

Congress of the United States

Washington, DC 20515

March 23, 2018

The Honorable Ricardo A. Rosselló Nevares
Governor of Puerto Rico
La Fortaleza
P.O Box 9020082
San Juan, PR 00902-0082

Mr. José B. Carrión III
Chairman
Financial Oversight and Management Board for Puerto Rico
P.O. Box 192018
San Juan, PR 00919-2018

Dear Governor Rosselló and Chairman Carrión:

We write to express our opposition to the recent proposal to privatize much of Puerto Rico's Department of Correction and Rehabilitation ("DCR").¹ Such a change could lead to undesirable outcomes, such as increasing the Island's deficit and leading to higher rates of recidivism. As a result, we believe that this proposal should be rejected and that on-Island alternatives should be pursued.

I. The Proposal Will Increase the Deficit

In our analysis, the proposal will not generate any new savings, but rather increase the government of Puerto Rico's deficit. While the proposal assumes a \$46.9 million cost reduction from implementing the "Out-of-State Program," such a plan will require spending at least \$70 million on correctional costs off-Island.² As a result, the structural deficit will actually increase, because every dollar of government spending moved off-Island results in a loss of 80 cents in tax revenue.³ As a result, the total increase to the Island's deficit attributable to the Out of State

¹ Government of Puerto Rico, *New Fiscal Plan for Puerto Rico* (February 12, 2018), available at <http://www.aafaf.pr.gov/assets/newfiscalplanforpr-02-12-2018.pdf> (last visited March 14, 2018).

² Puerto Rico Department of Corrections Secretary Eric Rolon stated at a press conference on January 31, 2018 that the Commonwealth plans to contract with a private prison company which will charge \$60 per diem per prisoner. (\$60 per diem)*(3,200 prisoners)*(365 days) = \$70 million spent off-Island per year.

³ See P. Carrillo, A. Yezer, J. Kalaj, *Could Austerity Collapse the Economy of Puerto Rico?* Institute for International Economic Policy Working Paper Series (Sept. 2017), available at <https://www2.gwu.edu/~iiep/assets/docs/papers/2017WP/CarrilloIIEP2017-17.pdf> (last visited March 14, 2018). In this pre-hurricane paper, economists from George Washington University employ a fiscal multiplier of 2 for Puerto Rico, and also cite data supporting the further conclusion that in Puerto Rico "the elasticity of tax revenue with respect to GDP, is stable over time and equal to .4." It is worth noting that 2 is a fairly conservative fiscal multiplier in light of the fact that reputable economists, including Nobel Laureate Joseph Stiglitz, argue that the true multiplier could be as high as 3.7, and the Congressional Budget Office's economists have opined that a 2.5 multiplier is appropriate as a high-end estimate during a fiscal crisis. See also P. Guzman, M. Guzman, J. Stiglitz, *An Analysis of Puerto Rico's debt relief needs to restore debt sustainability*, Espacios Abiertos (Jan. 2018), available at <http://espaciosabiertos.org/wp-content/uploads/2018/01/Final-Report-DSA-2018.01.pdf> (last visited March 14, 2018); C. Whalen, F. Reichling, *The Fiscal Multiplier and Economic Policy Analysis in the*

Program would be \$46.6 million.⁴ Furthermore, many reputable studies have concluded that there are no cost savings from the privatization of prisoner custody in the first place—regardless of any multiplier effect—including the United States General Accounting Office.⁵

II. General Concerns Over Prison Privatizations

Significant concerns have been raised about the operations of for-profit corrections companies.⁶ As a result, the practices of private prison companies can promote an environment that is more violent and counterproductive to rehabilitation.⁷ In this regard, we are concerned that privatizing Puerto Rico's prison system could generate these problems, where they did not exist before, and that transferring Puerto Rican inmates to private prisons outside of Puerto Rico would subject them to similar treatment. Either of these outcomes would be unacceptable.

III. Successful Rehabilitation Incorporates Family Visitation

We are also concerned that if implemented, this proposal would be devastating for families on the Island, and would undermine rehabilitation efforts. Numerous studies show the positive effects that family visitation and contact have in reducing recidivism among prisoners when released.⁸ Given the distance and cost involved in a privatized prison system for the island, it is likely that fewer inmates would receive family visits, and that this would impact their eventual release and reintegration into Puerto Rican society. A criminal defense lawyer in San Juan commented that this proposal would be a “terrible hardship,” and that family members would have to bear an expensive and time-consuming flight to the mainland.⁹ One criminology expert stated that the distance from family members brought about by this proposal would delay progress in the rehabilitation of inmates.¹⁰ Instead, the government should be working to rehabilitate prisoners and reduce recidivism, thereby helping former prisoners become productive members of society, and at the same time lowering prison costs over the long term.

United States, Congressional Budget Office Working Paper Series (Feb. 2015), available at https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/workingpaper/49925-FiscalMultiplier_1.pdf (last visited March 14, 2018).

⁴ $(-\$70M) \times (.8) + (-\$46.9M) \times (.8) + \$46.9M = -\$46.6M$. Notably, the lost tax revenue from the off-shoring alone is \$56M, which dwarfs the \$46.9M the Governor claims will be saved through the Out of State Program before even accounting for any multiplier effect of the \$46.9M in reduced government spending at all. In fact, even employing the IMF's standard multiplier of 1.34 (which former IMF economists have roundly criticized as too low), the net effect of the Out of State Program would be to increase the deficit by \$15.7M per year, calculated as follows: $(-\$70M) \times (1.34) \times (.4) + (-\$46.9M) \times (1.34) \times (.4) + \$46.9M = -\$15.7M$.

⁵ See In the Public Interest, *The Costs of Private Prisons: Background Brief* (April 2014), available at https://www.inthepublicinterest.org/wp-content/uploads/Prison-Costs-Backgrounder-Brief_Template2.pdf (last visited March 14, 2018).

⁶ See, e.g., American Civil Liberties Union, *The ACLU Is at the UN Tomorrow to Testify on the Horrific Human Rights Record of US Private Prison Companies* (April 26, 2017), available at <https://www.aclu.org/blog/mass-incarceration/privatization-criminal-justice/aclu-un-tomorrow-testify-horrific-human> (last visited March 8, 2018).

⁷ See In the Public Interest, *Buying Influence: How Private Prison Companies Expand Their Control of America's Criminal Justice System* (October 2016), available at https://www.inthepublicinterest.org/wp-content/uploads/ITPI_BuyingInfluence_Oct2016.pdf (last visited March 8, 2018).

⁸ See Prison Legal News, *Lowering Recidivism through Family Communication* (April 15, 2014), available at <https://www.prisonlegalnews.org/news/2014/apr/15/lowering-recidivism-through-family-communication/> (last visited March 14, 2018).

⁹ See Mother Jones, *Puerto Rico Might Ship Inmates to the Mainland to Help Solve Its Budget Crisis* (February 6, 2018), available at <https://www.motherjones.com/politics/2018/02/puerto-rico-might-ship-inmates-to-the-mainland-to-help-solve-its-budget-crisis/> (last visited March 14, 2018).

¹⁰ See El Nuevo Dia, *Thousands of Inmates would be transfer[red] to the United States* (January 28, 2018), available at <https://www.elnuevodia.com/english/english/nota/thousandsofinmateswouldbetransfertothetunitedstates-2393802/#> (last visited March 14, 2018).

IV. Constitutional Issues

We are also concerned that the externalization of imprisonment services proposal may violate Puerto Rican constitutional law. Article VI, Section 19 of the Constitution of Puerto Rico states:

*It shall be the public policy of the Commonwealth... to regulate its penal institutions in a manner that effectively achieves their purposes and to provide, within the limits of available resources, for adequate treatment of delinquents in order to make possible their moral and social rehabilitation.*¹¹

The Puerto Rico courts have held that Article VI, Section 19 may be violated when prisoners are prevented from visiting with their families, reasoning that visitation is necessary for rehabilitation.¹² It appears that this proposal, to the extent it prevents inmates from visiting with their families, may violate Puerto Rico's Constitution.

V. Previous privatization attempts have failed

Finally, we are concerned that this proposal attempts to reestablish policies that have failed previously. For example, in 2012, Puerto Rico entered into a two-year contract with Corrections Corporation of America ("CCA") to transfer as many as 480 male inmates to Cimarron Correctional Facility ("CCF") in Cushing, Oklahoma. In 2013, there was a unit-wide altercation at CCF involving those same inmates.¹³ Approximately three months after the altercation, CCA officials announced that the Puerto Rico DCR decided to terminate its contract with CCA and return its inmates to Puerto Rico, ultimately citing budgetary concerns.¹⁴ This failed experiment demonstrated both that privatization of Puerto Rican inmates to the mainland is unsafe and not cost-effective. This is not the time to propose privatization of prison services, particularly when numerous contracts awarded by the government of Puerto Rico have been prematurely terminated or have ended up in controversy.¹⁵ It is vital that the island focus on post-Maria recovery efforts and attracting investment to the Island, not outsourcing inherently governmental functions.

VI. Conclusion

For the reasons indicated above, we encourage you to rescind this proposal. It would tear families apart, hinder inmates' rehabilitation, repeat the mistakes of prior governments, and subject the government of Puerto Rico to legal challenges. We appreciate your sense of urgency in trying to remedy the Island's fiscal crisis. However, we are seriously concerned that if implemented, this proposal would cause more harm to Puerto Rico without any cost savings to justify it.

¹¹ Puerto Rico Constitution, Article VI, Section 19.

¹² *Almódovar Medina v. Martínez, Superintendente Institución Correccional Ponce*, Tribunal de Circuito de Apelaciones, Estado Libre Asociado de Puerto Rico, 2001TCA1463 (June 26, 2001).

¹³ See Tulsa World, *Cimarron Correctional Facility in Cushing remains under lockdown after inmate brawl* (June 12, 2015), available at http://www.tulsaworld.com/news/crimewatch/cimarron-correctional-facility-in-cushing-remains-under-lockdown-after-inmate/article_df3760d2-7fd2-5df3-acc2-5dc7094861cf.html (last visited March 14, 2018).

¹⁴ *Id.*

¹⁵ See, e.g., The Atlantic, *The Puerto Rico Power Scandal Expands* (November 3, 2017), available at <https://www.theatlantic.com/politics/archive/2017/11/puerto-rico-whitefish-cobra-fema-contracts/544892/> (last visited March 14, 2018).

Sincerely,



Nydia M. Velázquez
Member of Congress



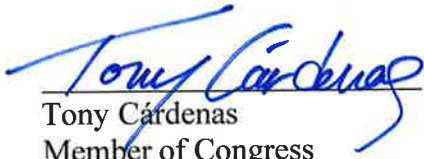
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Member of Congress



Bernard Sanders
United States Senator



Elizabeth Warren
United States Senator



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J. Luis Correa
Member of Congress



Joseph Crowley
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Elijah E. Cummings
Member of Congress



Lloyd Doggett
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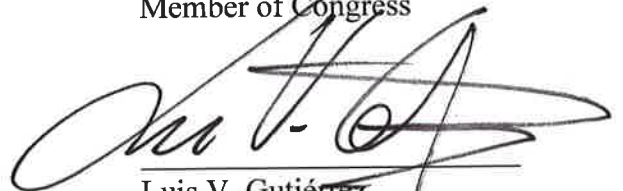
Keith Ellison
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Luis V. Gutiérrez
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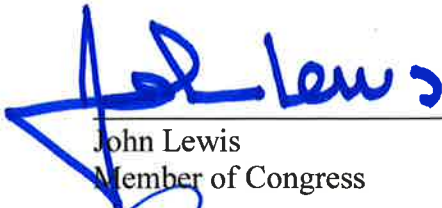
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Henry C. "Hank" Johnson, Jr.
Member of Congress



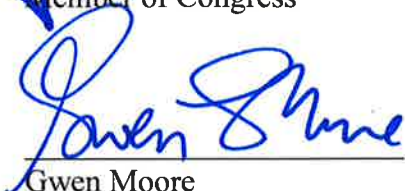
Barbara Lee
Member of Congress



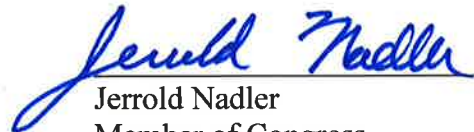
John Lewis
Member of Congress



Gregory Meeks
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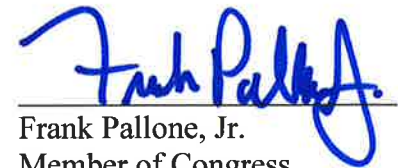
Gwen Moore
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Jerrold Nadler
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Grace F. Napolitano
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Frank Pallone, Jr.
Member of Congress



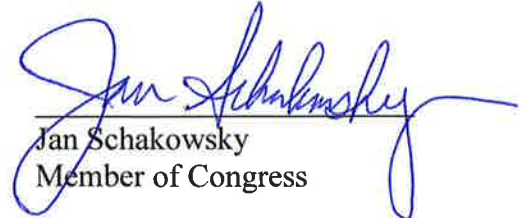
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Albio Sires
Member of Congress



Darren Soto
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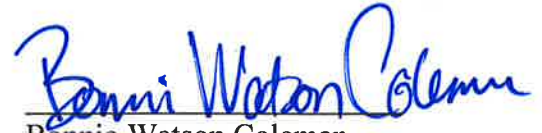
Dina Titus
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Norma J. Torres
Member of Congress



Juan Vargas
Member of Congress



Bonnie Watson Coleman
Member of Congress



Ro Khanna
Member of Congress

Cc: Gerardo José Portela Franco, Executive Director, Puerto Rico Fiscal Agency and
Financial Advisory Authority
Einar Ramos López, Director, Puerto Rico Department of Correction and Rehabilitation