

United States Senate
WASHINGTON, DC 20510

October 22, 2018

Mr. Ronald D. Vitiello
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536

Dear Acting Director Vitiello:

We write to express serious concerns and request information regarding Immigration and Customs Enforcement's (ICE) failure to comply with reporting requirements from the fiscal year (FY) 2018 Department of Homeland Security (DHS) appropriations bill, and with ICE's pattern of overspending and use of questionable contracting mechanisms to expand immigration detention capacity in FY 2018.

Report Language accompanying the FY 2018 DHS Appropriations Act, signed into law on March 23, 2018, required¹ ICE to make public a full list of all facilities in use for the detention of adults and children. For months, ICE failed to make any list available to the public. And while ICE finally released a list of detention centers in early September 2018, the list appears to omit several significant, recently-opened facilities, including La Palma Correctional Center, El Valle Detention Facility, and five Federal Bureau of Prisons (BOP) facilities, all secured by ICE just this summer.

Not only were these facilities omitted from the September report, but they appear to have been secured through questionable contracting practices, and without meaningful justification or transparency. ICE has been criticized for its contracting practices by DHS's Office of Inspector General (OIG) as recently as February 2018. Such practices result in facilities that have no meaningful oversight and strain our taxpayers. We are also concerned that ICE is securing new facilities near the end of the fiscal year at the same time as the agency continues to spend beyond its appropriated dollars and has repeatedly sought re-programming requests and transfers of appropriations.

La Palma (Eloy, Arizona): According to a news report, on July 24, 2018, ICE entered into a new agreement to utilize the 3,060 bed La Palma Correctional Center in Eloy, Arizona.² Instead of contracting directly with CoreCivic, the private corrections corporation that operates La Palma, it appears ICE modified an existing Intergovernmental Service Agreement (IGSA) with the City of

¹ See Division F, Joint Explanatory Statement <https://www.congress.gov/crec/2018/03/22/CREC-2018-03-22-bk2.pdf>; Consolidated Appropriations Act of 2018, Public Law No. 115-141 (incorporating and assigning the same weight to language in the House Report 115-239) <https://www.congress.gov/115/crpt/hrpt239/CRPT-115hrpt239.pdf>.

² Globe Newswire, *CoreCivic Enters Into New Agreement With Federal Government to Utilize the La Palma Correctional Center*, July 24, 2018, <https://globenewswire.com/news-release/2018/07/24/1541538/0/en/CoreCivic-Enters-Into-New-Agreement-With-Federal-Government-to-Utilize-the-La-Palma-Correctional-Center.html>. The facility is expected to hold 1,000 adult detainees and may house additional populations if space is available.

Eloy and used Eloy as a “middleman” between ICE and CoreCivic to operate La Palma. This appears to be the same technique ICE used in 2014 to establish the Dilley Family Residential Center – a practice that the OIG deemed both improper and unnecessary.³ According to the OIG report, by entering into a contract with a “middleman”, ICE has no assurance that it is executing detention center contracts in the best interest of the Federal government, taxpayers, or individuals in detention. Because of ICE’s agreement and legal relationship with the City of Eloy under the IGSA, CoreCivic’s performance is effectively insulated from government scrutiny. We are concerned about ICE’s continued practice of entering into contracts for government facilities in violation of established rules and guidelines, and ICE’s detention of individuals in centers with little to no oversight as a result of the suspect contracting mechanisms used.

El Valle (Raymondville, Texas): ICE also entered into a contract effective July 18, 2018 with the Management and Training Corporation (MTC) to re-open 1,000 beds at the El Valle Detention Facility, formerly known as the Willacy County Correctional Center, in Raymondville, Texas.⁴ ICE previously contracted with MTC from 2006 to 2011, but that contract was cancelled after reports of substandard conditions and sexual abuse of detainees.⁵ These reports prompted DHS to initiate thirteen criminal investigations into staff misconduct in the Willacy Detention Center,⁶ which resulted in at least one guilty plea to sexual abuse of a female detainee by a contract security officer.⁷ After ICE terminated its contract with the Willacy Detention Center, the BOP used the facility from 2011 to 2015 for immigrants in its custody. Conditions did not improve over these years, and precipitated a riot that nearly destroyed the facility due to mounting complaints about poor medical care, overuse of solitary confinement, and substandard conditions.⁸ The BOP declined to renew the contract with MTC for the Willacy Detention Center shortly after the riot and it remained closed since early 2015 until it re-opened this summer, under a new name.

Despite being re-named the El Valle Detention Facility, there is no indication of significant changes or precautions taken to remedy the facility’s previous deficiencies and notorious record. In the FY 2018 Appropriations Act, Congress specifically included a provision to prohibit ICE from contracting detention services if the two most recent inspections of a contracted facility are

³ DHS Office of Inspector General, *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services*, February 21, 2018,

<https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf> (“In September 2014, ICE improperly modified an existing IGSA with the City of Eloy (Eloy) in Arizona to establish the 2,400-bed South Texas Family Residential Center in Dilley, Texas, more than 900 miles away. Although ICE could have contracted directly with the private company that operates the South Texas Family Residential Center, CCA, it instead created an unnecessary “middleman” by modifying its existing IGSA with Eloy.”).

⁴ Management Training Corporation, *MTC Signs Contract with ICE to Operate Detention Facility in Raymondville*, July 18, 2018, <https://www.mtcetrains.com/wp-content/uploads/2018/07/MTC-TO-OPERATE-FACILITY-IN-RAYMONDVILLE.pdf>.

⁵ Jeremy Raff, *ICE Is a Godsend for One Small Town in Texas*, The Atlantic, July 11, 2018, <https://www.theatlantic.com/politics/archive/2018/07/ice-prison-trump-immigration-crackdown/564539/>.

⁶ Sarah Childress, *Why Immigrant Detainees Still Aren’t Safe from Abuse*, November 20, 2013, <https://www.pbs.org/wgbh/frontline/article/why-immigrant-detainees-still-arent-safe-from-abuse/>.

⁷ Department of Justice, *Former Willacy Detention Center Contract Security Officer Pleads Guilty to Sexual Abuse of a Female Detainee in Texas*, August 4, 2011, <https://www.justice.gov/opa/pr/former-willacy-detention-center-contract-security-officer-pleads-guilty-sexual-abuse-female>.

⁸ Seth Freed Wessler, *The True Story of a Texas Prison Riot*, The Nation, June 23, 2015, <https://www.thenation.com/article/the-true-story-of-a-texas-prison-riot/>.

less than adequate.⁹ This provision is intended to prevent the continued use of facilities that have systematically failed to provide adequate conditions for its detainees. Without any information from ICE that changes have been made to the facility, we fail to see how ICE's contract with MTC to operate the El Valle Detention Facility, given its previously discontinued contracts due to allegations of abuse and poor conditions, does not run afoul to the provision in the Appropriations Act.

Bureau of Prisons facilities (Texas, Arizona, Washington, Oregon, and California): In June, ICE signed interagency agreements with five BOP facilities¹⁰:

- La Tuna Federal Correctional Institution, Vinton, TX, contract effective June 11, 2018, expected to hold 220 people in ICE custody¹¹
- Federal Correctional Institution Phoenix, AZ, contract effective June 6, 2018, expected to hold 102 people in ICE custody¹²
- Federal Detention Center SeaTac, WA, contract effective June 6, 2018, expected to hold 220 people in ICE custody¹³
- Federal Correctional Institution Sheridan, OR, contract effective June 6, 2018, expected to hold 130 people in ICE custody¹⁴
- Federal Correctional Complex Victorville, CA, contract effective June 11, 2018, expected to hold 1,000 people in ICE custody¹⁵

BOP facilities are not appropriate for immigrants who are still in proceedings, and its facilities have failed to provide immigrants with adequate access to counsel, health care, or communication with family members.¹⁶ Because of the rushed nature of this expansion, BOP facilities were ill-prepared for the arriving immigrants. The consequences of this included sickness, inadequate translation services, and basic failures to provide for hygienic needs.¹⁷ The

⁹ See Consolidated Appropriations Act of 2018, Division F, Title II, Sec. 211, Public Law No. 115-141, March 23, 2018 <https://www.congress.gov/115/bills/hr1625/BILLS-115hr1625enr.pdf>.

¹⁰ Max Greenwood, ICE to transfer 1,600 detainees to federal prison, The Hill, June 7, 2018, <http://thehill.com/policy/national-security/391268-ice-to-transfer-1600-detainees-to-federal-prisons>.

¹¹ Contract available at <https://www.documentcloud.org/documents/4829358-La-Tuna-Federal-Correctional-Institution-BOP-ICE.html>.

¹² Contract available at <https://www.documentcloud.org/documents/4829361-Phoenix-AZ-Federal-Correctional-Institution-BOP.html>.

¹³ Contract available at <https://www.documentcloud.org/documents/4829364-SeaTac-Federal-Detention-Center-WA-BOP-ICE.html>.

¹⁴ Contract available at <https://www.documentcloud.org/documents/4829370-Sheridan-OR-Federal-Correctional-Institution-BOP.html>.

¹⁵ Contract available at <https://www.documentcloud.org/documents/4829372-Victorville-CA-Federal-Correctional-Complex-BOP.html>.

¹⁶ American Civil Liberties Union Southern California, *Judge Orders that Detainees Can Meet with Attorneys in Person or by Phone*, June 21, 2018, <https://www.aclusocal.org/en/press-releases/court-finds-immigration-detainees-held-incommunicado-victorville-prison-must-be>.

¹⁷ Lauren Weber, *1,000 Detainees Just Got Sent to a Prison That Staffers Consider Unsafe*, Huffington Post, June 23, 2018, https://www.huffingtonpost.com/entry/immigration-detainees-victorville-prison_us_5b2d8b44e4b0040e2742f1c9.

sudden increase in population has exacerbated the use of staff augmentation, in which BOP guard positions are filled with civilian employees such as nurses, teachers, or cooks.¹⁸

This detention expansion in the final months of the fiscal year is deeply concerning and runs contrary to the bipartisan report language accompanying the FY 2017 DHS Appropriations Act that expressed Congress's frustration with the "lack of fiscal discipline and cavalier management of funding for detention operations."¹⁹ Congress thereby reinforced that ICE must live within its means and budget more effectively to stop the perception that ICE has indefinite appropriations.

The appropriations process is rooted in the Constitution and must be taken seriously by all agencies, yet there appears to be a pattern of mismanagement of funds by ICE. This fiscal mismanagement is even more problematic in light of the fact that ICE has received nearly a \$1 billion dollar budget increase in the past two years—primarily for detention and deportation operations. Compounding the problem, ICE continues to request approval to augment its budget through fund transfers from other Departmental components.

While there may be significant disagreements about this Administration's immigration policies, there should be unified agreement about responsible stewardship of taxpayer funds. In light of the facts and reports above, we ask ICE to provide a detailed and timely response to the following questions by November 15, 2018:

Questions about the La Palma Facility

1. How and why did ICE decide to use the La Palma facility for immigrant detention purposes?
 - a. Which ICE officials made the final determination to use the La Palma facility?
 - b. What alternatives were considered?
2. What are the basic terms and conditions of the modified IGSA for the La Palma facility?
 - a. How long does it last and how much will ICE pay for use of the facility?
 - b. What are the terms of the modification in the Eloy IGSA for the La Palma facility?
3. Please provide a timeline of communication between ICE and CoreCivic, and ICE and the City of Eloy regarding the use of the La Palma facility.
4. Did ICE consider contracting directly with CoreCivic for the La Palma facility? If so, why did ICE ultimately decide to contract with the City of Eloy?
5. Why did ICE modify the Eloy IGSA instead of writing a new contract/IGSA with the City of Eloy for the La Palma facility?
 - a. Did the City of Eloy receive a payment from ICE, as a result of this contract? If so, what was the amount of the payment?

¹⁸ Kevin Johnson, *Exclusive: As federal prisons run low on guards, nurses and cooks are filling in*, USA Today, February 13, 2018, <https://www.usatoday.com/story/news/politics/2018/02/13/ill-equipped-and-inexperienced-hundreds-civilian-staffers-assigned-guard-duties-federal-prison-secur/316616002/>.

¹⁹ See House Report, Division F (Homeland Security), Consolidated Appropriations Act of 2017, 131 Stat. 135, Public Law No. 115-31, May 4, 2017, <http://docs.house.gov/bills- thisweek/20170501/DIVISION%20F-%20HOMELAND%20SOM%20OCR%20FY17.pdf>.

- b. What services were provided by the City of Eloy in order to receive such payment?
6. Is there a negotiated rate of fee per bed in the IGSA between ICE and City of Eloy?
7. Is there a negotiated rate of fee per bed in the contract between the City of Eloy and CoreCivic?
8. Does the City of Eloy use any portion of the La Palma facility for its purpose or conduct business at the facility?
9. What steps did ICE take to address concerns raised in the February 21, 2018 OIG Report?

Questions about the El Valle Detention Facility

1. How and why did ICE decide to contract with MTC for the El Valle facility for immigrant detention purposes?
 - a. Which ICE officials made the final determination to use the El Valle facility?
 - b. What alternatives were considered?
2. Did ICE consider the past performance failures of MTC at this facility when the agency signed the contract? If so, what were those considerations?
3. Did ICE officials consult with officials in the DHS Office of General Counsel or other DHS officials to determine if the provisions of the FY 2018 Appropriations Act barring contracts with "repeat offender" facilities applied to the new contract with MTC for the El Valle facility? If so, what advice did these officials provide?
4. What are the basic terms and conditions of this contract? How long does it last and how much will ICE pay for use of the facility?
5. How was this contract negotiated by ICE?
6. Did ICE review any inspection reports of MTC for the El Valle facility prior to signing the contract?
 - a. Please provide a list of the reports reviewed.
7. What contractual provisions protect detainees from the problems previously identified at this facility?
8. What remediation of past performance failures were required as a condition of the new contract for this facility?

Questions about the BOP Interagency Agreements

1. Why did ICE decide to enter into interagency agreements with the BOP for the La Tuna, Phoenix, SeaTac, Sheridan, and Victorville facilities?
 - a. Which ICE officials made the final determination to enter into each of the five agreements with the BOP?
 - b. What alternatives were considered?
2. Has ICE signed any additional interagency agreements to hold detainees at BOP facilities?
3. If so, please provide a complete list of all such agreements, when they were signed, and which the BPO facilities are covered by these agreements.
4. Please provide a timeline of communication between ICE and BOP for the use of each of the five facilities: La Tuna, Phoenix, SeaTac, Sheridan, and Victorville BOP facilities.
5. What legal authority allows ICE to house civil immigration detainees in BOP facilities?

6. What steps did ICE take to ensure that these BOP facilities provide all appropriate care and meet all legal requirements for detained immigrants, including health care, communications with family members, access to legal counsel, and other needs?
7. Do the interagency agreements ban the practice of “augmentation”? If not, does ICE have a means to track whether these BOP facilities are filling guard positions with non-federal employees? If not, is ICE tracking how frequently this occurs?
8. How many individuals are currently in ICE custody in the La Tuna, Phoenix, SeaTac, Sheridan, and Victorville facilities? Does ICE have plans to continue using these facilities in FY 2019?

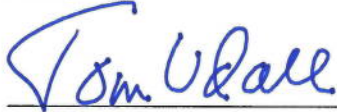
Appropriations Related Questions

1. Report language accompanying the FY 2018 DHS Appropriations Act, signed into law on March 23, 2018,²⁰ included report language requiring ICE to make public a full list of all facilities in use for the detention of adults and children. Has ICE failed to comply with this requirement monthly? Please indicate where on ICE’s website this information is available.
2. What steps will ICE take to ensure the full list of ICE facilities is publicly posted monthly?
3. In FY 2018, has ICE signed any additional contracts or interagency agreements for immigrant detention besides those with the La Palma and El Valle facilities, and the five BOP facilities?
 - a. If so, please provide a full list of these contracts/interagency agreements, including all terms and conditions, and when they were signed.
 - b. Why did ICE sign contracts/interagency agreements for the La Palma, El Valle, and five BOP facilities, bringing over 3,000 new detention beds online, near the end of the fiscal year?
 - c. What was the net result in detention beds and average daily population, after ICE signed the IGSA’s and interagency agreements for the La Palma and El Valle facilities, and the five BOP locations?
4. Does ICE maintain a target number for average daily bed capacity? If so, how was that target number determined?
5. What, if any, actions does ICE take if it determines that average daily population is below the agency’s target number? Does ICE take additional enforcement actions to detain more immigrants if it determines that its average daily population is below the target number?

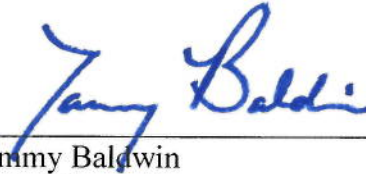
We remain deeply concerned about your failure to manage ICE’s spending—it is Congress that sets your agency’s budget and you must learn to live within it. Thank you for your prompt attention to these questions. We look forward to your answers and the documents requested by November 15, 2018.

²⁰ See Division F, Joint Explanatory Statement <https://www.congress.gov/crec/2018/03/22/CREC-2018-03-22-blk2.pdf>; Consolidated Appropriations Act of 2018, Public Law No. 115-141 (incorporating and assigning the same weight to language in the House Report 115-239 <https://www.congress.gov/115/crpt/hrpt239/CRPT-115hrpt239.pdf>).

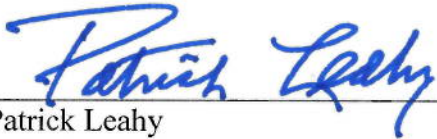
Sincerely,



Tom Udall
United States Senator



Tammy Baldwin
United States Senator



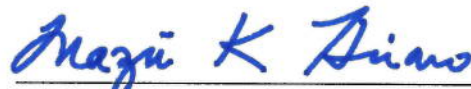
Patrick Leahy
United States Senator



Patty Murray
United States Senator



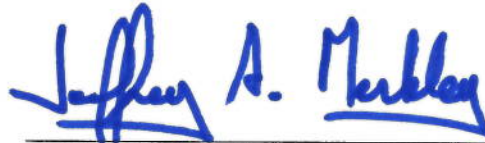
Richard Blumenthal
United States Senator



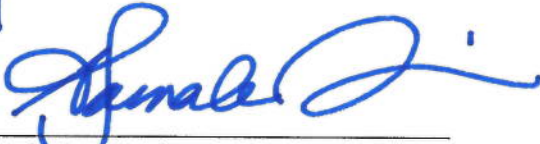
Mazie K. Hirono
United States Senator



Elizabeth Warren
United States Senator



Jeffrey A. Merkley
United States Senator



Kamala D. Harris
United States Senator



Ron Wyden
United States Senator



Kirsten Gillibrand
United States Senator



Cory A. Booker
United States Senator



Bernard Sanders
United States Senator



Chris Van Hollen
United States Senator

Cc: The Honorable Kirstjen Nielsen
Secretary

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Mr. John V. Kelly
Senior Official Performing the Duties of the Inspector General
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