

United States Senate

WASHINGTON, DC 20510

November 08, 2019

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

Dear Attorney General Barr,

Over two years ago, we wrote your predecessor, then-Attorney General Jeff Sessions, regarding his decision to rescind former-Deputy Attorney General Sally Yates's order that would have ultimately eliminated the federal government's use and reliance upon for-profit private prisons. In 2016, 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 In February 2017, Sessions reversed that directive and stated that private prisons were necessary to help the "Bureau's ability to meet the future needs of the federal correctional system."² We wrote to Sessions seeking clarity behind his decision, but we unfortunately never received a response. We are sending this letter to you to renew our call that the federal government terminate its use of private prisons.

Figures released by the Bureau of Justice Statistics earlier this year indicate that the federal prison population has decreased by more than 10 percent from 2007 to 2017.³ This decrease is 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."⁴ We remain concerned that Sessions's policy shift regarding the use of private prisons will hinder recent progress towards reforming our broken criminal justice system.

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.⁵ Between 1980 and 2013, due to mandatory minimum sentencing guidelines, the federal prison population surged by almost 800 percent.⁶

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 Sessions, J.B., Attorney General Memorandum for the Acting Director of the Federal Bureau of Prisons on "Rescission of Memorandum on Use of Private Prisons," (Feb. 21, 2017), *available at* https://www.justice.gov/oip/foialibrary/attorney_general_memorandum_advising_the_federal_bureau_of_prisons_th_at_the_department_will_continue_to_use_private_prisons.pdf/download.

³ Prison And Jail Incarceration Rates Decreased By More Than 10% From 2007 To 2017, The Bureau of Justice Statistics, *available at* <https://www.bjs.gov/content/pub/press/p17ji17pr.cfm>

⁴ DAG Memo, *supra* note 1.

⁵ Lee Ye Hee, Michelle, Yes, U.S. locks people up at a higher rate than any other country, *Wash. Post*, (July 7, 2015), 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.

⁶ DAG Memo, *supra* note 1.

The Bureau of Prisons contracted with private prisons because of an outdated and unsubstantiated theory that private prisons were not only more effective at holding inmates, but also economical. However, subsequent investigations and analyses 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 [Bureau of Prisons] institutions."⁷ 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."⁸ In fact, the investigation concluded that the Walnut Grove private prison was "among the worst [...] in any facility anywhere in the nation."⁹

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.¹⁰ 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.¹¹ Decreased staffing levels directly endanger staff and inmates. In fact, private prisons have 50 percent more assaults of staff and two-thirds more assaults among those who are incarcerated.¹² 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.¹³

The decrease in the federal prison population presents the Bureau of Prisons with a unique opportunity to reduce, and ultimately eliminate, its use of private prisons. We strongly urge you to return to the previous policy that would phase out for-profit private prisons and assure Congress that the Department of Justice is a committed partner in criminal justice reform.

⁷ 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>.

⁸ 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>.

⁹ DAG Memo, *supra* note 1.

¹⁰ 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>.

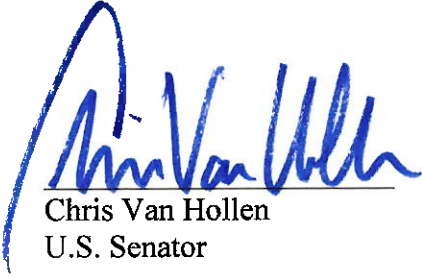
¹¹ *Kelly v. Werstler*, 979 F.Supp.2d 1237, [add specific page citation] (2013)

¹² 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.

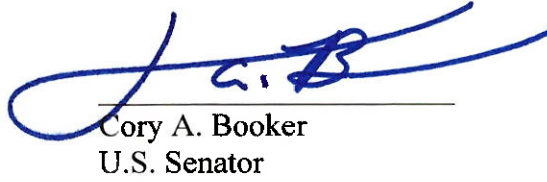
¹³ Mason, Cody, "Too Good to be True: Private Prisons in America," The Sentencing Project (Jan.2012) *available at* <http://sentencingproject.org/wp-content/uploads/2016/01/Too-Good-to-be-True-Private-Prisons-in-America.pdf>.

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