

Congress of the United States
Washington, D.C. 20515

June 10, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20500

Dear Attorney General Garland:

As Members of Congress, we write to express our serious concerns regarding the United States Department of Justice's continued pursuit of its legal challenge in *GEO Group Inc. v. Newsom* (Case No. 20-56172) against the state of California regarding AB 32 (People not Profit),¹ which aims to ban privately operated prisons and detention centers. Continuing the Trump Administration's lawsuit in support of private prison companies to stop the implementation of this law does not comport with the stated position of the Biden Administration to end privatized incarceration.

AB 32 was signed into law by Governor Gavin Newsom on October 11, 2019, and phases out private incarceration in California² by prohibiting the creation and renewal of private contracts after January 1, 2020 and by prohibiting the state from housing people at for-profit facilities as of 2028. AB 32's effective date was January 1, 2020. This legislation represents the will of California and aligns with the values of placing the safety and welfare of Californians over profit.

On October 16, 2019, a mere five days after AB 32 was signed,³ Immigration and Customs Enforcement (ICE) issued Solicitation No. 70CDCR20R00000002, seeking multiple "turnkey" facilities in California with a five-year period of performance and additional two five-year options. This solicitation resulted in the issuance of \$679,203,266.73⁴ in federal government detention contracts to private contractors, of the exact type now restricted by California State law. The

¹ Codified at Cal. Pen. Code § 5003.1 et seq.

² AB 32 phases out private incarceration, with some exceptions.

³ AB 32 was signed by California Governor Gavin Newsom on October 11, 2019. See, https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB32

⁴ According to Base and All Options Value (Total Contract Value): \$679,203,266.73
<https://www.governmentcontracts.us/government-contracts/opportunity-details/NBD00159025403382163.htm?searchText=it+service+management>

timing and terms of the solicitation - particularly in light of ICE's history of suspect contracting practices and insufficient oversight paired with the appearance that this solicitation aimed to circumvent AB 32 - drew the attention of many of our congressional colleagues. In November 2019, then Senator Kamala D. Harris (D-CA) (now Vice President Harris), U.S. Representative Zoe Lofgren (D-CA), Representative Jerrold Nadler (D-NY) and 18 other Members of Congress wrote to the Department of Homeland Security, sharing their concerns and requesting further information regarding the solicitation.⁵

On December 30, 2019, GEO Group Inc. sued California, challenging AB 32, with the Trump administration filing its suit⁶ in February 2020. Both cases were consolidated at the U.S. District Court Southern District of California. In October 2020, Hon. Judge Sammartino granted in part, and denied in part, GEO's and the United States' Motions for Preliminary Injunction, largely upholding AB 32.⁷ Both GEO and US DOJ (now under the Biden administration) appealed to the Ninth Circuit, where oral argument is now scheduled for June 7, 2021.

Continuing this appeal puts the Department of Justice in the way of President Biden's⁸ stated goal to ensure that the federal government does not use private facilities for incarceration. As described in an amicus brief before the Ninth Circuit in this appeal, those detained in privately run detention centers in California are exposed to a host of inhumane conditions, from serious, sometimes deadly, lack of adequate medical care to sexual abuse to everyday indignities. A separate amicus brief details the health dangers as exacerbated by the Covid-19 pandemic, to which these private facilities have failed to respond in a safe and adequate manner. A third amicus brief delved into the suspect contracting practices giving rise to the contracts impacted by AB 32.

We agree with the Biden Administration's stated goal of eliminating the use of privately operated criminal detention facilities. However, we are concerned that the Department could undermine that effort by continuing to take part in this lawsuit.

We believe the United States Department of Justice should reconsider its position and consider dismissing its lawsuit.

We thank you for your leadership, and look forward to working with you in the future.

⁵ Letter from Senator Kamala D. Harris (D-CA) (now Vice President Harris), U.S. Representative Zoe Lofgren (D-CA), Representative Jerrold Nadler (D-NY) and 18 other congresspeople to the Department of Homeland Security, regarding concerns over contracts for federal detention facilities, and accompanying press release. (Nov. 15, 2019) Available at, <https://lofgren.house.gov/media/press-releases/lofgren-nadler-harris-lead-letter-questioning-ice-s-move-circumvent-ca-law>

⁶ *USA, et al v. Gavin Newsom, et al* (Case No. 20-56304).

⁷ AB 32 was preliminarily enjoined only as to its applicability to U.S. Marshall's privately contracted detention facilities in California.

⁸ White House Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>

Sincerely,



Norma J. Torres
Member of Congress



Raúl M. Grijalva
Member of Congress

Grace F. Napolitano
Member of Congress

Karen Bass
Member of Congress

Barbara Lee
Member of Congress

Alan Lowenthal
Member of Congress

Jimmy Gomez
Member of Congress

Adriano Espaillat
Member of Congress

Tony Cárdenas
Member of Congress

Rashida Tlaib
Member of Congress

Eleanor Holmes Norton
Member of Congress

Zoe Lofgren
Member of Congress

Jan Schakowsky
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Joe Neguse
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Jackie Speier
Member of Congress

Mark DeSaulnier
Member of Congress

James P. McGovern
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Grace Meng
Member of Congress

Pete Aguilar
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Jesús G. “Chuy” García
Member of Congress

Mark Pocan
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Judy Chu
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Pramila Jayapal
Member of Congress