

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH  
JEFF SESSIONS, ALABAMA  
LINDSEY O. GRAHAM, SOUTH CAROLINA  
JOHN CORNYN, TEXAS  
MICHAEL S. LEE, UTAH  
TED CRUZ, TEXAS  
JEFF FLAKE, ARIZONA  
DAVID VITTER, LOUISIANA  
DAVID A. PERDUE, GEORGIA  
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT  
DIANNE FEINSTEIN, CALIFORNIA  
CHARLES E. SCHUMER, NEW YORK  
RICHARD J. DURBIN, ILLINOIS  
SHELDON WHITEHOUSE, RHODE ISLAND  
AMY KLOBUCHAR, MINNESOTA  
AL FRANKEN, MINNESOTA  
CHRISTOPHER A. COONS, DELAWARE  
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

May 19, 2016

**VIA ELECTRONIC TRANSMISSION**

The Honorable David Harlow  
Deputy Director  
United States Marshals Service  
Washington D.C. 20530

The Honorable Thomas R. Kane  
Acting Director  
Federal Bureau of Prisons  
Washington, D.C. 20534

Dear Acting Director Kane and Deputy Director Harlow:

In 2007, the Witness Security and Prisoner Operations Division of the United States Marshals Service released an update of the *Memorandum of Understanding (MOU) between the United States Marshals Service and the Federal Bureau of Prisons Regarding the Detention of Federal Prisoners*. The MOU outlines the responsibilities of the United States Marshals Service (USMS) and the Federal Bureau of Prisons (BOP), including the BOP's responsibility to house USMS prisoners and regularly compile a bed space Allocation Summary.<sup>1</sup>

Recently, multiple whistleblowers contacted my office alleging that the USMS and BOP have not complied with the 2007 MOU and have otherwise not been ensuring efficient bed allocation. According to these whistleblowers, the USMS is paying for bed space at private detention facilities even though BOP facilities have unused bed space allocated for USMS prisoners.

The BOP receives funds allocated for its facilities to house USMS prisoners. If BOP beds are available, it is wasteful to pay private facilities to house those prisoners. Moreover, documents provided to the Committee suggest that privately owned and operated facilities are

---

<sup>1</sup> Memorandum to USMS Chief Deputy United States Marshals. Jones, Sylvester. Assistant Director, Witness Security and Prisoner Operations Division. October 1, 2007. See page 3.

generally more expensive to operate on a per prisoner basis than BOP facilities, leading to an even greater likelihood of unnecessary spending. These documents further suggest that multiple private facilities have prisoner populations that, at least in the past two years, have exceeded guaranteed contract bed allocation minimums while nearby BOP facilities are under populated.

For example, the Queens Detention Facility (QDF), operated by the private prison company, The GEO Group (GEO), costs substantially more to house prisoners than MDC Brooklyn and MCC New York, which are operated by the BOP. In Fiscal Year 2013, housing prisoners at MDC Brooklyn cost the government \$93 per prisoner per day, or approximately \$33,854 per prisoner per year. Housing prisoners at MCC New York in Fiscal Year 2013 cost \$130 per prisoner per day, or approximately \$47,581 per prisoner per year. Beginning in Fiscal Year 2010, the cost per prisoner at both BOP facilities increased every year, likely resulting in an increase in Fiscal Year 2014 and beyond. Comparatively, the per diem rate for QDF in Fiscal Year 2013 was about \$172, increasing to \$181 in Fiscal Year 2014, \$190 in Fiscal Year 2015, and is currently \$199 in Fiscal Year 2016.

According to documentation provided to the Committee, the average daily population at QDF was 228 in Fiscal Year 2014. Given the difference in cost per prisoner between BOP and private facilities, potentially millions of dollars could have been saved during that Fiscal Year as well as over the life of the QDF contract if more prisoners were housed in BOP facilities. Notably, according to the federal government, the USMS has paid at least \$58,800,644 to GEO under the QDF contract since 2008.<sup>2</sup>

With respect to bed allocations, both MDC Brooklyn and MCC New York have maintained utilization shortfalls while the USMS exceeded its allocation at QDF. In Fiscal Year 2015, MDC Brooklyn allocated 2,120 beds to USMS prisoners, but as of July 2015, apparently MDC Brooklyn's average daily population was fewer than 1,400 prisoners, a utilization shortfall of over 722 beds. Additionally, in Fiscal Year 2015, MCC New York allocated 780 beds to USMS prisoners, but as of July 2015, there were approximately 653 prisoners housed there, a utilization shortfall of roughly 120 beds. By contrast, as of April 2015, the QDF had an average daily population of 228 prisoners, a 101% utilization of their 225 beds allocated for USMS prisoners. Recent numbers show that BOP beds continue to be underutilized. As of February 2016, MDC Brooklyn had 2,320 beds designated for the USMS but apparently only 1,396 were used – a shortfall of 924 beds – and only 652 beds were being used at MCC New York – a shortfall of 128 beds.

Additional documentation provided to the Committee suggests that multiple facilities across the country are facing similar bed allocation problems. Essentially, it appears that the USMS is not using available BOP housing for prisoners and may not be adhering to the MOU. And it appears these decisions have already cost the taxpayers millions of dollars. Accordingly, to better understand the relevant roles of the BOP and USMS in prisoner bed allocation and associated costs, please respond to the following questions:

---

<sup>2</sup> USASpending.gov, available at <https://www.usaspending.gov/Pages/AdvancedSearch.aspx?sub=y&ST=C.G.L.O&FY=2016,2015,2014,2013,2012,2011,2010,2009,2008&A=0&AI=DJJODT8C0004&SS=USA&RN=GEO&FA=1500&k=GEO&pidx=1&SB=RN&SD=ASC>

1. Is the 2007 MOU between the USMS and the BOP the most recent version of the agreement? If not, please provide the current version.
2. Please provide the total amount of money paid to GEO under the QDF contract for each fiscal year under the life of the contract. What, if any, steps were taken to achieve cost savings? Please explain.
3. Please provide the number of BOP beds allocated for USMS prisoners for MDC Brooklyn and MCC New York for Fiscal Years 2010 through 2016. Of the beds allocated, how many were actually utilized from Fiscal Years 2010 through 2016?
4. Please provide the number of BOP beds allocated for USMS prisoners for Fiscal Years 2010 through 2016. Of the beds allocated, how many were actually utilized from Fiscal Years 2010 through 2016?
5. Please provide the per prisoner cost for MDC Brooklyn and MCC New York from Fiscal Year 2010 to 2016.
6. Please provide the per prisoner cost for QDF from Fiscal Year 2010 to 2016.
7. Please provide the average daily population for each month at MDC Brooklyn and MCC New York from Fiscal Year 2010 to 2016.
8. Please provide the average daily population for each month at QDF from Fiscal Year 2010 to 2016.
9. What factors are considered in renewing the contract between QDF and the Department of Justice? Who is the decisional authority?
10. What, if any, analysis is performed by the USMS when determining where a prisoner will be housed? Please explain how, in the course of that analysis, potential cost savings are weighed.
11. Please provide the contract between the Department of Justice and GEO for QDF.
12. In general, when a private facility is over populated and a BOP facility contains open beds for USMS prisoners, why does USMS continue to maintain prisoner allocations in the private facilities? For example, when QDF is operating above 70% utilization of bed space while MDC Brooklyn is underutilized and MCC New York also has remaining bed space, why doesn't the USMS and BOP ensure that prisoners are transferred to the lower-cost facilities? Please explain.

In addition to the above questions, I request that you brief my staff on these issues. Please number your responses according to their corresponding questions. Please submit your responses by June 2, 2016. If you have any questions, contact Josh Flynn-Brown or Katherine Nikas of my Committee Staff at (202) 224-5225. Thank you for your cooperation.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary