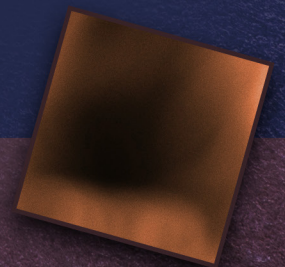
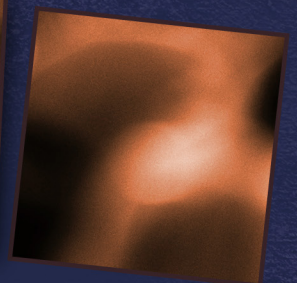
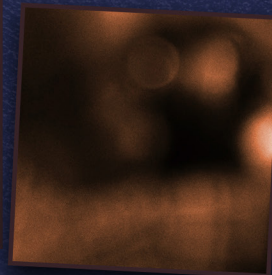
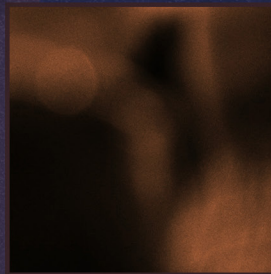


BROKEN PROMISES

Limits of Biden's Executive Order on Private Prisons



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EXECUTIVE SUMMARY

As a Presidential candidate, Joe Biden promised to end the use of private prisons in federal incarceration and immigration detention claiming “that the federal government should not use private facilities for any detention, including detention of undocumented immigrants.”¹ This report provides an overview of progress towards that unfulfilled promise and outlines the steps the administration must take to end the federal use of private prisons and phase out the use of immigration detention entirely.

On January 26, 2021, President Biden issued an executive order to phase out federal private prisons. The order² banned the renewal of contracts for privately operated Department of Justice (DOJ) prisons – which include Bureau of Prisons (BOP) and U.S. Marshals (USMS) facilities – but failed to include privately operated Immigration and Customs Enforcement (ICE) detention centers, which operate under the Department of Homeland Security (DHS). While private prisons make up less than 10% of the total U.S. prison and jail system,³ private prisons detained 79% of people in immigration detention in September 2021.⁴

While private prisons make up less than 10% of the total U.S. prison and jail system, private prisons detained 79% of people in immigration detention in September 2021.

1. [The Biden Plan for Strengthening America’s Commitment to Justice](#).
2. [Exec. Order No. 14006: Reforming Our Incarceration System to Eliminate Privately Operated Criminal Detention Facilities](#), 86 Fed. Reg. 7483 (effective Jan. 29, 2021).
3. Prison Policy Initiative, [Mass Incarceration: The Whole Pie 2020](#) (March 24, 2020).
4. In September 2021, an ACLU report found that 79% of all immigrants in detention are held in private prisons, down slightly from 81% in January 2020. See ACLU, [More of the Same: Private Prison Corporations and Immigration Detention Under the Biden Administration](#) (Oct. 5, 2021).



Implementation of the executive order within the DOJ has been inconsistent and, in some cases, contrary to the stated goals of Biden. As the government phases out some USMS and BOP contracts with private prison companies, others have been extended to allow for the negotiation of intergovernmental agreements to keep jails privatized or repurposed as ICE detention facilities.

The executive order specifically instructs the DOJ not to renew any “contracts with privately operated criminal detention facilities.” Five BOP private prison contracts for segregated “Criminal Alien Requirement” (CAR) prisons have been terminated with six more CAR prisons slated to close by November 2022. However, the USMS has only terminated two direct contracts with private prison companies and is actively pursuing new “pass-through” agreements to expand privatization. Furthermore, multiple privatized USMS contracts are indefinite in duration, and therefore can continue to operate despite the executive order.

In September 2021, ICE announced the reopening of the former BOP prison in Moshannon Valley, Pennsylvania as an ICE facility. Reports have emerged that local governments and private prison corporations are in talks to convert additional DOJ-contracted private prisons to ICE detention centers. These efforts are under way at facilities including the West Tennessee Detention Facility, and the Leavenworth Detention Facility in Kansas, where local governments are negotiating intergovernmental service agreements (IGSAs) to convert the facilities into ICE detention centers. ICE has made no public comments about these negotiations, leading to concerns that it may be negotiating in other locations with little to no transparency.

Furthermore, ICE is reportedly in the process of negotiating contract extensions with private detention centers, including at the GEO Group’s Broward Transitional Center in Florida and Management and Training Center’s Otero County Processing Center in New Mexico.



It is not too late to change course. Advocates and those directly impacted by the system are clear – detention puts people’s lives and well-being at great risk, exacerbates humanitarian crises, violates principles of human rights, and is cruel and unnecessary. The criminalization of migration and the incarceration of migrants must end. As a first step, the Biden administration should join states around the country that are banning for-profit incarceration. It should phase out the use of detention in the immigration system and ensure that the executive order on private prisons is followed in both letter and spirit and by extending the order to include immigration detention.

Specifically, we call on the Biden administration to:

1. Begin to fully phase out the use of immigration detention by releasing people from detention, cancelling ICE detention contracts, declining to renew contracts, and halting all expansion efforts.
2. Fully implement the executive order phasing out DOJ’s privately operated prisons. Allow existing contracts to expire and ensure that they are not renegotiated as intergovernmental agreements or with ICE as immigration detention facilities.
3. Extend the executive order to ICE contracts with private prison corporations and local governments.
4. Immediately cease intervention in litigation against state laws banning the use of private prisons in California and other states.
5. Reduce funding for ICE detention by 50 percent in the President’s proposed budget for Fiscal Year 2023.
6. Restore access to asylum at the border without the use of detention by immediately fully repealing MPP and ending Title 42.



INTRODUCTION

As a Presidential candidate, Joe Biden promised to end the use of private prisons in federal incarceration and immigration detention claiming “that the federal government should not use private facilities for any detention, including detention of undocumented immigrants.”⁵ Nine months later, his administration has failed to deliver on this promise. The President’s executive order on private prisons banned the

renewal of contracts for privately operated Department of Justice (DOJ) prisons – a first step in the right direction – but failed to include privately operated Immigration and Customs Enforcement (ICE) detention centers, which operate under the Department of Homeland Security (DHS).⁶ Further, the executive order has been implemented in an uneven and contradictory manner even as applied to DOJ facilities.

Despite the abuses and lack of justification for the use of immigration detention, Congress has continued to fund the system at astronomical levels.

Advocates and those directly impacted by the system have been clear – the criminalization of migration and the incarceration of migrants must end. In order to live up to its promise of ending for-profit incarceration and bringing justice and fairness to the immigration system, the Biden administration must extend the January 2021 executive order to include contracts between DHS and private prison corporations and local governments. This report explores the progress made since January on phasing out the use of private prisons by the federal government and what steps must be taken to fully effectuate the executive order, fulfill campaign promises, and end the immigration detention system.

5. *The Biden Plan for Strengthening America’s Commitment to Justice*, *supra* note 1.

6. Setareh Ghandehari, [Analysis of President Biden’s Executive Order on Private Prisons](#), Detention Watch Network (March 2021)



BACKGROUND - IMMIGRATION DETENTION AND PRIVATE PRISONS

The immigration detention system is made up of a network of approximately 200 jails and prisons across the country with funding from Congress for the detention of 34,000 people in Fiscal Year 21.⁷ Advocates, journalists, government inspectors, and people directly impacted by the system have amassed an expansive bibliography documenting the abuses of ICE detention across all types of facilities, whether publicly or privately operated. Despite the abuses and lack of justification for the use of immigration detention,⁸ Congress has continued to fund the system at astronomical levels.⁹

Today about 22,000 people are detained by ICE.¹⁰ Under the Trump administration, the system reached its height in 2019 at 55,000 people in detention on a given

day with half a million people detained over the course of the fiscal year.¹¹ At the beginning of 2021, the number of people in detention was at a historic low not seen in decades, largely due to the Trump administration's cruel anti-immigrant policies including the "Remain in Mexico" program and the Title 42 expulsions of migrants,¹² as well as state and local sanctuary policies that limited interior enforcement. Due to this trend, the incoming Biden administration had a unique opportunity to reduce reliance on the immigration detention system as capacity far outweighed use. Instead, the number of people in detention has skyrocketed under President Biden,¹³ the administration has requested funds well above current numbers,¹⁴ and ICE has renewed or negotiated new detention contracts.¹⁵

7. Defund Hate, [Congress Fails Americans by Rushing through \\$23 Billion in Taxpayer Dollars to ICE and CBP as Communities Face Deepest Suffering Yet During Pandemic](#) (Dec. 2021)

8. See generally Tom K. Wong, [Seeking Asylum: Part 2, U.S. Immigration Policy Center](#) (Oct. 29, 2019); [American Immigration Council & Women's Refugee Commission, Community Support for Migrants Navigating the US Immigration System](#) (March 1, 2021); [Ignation Solidarity Network, US Shelters for Asylum Seekers Declare: There is Room at the Inn](#) (Dec. 14, 2019); Hope Border Institute & Human Rights First, [Disorderly and Inhumane: Biden Administration Continues to Expel Asylum Seekers to Danger While U.S. Border Communities Stand Ready to Welcome](#) (2021); American Immigration Council, [Immigrants and Families Appear in Court: Setting the Record Straight](#) (July 30, 2019); Ingrid Eagly & Steven Shafer, [Measuring In Absentia Removal In Immigration Court](#), 168 U. Penn. L. Rev. 817 (2020); Transactional Records Access Clearinghouse (TRAC), [Record Number of Asylum Cases in FY 2019](#) (Jan. 8, 2020); Nina Siulc & Noelle Smart, [Evidence Shows That Most Immigrants Appear for Immigration Court Hearings](#), Vera Institute of Justice (October 2020); TRAC, [Most Released Families Attend Immigration Court Hearings](#) (June 18, 2019).

9. See ICE detention 2005-2018 budget figures at J. Rachel Reyes, [Immigration Detention: Recent Trends and Scholarship](#), Center for Migration Studies (March 26, 2018).

10. U.S. Dep't of Homeland Security, Immigration & Customs Enforcement, [Detention Management](#).

11. Alex Nowrasteh, [21 Immigrants Died in Immigration Detention in 2020](#), CATO (Oct. 22, 2020).

12. Kennji Kizuka & Julia Neusner, [Illegal and Inhumane: Biden Administration Continues Embrace of Trump Title 42 Policy as Attacks on People Seeking Refuge Mount](#), Human Rights First (Oct 2021).

13. Silky Shah, [Number of Immigrants Detained by ICE Has Increased 70 Percent Under Biden](#), Truthout (Sept. 2021).

14. [The President's FY 2022 Discretionary Request](#) (April 9, 2021).

15. See, e.g., Jessica Shirey, [Moshannon Valley Correctional Facility to Reopen as ICE Center](#), Gant News (Sept 2021).



The immigration detention system is made up of facilities owned by the federal government, local governments and private prison corporations. While private prisons make up less than 10% of the total U.S. prison and jail system,¹⁶ private prisons detained 79% of people in immigration detention in September 2021.¹⁷ Advocates have long called for ending for-profit contracts as one step towards phasing out immigration detention altogether in the U.S., noting that prison systems inflict suffering and drive profiteering whether operated by private prison corporations or by government agencies.

Since its inception, the private prison industry's fortunes have been tied to the growth of federal incarceration and the detention of immigrants, both through enforcement of civil immigration laws and criminal prosecutions for migration.¹⁸ Today, contracts with three federal agencies – Immigration and Customs Enforcement (ICE), the Federal Bureau of Prisons (BOP), and the U.S. Marshals Service (USMS) – account for more than half of all revenue for the two largest private prison corporations – CoreCivic¹⁹ and GEO Group.²⁰

Today, contracts with three federal agencies – Immigration and Customs Enforcement (ICE), the Federal Bureau of Prisons (BOP), and the U.S. Marshals Service (USMS) – account for more than half of all revenue for the two largest private prison corporations – CoreCivic and GEO Group.

16. Prison Policy Initiative, *supra* note 3.

17. In September 2021, an ACLU report found that 79% of all immigrants in detention are held in private prisons, down slightly from 81% in January 2020. See ACLU, *supra* note 6.

18. See, e.g., Seth Freed Wessler, [Inside the U.S. Marshals' Secretive, Deadly Detention Empire](#), *Mother Jones* (Dec. 2019); ACLU of Texas & ACLU, [Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System](#) (June 2014).

19. See U.S. Securities and Exchange Commission, CoreCivic 2020 Form 10-K, at 8, [available here](#) [hereinafter, "CoreCivic 2020 Form 10-K"].

20. See U.S. Securities and Exchange Commission, GEO Group 2020 Form 10-K, at 3, [available here](#) [hereinafter, "GEO Group 2020 Form 10-K"].



Between 2000 and 2016, the number of people incarcerated in federal private prisons rose 120 percent to 34,159.

While profiteering is inherent to the prison system with deep roots to slavery,²¹ the first modern corporate for-profit prison was the Houston Processing Center,²² a motel converted into an immigrant detention center opened by Corrections Corporation of America (now called CoreCivic) in 1984. Similarly, in 1987, Wackenhut Corrections Corporation (now known as GEO Group) won its first contract to open an immigrant detention center in Aurora, Colorado.²³

The immigration detention system has seen exponential growth in the last 30 years. In just the last four years, the number of people detained by ICE grew dramatically to an average daily population of more than 50,000 people in Fiscal Year 2019,²⁴ by far the most in the agency's history.

In the federal criminal punishment system, immigrant incarceration

has similarly driven private prison expansion. The number of immigrants in BOP and USMS custody has grown dramatically over the last 20 years alongside the rise in criminal prosecutions of migrants, especially since the creation of Operation Streamline,²⁵ a mass criminalization effort started in 2005, and the related felony prosecutions of immigrants for reentering the country without authorization.

BOP private prison contracts began in earnest in 1999 with the first contracts for Criminal Alien Requirement (CAR) prisons – a network of segregated prisons incarcerating non-citizens convicted of federal crimes who would be subjected to deportation proceedings after completing their sentences. Between 2000 and 2016, the number of people incarcerated in federal private prisons rose 120 percent to 34,159.²⁶

21. See, e.g., Shane Bauer, [The True History of the Private Prison Industry](#), Time (September 28, 2018).

22. [The Dirty Thirty: Nothing to Celebrate About 30 Years of Corrections Corporation of America](#), Grassroots Leadership (2013).

23. [GEO Group History Timeline](#), (last visited Oct. 13, 2021).

24. Bob Libal, Setareh Ghanderi, & Silky Shah, [Communities Not Cages: A Just Transition from Immigration Detention Economies](#), Detention Watch Network (May 2021), at 4.

25. Judith A. Greene, Bethany Carson, & Andrea Black, [Indefensible: A Decade of Mass Incarceration of Migrants Prosecuted for Crossing the Border](#), Grassroots Leadership (July 2016).

26. Kara Gotsch & Vinay Basti, [Capitalizing on Mass Incarceration: U.S. Growth in Private Prisons](#), The Sentencing Project (Aug. 2018).



While prisons are sites of abuse and neglect regardless of who runs them, a 2016 Office of Inspector General review found that BOP-contracted private prisons had more safety and security issues, higher rates of assaults, and improperly held imprisoned people in administrative segregation.²⁷

The USMS, which is responsible for federal pre-trial detention in criminal cases, contracts with local jails and private prisons for all of its detention capacity. That capacity has increasingly been driven by the criminal prosecution of immigrants for unauthorized entry, a

misdemeanor, or unauthorized reentry, a felony. In 2018 and 2019, two thirds of all federal criminal prosecutions were related to immigration cases.²⁸

In 2018 and 2019, two thirds of all federal criminal prosecutions were related to immigration cases.

PRESIDENT BIDEN'S EXECUTIVE ORDER ON PHASING OUT PRIVATE PRISONS FALLS SHORT OF CAMPAIGN PROMISES

Responding to reinvigorated calls for racial justice and renewed focus on the failures of the criminal punishment system, President Biden signed an executive order on January 26, 2021 and announced that the Department of Justice (DOJ) would begin phasing out contracts with privately operated

prisons.²⁹ While the order does not fully address mass incarceration, it was welcomed by advocates. The order is marginally more expansive than the attempt to phase out the use of private prisons by President Obama's administration in 2016³⁰ -- an attempt that was unsuccessful due to the prompt

27. United States Department of Justice Office of the Inspector General, [Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons](#) (Aug. 2016), at ii-iii.

28. See Wessler, *supra* note 18.

29. Exec. Order No. 14006, *supra* note 2.

30. [Memorandum for the Acting Director Federal Bureau of Prisons from Sally Q. Yates, Deputy Attorney General, DOJ](#) (Aug. 18, 2016).



Even as the government phases out some USMS and BOP contracts with private prison companies, others have been extended to to allow for the negotiation of intergovernmental agreements to keep jails privatized or repurposed as ICE detention facilities.

reversal by the Trump administration in early 2017.³¹

Unfortunately, rather than mandating contract terminations, the order directs the BOP and USMS to not renew existing contracts for facilities operated by private prison companies, limiting its reach to contracts with definite end dates.³² Multiple privatized USMS contracts are indefinite in duration,³³ and therefore can ostensibly continue to operate despite the executive order. Contrary to Biden’s campaign promises to “end for-profit detention centers,”³⁴ the order also fails to fully address private detention by leaving out for-profit immigration detention centers. These facilities are under the authority of the DHS, not the DOJ.

Even taking into consideration the limited scope of the executive order, implementation has been inconsistent and, in some cases, contrary to Biden’s stated goals, which included ending for profit incarceration of undocumented immigrants.³⁵ According to the language of the executive order, the Biden administration is committed to “phasing out the federal government’s reliance on privately operated criminal detention facilities, including for undocumented immigrants.”³⁶ In practice, however, even as the government phases out some USMS and BOP contracts with private prison companies, others have been extended to to allow for the negotiation of intergovernmental agreements to keep jails privatized or repurposed as ICE detention facilities.

31. [Memorandum for the Acting Director Federal Bureau of Prisons from Jefferson B. Sessions III, Attorney General, DOJ](#) (Feb. 21, 2017).

32. Ghandehari, *supra* note 6.

33. ACLU, Detention Watch Network, Nat’l Immigrant Justice Center, [Fatal Neglect: How ICE Ignores Deaths in Detention](#) (Feb. 2016).

34. [The Biden Plan for Securing our Values as a Nation of Immigrants](#).

35. *The Biden Plan for Strengthening America’s Commitment to Justice*, *supra* note 1.

36. Exec Order No. 14006, *supra* note 2.



IMPLEMENTATION OF THE EXECUTIVE ORDER HAS THUS FAR BEEN UNEQUAL AND CONCERNING

BUREAU OF PRISONS

The Bureau of Prisons contracts with private prison companies to operate immigrant-only federal prisons, which the government refers to as Criminal Alien Requirement (CAR) facilities.³⁷ CAR prisons are used to imprison immigrants convicted of federal crimes, including for unauthorized entry and reentry, and are rife with atrocious conditions and violations. There is a well-documented history³⁸ of human rights abuses within CAR prisons,³⁹ despite attempts by private prison companies to shroud the facilities in secrecy.

Pursuant to the executive order, as of September 2021, five CAR contracts have been terminated, all of which are between the BOP and GEO Group: D. Ray James in Georgia, Rivers in North Carolina, Moshannon Valley in Pennsylvania, Reeves County Detention Center I/II in Texas, and Great Plains in Oklahoma.

However, in September 2021, ICE and the GEO Group (GEO) revealed plans to reopen a recently closed BOP facility in Pennsylvania as a contracted ICE detention center. In January 2021, GEO announced that the BOP declined to renew its contracts for the Moshannon Valley Detention Center. ICE appeared to pursue the contract for Moshannon Valley as a replacement for its recent loss of the York County Prison contract in Pennsylvania in August 2021. The reopening of Moshannon as a privatized ICE detention facility contradicts the spirit of the Biden administration's executive order, at odds with its stated goal of phasing out the use of privately operated facilities and reducing reliance on immigration detention.

The remaining contracts for CAR prisons all expire at various times in late 2021 or in 2022, detailed below in Timeline 1.

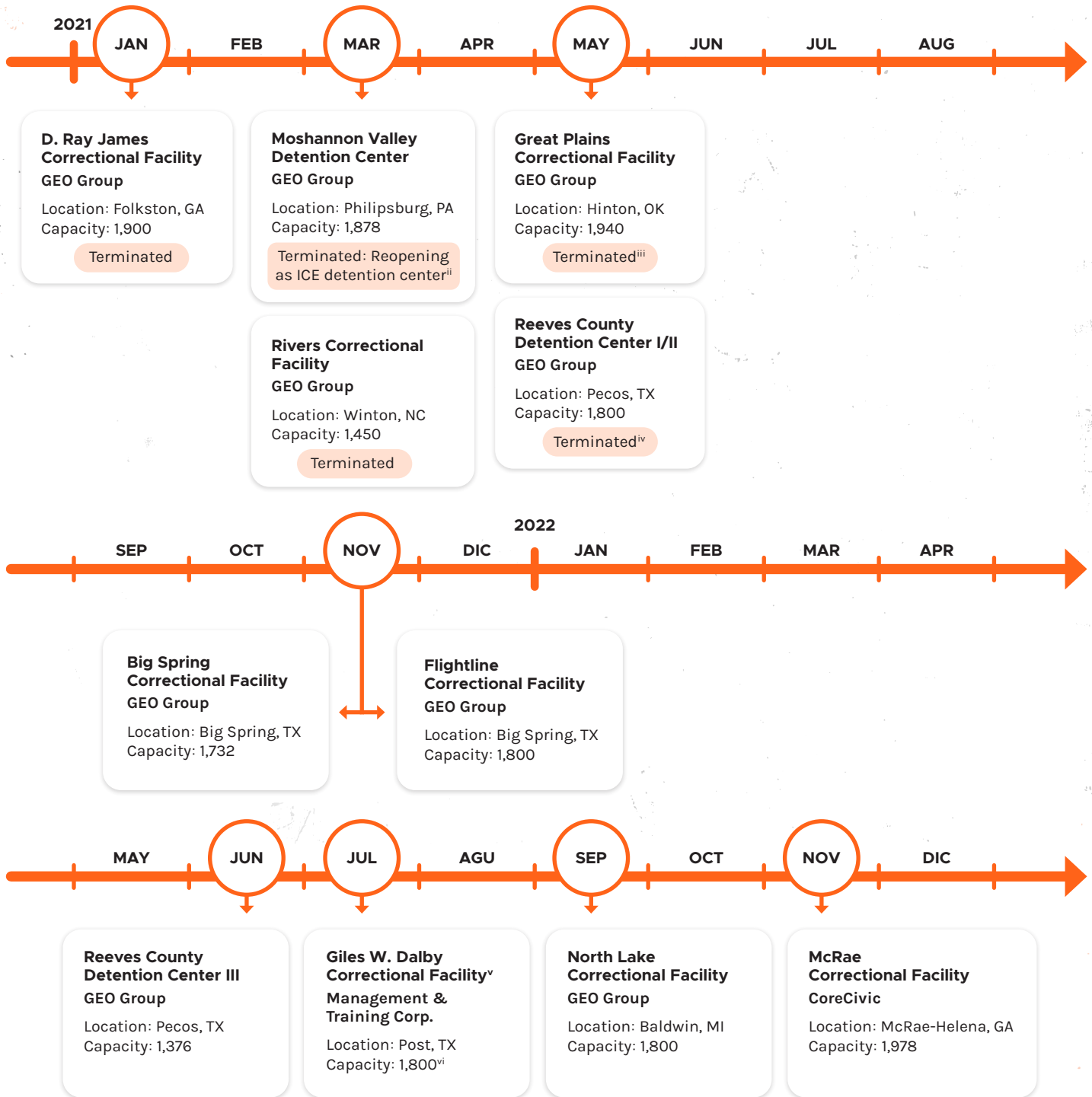
37. [Shadow Prisons](#), Detention Watch Network.

38. Seth Freed Wessler, [This Man will Almost Certainly Die](#), The Nation (Jan. 28, 2016)

39. See ACLU of Texas & ACLU, *supra* note 18.



TIMELINE 1: CONTRACT EXPIRATION FOR BUREAU OF PRISONS “CAR” PRISONSⁱ



i. All contract information for CAR prisons was taken from GEO and CoreCivic Form 10Ks, supra note 16 and 17 respectively, unless otherwise specified.
 ii. Shirey, supra note 15.
 iii. Seeking Alpha, supra note 44.
 iv. Business Wire, supra note 43.
 v. Office of the Inspector General, U.S. Dep't of Just., Evaluation and Inspection Division, [Remote Inspection of Fed. Bureau Of Prisons Contract Correctional Institution Giles W. Dalby, Operated by Management & Training Corporation](#) (Aug. 2020), at ii n.3.
 vi. [Giles W. Dalby Correctional Facility](#), Management & Training Corporation.



U.S. MARSHALS SERVICE

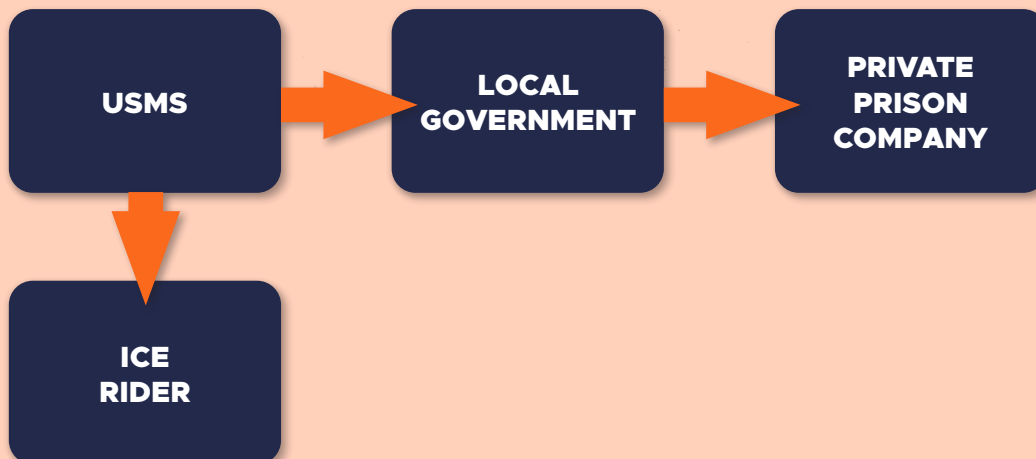
The U.S. Marshals Service (USMS) operates a vast network of federal pretrial detention by contracting with state and local governments and private prison companies for bed space. In many cases, the USMS has an intergovernmental agreement (IGA) with a local government that then subcontracts to a private prison corporation. Many USMS contracts also include riders that allow ICE to use the facility for immigrant detention, which often also involve private prison companies. These contracts should be phased out as part of the existing executive order.

The executive order specifically instructs DOJ not to renew any “contracts with

privately operated criminal detention facilities.” Despite this clear mandate, USMS has only officially terminated two direct contracts with private prison companies: the contract with GEO for the Queens Detention Facility in New York⁴⁰ and the contract with CoreCivic for the Crossroads Correctional Center in Montana.⁴¹ Violating the intent of the executive order, USMS continues to maintain its existing network of subcontracts with private prison companies and is actively pursuing new “pass-through” agreements to expand privatization.

For example, as of August 2021, GEO stated that the company had “three facilities under direct contract” with USMS and appears to actively explore entering into intergovernmental

USMS/ICE RIDER CONTRACT STRUCTURE



40. Brand, supra note 57.

41. Though the USMS is no longer jailing individuals at the Crossroads Correctional Center, CoreCivic entered into a new contract with the state of Montana to continue operating the facility for Montana’s Department of Corrections. See Seaborn Larson, [Montana heads into new deal with private prison in Shelby](#), Independent Record (Jun. 10, 2021).



**TABLE 1:
PRIVATELY CONTRACTED USMS JAILS AND ICE RIDERS⁴²**

Name of Facility	Location	Private Prison Company	Capacity	USMS Expiration Date	IGA	ICE Rider
Queens Detention Facility	Jamaica, NY	GEO Group	222	Terminated April 2021 ⁴³	N	N
West Tennessee Detention Facility	Mason, TN	CoreCivic	600	Terminated Sept 2021 ⁴⁴ CoreCivic attempting ICE contract ⁴⁵	N	Y ⁴⁶
Western Regional Detention Facility	San Diego, CA	GEO Group	770	Original: Sept 2021 Extension: March 2022 ⁴⁷	N	N
El Centro Detention Facility	El Centro, CA	GEO Group	512	December 2021	N	N
Leavenworth Detention Center	Leavenworth, KS	CoreCivic	1,033	December 2021 CoreCivic attempting ICE contract ⁴⁸	N	N

42. All USMS contract information was retrieved from GEO Group and CoreCivic Form 10-Ks, unless otherwise specified. See GEO Group 2020 Form 10-K, supra note 20 and CoreCivic 2020 Form 10-K, supra note 19.

43. David Brand, [Detainees moved out of NYC's lone private jail as federal contract expires](#), Queens Daily Eagle (April 1, 2021)

44. Jeff Ireland, [County Executive Working on Plan to Keep Mason prison open](#), The Leader (Sept. 15, 2021).

45. Id.

46. See U.S. Dep't of Homeland Security, Immigration & Customs Enforcement, ICE dedicated NonDedicated Facility List, [available here](#) (listing West Tennessee as "USMS CDF" under "TYPE DETAILED" column) [hereinafter, "ICE dedicated/NonDedicated Facility List"]. Based on publicly available information, throughout this report "USMS CDF" is interpreted as an indication that ICE has a rider on a USMS contract with a private prison company.

47. [The GEO Group Enters Into Six-Month Contract Extension With U.S. Marshals Service for Western Region Detention Facility](#), Business Wire (Sept. 21, 2021).

48. Carrie Johnson, [Biden Ended Contracts with Private Prisons. So one May Turn to House Immigrants](#), NPR (Sept. 15, 2021).



Name of Facility	Location	Private Prison Company	Capacity	USMS Expiration Date	IGA	ICE Rider
Central Valley Annex	McFarland, CA	GEO Group	700	Jan 2022	Unknown	N ICE Direct Contract ⁴⁹
Tallahatchie County Correctional Facility	Tutwiler, MS	CoreCivic	2,672	Jun 2022	Y ⁵⁰	Y ⁵¹
Aurora/ICE Processing Center	Aurora, CO	GEO Group	1,532	Oct 2022	Unknown	N ICE Direct Contract ⁵²
Robert A. Deyton Detention Facility	Lovejoy, GA	GEO Group	768	Feb 2023	N	Y ⁵³
Central Arizona Florence Correctional Complex	Florence, AZ	CoreCivic	4,128	Sept 2023	Y ⁵⁴	Y ⁵⁵
Cimarron Correctional Facility	Cushing, OK	CoreCivic	1,600	Sept 2023	Y	N

49. GEO Group and ICE have a contract for Central Valley Annex to use the facility for federal immigration detention. See, e.g., Sam Morgen, [ICE Wins Crucial Court Battle on Appeal, allowing Expansion of Mesa Verde detention center in McFarland](#), The Record (Nov. 4, 2020). Central Valley Annex also jails individuals on behalf of the USMS, though the exact contracting scheme between USMS, ICE, and GEO is not publicly available. See, e.g., Rebecca Plevin, [Biden wants to phase out private prisons. GEO Group and California city have other plans](#), The Fresno Bee (Sept. 22, 2021); GEO Group 2020 Form-10K, supra note 20 at 10 (listing “ICE/USMS” as primary customers for Central Valley Annex).

50. See U.S. Dep’t of Homeland Security, Immigration & Customs Enforcement, Over-72-hour ICE Detention Facilities, [available here](#) (listing Tallahatchie facility as “U.S. Marshals Service Inter-Governmental Agreement” under “Facility Type-Detailed” Column) [hereinafter, “ICE Over-72 hour Facilities”].

51. Id.

52. GEO Group and ICE have a contract for Aurora/ICE Processing Center (also referred to as Aurora Contract Detention Facility and Denver Contract Detention Facility) to use the facility for federal immigration detention. See, e.g., U.S. Dep’t of Homeland Security, Immigration & Customs Enforcement, Detention FY 2021 YTD, Alternatives to Detention FY 2021 YTD and Facilities FY 2021 YTD, Footnotes, [available here](#) (listing Denver Contract Facility as “CDF” under “Type Detailed”)[hereinafter, “ICE Facilities FY 2021 List”]. Aurora/ICE Processing Center also jails individuals on behalf of the USMS, though the exact contracting scheme between USMS, ICE, and GEO is not publicly available. See, e.g., GEO Group 2020 Form 10K, supra note 20 at 10 (listing “ICE/USMS” as primary customers for Aurora/ICE Processing Center).

53. See e.g., ICE Facilities FY 2021 List, supra note 66 (listing Robert A. Deyton facility as “USMS CDF” under “Type-Detailed”).

54. See, e.g., ICE Facilities FY 2021 List, supra note 66 (listing CCA, Florence Correctional Complex as “USMS IGA” under “Type Detailed”).

55. Id.



Name of Facility	Location	Private Prison Company	Capacity	USMS Expiration Date	IGA	ICE Rider
Rio Grande Processing Center	Laredo, TX	GEO Group	1,900	Oct 2023	N	Y ⁵⁶
Nevada Southern Detention Center	Pahrump, NV	CoreCivic	1,072	Sept 2025	Y ⁵⁷	Y ⁵⁸
Brooks County Detention Center	Falfurrias, TX	GEO Group	652	No end Date	Y	Y ⁵⁹
Coastal Bend Detention Center	Robstown, TX	GEO Group	1,176	No end Date	Y	Y ⁶⁰
Eagle Pass Correctional Facility	Eagle Pass, TX	GEO Group	661	No end Date	N	N
East Hidalgo Detention Center	La Villa, TX	GEO Group	1,346	No end Date	Y	Y ⁶¹
Joe Corley Processing Center	Conroe, TX	GEO Group	1,517	No end Date	N	Unknown ICE has an IGSA ⁶²

56. ICE has an Inter-Governmental Agreement (IGA) to use beds at Rio Grande Processing Center. Based on the publicly available information, the IGA is likely a rider on the USMS contract for this facility. See ICE Facilities FY 2021 List, supra note 66 (listing Rio Grande Processing Center as “USMS CDF” under “Type Detailed”); ICE dedicated/NonDedicated Facility List, supra note 60 (listing Rio Grande Processing Center as “IGSA” under “TYPE DETAILED” column).

57. See, e.g., ICE Facilities FY 2021 List, supra note 66 (listing Nevada Southern Detention Center as “USMS IGA” under “Type Detailed”).

58. Id.

59. See ICE Over-72 hour Facilities, supra note 64 (listing Brooks County Detention Center as “U.S. Marshals Service Inter-Governmental Agreement” under “Facility Type-Detailed” Column).

60. See ICE dedicated/NonDedicated Facility List, supra note 60 (listing Coastal Bend as “USMS IGA” under “TYPE DETAILED” column).

61. See, e.g., ICE Facilities FY 2021 List, supra note 66 (listing East Hidalgo as “USMS IGA” under “Type Detailed”).

62. ICE contracts with GEO Group through an IGSA to use Joe Corley Processing Center for federal immigration detention. See ICE Facilities FY 2021 List, supra note 66. Joe Corley Processing Center is also used to jail individuals on behalf of the USMS, though the exact contracting scheme between USMS, ICE, and GEO is not publicly available. See, e.g., GEO Group 2020 Form-10K, supra note 20 at 11 (listing “ICE/USMS” as primary customers for Joe Corley Processing Center).



Name of Facility	Location	Private Prison Company	Capacity	USMS Expiration Date	IGA	ICE Rider
Karnes County Detention Facility	Karnes, TX	GEO Group	679	No end Date	Y	Y ⁶³
Kinney County Detention Center	Brackettville, TX	GEO Group	384	No end Date	Y	N
Val Verde Detention Center	Del Rio, TX	GEO Group	1,407	No end Date	Y	Y ⁶⁴
Cibola Correctional Center	Milan, NM	CoreCivic	1,129	No end Date	Unknown	Unknown ICE has IGSA ⁶⁵
Eden Detention Center	Eden, TX	CoreCivic	1,422	No end Date	Y	Y ⁶⁶
Otero County Prison Facility	Chaparral, NM	Management and Training Corporation	1,418	Unknown	Y ⁶⁷	N
Willacy County Regional Detention Facility	Raymondville, TX	Management and Training Corporation	552	September 2021, extended for 6 months ⁶⁸	Y	Y ⁶⁹

63. See ICE Over-72 hour Facilities, supra note 64 (listing Karnes County Detention Center as “U.S. Marshals Service Inter-Governmental Agreement” under “Facility Type-Detailed” Column).

64. See ICE dedicated/NonDedicated Facility List, supra note 60 (listing Val Verde as “USMS IGA” under “TYPE DETAILED” column).

65. ICE contracts with CoreCivic through an IGSA to use Cibola for federal immigration detention. See ICE Facilities FY 2021 List, supra note 66 (listing Cibola facility as “IGSA” under “Type Detailed”). Cibola Correctional Center is also used to jail individuals on behalf of the USMS, though the exact contracting scheme between USMS, ICE, and CoreCivic is not publicly available. See, e.g. CoreCivic Group 2020 Form-10K, supra note 16 at 22 (listing “USMS” as primary customer for Cibola Correctional Center).

66. See ICE Facilities FY 2021 List, supra note 66 (listing Eden Detention Center as “USMS IGA” under “Type Detailed” column).

67. See U.S. Dept’t of Justice, U.S. Marshals Service, [Detention Services Intergovernmental Agreement: Otero County](#) (Dec. 11, 2007).

68. Fernando Del Valle, [Willacy County Commissioners Request Extension; Officials mulling taking over prison operations](#), Valley Morning Star (Sept. 15, 2021).

69. See ICE dedicated/NonDedicated Facility List, supra note 60 (listing Willacy as “USMS IGA” under “TYPE DETAILED” column).



Name of Facility	Location	Private Prison Company	Capacity	USMS Expiration Date	IGA	ICE Rider
Irwin County Detention Center	Ocilla, GA	LaSalle Corrections	1,201	No End Date ⁷⁰	Y ⁷¹	ICE Rider Terminated ⁷²
Limestone County Detention Center	Groesbeck, TX	LaSalle Corrections	1,006	Unknown	Y ⁷³	Y ⁷⁴
Fannin County Jail	Bonham, TX	LaSalle Corrections	439 ⁷⁵	Unknown	Unknown	Unknown
Parker County Jail	Weatherford, TX	LaSalle Corrections	449	Unknown	N	N
Rolling Plains Detention Center	Rolling Plains Detention Center Haskell, TX	LaSalle Corrections	548	Unknown	Y ⁷⁶	Y ⁷⁷
San Luis Regional Detention Center	San Luis, Arizona	LaSalle Corrections	860	Unknown	Unknown	Unknown ICE has IGSA ⁷⁸

70. John Washington & Jose Olivares, [Nothing Is Changing: Ice Sends Detainees To Irwin Prison Despite Pledges To Close It](#), The Intercept (June 3, 2021).

71. See ICE Over-72 hour Facilities, supra note 64 (listing Irwin facility as “U.S. Marshals Service Inter-Governmental Agreement” under “Facility Type-Detailed” Column)

72. Email on October 19, 2021 from ICE official to Detention Watch Network, on file with authors.

73. See ICE Facilities FY 2021 List, supra note 66 (listing Limestone as “USMS IGA” under “Type Detailed” column)

74. Id.

75. Capacity for all LaSalle facilities taken from LaSalle company website, [available here](#), except for Fannin County Jail and Rolling Plains Detention Center. Capacity for those facilities comes from Texas Commission on Jail Standards, [Abbreviated Population Report](#) (October 1, 2021).

76. See ICE Facilities FY 2021 List, supra note 66 (listing Rolling Plains as “USMS IGA” under “Type Detailed” column).

77. Id.

78. ICE contracts with LaSalle through an IGSA to use San Luis Detention Center for federal immigration detention. See ICE Facilities FY 2021 List, supra note 66 (listing San Luis facility as “IGSA” under “Type Detailed”). San Luis Detention is also used to jail individuals on behalf of the USMS, though the exact contracting scheme between USMS, ICE, and LaSalle is not publicly available. See United States Marshals Service, [USMS Detention Population](#) (April 30, 2019).



Name of Facility	Location	Private Prison Company	Capacity	USMS Expiration Date	IGA	ICE Rider
West Texas Detention Center	Sierra Blanca, TX	LaSalle Corrections	1,053	Unknown	Y ⁷⁹	Y ⁸⁰
Jefferson County Downtown Jail	Beaumont, TX	LaSalle Corrections	501	Unknown	Y ⁸¹	N

agreements to keep the facilities open.⁸² The contract for one of these facilities, the Western Regional Detention Facility in San Diego, was originally set to expire at the end of September 2021,⁸³ but the USMS was recently granted a six-month extension to keep the facility open.⁸⁴ GEO is also exploring “various alternative contract structures” to keep Western Regional open after the six-month extension expires, including a potential agreement with the city of McFarland, a city over 250 miles from San Diego where the facility is located.⁸⁵ In August 2021, the McFarland City Council voted to pursue a contract with USMS that would allow the agency to continue detaining individuals at the facility, even though it would still be operated by GEO. These

types of “pass-through” agreements are deeply concerning: By going through the city to contract with the private prison company, USMS would be violating the spirit and intent of the executive order, which clearly calls for an end to contracts with “privately operated” facilities.

Similar arrangements are under way for the Willacy County Regional Detention Center in Texas.⁸⁶ The Willacy contract between USMS and the Management and Training Corporation (MTC) was set to expire on September 30, 2021. However, the government recently granted a six-month extension for MTC to determine “the future of [this] top revenue source.”⁸⁷ Again in direct conflict

79. See ICE dedicated/NonDedicated Facility List, *supra* note 60 (listing West Texas Detention Center as “USMS IGA” under “TYPE DETAILED” column).

80. *Id.*

81. LaSalle Corrections, Locations: Jefferson County, [listing Jefferson County as its IGA partner](#).

82. GEO Group 2020 Form 10-K, *supra* note 20.

83. *Id.*

84. [The GEO Group Enters Into Six-Month Contract Extension With U.S. Marshals Service for Western Region Detention Facility](#), Business Wire (Sept. 21, 2021).

85. Sam Morgen, [McFarland pursuing agreement with U.S. Marshals to keep private prison in San Diego open](#), Bakersfield Californian (Aug. 19 2021).

86. Del Valle, *supra* note 82.

87. J Salinas, [Operation of Privately-Run Prison Willacy County Given 6-Month Extension](#), Kurv710 News Talk (Sept. 19, 2021).



with the executive order, earlier this year, the private prison company CoreCivic successfully entered into a new contract with Mahoning County, Ohio, to continue allowing USMS to detain individuals at the Northeast Ohio Correctional Center.⁸⁸

Multiple private facilities with expiring USMS contracts are also exploring plans to reopen as ICE detention centers. In particular, CoreCivic appears to be considering these contracts with ICE and local governments for the West Tennessee Detention Facility where a USMS contract expired on September 30, 2021⁸⁹ and the Leavenworth Detention Facility in Kansas, where the USMS contract expires in December 2021.⁹⁰

The legal directors of the ACLU affiliates in Kansas, Nebraska, Missouri, and Iowa along with federal defenders in the four states sent a letter to the Department of Justice and called for the closure of the Leavenworth prison, arguing against the ICE intergovernmental service agreement to keep the facility open.⁹¹ In the letter, they described the facility as “dangerously understaffed, poorly managed, and incapable of safely housing its detainee population.”⁹²

IMMIGRATION AND CUSTOMS ENFORCEMENT

As previously noted, President Biden’s executive order does not apply to private facilities operated on behalf of Immigration and Customs Enforcement (ICE), which was moved from the Department of Justice to the newly created Department of Homeland Security in 2003.⁹³ Given that at least a quarter of ICE jails are privately operated, as demonstrated in Table 2, and nearly 80% of ICE detention space is privately operated, extending the order to include DHS facilities would have a significant impact on reducing the scale of ICE detention.

In fact, Biden’s campaign promises specified “that the federal government should not use private facilities for any detention, including detention of undocumented immigrants.”⁹⁴ Additionally, DHS Secretary Alejandro Mayorkas made clear that he would be focused on the use of detention and his belief that it is overused.⁹⁵ Despite these statements, the administration is headed in exactly the opposite direction by increasing the use of ICE detention and expanding ICE detention capacity.

88. [Deal lets federal inmates stay at Youngstown private prison](#), 21 WFMJ (May 27, 2021).

89. Ireland, supra note 58.

90. Johnson, supra note 62.

91. [Letter from ACLU of Kansas, ACLU of Iowa, et. al to White House Domestic Policy Counsel & Leavenworth County Commission](#) (Sept. 2, 2021).

92. Id.

93. U.S. Dep’t of Homeland Security, Immigration & Customs Enforcement, [The History of ICE](#).

94. The Biden Plan for Strengthening America’s Commitment to Justice, supra note 1.

95. See, e.g., [Secretary Mayorkas’ comments at UCLA on April 20, 2021](#).



The number of immigrants in ICE custody – at a 20 year low when the administration took office – more than doubled by July to 27,000.⁹⁶ Though far from the peak of 55,000 during the pre-pandemic Trump administration, this trend is deeply troubling at a time of growing consensus among advocates that the use of immigration detention should be phased out entirely.

In May 2021, the Biden administration ended two detention contracts⁹⁷ – one with a private prison in Irwin County, Georgia with a history of medical abuse and neglect and where multiple women have raised allegations of gynecological procedures being performed without informed consent⁹⁸ and another with a troubled jail in Bristol County, Massachusetts.⁹⁹ While the Irwin detention center no longer detains people in ICE custody, the prison continues to detain people for the USMS¹⁰⁰ under a contract that remains in place with no end date and therefore, not covered by the February executive order.¹⁰¹

Given that at least a quarter of ICE jails are privately operated, as demonstrated in Table 3, and nearly 80% of ICE detention space is privately operated, extending the order to include DHS facilities would have a significant impact on reducing the scale of ICE detention.

96. Maggie Gile, [Number of Detainees in ICE Custody Has Doubled In 5 Months, Higher than July 2020 Total](#), Newsweek (Aug. 5, 2021).

97. Ben Fox & Kate Brumback, [US ends use of 2 immigration jails accused of mistreatment](#), AP News (May 20, 2021).

98. Azadeh Shahshahani & Priyanka Bhatt, [ICE Shut Down One Gruesome Detention Center- Then Transferred Immigrants to Another](#), The Progressive (June 18, 2021).

99. ICE terminated its contract with the Bristol County Jail following reports that guards used pepper balls, a stun grenade and canines against people in detention and after Massachusetts Attorney General Maura Healey called for the immigration contract to be terminated. See Maria Sacchetti, [ICE to stop detaining immigrants at two county jails under federal investigation](#), Washington Post (May 20, 2021).

100. Jeremy Redmon, [All ICE detainees moved out of South Georgia Jail](#), Atlanta Journal Constitution (Sept. 4, 2021).

101. Washington & Olivares, supra note 84.



**TABLE 2:
PRIVATELY OPERATED ICE JAILS¹⁰²**

Name of Facility	Location	Private Prison Company	Total Facility Capacity ¹⁰³
Adams County Det Center	Natchez, MS	Core Civic	2,450
Adelanto Ice Processing Center (+ Desert View Annex)	Adelanto, CA	GEO Group	1,940
Bluebonnet Detention Facility	Anson, TX	MTC	1,000
Broward Transitional Center	Pompano Beach, FL	GEO Group	700
Cca, Florence Correctional Center	Florence, AZ	CoreCivic	5,003
Cibola County Correctional Center	Milan, NM	CoreCivic	1,204
Coastal Bend Detention Facility	Robstown, TX	GEO Group	1,176
Delaware Co Jail (George W. Hill)	Thornton, PA	GEO Group	1,883
Denver Contract Detention Facility	Aurora, CO	GEO	1,540
East Hidalgo Detention Center	La Villa, TX	GEO Group	1,346
Eden Detention Center	Eden, TX	CoreCivic	1,438

102 The information in Table 2 is based on information made publicly available by ICE, CoreCivic, The GEO Group, Immigration Centers of America, LaSalle Corrections, and Management and Training Corporation. The following sources were used: [source A](#), [source B](#), [source C](#), [source D](#), [source E](#), [source E](#); Spreadsheet of information about detention facilities from Immigration and Customs (ICE) Enforcement and Removal Operations (ERO) division, [available here](#).

103 Many of the detention centers in Table 2 detain people for ICE as well as other state or federal agencies, including for USMS and local criminal custody. Total Facility Capacity refers to the entire facility. It is noteworthy that usage is often fluid among various agencies.



Name of Facility	Location	Private Prison Company	Total Facility Capacity
El Valle Detention Facility	Raymondville, TX	MTC	1,000
Elizabeth Contract Detention Facility	Elizabeth, NJ	CoreCivic	304?
Eloy Federal Contract Facility	Eloy, AZ	CoreCivic	1,550
Folkston Main Ipc + Folkston Annex	Folkston, GA	GEO Group	1,118
Golden State Annex (Of Mesa Verde)	McFarland, CA	GEO Group	
Houston Contract Detention Facility	Houston, TX	CoreCivic	1,052
Iah Secure Adult Detention Facility (Polk)	Livingston, TX	MTC	
Immigration Centers Of America Farmville	Farmville, VA	ICA	732
Imperial Regional Detention Facility	Calexico, CA	MTC	782
Jackson Parish Correctional Center	Jonesboro, LA	LaSalle	1,007
Joe Corley Processing Ctr	Conroe, TX	CCA	1,517
Karnes County Correctional Center	Karnes City, TX	GEO	679
Karnes County Residential Center (Family)	Karnes City, TX	GEO	830
La Palma Correctional Center (& La Palma Correction Center - Apso)	Eloy, AZ	CoreCivic	3,240
Laredo Processing Center	Laredo, TX	CoreCivic	404
Lasalle Ice Processing Center (Jena)	Jena, LA	GEO Group	1,160



Name of Facility	Location	Private Prison Company	Total Facility Capacity
Limestone County Detention Center	Groesbeck, TX	LaSalle	1,006
Mesa Verde Ice Processing Center (+ Central Valley Annex)	Bakersfield, CA	GEO Group	1,100
Montgomery Ice Processing Center	Conroe, TX	GEO Group	1,000
Nevada Southern Detention Center	Pahrump, NV	CoreCivic	1,064
Otay Mesa Detention Center (San Diego Cdf)	San Diego, CA	CoreCivic	1,572
Otero County Processing Center	Chaparral, NM	MTC	1,089
Pine Prairie Ice Processing Center	Pine Prairie, LA	GEO Group	1,094
Prairieland Detention Facility	Alvarado, TX	LaSalle	782
Richwood Correctional Center	Richwood, LA	LaSalle	1,129
Rio Grande Detention Center	Laredo, TX	GEO Group	1,900
River Correctional Center	Ferriday, LA	LaSalle	602
Robert A. Deyton Detention Facility	Lovejoy, GA	GEO Group	768
Rolling Plains Detention Center	Haskell, TX	LaSalle	525
San Luis Regional Detention Center	San Luis, AZ	LaSalle	860
South Louisiana Detention Center	Basile, LA	GEO Group	1,041



Name of Facility	Location	Private Prison Company	Total Facility Capacity
South Texas Family Residential Center	Dilley, TX	CoreCivic	2,400
South Texas Ice Processing Center	Pearsall, TX	GEO Group	1,904
Stewart Detention Center	Lumpkin, GA	CoreCivic	1,966
T. Don Hutto Detention Center	Taylor, TX	CoreCivic	512
Tacoma Ice Processing Center (Northwest Det Ctr)	Tacoma, WA	GEO	1,575
Torrance County Detention Facility	Estancia, NM	CoreCivic	910
Val Verde Correctional Facility	De Rio, TX	Geo	1,407
Webb County Detention Center (Cca)	Laredo, TX	CoreCivic	532
West Texas Detention Facility	Sierra Blanca, TX	LaSalle	1,053
Western Tennessee Detention Facility	Mason, TN	CCA	600
Willacy Co Regional Detention Facility	Raymondville, TX	MTC	552
Winn Correctional Center	Winnfield, LA	LaSalle	1,900



Unfortunately, the administration has failed to close any more detention centers since these announcements. Instead, the administration has increased the number of people in detention and has moved to expand detention capacity. As noted earlier, reports have emerged that local governments and private prison corporations are in talks to convert DOJ-contracted private prisons to ICE detention centers. These efforts are under way at facilities including the announced reopening of a former BOP prison in Moshannon Valley, Pennsylvania as an ICE facility,¹⁰⁴ the West Tennessee Detention Facility,¹⁰⁵ and the Leavenworth Detention Facility in Kansas,¹⁰⁶ where local governments are negotiating intergovernmental service agreements (IGSAs) to convert the

facilities into ICE detention centers. ICE has made no public comments about these negotiations, leading to concerns that it may be negotiating in other locations with little to no transparency.

Furthermore, ICE is reportedly in the process of negotiating contract extensions with private detention centers, including at the GEO Group's Broward Transitional Center in Florida¹⁰⁷ and the Management and Training Center's Otero County Processing Center in New Mexico. According to documents uncovered by the ACLU of New Mexico, ICE's temporary agreement with MTC is set to expire at the end of October, but the agency is quietly negotiating a long-term extension, according to bank documents from the facilities financiers.¹⁰⁸

A TROUBLING TREND

In light of the conversion of Moshannon Valley and the negotiations underway to keep USMS facilities open, advocates see a troubling trend of the administration's increasing reliance on immigration detention and turn on its own promises to reduce private incarceration overall.

Further in line with this trend, the Biden administration has also continued litigation started by the Trump administration against California's AB32 law banning private detention in California.¹⁰⁹ These efforts seem to fit into the administration's focus on

104. GEO Group 2020 Form 10-K, *supra* note 20.

105. Ireland, *supra* note 58.

106. Johnson, *supra* note 62.

107. Monique O. Madan & Alex Roarty, [Will Biden Officials Renew ICE contract with GEO Group? It's not off the table](#), Miami Herald (April 30, 2021).

108. ACLU New Mexico, [A Privately-Run ICE Detention Center Got A Pay Increase. Guaranteed Minimum During Pandemic Detention Declines](#) (Oct. 14, 2021).

109. See, e.g., Bob Egelko, [U.S. appeals court strikes down California ban on privately owned prisons housing immigrants](#) (Oct. 5, 2021).



immigration detention as a means of deterrence as revealed by DHS officials.¹¹⁰

The message from the Biden administration to migrants has been clear – “do not come” or face detention and deportation. For example, despite calls from immigration advocates and public health experts to end the border closure under Title 42, the President has continued to defend and use the policy to expel asylum seekers and others seeking safety and security in

the United States. While it has reissued the new memo to announce its intent to terminate Trump’s anti-immigrant Migration Protection Protocols (MPP) or “Remain in Mexico” policy, the administration has much more work to do to end MPP for good.¹¹¹ As with prior administrations, the Biden Administration uses detention as both deterrence and political maneuvering to avoid Republican criticism about perceived pro-immigrant policies.¹¹²

CONCLUSION

Detention puts people’s lives and well-being at great risk, exacerbates humanitarian crises, violates principles of human rights, and is cruel, and unnecessary. Taken together, the current deterrence policies -- 1) closing the border to asylum seekers under the pretext of public health, 2) continuing the use of metering policies like MPP which force people to endure unsafe border camps, and 3) detaining people once they are allowed in -- work together to create an artificial crisis and self-perpetuating border regime that is used to justify continued use of those same policies.

With the historically low number of people in detention in January 2021, the Biden administration missed an opportunity to begin ending the unjust and unnecessary system of immigration detention. Instead, the administration has increased the number of people in detention, doubled down on anti-immigrant Trump-era deterrence policies, and expanded detention capacity in direct conflict with its own promises to end for-profit incarceration and bring fairness to the immigration system.

But it’s not too late to change course. States across the country are leading the charge by banning for-profit

110. Hamed Aleaziz, [Biden’s Approach to Immigration Is Causing a Huge Internal Rift And Leading To A lot of Confusion](#), BuzzFeed News (Sept. 23, 2021).

111. See Department of Homeland Security, [Explanation of the Decision to Terminate the Migrant Protection Protocols](#) (Oct. 29, 2021).

112. Fabiola Cineas, [Why America keeps turning its back on Haitian migrants](#), Vox (Sept. 23, 2021).



incarceration, including immigration detention.¹¹³ The Biden administration should join them and begin phasing out the use of detention in the immigration system by ensuring that the executive

order on private prisons is followed in both letter and spirit and by extending the order to include immigration detention.

More specifically, we recommend that the Biden administration:

1. Begin to fully phase out the use of immigration detention by releasing people from detention, cancelling ICE detention contracts, declining to renew contracts, and halting all expansion efforts.
2. Fully implement the executive order phasing out DOJ's privately operated prisons. Allow existing contracts to expire and ensure that they are not renegotiated as intergovernmental agreements or with ICE as immigration detention facilities.
3. Extend the executive order to ICE contracts with private prison corporations and local governments.
4. Immediately cease intervention in litigation against state laws banning the use of private prisons in California and other states.
5. Reduce funding for ICE detention by 50 percent in the President's proposed budget for Fiscal Year 2023.
6. Restore access to asylum at the border without the use of detention by immediately fully repealing MPP and ending Title 42.

113. Private Detention Facility Moratorium Act, H.B. 2040, 2019 Leg., Reg. Sess. (Ill. 2019), [available here](#) (extending Illinois ban on private prisons to include prohibition on privately-run immigration detention); H.B. 1090, 2021 Wash. Sess. Laws, [available here](#) (banning private for-profit prisons and detention centers in Washington state from renewing their contracts); Detention facilities: private, for-profit administrative service, A.B. 32, 2019 Leg., Reg. Sess. (Cal. 2019), [available here](#) (prohibiting new or renewed contracts with private, for profit prisons in California).





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