detention, and the conditions demonstrate that these private facilities fail to meet the government’s standards for detention centers and lack proper oversight and accountability.

¹⁰ U.S. GOV’T ACCOUNTABILITY OFF., GAO-21-149, IMMIGRATION DETENTION: ACTION NEEDED TO IMPROVE PLANNING, DOCUMENTATION, AND OVERSIGHT OF DETENTION FACILITY CONTRACTS (2021), <https://www.gao.gov/assets/gao-21-149.pdf>.

¹¹ OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., OIG-23-38, RESULTS OF AN UNANNOUNCED INSPECTION OF ICE’S STEWART DETENTION CENTER IN LUMPKIN, GEORGIA 18 (2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-08/OIG-23-38-Jul23.pdf>.

¹² OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., OIG-24-23, RESULTS OF AN UNANNOUNCED INSPECTION OF ICE’S GOLDEN STATE ANNEX IN MCFARLAND, CALIFORNIA 10 (2024), <https://www.oig.dhs.gov/sites/default/files/assets/2024-04/OIG-24-23-Apr24.pdf>.

¹³ See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (finding in a case challenging indefinite immigration detention that “[t]he proceedings at issue here are civil, not criminal, and we assume that they are nonpunitive in purpose and effect.”)

¹⁴ U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-596, IMMIGRATION DETENTION: ICE SHOULD ENHANCE ITS USE OF FACILITY OVERSIGHT DATA AND MANAGEMENT OF DETAINEE COMPLAINTS 8 (2021), <https://www.gao.gov/assets/gao-20-596.pdf>; see also IMMIGR. AND CUSTOMS ENF’T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011 (REV. DEC. 2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹⁵ *Industry Leading Standards*, GEO GROUP, INC., <https://www.geogroup.com/industry-leading-standards> (last visited Dec. 9, 2024); *CoreCivic Facilities Receive High Scores at Annual ACA Conference*, CORECIVIC (Aug. 24, 2023), <https://www.corecivic.com/news/corecivic-facilities-receive-high-scores-at-annual-aca-conference>.

¹⁶ See Tom Dreisbach, *Government’s own experts found ‘barbaric’ and ‘negligent’ conditions in ICE detention*, NPR (Aug. 16, 2023), <https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions> (reporting on recently released inspection reports of immigration detention centers whose “conditions . . . often appear indistinguishable from prison.”)

According to the American Civil Liberties Union (ACLU), between January 2017 and May 2024, seventy individuals died in ICE custody.¹⁷ Another investigation found that more individuals died in ICE custody in FY 2024 than in each of the six preceding years, except for 2020 during the height of the COVID pandemic.¹⁸ These numbers are likely to be lower than the actual number of all individuals who die as a result of ICE custody, as ICE has a practice of releasing seriously ill individuals so as to circumvent congressionally-mandated reporting requirements for deaths in custody.¹⁹ Finally, the same ACLU report determined that 95% of the 70 deaths in ICE's custody between January 2017 and May 2024 would have been prevented with appropriate medical care. Private prison companies are responsible for needless deaths, whose true extent is not known.

Sexual abuse is also rampant in immigration detention facilities. A report by Futuro Investigates found that there were "308 sexual assault and sexual abuse complaints filed by immigrants detained in ICE facilities nationwide between 2015 and 2021."²⁰ The report notes that this number likely only represents a fraction of the incidents of sexual assault in immigration detention facilities, and that very few of these reported cases are investigated by ICE.²¹ A separate study found 922 sexual assault allegations were reported to ICE facility administration from September 2018 to April 2022.²² The authors concluded that sexual assault in immigration detention occurred at rates 3.5 times that in the general U.S. population.²³ Along with this high rate of sexual assault, the number of allegations across multiple facilities indicates that detention facilities are not complying with the Prison Rape Elimination Act, as they are statutorily required to do.²⁴

Detained individuals also suffer from a lack of proper medical or mental health care. A study examining hospitalization rates from immigration detention in Texas and Louisiana concluded that most hospitalizations are due to infectious and psychiatric diseases.²⁵ Additionally, these hospitalization rates are near the national average, despite the fact that detained individuals are younger on average than the population as a whole and that new immigrants generally have lower morbidity rates than U.S.-born individuals.²⁶ A complaint filed by the National Immigration Justice Center with the Office for Civil Rights and Civil Liberties (CRCL) found that requests for mental health care are often left unanswered or answers are significantly delayed, and that the care provided is "poor, deficient, and neglectful," in

¹⁷ EUNICE HYUNHYE CHO ET AL., ACLU, DEADLY FAILURES: PREVENTABLE DEATHS IN U.S. IMMIGRATION DETENTION 16 (2024), <https://assets.aclu.org/live/uploads/2024/06/2024-07-01-ICE-Detainee-Deaths.pdf>.

¹⁸ Daniella Silva, *The number of deaths in ICE custody is already more than double all of last year*, NBC NEWS (June 1, 2024), <https://www.nbcnews.com/news/us-news/number-deaths-ice-custody-already-double-last-year-rcna154659>.

¹⁹ Andrea Castillo & Jie Jenny Zou, *ICE rushed to release a sick woman, avoiding responsibility for her death. She isn't alone*, L.A. TIMES (May 13, 2022), <https://www.latimes.com/world-nation/story/2022-05-13/ice-immigration-detention-deaths-sick-detainees>.

²⁰ Zeba Warsi, *'Immensely Invisible:' Women Fighting ICE's Inaction on Sexual Abuses*, FUTURO INVESTIGATES (July 21, 2023), <https://futuroinvestigates.org/investigative-stories/immensely-invisible/immensely-invisible-women-fighting-ices-inaction-on-sexual-abuses/>.

²¹ *Id.*

²² Nicole Lue, *Trends in Sexual Assault Against Detainees in US Immigration Detention Centers, 2018-2022*, JAMA, Jan. 24 2023, <https://pmc.ncbi.nlm.nih.gov/articles/PMC10408271/>.

²³ *Id.*

²⁴ *Id.*; see 6 C.F.R. §§ 115.11-13 (2024); 34 U.S.C. § 30309.

²⁵ Joseph Nwadiuko et al., *Adult Hospitalizations from immigration detention in Louisiana and Texas, 2015-2018*, 2 PLOS Glob. Public Health, no. 8, 2022, at 1, 10, <https://journals.plos.org/globalpublichealth/article?id=10.1371/journal.pgph.0000432>.

²⁶ *Id.*

violation of ICE's own standards.²⁷ Suicide attempts are not uncommon in immigration detention facilities, such as those reported at Torrance Detention Center in Estancia, New Mexico,²⁸ and the Northwest ICE Processing Center in Tacoma, Washington.²⁹

Compounding the mental health care challenges faced by individuals detained in immigration detention is the excessive use of solitary confinement. One recent report found that the use of solitary confinement has increased in recent years and that it is often employed for punitive purposes, in contravention of ICE directives.³⁰ Furthermore, ICE used solitary confinement over 14,000 times between 2018 and 2023 and the average duration of solitary confinement was 27 days.³¹ Strikingly, the numerous instances of the use of solitary confinement for over a year all occurred at private, for-profit immigration detention facilities.³²

One example that highlights the appalling conditions that immigrant detainees face in detention comes from Baker County Detention Center in MacClenny, Florida, where a nurse practitioner filed a whistleblower complaint to CRCL. The facility's medical unit was chronically understaffed, medical records were regularly falsified, and conditions in solitary confinement were cruel and contravened ICE policy. One patient even described an incident of waterboarding by staff.³³ According to the complaint, one individual was placed in solitary confinement for over a month, despite her diagnosis of post-traumatic stress disorder, anxiety and depression, as punishment for requesting to use the restroom.³⁴ While held in solitary confinement, she faced a mental health crisis and staff responded by forcibly removing her clothes, placing her in an anti-suicide smock that left her exposed, and restraining her to a chair.³⁵ Facility staff ogled her and video of the incident was later played during an all-staff meeting as a good example of use of force.³⁶

Recommendations

MALDEF strongly urges you to fulfill your promise to the American people and close all private, for-profit detention centers. This would allow individuals to litigate their immigration cases with access to legal counsel, and with the support of their families and communities. Additionally, such a measure

²⁷ Complaint from the Nat'l Immigr. Just. Ctr. to the Off. for C.R. & C.L., Dep't of Homeland Sec. (June 2, 2022), https://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2022-06/CRCL-complaint-mental-health-care-immigration-detention_June-2022_public.pdf.

²⁸ Rafael Bernal, *Suicide attempts highlight mental health concerns in immigrant detention*, THE HILL (March 03, 2023), <https://thehill.com/latino/3881755-suicide-attempts-highlight-mental-health-concerns-in-immigrant-detention/>.

²⁹ Grace Deng, *At least 6 suicide attempts this year at Tacoma ICE detention center, 911 calls show*, WASH. STATE STANDARD (Apr. 10, 2024), <https://washingtonstatestandard.com/2024/04/10/at-least-6-suicide-attempts-this-year-at-tacoma-ice-detention-center-911-calls-show/>.

³⁰ PHYSICIANS FOR HUM. RTS., "ENDLESS NIGHTMARE": TORTURE AND INHUMAN TREATMENT IN SOLITARY CONFINEMENT IN U.S. IMMIGRATION DETENTION 14 (2024), <https://phr.org/wp-content/uploads/2024/02/PHR-REPORT-ICE-Solitary-Confinement-2024.pdf>.

³¹ *Id.*

³² *Id.*

³³ Protected Whistleblower Disclosure of Provider Vera Goodwin from the Gov't Accountability Project to Members of Cong. (Nov. 14, 2024), <https://whistleblower.org/wp-content/uploads/2024/11/Nov-2024-Whistleblower-Disclosure-of-Nurse-Practitioner-Vera-Goodwin-re-Baker.pdf>.

³⁴ Complaint from the ACLU of Florida to the Off. for C.R. & C.L., Dep't of Homeland Sec. (Nov. 14, 2024), https://www.acluf.org/sites/default/files/field_documents/anac_crcl_final_version.pdf.

³⁵ *Id.*

³⁶ *Id.*

would save taxpayers billions of dollars – just in FY 2024 Congress appropriated over \$3.4 billion dollars for immigration detention, which is a record high.³⁷ After terminating contracts with private detention centers, DHS should release all formerly detained individuals to their communities and to community-based programming as an alternative to detention.³⁸ The conditions of immigration detention are inhumane and sometimes even fatal. Thank you for your consideration of this request.

Sincerely,



Leighton Fernando G. Cook
Legal Fellow

cc: The Honorable Alejandro Mayorkas, Secretary of Homeland Security

³⁷ H. COMM. ON APPROPRIATIONS, 118TH CONG., H. COMM. PRINT 55-008 OF THE FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2024 at 631, <https://www.govinfo.gov/content/pkg/CPRT-118HPRT55008/pdf/CPRT-118HPRT55008.pdf>; NAT'L IMMIGR. JUST. CTR., POLICY BRIEF: SNAPSHOT OF ICE DETENTION: INHUMAN CONDITIONS AND ALARMING EXPANSION (2024), <https://immigrantjustice.org/research-items/policy-brief-snapshot-ice-detention-inhumane-conditions-and-alarming-expansion>.

³⁸ NAT'L IMMIGR. JUST. CTR., WHITE PAPER: ROAD TO DISMANTLE THE U.S. IMMIGRATION DETENTION SYSTEM (2021), <https://immigrantjustice.org/research-items/white-paper-roadmap-dismantle-us-immigration-detention-system>; NAT'L IMMIGR. JUST. CTR., A BETTER WAY: COMMUNITY-BASED PROGRAMMING AS AN ALTERNATIVE TO IMMIGRANT INCARCERATION (2019), <https://immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration>.