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*Via Email and U.S. Mail*

Re: Plan to convert hotel into 1,200 person ICE detention facility

Dear Gentlemen,

I understand that you represent the lender and borrower for a property at North Scottsdale Road and East Mountain View Road in Scottsdale (the "Hotel Property"), which is currently the subject of a dispute over being potentially converted into an under 72-hour ICE detention facility for housing up to 1,200 adult and minor migrants.<sup>1</sup>

I am writing to express grave concerns about whether a detention facility is an appropriate and legal use of the Hotel Property, particularly in light of information that my office recently learned through a court-ordered deposition of the Deputy Director of the ICE Phoenix Field Office, Albert Carter. I am further writing to express public safety concerns about the decision to establish this 1,200 person detention facility at the Hotel Property. The root-causes of the current crisis are problems of the Biden Administration's own making, including policies that have administratively—and intentionally—crippled ICE's important law enforcement mission and incentivized illegal immigration. While everyone rightly expects that migrants should be treated humanely, a new detention facility at the Hotel Property should not be established.

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<sup>1</sup> See Renalta Cló, *Migrants could be detained at Valley hotel*, ARIZONA REPUBLIC (May 31, 2021).

*First*, regardless of how well-intentioned everyone involved is, detention facilities inherently carry some risk that one or more individuals who pose a public safety threat are going to be housed there and potentially leave the premises. As outlined in the lender's Verified Complaint:

The ICE/DHS Contract provides that the hotel on the Property will cease being operated as a hotel, and will instead be operated as an ICE/DHS detention center for immigrant families being held in ICE custody who are awaiting deportation, continued custody, or release determinations by ICE, DHS or the Department of Justice.

...

The ICE/DHS Contract leaves no doubt that the Property will in fact be operated as an ICE detention center, securing and holding all of the individuals who stay there in government custody at all times, day and night. For example, the ICE/DHS Contract states that "[a]ll residents will be in the legal custody of ICE, therefore they can only be released at the direction of ICE" (*id.* at 60, § 2), and "[a]t all times, individuals comprising family units shall remain in the legal custody of ICE, irrespective of residential services provided by Service Provider." *Id.* at 62, § 5(a)(iii), (xi). The ICE/DHS Contract also requires that those providing services at the Property "shall structure all programs and implement strategies designed to ensure residents remain within the residential setting to include, if necessary, consequences for departing without authorization." *Id.* at 62, § 5(a)(xi)."<sup>2</sup>

This is consistent with the deposition testimony of Director Carter, who testified that ICE "detention facilities are broken down in multiple ways for immigration purposes. There is an over 72-hour facility where individuals are housed for longer term. But there are also under 72-hour facilities that are generally managed through intergovernmental service agreements that would also be included."<sup>3</sup> Mr. Carter's testimony confirms that what is being established is a type of detention facility, not a hotel.

Mr. Carter also provided examples of some of the under 72-hour facilities in Arizona including facilities managed by the Coconino County Sheriff's Office, La Paz County Sheriff's Office, Santa Cruz County Sheriff's Office, and the San Luis Detention Center.<sup>4</sup> While there was one hotel—the Holiday Inn Express & Suites Phoenix/Chandler—according to the ICE detention data, the average length of stay was only 2 days, and there were *only 2 detainees being housed there*, compared to up to 1,200 contemplated for the Hotel Property.<sup>5</sup>

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<sup>2</sup> Verified First Amended Complaint ("Verified Complaint") at ¶¶50, 53, *Wilmington Trust, N.A. v. Woodbridge Hospitality, L.L.C. et al.*, No. CV2021-006723 (Maricopa County Super. Ct. May 24, 2021).

<sup>3</sup> Albert Carter Deposition at 26:16-22.

<sup>4</sup> *Id.* at 27-28.

<sup>5</sup> *Id.* at 25 (discussing Exhibit 5 to Carter's deposition, FY21\_DetentionStaff 04292021.xlsx).

*Second*, there is no guarantee that housing 1,200 detainees in this area would not result in some of them being released into the community. ICE has adopted irresponsible “enforcement priorities” that administratively repeal almost all ICE enforcement. Those “enforcement priorities” notably do not include those who have previously been convicted of what the Biden Administration deems insufficiently serious crimes, or those who have been charged but not convicted of a crime. Given this, if the prime contractor is unable to place particular detainees, it is foreseeable that ICE could simply release the detainee into the community because they do not fall within the Biden Administration’s extremely narrow “enforcement priorities.”

The State of Arizona and State of Montana recently filed a lawsuit in federal district court in Arizona challenging these enforcement priorities as arbitrary and capricious and contrary to law. The potential release of individuals from the detention facility at the Hotel Property only illustrates why the enforcement priorities are bad policy that is harmful to public safety. *See Arizona and Montana v. Department of Homeland Security*, No. 21-186 (D. Ariz.).

*Third*, based on the limited information available, this does not appear to be a good location for a 1,200 person detention facility in any event, and may well—or at least should—require significant additional study by local government before such a drastic change is implemented. The Hotel Property is literally adjacent to an apartment complex and near a senior living facility. It is also across the street from a residential neighborhood and another apartment complex. It is less than a block from a high school, less than one mile from a preschool, and less than two miles from a middle school.

The lender, who stands to potentially receive some of the revenues from this contract, has itself voiced concerns that this dramatic change in use would require rezoning the property or at a minimum obtaining a variance. The Verified Complaint alleges:

On information and belief, using the Property in the manner stated in the ICE/DHS Contract would not be in compliance with existing City of Scottsdale zoning ordinances and/or other restrictive covenants governing the Property, and would therefore require a change to, or waiver or exemption from, the existing zoning ordinances and use permits, or would result in a violation of the existing zoning ordinances and use permits.<sup>6</sup>

The Lender’s application for temporary restraining order, similarly stated:

It is also very likely that Borrower’s conduct in agreeing to the ICE/DHS Contract and preparing to perform it violated the provisions in the Loan Agreement and Deed of Trust prohibiting Borrower from doing anything at the Property that might not comply with existing zoning ordinances and prohibiting Borrower from attempting to change the zoning ordinances or obtain an exception or variance from them. *See* Loan Agreement § 5.18; Deed of Trust § 3. Borrower has represented that a zoning change from the City of Scottsdale will be needed to

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<sup>6</sup> Verified Complaint ¶59.

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convert the hotel on the Property into condominiums (and has not yet been obtained). In that case, it seems unlikely that the City of Scottsdale would allow the Property to change its use from a hotel to an ICE detention center without requiring even more drastic zoning changes or variances.<sup>7</sup>

*Fourth*, despite obvious potential impacts from the establishment of the detention facility to the “human environment,” 42 U.S.C. §4332(C), DHS has not conducted any of the necessary environmental analysis under the National Environmental Policy Act (“NEPA”) to study such impacts. *See, e.g., Hanly v. Mitchell*, 460 F.2d 640, 647 (2d Cir. 1972) (NEPA “must be construed to include protection of the quality of life for city residents. Noise, traffic, overburdened mass transportation systems, crime, congestion and even availability of drugs all affect the urban ‘environment.’” (cleaned up)). Absent any such compliance efforts, the contract with DHS is likely invalid as a matter of law.

This violation of NEPA is part of a broader pattern of DHS failing to comply with NEPA with respect to immigration and border control policies. Because of these other violations, I have filed suit against DHS and its officials in the U.S. District Court for the District of Arizona. *See Arizona v. Mayorkas*, No. 21-617 (D. Ariz. 2021).

For all of these reasons, I urge you not to go forward with converting the Hotel Property into a 1,200 person detention facility.

Sincerely,



Mark Brnovich  
Attorney General

Enclosure

CC: Allister Adel, Maricopa County Attorney, [REDACTED]@mcao.maricopa.gov  
Sherry R. Scott, Scottsdale City Attorney, [REDACTED]@ScottsdaleAZ.gov

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<sup>7</sup> Application for Emergency Temporary Restraining Order and Preliminary Injunction at 10-11, *Wilmington Trust, N.A. v. Woodbridge Hospitality, L.L.C. et al.*, No. CV2021-006723 (Maricopa County Super. Ct. May 24, 2021).