

UNITED STATES DISTRICT COURT

**SOUTHERN DISTRICT OF TEXAS
UNITED STATES COURTHOUSE
515 RUSK STREET, RM 11535
HOUSTON, TEXAS 77002**

**CHAMBERS OF
CHIEF JUDGE LEE H. ROSENTHAL**

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July 23, 2021

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General:

As you know, on January 26, 2021, President Biden signed the Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities. Under the Executive Order, the Department of Justice cannot enter or renew contracts to use privately operated state or local detention facilities. Two detention facilities in the Southern District of Texas will become unavailable for our use, severely impacting our District as soon as September 30, 2021. We urgently need relief or delay from enforcement of the Executive Order because of the impact on our border divisions.

The Executive Order affects both the MTC Willacy facility in the Brownsville Division and the GEO Rio Grande facility in the Laredo Division. The MTC Willacy contract expires on September 30, 2021. The GEO Rio Grande contract expires on October 31, 2023. The loss of these two facilities will affect approximately 1,600 detainees, or 25% of the U.S. Marshals Service's inmate population in the Southern District of Texas. Additional impacts will be felt in the Corpus Christi and McAllen Divisions, as the Marshals Service moves detainees around the District to make room for those currently housed in the private contract facilities.

The inability to renew these contracts raises pressing border security and public safety concerns. Losing these two privately operated facilities will affect our court, the Marshals Service, the United States Attorney's Office, the Federal Public Defender, and the Criminal Justice Act Panel and retained attorneys. The greatest impact involves pretrial detainees, because most post-trial inmates who are sentenced are promptly transferred to the Bureau of Prisons to serve their time in federally owned facilities. Options for housing pretrial detainees along the border are limited due to the lack of federally owned facilities in the District. There are only two. The FCI Three Rivers facility is located 118 miles from the Laredo Division, 179 miles from the McAllen Division, and 213 miles from the Brownsville Division. The other facility, FDC Houston, is over 300 miles from these border divisions.

The loss of the use of the contract facilities means that the nearest federally owned detention facility is over one hundred miles from the border. That makes it much more difficult for pretrial detainees to access their attorneys, which could result in defendants claiming

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inadequate representation. This, of course, creates issues with due process and adds additional litigation to an already busy court.

Housing pre-trial detainees near the court is the most efficient, cost-effective, and safest way for the Marshals Service to produce them for court appearances and, if needed, to transfer inmates to INS for deportation. I attach letters from the U.S. Marshal for the Southern District of Texas, T. Michael O'Connor, and the Federal Public Defender for the Southern District of Texas, Marjorie A. Meyers, describing some of the impacts in more detail.

Our court is working to improve some procedures and protocols that may help alleviate the burdens the loss of these facilities will impose. There is a limit to what we can do. The court is already dealing with a shortage of bedspace due to COVID protocols and the large number of detainees along the border. We are working closely with the Department of Justice, the U.S. Marshals Service, the Federal Public Defender, the United States Attorney's Office, and with other districts on the southwest border with Mexico to identify helpful approaches. We welcome the opportunity to meet with you, either in person or by video conference, to update you on our progress and to ask for your assistance.

Thank you for your time and attention to this important matter.

Sincerely,

Lee H. Rosenthal
Chief Judge

Attachments

cc: U.S. Deputy Attorney General Lisa Monaco
U.S. Principal Deputy Attorney General John P. Carlin
U.S. Assistant Attorney General for the Criminal Division Kenneth Polite
U.S. Senator John Cornyn
U.S. Senator Ted Cruz
U.S. Administrative Office Director, Honorable Roslynn R. Mauskopf
Chief White House Counsel Dana Remus
Counselor to U.S. Supreme Court Chief Justice Roberts, Jeffrey Minear
U.S. Congressman Filemon Vela, Brownsville Representative
U.S. Congressman Henry Cuellar, Laredo Representative
U.S. Congressman Vicente Gonzalez, McAllen Representative
U.S. District and Magistrate Judges, Southern District of Texas
U.S. Marshal, Southern District of Texas, T. Michael O'Connor
Federal Public Defender, Southern District of Texas, Marjorie Meyers

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Acting U.S. Attorney, Southern District of Texas, Jennifer B. Lowery
Chief U.S. Probation/Pretrial Services Officer, Southern District of Texas, Teresa
Brewster
Clerk, U.S. District Court, Southern District of Texas, Nathan Ochsner



U.S. Marshals Service

Southern District of Texas

Executive Summary

USMS – Bedspace Allocation Update

Esteemed Judiciary,

The USMS – Southern District of Texas, utilizes three types of arrangements to contract housing for federal inmates: 1) Intergovernmental Agreements (IGA). Herein, USMS contracts local government entities such as Sheriff's offices to house inmates. 2) IGA Pass-throughs – where an agreement exists with a local government entity that then contracts detention services with a private contractor. 3) Direct Private - where the USMS enters a contract with a private facility, directly. S/TX has private contracts with two private companies: *MTC-Willacy Regional Detention Center* (Brownsville and McAllen divisions), and *GEO-Rio Grande Detention Center* (Laredo division).

Direct Privates: The executive order restricting DOJ's ability to enter contracts with private detention facilities will affect both MTC-Willacy and GEO-Rio Grande. MTC-Willacy contract will expire on September 30, 2021 and GEO's contract will expire on October 31, 2023. The closing of MTC Willacy will affect approximately 600 inmates - the majority of which are Brownsville pre-trial inmates. The impending closure of GEO-Rio Grande will affect approximately 1,000 Laredo pre-trial inmates.

IGA Pass-throughs: Currently, the executive order does not impact existing IGA pass-through facilities such as: GEO-East Hidalgo Detention Center (La Villa), GEO-Costal Bend, or GEO-Joe Corley.

IGAs: IGAs that are in place directly with local government entities, will not be affected by the executive order, but we continue to have challenges obtaining bedspace at county owned facilities throughout the border divisions.

Contract Renewal/Expiration:

- Geo Rio Grande Processing Center in Laredo, Texas - **October 2023**
- Geo GTI (Transportation/crucial for moving sentenced inmates) - **October 2023**
- CoreCivic (private direct contract with ICE. USMS authorized user) - **March 2023**
- MTC Willacy near Brownsville, Texas - **September 30, 2021**

Alternatives

USMS headquarters has informed the district that they are developing an agreement with the Bureau of Prisons (BOP) to provide bedspace for pre-trial inmates at BOP's Three Rivers prison, located in Three Rivers, TX. USMS has identified concerns using this location, however. Problem areas identified are: lack of space designed to accommodate pre-trial population, limited number of attorney visitation booths, limited access to inmates for other court related activities, such as PSI interviews, and the distance from courthouses in the southern half of the district. On average, driving distance can be from one to three hours, each way. In addition, USMS is attempting to relocate inmates from MTC-Willacy to various detention centers throughout the state. In an effort at maintaining Brownsville inmates within a reasonable distance from the courthouse, we will be required to shift prisoner populations in other divisions to detention centers further away, especially from the McAllen and Corpus divisions.

The USMS is aware that moving inmates hours away from divisions will have a direct impact on the Courts, Judiciary family, and the FPD/CJA. For these reasons, we will continue to work diligently to solve this problem. Thank you for your understanding and cooperation as we work through these unforeseen circumstances.



T. Michael O'Connor
United States Marshal
Southern District of Texas

Current Inmate Population Snapshot

Facilities	Total Contracted beds	Currently used	Currently vacant
GEO Brooks County Detention Center (Pass-through)	390	430	0
GEO Coastal Bend Detention Center (Pass-through)	1024	978	46
GEO Eagle Pass Detention Facility (Pass-through)	180	226	0
GEO East Hidalgo Detention Center (Pass-through)	1300	1400	0
GEO Joe Corley Processing Center (Pass-through)	1012	853	159 (not all avail. due to COVID)
GEO Rio Grande Processing Center (Direct Private)	1231	801	430 (not all avail. due to COVID)
MTC Willacy (Direct Private)	640	553	0 (Due to closing)
Core Civic Webb (Direct Private – ICE contract)	50	50	0
Total	5,815	5,291	635 (not all avail. due to COVID)

Current vacant beds are affected by Center for Disease Control COVID-19 protocol of only using 75% of available bed space at some correctional facilities, “dead beds” created by the co-horting of new inmates entering facilities, and the subtraction of restrictive housing and medical housing that cannot be used as regular housing unless a special need (Protective housing, Separation, disciplinary) or medical need exists.

FEDERAL PUBLIC DEFENDER
Southern District of Texas

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June 26, 2021

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Honorable Andrew Hanen
United States District Judge
Southern District of Texas
515 Rusk, 9th floor
Houston, TX 77002

RE: Willacy County Regional Correctional Center

Dear Judge Hanen:

I am writing to you to express our concerns with the decision of the United States Marshal Service not to renew the contract with the Willacy County Regional Correctional Center and the proposal to transfer all prisoners currently housed there to Brooks County.

As you can imagine this will have a devastating impact on our practice and will significantly undermine our ability to represent our clients effectively as required under the Sixth Amendment. In Brownsville alone, we have more than 400 pending cases and most of those clients are detained.

We have been advised that the Willacy facility is currently housing approximately 524 prisoners with charges pending in the Brownsville Division and 25 prisoners with charges pending in the McAllen Division.

Normally, an attorney would expect to visit with a client numerous times: to prepare for arraignment, to review the evidence, to determine whether to plead guilty or go to trial, to prepare for re-arraignment or trial, to review the PSR and to prepare for sentencing. While we have been conducting most of our client interviews remotely during the pandemic, this is a poor substitute for in-person interviews and is completely inadequate for some of these discussions.

It is approximately 150 miles from Brownsville to Brooks County and the travel takes anywhere from 4 to 5 hours round trip depending on traffic and the checkpoints. There is only one attorney visitation booth at Brooks County. Attorneys are leaving their homes at 5:00 a.m. to try to be the first person at the facility to visit. If they are not, they wait hours for the chance to see their clients. Normally, attorneys try to visit multiple clients per trip. Even this is hampered by the guards' failure to produce the clients expeditiously. Essentially, a trip to Brooks County to visit clients often entails a 16-hour day. And this is in addition to daily court proceedings.

The Marshal has expressed a willingness to transport up to 50 prisoners per day to the courthouse to meet with their attorneys. At some point, this may be a partial solution but for now it is not. Any prisoner who

leaves the facility is quarantined for 14 days upon return. In other words, no one can visit them and they face a significant hardship isolation.

Finally, while it will be extremely difficult for our office to meet our obligations to clients housed far away with limited visitation, the impact on the CJA panel lawyers will be even worse. Some have already advised us that they are considering resigning from the panel if they will have to travel to Brooks County to meet with their clients.

We welcome the opportunity to work with the stake holders to resolve this situation. Thank you for your assistance.

Respectfully yours,

Marjorie A. Meyers

Marjorie A. Meyers
Federal Public Defender
Southern District of Texas

cc: Honorable Lee H. Rosenthal
Chief United States District Judge