Congress of the United States Washington, DC 20515

March 15, 2021

Susan Rice Director Domestic Policy Council 1600 Pennsylvania Avenue NW Washington, DC 20500

Alejandro Mayorkas Secretary Department of Homeland Security 1180 2nd Street SW Washington, DC 20024

Dear Director Rice and Secretary Mayorkas:

We applaud the Biden Administration's commitment to addressing racial injustice and systemic inequity by working to sever the link between incarceration and profit. The Biden Administration has already taken an important step toward this end via the "Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities," released on January 26, 2021,¹ which instructed the Department of Justice (DOJ) to phase out its use of private prisons by requiring the Attorney General not to renew contracts with privately operated criminal detention facilities. We support the calls from more than 70 Congressional offices to expand this Executive Order to incorporate privately operated immigration detention facilities under Immigration and Customs Enforcement (ICE).² However, privately operated immigration detention facilities are not the only instance in which financial incentives fuel needless expansion of immigration detention. We urge the Biden administration to release an additional Executive Order announcing a plan to phase out contracts between ICE and state, county, and local jails and prisons.

ICE operates a sprawling network of more than 200 detention facilities.³ The majority of these facilities operate through contracts between ICE (or, less commonly, the U.S. Marshals Service – USMS) and localities for the purposes of detaining immigrants.

¹ https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reformingour-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/ ² https://crow.house.gov/sites/crow.house.gov/files/01.28.21%20-

^{%20}Letter%20to%20Acting%20Secretary%20Pekoske%20Regarding%20Phasing%20Out%20Privately%20Operated%20Immigration%20Detention%20Facilities.pdf

³ ICE uploads current lists of all immigration detention facilities in use for more than 72 hours on its website at <u>https://www.ice.gov/facility-inspections</u>.

According to a 2019 report by the Brooking Institute, 49% of people in ICE detention were held in facilities owned by counties and 14% in facilities owned by cities and municipalities.⁴ In some cases, localities subsequently sub-contract services for operating detention facilities to private prison companies. In other instances, localities reserve space in local, county, or state jails and prisons for the purposes of detaining immigrants. In all cases, localities are financially incentivized to detain immigrants.

In many instances, ICE will offer localities a per diem rate to detain immigrants that is substantially higher than the per diem rate offered by state Departments of Corrections to detain people held in criminal custody. For example, as of October 2019, the per diem rate offered by ICE to sheriffs offices in Louisiana is approximately \$65⁵, while the average per diem rate paid to Louisiana sheriffs departments to jail people serving criminal sentences ranges from \$10.25 to \$24.39.⁶ This financial incentive has fueled the expansion of immigration detention throughout the country, including in states such as Louisiana, which successfully reduced criminal incarceration levels, only to re-fill those same beds with immigrants.⁷ Profit incentives to reduce one form of incarceration at the expense of expanding another come at particular cost to Black and Brown immigrants, who are doubly vulnerable to aggressive surveillance and incarceration in the context of both criminal justice and civil immigration enforcement.

Conditions in municipal, county, and state jails and prisons contracting with ICE to detain immigrants mirror the systemic abuses in privately operated immigration detention facilities, including medical neglect, long term use of solitary confinement, sexual assault, and lack of access to legal counsel.⁸ In some instances, people detained on civil immigration charges in jails and prisons operated by localities lack access to basic services more regularly available in large, privately operated facilities, as smaller facilities are not designed for long-term confinement. Just as in privately operated

⁴ Hudak, John; Stenglein Christine. "How states can improve America's immigration system." The Brookings Institute. September 10, 2019. https://www.brookings.edu/research/how-states-can-improve-americas-immigration-system/

⁵ Stole, Bryan. "In north Louisiana, sheriff and private prison operator trade prisoners for ICE detainees." Nola.com. October 21, 2019. https://www.nola.com/news/article_9927b374-f388-11e9-8eca-43ec3c782d9f.html

⁶ Clark, Maria. "Louisiana's prisons are increasingly being used to detain immigrants." The Times-Picayune. April 8, 2020. https://www.nola.com/news/article_9110ce70-bb2f-54e1-b4e1-54140b7a0559.html

⁷ Merchant, Nomaan. "Louisiana becomes new hub for immigrant detention under Trump." PBC. October 9, 2019. https://www.pbs.org/newshour/nation/louisiana-becomes-new-hub-for-immigrant-detention-under-trump

⁸ For an example of systemic neglect and abuse in a County-operated jail detaining immigrants on behalf of ICE see an overview of conditions in the Dodge County Jail in Wisconsin by Freedom for Immigrants: https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5e41c8ea22e3ec68cdfb7c45/1581369 579598/DIYD+WI+5+FINAL.pdf

facilities, immigration detention centers operated by localities also obstruct meaningful oversight.⁹

During the COVID-19 pandemic, some of the most egregious examples of medical neglect and failure to follow public health protocols occurred in locally operated jails and prisons. This includes the Morrow County Jail in Ohio, in which 100% of all immigrants tested positive for COVID-19, after county officials used expired thermometers to conduct temperature checks and failed to implement even basic medical quarantining procedures.¹⁰ Some of the worst examples of abuse and retaliation against detained immigrants during the COVID-19 pandemic also occurred in jails and prisons operated by localities, including an incident at the Bristol County jail in Massachusetts in which the Sheriff's office unleashed dogs and pepper spray against detained immigrants, resulting in at least two hospitalizations.¹¹

In order to truly sever the financial incentives causing the expansion of an unnecessary and abuse-ridden system of mass incarceration, we urge you to end contracts between the federal government and localities for the purposes of immigration detention. At a historic moment where immigration detention levels are at their lowest in a generation, now is the time to act to rein in a system of detention built on a disproven myth that immigrants fail to appear in court.¹² Indeed, several states, including California¹³, New Jersey¹⁴, and

⁹ "ICE detention facilities: failing to meet basic standards of care." United States House of Representatives, Committee on Homeland Security. Majority staff report. September 21, 2020. https://homeland.house.gov/imo/media/doc/Homeland%20ICE%20facility%20staff%20report.pdf

¹⁰ Whitmire, Lou. "Report: More than 100% of Morrow County jail inmates had COVID-19." Mansfield News Journal. June 8, 2020. https://www.mansfieldnewsjournal.com/story/news/2020/06/08/report-allmorrow-county-ice-jail-inmates-ohio-coronavirus-covid-19-immigration-customsenforcement/5317798002/

¹¹ Kail, Benjamin. "Bristol county sheriff's office illegally used dogs, excessive pepper spray against immigrant detainees who may have had COVID, Mass AG reports." Masslive. December 15, 2020. https://www.masslive.com/police-fire/2020/12/bristol-county-sheriffs-office-illegally-used-dogs-excessive-pepper-spray-against-immigrant-detainees-who-may-have-had-covid-mass-ag-reports.html

¹² Ingrid Eagly & Steven Shafer, *Measuring* In Absentia *Removal in Immigration Court* (American Immigration Council, 2021) (revealing that 83% of non-detained immigrants and 96% of represented immigrants appeared for every hearing between fiscal years 2008-2018, and that 15-20% of *in absentia* removal orders are overturned through motions to reopen), *available at*, https://www.americanimmigrationcouncil.org/research/measuring-absentia-removal-immigration-court,

¹³ Chappel, Dale. "California: Governor Signs Bill to Block Expansion of For Profit Detention Centers." Prison Legal News. May 8, 2018. https://www.prisonlegalnews.org/news/2018/may/8/californiagovernor-signs-bill-block-expansion-profit-detention-centers/

¹⁴ Alvarado, Monsy. "Bergen lawmaker's bill would bar new immigrant detention contracts with ICE." NorhtJersey.com January 7, 2020. https://www.northjersey.com/story/news/newjersey/2021/01/07/bergen-county-lawmaker-would-ban-nj-counties-ice-detentioncontracts/4139920001/

Maryland¹⁵, have already taken steps to phase out both public and private detention. The federal government should follow suit.

We urge the Biden-Harris administration to immediately enact an additional Executive Order to phase out contracts or agreements between ICE and/or the USMS with states, counties, and municipalities for the purposes of immigration detention.

Sincerely,

Ilhan Omar Member of Congress

Additional signers Representative Jamaal Bowman, Ed. D. Representative Cori Bush Representative André Carson Representative Gerald E. Connolly Representative Jim Cooper Representative Jesús G. "Chuy" García Representative Raúl M. Grijalva Representative Adriano Espaillat Representative Pramila Jayapal Representative Barbara Lee Representative Alan Lowenthal Representative Carolyn B. Maloney Representative James P. McGovern Representative Eleanor Holmes Norton Representative Alexandria Ocasio-Cortez Representative Mark Pocan Representative Ayanna Pressley Representative Jan Schakowsky Representative Rashida Tlaib **Representative Ritchie Torres** Representative Nvdia M. Velázquez Representative Debbie Wasserman Schultz Representative Bonnie Watson Coleman

¹⁵ Ieronimo, Caterina. "Maryland has an opportunity to hold ICE accountable. It should take it." The Diamondback. February 25, 2020. https://dbknews.com/2020/02/25/maryland-ice-general-assembly-immigrant-prison-detention-abuse/