

United States Senate

April 3, 2016

The Honorable Jeff Sessions
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Attorney General Sessions,

We write to seek clarity about your recent decision to rescind former Attorney General Sally Yates's order to the federal Bureau of Prisons to reduce the federal government's use and reliance on private prisons. Last year, then-Deputy Attorney General Yates issued a memorandum detailing how the deficiencies and inefficiencies of private prisons are incompatible with the goals of "reducing recidivism and improving public safety."¹

While the United States is home to less than 5 percent of the world's population, we incarcerate close to 25 percent of the world's prison population.² In recent years, the federal prison population has greatly decreased due to "several significant efforts to recalibrate federal sentencing policy, including the retroactive application of revised drug sentencing guidelines, new charging policies for low-level, non-violent drug offenders, and the [Obama] Administration's ongoing clemency initiative."³ By decreasing the federal government's reliance on private prisons, our Nation would have taken a step forward in reducing the size of the private prison population "by more than half from its peak in 2013."⁴ We are concerned that your decision to shift policy, and no longer reduce the federal government's use and reliance on private prisons, will hinder recent progress towards reforming our broken criminal justice system.

Between 1980 and 2013, due to mandatory minimum sentencing guidelines, the federal prison population surged by almost 800 percent.⁵ The federal Bureau of Prisons contracted with private

¹ Yates, S. Q., Deputy Attorney General Memorandum to Acting Director of the Federal Bureau of Prisons on "Reducing our Use of Private Prisons," (Aug. 18, 2016) (DAG Memo on Reducing Private Prisons), *available at* <https://www.justice.gov/archives/opa/file/886311/download>

² Lee Ye Hee, Michelle, Yes, U.S. locks people up at a higher rate than any other country, *Wash. Post*, (July 7, 2015), *available at* https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/?utm_term=.5de1802584c6

³ See Note 1, DAG Memo on Reducing Private Prisons, *available at* <https://www.justice.gov/archives/opa/file/886311/download>

⁴ Yates, S., "Phasing Out Our Use of Private Prisons," DOJ Blog (Aug. 18 2016), *available at* <https://www.justice.gov/archives/opa/blog/phasing-out-our-use-private-prisons>.

⁵ See Note 1, DAG Memo on Reducing Private Prisons, *available at* <https://www.justice.gov/archives/opa/file/886311/download>

Prisons because of an outdated theory that private prisons were not only more effective at holding inmates, but also economical. However, subsequent studies have revealed severe safety and security deficiencies in private prisons. For example, in 2016, the Justice Department's Office of the Inspector General concluded, "in most key areas, contract prisons incurred more safety and security incidents per capita than comparable BOP institutions."⁶ In another example, a 2012 Justice Department investigation found that in the City of Walnut Grove, Mississippi, a private prison that held youth offenders, did not provide "constitutionally adequate care" and that staff routinely engaged in "systematic, egregious, and dangerous practices."⁷ In fact the investigation concluded that the Walnut Grove private prison was "among the worst [...] in any facility anywhere in the nation."⁸

Additionally, private prisons offer little savings for taxpayers. Under the leadership of President George W. Bush, the Justice Department found that the 1 percent average savings offered by private prisons was because private prisons employ on average 15 percent less staff.⁹ Even when directed by a federal district court to implement contractual mandatory staffing requirements designed to reduce violence, [high level] employees at Civic Corp, a private prison company, continued to falsify staffing logs and lie about the number of officers on duty.¹⁰ Decreased staffing levels directly endanger staff and inmates—in fact, private prisons have 50 percent more inmate-on-staff assaults and 2/3 more inmate-on-inmate assaults.¹¹ These statistics of violence in private prisons are particularly alarming because, unlike most federal public prisons, private prisons used by the federal government generally hold minimum or medium security level inmates. The epidemic of violence and misconduct has convinced numerous states to reduce or eliminate their use of private prisons.¹²

We are also concerned that your decision to increase the use of private prisons lends the appearance of rewarding campaign donors. President Trump has stated, "It [private prison] seems to work a lot better" despite reports from past Republican and Democratic administrations

⁶ U.S. Dep't of Justice, Office of the Inspector General, "Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons," (Aug. 2016), available at <https://oig.justice.gov/reports/2016/e1606.pdf>.

⁷ Letter from then-Assistant Attorney General Thomas E. Perez to Governor Phil Bryant of Mississippi, entitled "Investigation of the Walnut Grove Youth Correctional Facility," Mar. 20, 2012, available at <https://www.justice.gov/sites/default/files/crt/legacy/2012/04/09/walnutgrovefl.pdf>

⁸ See n

⁹ Austin, J. and Coventry, G., Report on "Emerging Issues on Privatized Prisons," U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Assistance, (Feb. 2001), available at <https://www.ncjrs.gov/pdffiles1/bja/181249.pdf>

¹⁰ *Kelly v. Werstler*, 979 F.Supp.2d 1237, [add specific page citation] (2013)

¹¹ Blakely, C.R. & Bumphus, V.W., "Private and public sector prisons—a comparison of selected characteristics," *Federal Probation*, 27-33, 68 (2004), available at http://www.uscourts.gov/sites/default/files/fed_probation_june_2004.pdf

¹² Mason, Cody, "Too Good to be True: Private Prisons in America," The Sentencing Project (Jan.2012) available at: <http://sentencingproject.org/wp-content/uploads/2016/01/Too-Good-to-be-True-Private-Prisons-in-America.pdf>

that conclude otherwise.¹³ Corporations that manage private prisons—Civic Corp, GEO Group, and Management and Training Corporation—reportedly donated over \$750,000 to super PACs that supported the President.¹⁴ One private prison corporation donated \$100,000 to pro-Trump PACS the day after former Attorney General Yates announced that the Bureau of Prisons would no longer renew their contracts with private prisons.¹⁵

In order to foster transparency, we would like a written response to the questions below:

- (1) The federal prison population has decreased since 2014 and the federal Bureau of Prisons is currently not operating at full capacity.¹⁶ But in your February 2017 ‘Rescission of Memorandum on Use of Private Prisons’ memorandum you stated that you were reversing federal corrections policy in order to allow the Bureau of Prisons the “ability to meet the future needs of the federal correctional system.”¹⁷ What sources did the Justice Department gather and analyze to justify its decision that the Bureau of Prisons needs more private prison facilities?
- (2) The 2016 report, “Review of the Federal Bureau of Prisons Monitoring of Contract Prisons,” by the Justice Department’s Office of the Inspector General, concluded that while the Bureau of Prisons requires “safe and secure” settings for all inmates that standard was not currently being met at private prisons. How do the “needs” of the Bureau of Prisons to justify relying on private prisons to house inmates outweigh the risks of harm to incarcerated people if they are placed in facilities that the Inspector General has found less safe?
- (3) The Justice Department’s own August 18, 2016, memorandum on “Reducing our Use of Private Prisons,” found that private prisons “simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department’s Office of Inspector General, they do not maintain the same level of safety and security” as federal public prisons.

¹³ Burnett, J., “Will The Private Prison Business See A Trump Bump?,” NPR, All Things Considered (Jan. 4, 2017), available at <http://www.npr.org/2017/01/04/508048666/will-the-private-prison-business-see-a-trump-bump>.

¹⁴ Schouten, F., “Private prisons back Trump and could see big payoffs with new policies,” (Feb. 23, 2017), available at <http://www.usatoday.com/story/news/politics/2017/02/23/private-prisons-back-trump-and-could-see-big-payoffs-new-policies/98300394/>

¹⁵ Zapotosky, M., “Justice Department will again use private prisons,” Wash. Post. (Feb. 23, 2016), available at https://www.washingtonpost.com/world/national-security/justice-department-will-again-use-private-prisons/2017/02/23/da395d02-fa0e-11e6-be05-1a3817ac21a5_story.html?utm_term=.768ddae260d4

¹⁶ U.S. Federal Bureau of Prisons website (Retrieved Mar. 13, 2017), available at https://www.bop.gov/about/statistics/population_statistics.jsp

¹⁷ See N. 13.

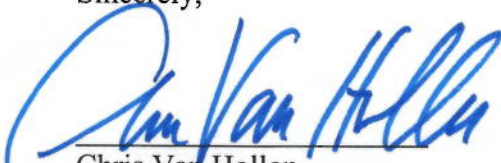
- a. What evidence leads you to believe that a switch in policy for the Bureau of Prisons to rely on private prisons would make incarcerated people safer, have the same level of resources and services, as provided in federal public prisons?
- b. Does the Justice Department have any evidence that private prisons provide substantial cost savings to the Department? If so, please provide in detail.
- c. What measures will the Justice Department take to ensure that private prisons implement the same safety procedures adopted by federal public prison facilities as outlined in the Bureau of Prisons Large Secure Adult Contract Oversight Checklist?
- d. Will the Bureau of Prisons commit to revise the checklist to address more access to healthcare for inmates?

(4) The Bureau of Prisons is currently not in compliance with the Government Performance and Results Act Modernization Act of 2010 (GPRA), which encourages transparency and increases the ability for Congressional stakeholders to analyze the Bureau of Prisons budget justifications. Without this information, members of Congress are unable to fully evaluate if private prisons behave “consistent with the value or quality of service the BOP should be receiving based on the amount of money that is being spent.”¹⁸ What actions will the Justice Department take under your leadership to ensure swift and full compliance with the GPRA?

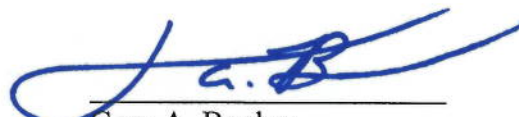
(5) How many new private prisons does the federal Bureau of Prisons plan to partner with, or help construct, within the next 10 years and where will those new private prisons be located within the United States?

Thank you for your consideration of this matter, and we look forward to your timely response.

Sincerely,



Chris Van Hollen
U.S. Senator



Cory A. Booker
U.S. Senator

¹⁸ See N. 6.