

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

September 28, 2016

The Honorable Sally Q. Yates
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Thomas R. Kane, Ph.D.
Acting Director
Federal Bureau of Prisons
320 First Street NW
Washington, D.C. 20534

Dear Deputy Attorney General Yates and Acting Director Kane:

On August 18, 2016, Director Yates announced the Bureau of Prisons (BOP) must phase out the use of privately-operated prisons by either declining to renew contracts with private companies for prison operations or significantly reducing the scope of the contracts.

In light of the fact that BOP facilities are currently operating at 116 percent of their intended capacity, reducing the use of privately-operate prisons will place even more stress on the prison system. The Justice Department's plan will undermine the effectiveness of the system's rehabilitation programs.

For example, in order to comply with DOJ's decision, BOP reduced its request for bids for 10,800 beds in six states for five years for Criminal Alien Requirement (CAR) inmates. The Bureau's new request is for only 3,600 beds, in Texas, for two years. According to a report by the Department's Office of Inspector General (OIG) in August 2016, contract prisons in Texas alone currently house more than 10,200 inmates.¹ I understand these inmates are primarily CAR inmates and that current contracts with these prisons are all expiring. This significant reduction in contracts for new beds raises questions as to how BOP will take in and account for the more than 6,600 additional CAR inmates covered by current contracts. Housing CAR inmates—who will be deported upon the completion of their sentence—in BOP facilities with inmates who will

¹ Office of Inspector General U.S. Department of Justice, *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*, Evaluation and Inspections Division 16-06, Aug. 2016, available at <https://www.oig.justice.gov/reports/2016/e1606.pdf#page=1>.

return to their communities upon release will dilute the work, rehabilitation, and reentry programs that assist BOP inmates.

The decision to phase out privately-operated prisons was made based in part on the Inspector General's report,² even though the report made no such recommendation.³ The report did, however, find "contract prisons incurred more safety and security incidents per capita than comparable BOP institutions"⁴ The OIG was unable to evaluate all of the factors that contributed to that finding, including the effect of inmate demographics.⁵ Further the OIG stated that without "conducting an in-depth study into the influence of such demographic factors on prison incidents, it would not be possible to determine their impact."⁶

To help the Committee understand the basis for the Justice Department's decision, please provide the following information regarding the DOJ's directive to the BOP and its implementation:

1. What are the reasons for the decline in the criminal alien population?
2. To what extent does prosecutorial discretion play a role in this decline?
3. What independent analysis led to the decision to phase out and end the use of privately operated prisons?
4. Will DOJ and BOP conduct a study of demographic factors, as recommended by the OIG?
5. What steps has BOP taken to improve contract monitoring and evaluate the differences in the data among prisons, as recommended by the OIG?
6. As the BOP reduces contracts for privately-operated prisons through CAR16, has the number of inmates and the need for space decreased by a similar level of 7,200 beds?
7. What population of CAR inmates does BOP project for the next year and the next five years?
8. Do BOP prison facilities have sufficient capacity to house CAR inmates who will no longer be housed at privately-operated facilities as CAR contracts are reduced?
9. Does the BOP plan to house CAR inmates in the same facilities as inmates who will be remaining in the U.S.?

² Sally Yates, *Reducing the Use of our Private Prisons Memorandum for the Acting Director Federal Bureau of Prisons*, August, 18, 2016, <https://www.justice.gov/opa/file/886311/download>

³ *Supra* note 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

10. Does this change create new safety and security concerns?
11. Does this change increase costs for the BOP? Please provide data sufficient to show changes in costs.
12. To what extent is Immigration and Customs Enforcement (ICE) operating its Institution Hearing Program in the contract facilities that will be phased out?
13. Please name each facility where ICE was operating the Program.
14. How will ICE access the criminal detained population for the purposes of removal based on this new policy announcement?
15. If BOP reduces the contracts for CAR inmates, does that choice send the signal that law enforcement for criminal aliens is not a priority for the federal government?
16. According information provided to the Committee by BOP, the contract prisons were generally cheaper than BOP facilities. Does this change in policy increase costs for the BOP?
17. The OIG report stated that “many of the inmates incarcerated in these contract prisons are Mexican nationals with convictions for immigration offenses who have 90 months or less remaining to serve on their sentences.”⁷ Please identify the crimes the criminal aliens being held at the contract facilities committed.

Please also provide the following documents to the Committee:

1. Documents sufficient show data for the past five years on the criminal alien population in BOP and contract facilities.
2. Documents sufficient to show data on border prosecutions to include prosecutions of smuggling, drug cases, illegal entry, and illegal reentry cases for the past five years.
3. Documents sufficient to show any independent analysis conducted by DOJ that led to the decision to phase out and end the use of privately operated prisons

Please provide a response to this information and a briefing as soon as possible, but no later than 5:00 p.m. on October 12 2016.

The Committee on Oversight and Government Reform is the principal oversight Committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X.

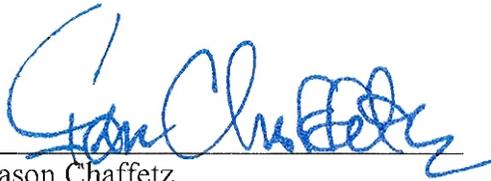
⁷ *Id.*

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When producing documents to the Committee please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committees' request.

If you have any questions about this request, please contact Dimple Shah at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman



Will Hurd
Member



Earl L. "Buddy" Carter
Member

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.