

March 12, 2021

Ms. Katherine Twomey Allen
Mr. Daniel Tenny
Mr. Mark B. Stern
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Dear Ms. Twomey Allen, Mr. Tenny, and Mr. Stern:

We are writing to urge you to withdraw the United States' suit against the state of California in *GEO Group Inc. v. Newsom (Case No. 20-56172)*. In this case, the United States is challenging the legality of a California state law known as AB 32 (People not Profit), which aims to ban privately operated prisons and detention centers in California.

AB 32 represents the will of California and aligns with the values of placing the safety and welfare of Californians over profit. Introduced by California Assembly Member Rob Bonta and signed into law by Governor Newsom in October 2019, California's ban on private prisons prohibits the creation and renewal of private contracts with companies like Geo Group Inc. (GEO) after January 1, 2020 and prohibits the state from housing prisoners at for-profit facilities as of 2028. This comes on the heels of other state reforms, such as AB 103 which prohibits California actors from entering into government-run contracts as well.

In February 2020, the Trump administration sued to block the law's application to federal facilities in California, many of which have alarming and lethal records of health and safety failures for Californian residents and others detained in them. This suit now sits before the Ninth Circuit, where the federal government has appealed the District Court's denial in part of a requested preliminary injunction of AB 32. Continuing this appeal puts the Department of Justice in the way of a future that the administration of President Joe Biden [claims](#) to support: one in which the federal government does not use private facilities for any detention.¹

As described in an [amicus brief](#) before the Ninth Circuit in this appeal, those detained in the six privately run immigration 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. As detailed in a separate [amicus brief](#), these dangers are exacerbated by the Covid-19 pandemic, to which these private facilities have failed to respond in a safe and adequate

¹ As stated in "The Biden Plan for Black America," "Biden will end the federal government's use of private prisons, building off an Obama-Biden Administration policy rescinded by the Trump Administration. And, he will make clear that the federal government should not use private facilities for any detention, including detention of undocumented immigrants." Available at, <https://joebiden.com/blackamerica/>

manner. These dangers in no way started with the pandemic and will not end when it is finally brought under control.

By dropping the lawsuit, the Department of Justice can take an affirmative step toward racial justice and human rights as well as the current administration's goal of eliminating the use of privately operated detention facilities.

Indeed, it is not even clear what basis ICE has to argue federal preemption in this case. As this [amicus brief](#) explains, in decades of revisions to the INA, Congress has never authorized ICE to contract out entire detention operations to private prison companies. The provision ICE relies on for its claimed authority was first passed by Congress at a time when private prisons did not even exist.

Instead of pursuing the Trump administration's challenge to AB 32, the Department of Justice should investigate whether rushed contracts to expand privately-run immigration prisons before the California law went into effect, comply with federal procurement standards. The prison company GEO argues that these five-year renewable contracts are 15-year contracts, locking in their control until 2034.

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 congresspeople wrote to DHS, stating “[g]iven the timing and terms of this solicitation - particularly in light of ICE’s history of suspect contract activities and insufficient oversight - we are understandably concerned that the Solicitation is intended to favor incumbent contractors. If so, these efforts would be in direct contradiction with the spirit of full and open competition required by federal procurement law.”² These concerns are further detailed in an [amicus](#) before the Court.

Thank you for your consideration of these facts. We hope to work with - not against - the Biden administration's Department of Justice with a shared aim of ending the harms resulting from mass incarceration and detention of migrants. These systems are unnecessary, immoral, and disproportionately impact Black and Brown communities. We look forward to working together toward community-based solutions.

Should you have any questions, please e-mail Grisel Ruiz (gruiz@ilrc.org) and Clara Long (longc@hrw.org). We look forward to a response at your earliest convenience.

² 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>

Sincerely,

ACLU of Northern California
ACLU of Southern California
ACLU San Diego & Imperial Counties
Advancing Justice - Asian Law Caucus
Alameda County Public Defender
American Friends Service Committee-San Diego
Arts+ Bayside MLK Jr. Foundation
Bend The Arc: Jewish Action, California
Buen Vecino Ventura County
CA Collaborative for Immigrant Justice
California Coalition for Women Prisoners
California Coalition for Women Prisoners (CCWP)
Centro Legal de la Raza
Chula Vista Partners in Courage
California Immigrant Youth Justice Alliance
(CIYJA)
Communities United for Restorative Youth Justice
(CURYJ)
Community Healers
Community Legal Services in East Palo Alto
Community Organizer
Community Works
Courage California
Desert Support for Asylum Seekers
Detention Watch Network
Dignity and Power Now
Free Them All San Diego
Freedom for Immigrants (formerly CIVIC)
Hand in Hand: The Domestic Employers Network
Human Impact Partners (HIP)
Human Rights Watch
Immigrant Legal Resource Center
Immigrant Defenders Law Center
Immigrant Defense Advocates
In Plain Sight
Indivisible San Diego Persist
Initiate Justice
Inland Coalition for Immigrant Justice
Innovation Law Lab

Interfaith Movement for Human Integrity
Kehilla Community Synagogue
La Raza Centro Legal, San Francisco
Lakeshore Avenue Baptist Church, Oakland
Legal Services for Prisoners with Children
Long Beach Immigrant Rights Coalition
Multicultural Community Center Interns - UCB
National Lawyers Guild, Sacramento Chapter
Nature Rhythms
Network in Solidarity with the People of Guatemala
No Justice Under Capitalism
NorCal Resist
Oasis Center San Diego
Open Immigration Legal Services
Orange County Equality Coalition
Pacifica Social Justice
Pangea Legal Services
Peninsula Progressive Action Group
Public Counsel
Re:Store Justice
Root & Rebound
San Bernardino Community Service Center
San Francisco Peninsula People Power
Secure Justice
Services, Immigrant Rights & Education Network
(SIREN)
South Bay People Power
Southern California Immigration Project
SURJ Marin - Showing Up for Racial Justice
Urban Tilth

Cc: Attorney General Merrick Garland, Vice President Kamala Harris, Acting Solicitor General Elizabeth Prelogar, Senator Padilla, Senator Diane Feinstein, Representative Zoe Lofgren, Representative Julia Brownley, Representative Tony Cárdenas, Representative Susan Davis, Representative Mark DeSaulnier, Representative Ro Khanna, Representative Alan Lowenthal, Representative Doris Matsui, Representative Jerry McNerney, Representative Lucille Roybal-Allard, Representative Linda Sánchez, Representative Mark Takano, Representative Norma Torres, Representative Juan Vargas, Representative Jimmy Gomez.