



**HOMELAND SECURITY ADVISORY
COUNCIL**

**Report of the
Subcommittee on Privatized Immigration
Detention Facilities**

December 1, 2016

This page is intentionally left blank.

DRAFT

This publication is presented on behalf of the Homeland Security Advisory Council, Privatized Immigration Detention Facilities Subcommittee, chaired by Administrator (Ret.) Karen Tandy, Drug Enforcement Administration as the final report and recommendations to the Secretary of the Department of Homeland Security, Jeh C. Johnson.

Karen Tandy
Administrator (Ret.)
Drug Enforcement Administration

DRAFT

This page is intentionally left blank.

DRAFT

PRIVATIZED IMMIGRATION DETENTION FACILITIES SUBCOMMITTEE MEMBERS

Karen P. Tandy (Chair) – Former Administrator, Drug Enforcement Administration

Marshall Fitz – Senior Fellow, Center for American Progress; Managing Director of Immigration, Emerson Collective

Kristine Marcy – Vice Chairman, Board of Directors, National Academy of Public Administration

Christian Marrone – Vice President for External Affairs and Chief of Staff to the CEO, CSRA Inc.

David A. Martin – Professor of Law Emeritus, University of Virginia

William H. Webster – (ex-officio) Retired Partner, Milbank, Tweed, Hadley & McCloy LLP

HOMELAND SECURITY ADVISORY COUNCIL STAFF

Sarah E. Morgenthau, Executive Director, Homeland Security Advisory Council

Erin Walls, Director, Homeland Security Advisory Council

Victor de León, Staff, Homeland Security Advisory Council

This page is intentionally left blank.

DRAFT

TABLE OF CONTENTS

I. INTRODUCTION	1
<i>A. The Secretary's charge to the subcommittee.....</i>	1
<i>B. Limitations.....</i>	1
<i>C. Executive summary of recommendations</i>	2
II. BACKGROUND	4
<i>A. Stakes and underlying values</i>	4
<i>B. The DOJ phase-out decision</i>	5
<i>C. Factors affecting ICE detention</i>	6
III. OPTIONS AND RECOMMENDATIONS	8
<i>A. The ICE-run model</i>	8
<i>B. Improving practices at all facilities.....</i>	11
<i>C. Other recommendations for monitoring and “ownership” of accountability, in facilities run by private contractors (and in the larger county jail facilities).....</i>	14
APPENDIX A – SUBCOMMITTEE MEMBER BIOGRAPHIES.....	17
APPENDIX B – SUBJECT MATTER EXPERTS AND OTHER WITNESSES	20
APPENDIX C – ADVOCATE LETTERS AND SUBMISSIONS FROM PUBLIC	23

This page is intentionally left blank.

DRAFT

I. INTRODUCTION

A. *The Secretary's charge to the subcommittee*

On August 26, 2016, Secretary Jeh Johnson tasked the Homeland Security Advisory Council (HSAC) to create a subcommittee to look at the use by U.S. Immigration and Customs Enforcement (ICE) of privately run immigration detention facilities. The tasking was occasioned by an August 18 announcement that the Department of Justice (DOJ) was directing the Bureau of Prisons (BOP) to reduce and ultimately end its use of private prisons. The Secretary asked that this Subcommittee on Privatized Immigration Detention Facilities “address ICE’s current policy and practices concerning the use of private immigration detention facilities and evaluate whether this practice should be eliminated. This evaluation should consider all factors concerning policy and practice with respect to ICE’s detention facilities, including fiscal considerations.”¹

The subcommittee was created and spent approximately two months reviewing ICE policies and interviewing ICE leadership, as well as other subject matter experts, staff of the Department of Homeland Security (DHS), officials from BOP, the U.S. Marshals Service (USMS), and DOJ. The subcommittee also met with detention experts, executives from the major private detention companies, and representatives from national and local immigration advocacy groups.² Additionally, subcommittee members visited two ICE detention facilities, one owned and operated by ICE and the other owned and operated by a private for-profit company. This report and its recommendations are the result of the interviews, documents, and site visits mentioned above along with other research conducted by members of the subcommittee.

B. *Limitations*

It is important to note at the outset certain limitations on the scope of our inquiry. Our immigration law enforcement system is highly complex, and the topic of immigration detention is deeply controversial. A report based on a two-month study of this sort necessarily must take a high-altitude view of the subject, and extrapolate from a limited array of experiences and research. (In contrast, the DOJ decision to phase out privatized BOP prisons drew from an extensive and data-driven inquiry by that Department’s Inspector General, looking in detail at practices in 28 BOP facilities.) Final decisions on the significant questions we have examined would benefit from a more in-depth review of policies and practices – though we believe our report and recommendations illuminate useful conclusions and lines of further inquiry.

Furthermore, our compressed timeframe dictated that we focus closely on the question of the type of facility to be used for detention (primarily private vs. public), whenever immigration detention is employed, and relatedly on potential changes to administrative practices that could improve the quality and safety of detention. We did not try to address the broader policy

¹ The tasking is published in Volume 81 of the Federal Register, page 60713 (Sept. 2, 2016).

² A list of subject matter experts and other witnesses with whom we met appears in Appendix B.

decisions regarding how extensively DHS should deploy detention instead of alternatives to detention such as community supervision programs, electronic monitoring, or release on bond. We recognize the important debates occurring in multiple forums over the latter question, and acknowledge that shifts in policies governing when to detain, as well as changes in migration flow patterns, will affect the scope of realistic and available options.

C. Executive summary of recommendations

We present here at the outset the subcommittee's core recommendations. The background and reasoning supporting these conclusions are explained more fully in the remaining sections of this report.

(1) Fiscal considerations, combined with the need for realistic capacity to handle sudden increases in detention, indicate that DHS's use of private for-profit detention will continue. But continuation should come with improved and expanded ICE oversight, and with further exploration of other models to enhance ICE control, responsiveness, and sense of accountability for daily operations at all detention facilities. ICE should also seek ongoing ways to reduce reliance on detention in county jails.³

(2) Congress should provide to ICE the additional monetary and personnel resources needed to provide for a more robust, effective and coordinated inspection regime, as well as the other improvements identified in this report.

(3) The ICE Health Service Corps (IHSC) has brought identifiable improvements to health care in ICE detention facilities. It should be provided the funding to expand coverage to a higher percentage of the facilities where ICE detainees are held, and to ensure full staffing in those facilities, as part of continuing efforts to improve medical services.

(4) ICE will still need to make some limited use of county jail detention, because enforcement action often takes place in locations distant from DHS's primary facilities. ICE should strive, however, to negotiate inclusion of the full range of ICE detention standards in its agreements with county jails, and should, to the maximum extent possible, use county jails only for short-term detention (less than 72 hours) before transfer to larger and higher-quality dedicated facilities.

(5) All inspections should make greater use of qualitative review of outcomes, rather than simply using a quantitative checklist. The point of inspections is to provide meaningful evaluation of actual on-the-ground detention conditions in each facility, in order to develop and implement specific correctives as necessary.

(6) Annual inspections done by ICE's Enforcement and Removal Operations (ERO) should move toward greater direct involvement by ICE officers and subject matter experts and not be left to implementation by the personnel of an inspection contractor.

³ See footnote 14 below for additional views on this recommendation.

(7) ICE should establish a more regular method for inspection of under-72-hour facilities and staging areas.

(8) ICE should make greater use of unannounced inspections.

(9) The current layered system for inspections should be reformed to improve communication among the involved offices, in order to minimize duplication of work and to facilitate recognition of, and follow-up on, problematic practices identified in earlier inspections.

(10) ICE should press hard for inclusion of the full and most recent Performance Based National Detention Standards (PBNDS) in all contracts and agreements as they are negotiated or renewed, minimizing waivers based on claims by the facility that certain prescribed practices are burdensome.

(11) ICE should carefully examine its contract provisions to improve the array of tools and procedures used to assure effective response to identified deficiencies, including monetary withholding or contract reductions, plus rigorous follow-on review by ERO and other personnel.

(12) ICE should establish clearly defined channels for the reporting of potential problems, deficient conditions, or indications of abuse noted by ICE personnel who are regularly present in contract detention facilities – with clear provision for timely follow-up by appropriate ICE or DHS offices. ICE officers and employees should be encouraged to do such reporting and should be rewarded for reports that uncover serious problems or lead to significant improvements in practices.

(13) ICE should make sure there are well-defined channels for detainees and their families and representatives to report problems, including through an enhanced community liaison. Complainants should be kept regularly informed of the progress of official review and receive response to any complaint or grievance.

(14) ICE should revise contracts and Intergovernmental Service Agreements (IGSAs) to provide for the stationing of an “ICE warden” at each of its largest facilities. This officer should be given broad authority and focused accountability for alert unstructured monitoring and timely response.

II. BACKGROUND

A. *Stakes and underlying values*

Civil detention pending either an immigration hearing or implementation of a final removal order is a weighty exercise of governmental power and must be done with care, vigilance, and protections for the rights and health of the detainees. (Courts have held that the constitution guarantees, among other protections affecting detainees, freedom from physical abuse in detention, attention to medical needs, access to courts, and accommodation of the right to prepare for and participate in administrative hearings regarding their removal.⁴) Protecting detainee rights and safety, while still serving the basic purposes of the underlying enforcement regime, is a continuing challenge for *all* detention and corrections systems, federal, state, and local.

The committee heard presentations from immigrant advocacy groups alleging serious deficiencies or abuses that have occurred in ICE detention, with particular, but not exclusive, focus on privately operated ICE facilities.⁵ We also spoke with numerous ICE officials, who disputed some of these assertions, explained the array of ICE detention facilities, the working of their systems for contracting and monitoring, and their views of the system's challenges and accomplishments.

Because legitimate restriction on physical liberty is inherently and exclusively a governmental authority, much could be said for a fully government-owned and government-operated detention model, if one were starting a new detention system from scratch. But of course we are not starting anew. Over many decades, immigration detention has evolved into a mixed public-private system where only 10 percent of detainees are now in ICE-owned facilities (known as Service Processing Centers or SPCs). Nearly all of the rest of the detainees are in facilities operated by private companies or by county jails,⁶ under various forms of contract or agreement with ICE.⁷ Even in the SPCs, many core functions, including security, are carried out

⁴ See, e.g., *Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir. 1987); *Wong Wing v. United States*, 163 U.S. 228 (1896). Statutes and regulations also specify and amplify detainee rights.

⁵ Appendix C contains the principal written communications addressed to the committee from those with whom we met, including advocacy organizations and subject-matter experts.

⁶ We use the term “county jails” to refer generally to the detention facilities used for immigration detention that are under the operational control of non-federal governmental entities rather than ICE or a private contracting firm. As we use it, the term includes facilities run by state, local, or municipal governmental authorities, not necessarily always by county sheriffs.

⁷ The contracting structures are different for direct ICE agreements with private contractors versus those with county jails. ICE has authority to enter into intergovernmental service agreements (IGSAs) with state or local government entities for use of the latter’s detention facilities, under contracting procedures that are far less complex than the usual federal government acquisition process commonly used for direct arrangements with private contract detention facilities. But it should be noted that many facilities covered by IGSAs, especially those with a high bed capacity, are actually operated by a private for-profit contractor. In such cases ICE deals primarily with the private contractor over operational matters; the IGSA arrangement is used primarily to facilitate ease of contracting, and the local government entity involved plays only a limited role. We count such facilities in the second category in Table I –

by contract personnel, but with a more direct form of supervision by ICE officers than is the case in the other two broad categories of detention facilities.

Table I
ICE Detainee Population by Type of Facility
(Based on average daily population as of September 12, 2016;
see footnote 7 for method used to determine facility type)

<i>Facility type</i>	<i>Percent of ICE detainee population</i>
Federally owned and directed facilities (SPCs)	10 percent
Facilities operated by private, for-profit contractors	65 percent
Facilities operated by county jails or other local or state govt entity	25 percent

The question for the subcommittee, and ultimately for the Department, is therefore how to reform the current structure to maximize the protection of detainee rights while still serving the core purposes of the underlying enforcement regime. Even in the perspective of a potentially lengthy implementation timeline (extending perhaps a decade, if necessary, to build new facilities and allow current contracts to expire, rather than paying high fees for early contract termination), likely resource constraints must necessarily be taken into account. Wholly ICE-run facilities are definitely an option to consider closely, but *the core question is not the identity of the operating entity but how to assure high-quality, efficient, safe, humane detention that is appropriate for ICE detainees held for civil rather than criminal processing*. All types of detention facilities, even if operated entirely by federal government officers and employees, require careful, sustained attention to programs for supervision, monitoring, inspection, and timely remedial action.

B. The DOJ phase-out decision

The decision by DOJ to phase out – over many years as contracts expire – the use by BOP of private contractor-operated prisons was the immediate stimulus for the subcommittee's tasking. It is therefore important to understand precisely what decision DOJ faced and what it decided. As the memorandum from Deputy Attorney General Yates (Yates Memorandum)⁸

facilities operated by private for-profit contractors – because the table is not based on formalities of contracting but rather on which type of entity has primary operational control over the facility.

A further variation should also be noted. In many other locations, ICE gains access to the use of county jail space by means of riders on intergovernmental agreements (IGAs) already in place with the U.S. Marshals Service. Typically in those facilities operational control resides in the county jail, and Table I counts them in the third category based on that factor. The distinction between IGSAs and IGAs is not material for this subcommittee's inquiry. (Some of our interviewees did suggest that improved ICE control could be achieved by reducing reliance on these sorts of indirect agreements, but other evidence indicated that such agreements did not significantly impede steps to enhance ICE monitoring and control when ICE is determined to take them. We did not reach a conclusion on this issue.)

⁸ Memorandum for the Acting Director, Federal Bureau of Prisons, from Sally Q. Yates, Deputy Attorney General, *Reducing our Use of Private Prisons*, Aug. 18, 2016.

makes clear, DOJ began contracting with private prisons about a decade ago to cope with steeply rising prison populations. But recent developments have resulted in significantly reduced federal prison populations, declining from a total of 220,000 in 2013 to 195,000 today. At present only 15 percent of BOP detainees are in private facilities. (ICE's situation is the mirror image; only 10 percent of ICE detainees are in ICE-owned facilities.) The declining prison population provides a clear opportunity to close facilities, and DOJ will use that opportunity to move away from contracting with private for-profit companies.

Importantly, in reaching this decision, the Yates Memorandum noted that federally operated BOP facilities had a better record than private contractors on most (but not all) safety and security factors according to a recent review by the DOJ Office of the Inspector General,⁹ and that private facilities do not provide the same level of programs and resources. DOJ's decision, however, did not represent a finding that private prisons are inherently substandard; the Deputy Attorney General said that they had "served an important role during a difficult period."

C. Factors affecting ICE detention

ICE's use of detention most closely parallels that of the Marshals Service, rather than BOP's use thereof, but DOJ has not acted to phase out the use of private detention facilities by the Marshals Service. Like ICE, the Marshals primarily hold detainees awaiting trial or implementation of a judgment, rather than for corrections or the related services that are provided in prisons for convicted offenders. The Marshals Service had an average daily population of 51,382 in FY 2016. About 19 percent were in federal facilities, 35 percent in facilities operated by private contractors, and 46 percent in county jail facilities.

ICE detention is also particularly subject to sudden and sharp swings in population, to a greater degree than the Marshals Service. For example, on November 10, in the midst of our deliberations, Secretary Johnson announced that apprehensions of new arrivals along the southwest border had increased from 39,501 in September to 46,195 in October (an increase of 16 percent) and that ICE detention, which is normally at 31,000 to 34,000 beds, had risen to 41,000. His announcement stated that he was authorizing ICE to acquire still further detention space for single adults.¹⁰

Capacity to handle such surges, when policymakers determine that detention will be part of the response, cannot reasonably be maintained solely through the use of facilities staffed and operated by federal officers. This leaves essentially two options for coping with sudden detention fluctuations: privately operated facilities or county jails.

The subcommittee heard from a wide variety of sources, including both immigration advocates and current and former ICE officials, that county jails are, in general, the most problematic facilities for immigration detention. Because most of them are mixed-use facilities

⁹ Office of the Inspector General, U.S. Department of Justice, *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons* (Evaluation and Inspections Division 16-06, August 2016).

¹⁰ Statement by Secretary Johnson on Southwest Border Security, DHS Press Release (Nov. 10, 2016).

primarily handling county detainees in the criminal-justice process, such facilities often will not accept the full range of detailed detention standards that ICE has developed, though they typically are required to agree to a more limited subset of the standards and to some provisions for ICE monitoring. Moreover, the officials operating such county facilities can be resistant to changes in their practices in response to identified problems, in part because they do not wish to have sharp differences in treatment for different categories of detainees (ICE vs. local) held at the same facility.

The subcommittee emphasizes that it would not represent improvement to phase out private contractors if the result were heavier use of county jails. At least with regard to the capacity to respond to surges in migration flows, contracts with private contractors in general represent a better alternative.

We also recognize that ICE cannot realistically eliminate all use of county jail facilities for detention, but for different reasons – primarily because immigration enforcement action often takes place in remote locations distant from the other types of detention facilities. Nonetheless, the difficulties mentioned above in ensuring acceptable standards in county jails dictate that ICE should use such facilities only for short-term detention, transferring the detainees as soon as possible to an SPC or a more complete facility run by a contractor and subject to the full range of ICE standards and oversight.

III. OPTIONS AND RECOMMENDATIONS

A. The ICE-run model

SPCs. Our site visits to detention facilities did provide insights into potential structural advantages that the SPC model might hold over the full private contract model. That experience offered indications that when ICE operates the detention facility, ICE leadership can respond more quickly and effectively to developing problems or sudden incidents. Even with the use of specialized private contractors to carry out the lion's share of specific operational functions (including security), as is the case in all the SPCs, the SPC director, a senior and experienced ICE officer, is clearly in charge of what happens at the facility and thus bears unmistakable accountability for its operation. That director, supported by ICE executive staff based at the facility, may more readily detect and address problems, errors or abuses, and direct timely changes when dictated by local developments or by changed ICE policy. Of course, such responsiveness is not automatic; it also can depend heavily on the particular officers involved or other details of the smaller scale contracts and relationships at a particular SPC. We were not able to explore sufficiently whether SPCs as a general matter enjoy this governance advantage, but we suggest that DHS undertake a closer and more systematic look at this potential in connection with further detention planning.

We also note that the SPC model is generally more expensive than the other types of ICE detention. ICE reports that the average cost of a day in an ICE SPC is \$184.35 per person versus \$144.23 in a privately-contracted detention facility.¹¹ Moreover, one-time transition costs to ICE-owned and directed facilities would exceed \$1.3 billion and could be as much as \$5-6 billion, according to estimates received from ICE.¹² The cost factor undoubtedly puts limits on the extent to which significant changes toward an SPC model could be pursued. And we repeat the admonition noted above: any reduction in the use of private contractor detention would disserve the goals of safe and humane immigration detention if it simply results in increased reliance on detention in county jails.

ICE Health Service Corps. Quality health care is an ongoing challenge in all prison and detention facilities, no matter who runs them. Health care inevitably affects core concerns about the safety and well-being of the individual detainees, and substandard care is recognized as a leading potential source for grievances or disturbances. Sustaining adequate health care staffing, however, can be difficult for all types of detention facilities and prisons, in part because of their typically remote location and in part because skilled health-care professionals generally have other job opportunities in more attractive or comfortable settings. A March 2016 report by the

¹¹ For this reason ICE has been under sustained pressure from congressional appropriators to reduce the use of SPCs and in fact has closed four SPCs over the last eight years, while opening new contract facilities.

¹² Actual costs of such a transition could vary considerably, depending on a host of choices about exactly what new facilities would be purchased, leased, or constructed, and the exact mix of federal and contract employees in the staffing at those facilities.

DOJ OIG, for example, examined and critiqued chronic difficulties in sustaining adequate health care staffing in federally operated BOP facilities.¹³

ICE's challenge in this realm is perhaps greater than that facing most U.S. detention or prison facilities, because a great many of its detainees are recent arrivals from other countries where the individual may have had very limited access to quality health care. ICE and its predecessor agencies have struggled with this challenge for decades, and allegations of poor-quality health care in ICE facilities have regularly figured in outside criticism of the system.

ICE has responded in two primary ways over the last decade or so, and improvements have resulted. First, ICE adopted more detailed and rigorous requirements for treatment, hospitalization, and extensive notifications regarding any detainee who has a life-threatening illness. If death results, in any type of ICE detention facility, immediate reporting is required to the head of ICE Enforcement and Removal Operations, and then to the office of the ICE Director, DHS's Office of the Inspector General, and its Office for Civil Rights and Civil Liberties (CRCL), as well as next-of-kin. The policy mandates a close inquiry into the circumstances of the death, leading to a detailed report that highlights lessons learned. Health care and emergency response practices have been reformed based on this learning process. Deaths in ICE custody have been significantly reduced, from an average of 26 per year in calendar years 2004-2006 to 7 in 2013-2015, despite rising detainee populations.

Second, and of wider applicability, ICE moved in 2006 to set up its own, directly run, health-care provider service, the ICE Health Service Corps, with a staff of 1100, importantly including uniformed officers from the Public Health Service. IHSC provides direct medical, dental and mental health care to approximately 13,500 detainees housed at 21 designated facilities. IHSC also plays a monitoring role with regard to the health care provided by the contractor or county jail in other facilities. ICE would like to expand the use of IHSC in both direct-provision and monitoring capacities, but expansion would require enhanced appropriations.

Although there are definitely still problems and challenges in health care at IHSC-staffed facilities, most persons with whom we talked indicated that the quality of care in such facilities is better than under a contractor-supplied system. This appears to result from the fact that IHSC health care falls under the direct accountability of ICE officials and is thus more responsive in addressing problems. The subcommittee supports expansion of the use of IHSC, with the ultimate objective of IHSC deployment in all of the larger ICE facilities of any type. We urge Congress to provide the necessary funding.

Specific recommendations on expanding the role of government-run facilities or operations:

¹³ Office of the Inspector General, U.S. Department of Justice, *Review of the Federal Bureau of Prisons' Medical Staffing Challenges* (Evaluation and Inspections Division 16-02, March 2016).

(1) Fiscal considerations, combined with the need for realistic capacity to handle sudden increases in detention, indicate that DHS's use of private for-profit detention will continue. But continuation should come with improved and expanded ICE oversight, and with further exploration of other models that can enhance ICE control, responsiveness, and sense of accountability for daily operations at all detention facilities. ICE should also seek ongoing ways to reduce reliance on detention in county jails.¹⁴

(2) Congress should provide to ICE the additional monetary and personnel resources needed to provide for a more robust, effective and coordinated inspection regime, as well as the other improvements identified in this report.

(3) IHSC has brought identifiable improvements to health care in ICE detention facilities. It should be provided the funding to expand coverage to a higher percentage of the facilities where ICE detainees are held, and to ensure full staffing in those facilities, as part of continuing efforts to improve medical services.

(4) ICE will still need to make some limited use of county jail detention, because enforcement action often takes place in locations distant from DHS's primary facilities. ICE should strive, however, to negotiate inclusion of the full range of ICE detention standards in its agreements with county jails, and should, to the maximum extent possible, use county jails only for short-term detention (less than 72 hours) before transfer to larger and higher-quality dedicated facilities.

¹⁴ Separate views of subcommittee member Marshall Fitz on this recommendation:

Based on the review this subcommittee conducted, I respectfully dissent from the conclusion that reliance on private prisons should, or inevitably must, continue. I concede, as reflected in this recommendation, that overall enforcement policy, historical reliance on private prisons, and geographic concerns are presently driving reliance on private facilities. I also acknowledge that any shift away from such reliance would take years, carry significant costs, and require congressional partnership. As a result, I understand the position adopted by the subcommittee, but I disagree that these obstacles require our deference to the status quo.

First, in my estimation, the review undertaken by the subcommittee points directly toward the inferiority of the private prison model from the perspective of governance and conditions. To be sure, fiscal and flexibility considerations represented countervailing factors. However, on balance, my *preliminary judgment, based on the evidence we actually gathered as part of this review*, is that a measured but deliberate shift away from the private prison model is warranted.

Second, as the body of this report acknowledges, the short time line and tools at our disposal necessarily limited the depth of our review. As such, I emphasize the preliminary nature of my judgment above. I believe, however, that recommendation (1) likewise should have acknowledged that process constraints rendered any firm conclusion on the appropriate mix of detention models premature.

Third, a number of key issues that went beyond the scope of this review are too consequential and too integral to allow for a fully informed decision on federal versus private detention models. A meaningful determination on the best detention model in light of all relevant factors demands deeper investigation. Any such investigation should consider a broader set of questions regarding the most effective and humane approach to civil detention as well as whether alternatives to detention could lead to diminished reliance on physical incarceration. Absent that type of thorough review, I cannot, in good conscience, agree that status quo reliance on the continuation of the private detention model is warranted or appropriate.

Aside from this fundamental question, I strongly concur in the remainder of the subcommittee's recommendations regarding steps that should be taken immediately to improve the conditions, inspections, and oversight of extant facilities.

B. Improving practices at all facilities

Because any transition to greater use of ICE-run facilities would at best require many years, and because we recognize that some use of privately run facilities will continue, the subcommittee also looked closely at potential changes in practices that would improve conditions in all ICE facilities. A major focus was the process for inspection and monitoring, plus promptly implementing reforms at the specific facility that are revealed as necessary or advisable. This section focuses on improvements in inspections, including evolution of underlying standards, and has application to all types of ICE detention facilities.

Background and the evolution of standards and monitoring. ICE and its predecessor agencies have taken notable and progressive steps to improve conditions as the immigration detention system has evolved. The primary ongoing challenges concern effective on-the-ground implementation.

Effective monitoring and accountability depend in significant measure on the existence of clear standards against which a facility's performance – and that of responsible individuals – can be measured. This is true for both government-operated and privately run facilities. A first set of comprehensive standards for detention facilities was published by INS in 2000 and made applicable to detention contracts. DHS undertook a major effort, involving wide consultation, to refine, expand, and improve these detailed standards, resulting in 2008 in the publication of its Performance Based National Detention Standards. Another round of extensive consultation, including with representatives from the bar and with immigration advocacy organizations, produced the third-generation set of standards reflected in PBNDS 2011. Its 450 pages contain detailed specifications governing all aspects of facility operation. For new contracts with private facilities, and as older contracts reach the point of renewal, ICE has worked to incorporate the latest PBNDS version to set the governing contractual standards. The pattern of standards is more mixed for county jails. There ICE has bowed to intergovernmental sensitivities, especially when ICE detainees make up only a small portion of the facility's population, and often permits a jail facility to subscribe to a more limited range of standards by providing its own alternative mechanisms or procedures. In some circumstances, private contract facilities are granted a waiver of particular standards or requirements they contend are operationally burdensome.

Since at least 2009, ICE has been clearly on record as favoring a civil detention model, rather than a model designed for the criminal-justice process, because ICE detention is not based on a criminal charge or on punishment. Instead, detention is generally imposed when judged necessary to assure that a person charged with a civil violation attends hearings and remains available for removal if his or her defenses or claims for relief fail. The risk of flight is the primary consideration in decisions on release versus detention, though danger to the community is also taken into consideration, both for potential release during proceedings and for security classification for incoming detainees.

ICE has altered some facilities to conform more closely to a civil model of detention, providing, for example, greater freedom of movement within the facility's perimeter, expanded opportunities to retain personal property including clothing, enhanced recreational opportunities,

and similar changes. The full potential of the civil model has not been realized, however. This shortfall results in part from insufficient follow-through by ICE, though certain prototype facilities have been established. It also derives in part from changes in 2014 to enforcement priorities, which have resulted in a far higher percentage of detainees with criminal convictions, potentially posing a greater risk of danger and therefore indicating more restrictive conditions for such persons. Nonetheless the civil model remains ICE's stated framework for policy and planning. The subcommittee endorses this objective and recommends that ICE continue to move toward fuller implementation of the civil model in all types of ICE facilities.

ICE and DHS have also made other notable improvements through the restructuring of responsibilities for policy development, inspections, and other monitoring. In 2009, ICE created the Office of Detention Policy and Planning, which reports directly to the ICE Director, to centralize responsibility for updates and improvements to detention standards and for other reform initiatives, including implementation of the civil model of detention. ICE embarked in 2010 on a process of closing some detention facilities and opening others, in order to detain persons in closer proximity to the main locations of enforcement activity – and therefore closer to their families and to legal representation. (In this connection, ICE also implemented in 2010 a national online detainee locator system, to help family and friends know the status of persons detained as part of immigration proceedings.) ODPP was charged with providing consistent headquarters involvement and guidance in that process for altering the map of detention facilities.

Responsibility for a highly important set of regular inspections of detention facilities was also transferred in 2009 to a new ICE Office of Detention Oversight (ODO). ODO is part of ICE's Office of Professional Responsibility and therefore institutionally independent from Enforcement and Removal Operations (ERO), which oversees and operates detention facilities.

These organizational changes and the adoption of the comprehensive 2011 Performance Based National Detention Standards provide a solid foundation for ongoing improvements in detention conditions. Nonetheless, allegations and documented occurrences of deficiencies and abuses in detention facilities, sometimes quite serious, continue. Significant challenges persist in assuring that actual on-the-ground practice lives up to the full requirements – in all types of ICE detention facilities (whether ICE-run, private-contractor-operated, or county jail). Monitoring by ICE (and other DHS units, as appropriate), including a disciplined inspection regime, is crucial in all ICE facilities, and accountability for deficiencies and abuses must be resolute.

Improving the inspection process. The current inspection structure is characterized by four primary levels.¹⁵

¹⁵ In addition, the ICE Health Service Corps conducts inspections of medical care in ICE facilities. And the DHS Office of the Inspector General has authority to inspect, including making unannounced spot inspections. Inspections based on the Prison Rape Elimination Act (PREA) are planned for launch in 2017, to be conducted by auditors from outside the Department.

- First, the private contracting companies have their own inspection and monitoring processes. (ICE is now working to enhance and standardize the requirement for such contractor action through a new Quality Assurance Surveillance Program (QASP).)
- Second, ICE ERO conducts annual inspections of all facilities that hold persons for over 72 hours (about 146 facilities), which includes SPCs. (As of September 12, 2016, ICE has 180 authorized detention facilities.) This review is carried out through an inspection contract with The Nakamoto Group, Inc. Nakamoto's teams, which do not include ICE personnel or outside subject-matter experts, focus on quantitative measurement of inputs rather than qualitative inquiry. (The quantitative process addresses, for example: Does the facility have a written policy that meets the applicable ICE standards on outdoor recreation or on staff training? Did the facility follow all the sequential steps in the prescribed procedures for video recording of use-of-force incidents? In the subcommittee's view, qualitative review could better assess the extent to which policies are implemented in daily practice.)
- Third, ICE's Office of Detention Oversight regularly undertakes more extensive inspections of roughly 100 of the largest ICE detention facilities. These inspections, which focus on core standards that affect detainee health, safety, and well-being, are undertaken by teams headed by ODO personnel, supplemented by subject matter experts and supported by contracted staff. These inspections occur on a three-year schedule (approximately 30-35 per year, thus covering about 100 facilities in each three-year cycle), but are done more frequently if needed in light of reported problems.
- Fourth, DHS's Office of Civil Rights and Civil Liberties (CRCL), which reports directly to the Secretary of Homeland Security, receives complaints from detained individuals and their counsel, and also follows other sources of information about conditions in ICE detention facilities. Based on its review of complaints and further inquiry, it makes recommendations to the Department for changed practices, and it also schedules 10-15 intensive site visits each year to ICE detention facilities, led by experienced CRCL officers and also involving subject matter experts.

A structure providing differentiated and layered inspection procedures for different-sized detention facilities, with the most intensive inspections applied based on evidence of persistent or acute problems, is basically sound. Closer and more detailed attention should indeed be paid to those centers housing more detainees or holding them for lengthier periods. But our inquiry suggests many improvements to the overall DHS inspection regime that could and should be implemented.

Specific recommendations regarding inspections and remediation:

(5) All inspections should make greater use of qualitative review of outcomes, rather than simply using a quantitative checklist. The point of inspections is to provide meaningful evaluation of actual on-the-ground detention conditions in each facility, in order to develop and implement specific correctives as necessary. Designing a specific qualitative methodology in a way that preserves consistency is not easy, but ICE is now in the midst of an intensive effort to develop detailed procedures for adding qualitative review of

medical care to its annual inspections. We commend ICE for that undertaking and urge that qualitative review be progressively implemented to cover other core standards.

(6) Annual inspections by ERO should move toward greater direct involvement by ICE officers and subject matter experts and not be left so completely to implementation by the personnel of an inspection contractor. Because of the centrality and sensitivity of the inspection process, ICE should seriously consider conducting this inspection role through ICE personnel only, or at least through teams headed by ICE officers with more limited involvement of an inspection contractor.

(7) ICE should establish a more regular method for inspection of under-72-hour facilities and staging areas, plus those facilities given certain permissions to “self-inspect,” concentrating on those locations that handle the largest numbers of detainees.

(8) ICE should make greater use of unannounced inspections.

(9) The current layered system for inspections should be reformed to improve communication among the involved offices, in order to minimize duplication of work and to facilitate recognition of, and follow-up on, problematic practices identified in earlier inspections.

(10) ICE should press hard for inclusion of the full and most recent PBNDS standards in all contracts and agreements as they are negotiated or renewed, minimizing waivers based on claims by the facility that certain prescribed practices are burdensome.

(11) ICE should carefully examine its contract provisions to improve the array of tools and procedures used to assure effective response to identified deficiencies, including monetary withholding or contract reductions, plus rigorous follow-on review by ERO and other personnel. The point is to enhance the incentives for contractors to take proactive and early steps to fix problems.

C. Other recommendations for monitoring and “ownership” of accountability, in facilities run by private contractors (and in the larger county jail facilities)

Monitoring. We also recommend other steps to enhance the role of ICE in unstructured monitoring (i.e., separate from the formal inspections regime addressed in the previous section of this report), in a way that connects more directly to timely remedy of deficiencies.

In practice, monitoring of contractor performance in detention facilities already occurs not only through structured inspections but also through the daily interactions that ICE officers typically have with contractor personnel and with detainees. Contract detention facilities, at least those of any significant size, contain office space for numerous ICE personnel, particularly deportation officers, who are regularly on site to do intake, conduct detainee interviews, discuss case processing, manage transportation to immigration court or other locations, or help arrange for travel documents needed in the removal process. ICE personnel already have multiple

opportunities to learn of issues or problems in the detention facility. They should be systematically encouraged to report indications of deficiencies, errors, and particularly more serious abuses, through clearly defined channels that provide for timely follow-up. ICE should also assure that channels are clearly defined for detainees and their families and representatives to report such problems, including through enhanced community liaison. Efforts should be made to keep complainants regularly apprised of the status of the official response to any complaint or grievance.

Placing focused accountability for operations in a relatively high-ranking ICE ERO officer for each large facility. Accountability for early response to problems and for remedying deficient or dangerous practices in contract facilities of course resides importantly with the contractor. But ICE could restructure the roles of the primary ICE officials involved in dealings with each contract facility, to heighten ICE's "ownership" of accountability for safe and effective operation of the facility.

By imposing detention, the government ultimately stands accountable for protecting basic rights and safety in that setting. We heard ideas for assigning to each of the larger ICE facilities an ICE officer who would serve as a kind of "ICE warden." He or she would build on the monitoring identified above by walking the halls, talking with detainees and working-level operational personnel to identify both problems and exemplary behavior – of course accompanied by frequent follow-up and consultation with the contracting company's lead officers at that facility. Contract or IGSA provisions would be restructured to afford the ICE warden significant authority to take urgent action when needed and also to arrange for or negotiate longer term responsive changes in practices. He or she could also call for specific focused inspection or inquiry, engaging other ICE or DHS offices as warranted, to address a problematic area.

The subcommittee finds this suggestion quite promising for the larger contract detention facilities. We do not have a specific recommendation for the number or size of facilities where such deployment would be appropriate, but we note that ICE now stations Detention Services Managers (who have a more constricted range of authority than we envision for an ICE warden) at approximately 42 facilities – a useful benchmark for at least the early deployment of the new officer position.

Specific recommendations regarding other monitoring:

(12) ICE should establish clearly defined channels for the reporting of potential problems, deficient conditions, or indications of abuse noted by ICE personnel who are regularly present in contract detention facilities – with clear provision for timely follow-up by appropriate ICE or DHS offices. ICE officers and employees should be encouraged to do such reporting and should be rewarded for reports that uncover serious problems or lead to significant improvements in practices.

(13) ICE should make sure there are well-defined channels for detainees and their families and representatives to report problems, including through an enhanced community liaison. Complainants should be kept regularly informed of the progress of official review and response to any complaint or grievance.

(14) ICE should revise contracts and IGSAs to provide for the stationing of an “ICE warden” at each of its largest facilities. This officer should be given broad authority and focused accountability for alert, unstructured monitoring and timely response.

DRAFT

APPENDIX A – SUBCOMMITTEE MEMBER BIOGRAPHIES

Karen Tandy (Chair)

Karen Tandy has 37 years of leadership experience in the government and corporate sectors. For seven years, she was the Senior Vice President of Government Affairs for Motorola Solutions where she oversaw country management, compliance, governance, and government affairs in more than 70 countries where Motorola operates. Her responsibilities also included corporate social responsibility, including the company's charitable Foundation and sustainability initiatives. During her tenure, Ms. Tandy was Motorola's top public policy spokesperson on issues related to global telecom policy, trade, regulation and spectrum allocation.

Prior to joining Motorola in 2007, Tandy headed the U.S. Drug Enforcement Administration (DEA), where she managed a \$2.4 billion budget and approximately 11,000 employees in 86 global offices. Prior to that, she was U.S. Associate Deputy Attorney General, responsible for developing national drug enforcement and money laundering policy and strategies, including terrorist financing after the terrorist attacks on 9/11. She previously held a variety of leadership positions in the Criminal Division of the Department of Justice where she led a nationwide organized crime task force comprised of thousands of prosecutors and law enforcement agents. She also served for more than a decade as Senior Litigation Counsel and Assistant U.S. Attorney in the Eastern District of Virginia and in the Western District of Washington.

Marshall Fitz

Marshall Fitz is a Senior Fellow at the Center for American Progress (CAP), where he helps guide the Center's advocacy and strategy regarding the Department of Homeland Security's immigration directives. Mr. Fitz is also the Managing Director of Immigration at the Emerson Collective, where he leads the organization's strategies to advance common-sense immigration policies and solutions at the federal, state, and local levels. Prior to joining CAP, Mr. Fitz was Director of Advocacy at the American Immigration Lawyers Association where he led public education and advocacy efforts for the professional bar association. He also served as a law clerk to Judge Bruce M. Selya of the U.S. Court of Appeals for the First Circuit. Mr. Fitz has a Bachelor's Degree and a J.D. from the University of Virginia.

Kristine M. Marcy

Kristine Marcy is an elected Fellow of the National Academy of Public Administration, a non-profit organization chartered by Congress and dedicated to improving governance at all levels of Government. As a Fellow, she has served on panels charged with reviewing and crafting solutions to challenges at the U.S. Park Police, Federal Bureau of Investigations, U.S. Secret Service, Department of Justice Civil Rights Division and other agencies and departments. Currently, she serves as a Member of the Board of Directors of the Academy. From January to June 2011, she also served as President and CEO of the Academy.

Ms. Marcy is a retired federal executive with over 30 years of experience in ten federal departments and agencies including the Small Business Administration (Chief Operating Officer), Immigration and Naturalization Service (Senior Counsel for Detention and Deportation), U.S. Marshals Service (Assistant Director for Prisoner Services and Prisoner Transportation), Department of Justice (Associate Deputy Attorney General) and others. During her career, Ms. Marcy blended deep program knowledge with extensive hands-on experience to assist agencies in both operational and leadership positions. Post retirement, Ms. Marcy was an executive consultant for McConnell International, a government relations consulting firm. Ms. Marcy received her J.D. from The George Washington University.

Christian Marrone

Christian Marrone currently serves as the Vice President for External Communications and Chief of Staff to the CEO for CSRA, Inc. In this role, Mr. Marrone is charged with executing the company's strategy for strengthening relationships across the U.S. government and spearheading the company's efforts to provide thought leading solutions to address the critical policy issues challenging government. Mr. Marrone has nearly 20 years of experience in government administration spanning multiple presidential administrations, government agencies and the private sector. Prior to joining CSRA, Mr. Marrone served as the Chief of Staff of the Department of Homeland Security, for Secretary Jeh Johnson. He has also held a number of senior positions within the Department of Defense (DOD), including Special Assistant to then-Secretary Robert Gates, and Acting Assistant Secretary of Defense for Legislative Affairs. After leaving the DOD, Mr. Marrone served as an Executive for 3M, where he helped develop the company's Defense Markets Division and as Vice President for National Security and Acquisition Policy at the Aerospace Industries Association.

Mr. Marrone has been awarded the Secretary of Homeland Security Distinguished Public Service Award, has twice received the Secretary of Defense Medal for Distinguished Public Service, the Office of the Secretary of Defense Medal for Exceptional Public Service, the Young Alumni of the Year, Pennsylvania State University College of Liberal Arts and the Philadelphia Business Journal 40 Under 40 Award. Mr. Marrone has a Bachelor of Arts in Political Science from Pennsylvania State University, a J.D. from Temple University, and a Master's degree in Government Administration from the University of Pennsylvania.

David A. Martin

David Martin is a leading scholar in immigration, constitutional law, and international law who has helped shape immigration and refugee policy while serving in several U.S. government posts. He joined the University of Virginia law faculty in 1980, after a period of private practice in Washington, D.C. and took emeritus status in May 2016. Professor Martin served as the Principal Deputy General Counsel at the Department of Homeland Security (DHS) from January 2009 to December 2010; during this time, he also served as DHS's representative on the interdepartmental task force created to evaluate the cases of all detainees at Guantanamo and to review overall detention policies. His prior government service includes positions at the Department of State, Department of Justice, and the Immigration and Naturalization Service.

William Webster (Ex-Officio)

William Webster (HSAC Chair) served as Director of the Central Intelligence Agency (CIA) from 1987 to 1991. Following his departure from the CIA, Judge Webster joined the law firm of Milbank, Tweed, Hadley & McCloy, LLP in Washington, DC where he is now a retired partner. Prior to his service as CIA Director, Judge Webster served as Director of the Federal Bureau of Investigation from 1978 to 1987, a Judge on the United States Court of Appeals for the Eighth Circuit from 1973 to 1978, and a United States District Court Judge for the Eastern District of Missouri from 1970 to 1973. In 1991, Judge Webster was presented the Distinguished Intelligence Medal. He has also been awarded the Presidential Medal of Freedom and the National Security Medal.

APPENDIX B – SUBJECT MATTER EXPERTS AND OTHER WITNESSES

Eleanor Acer, Senior Director, Refugee Protection Program, Human Rights First

S. Maryam Ali, Special Assistant to the Chief of Staff, U.S. Immigration and Customs Enforcement .

Michelle Brané, Director of the Migrant Rights and Justice Program, Women's Refugee Commission

Andrew J. Bruck, Senior Counsel to the Deputy Attorney General, U.S. Department Of Justice

Jonathan Carver, Chief Financial Officer, U.S. Immigration and Customs Enforcement

Jennifer Chan, Associate Director of Policy, Heartland Alliance

Greg Chen, Director of Advocacy, American Immigration Lawyers Association

David Donahue, Sr. Vice President, The GEO Group, Inc.

Angela Dunbar, Assistant Director of the Correctional Programs Division, Federal Bureau of Prisons, U.S. Department of Justice

Alice Farmer, Protection Officer, United Nations High Commissioner for Refugees

Jennifer Fenton, Director, Inspections and Detention Oversight, Office of Professional Responsibility, U.S. Immigration and Customs Enforcement .

Deborah Fleischaker, Deputy Director for the Compliance Branch, U.S. Department of Homeland Security

Brad Gross, Assistant Director for the Administration Division, Chief Financial Officer, U.S. Department of Justice

Lucas Guttentag, Senior Counselor to the Secretary of Homeland Security, U.S. Department of Homeland Security

Adam Hasner, Executive Vice President, The GEO Group, Inc.

Damon Hininger, President and Chief Executive Officer, CoreCivic

Todd Hoffman, Executive Director, Office of Field Operations, U.S. Customs and Border Patrol

Thomas D. Homan, Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement .

Aaron Hull, Deputy Chief, Operational Programs, U.S. Customs and Border Patrol

Tom Jawetz, Vice President of Immigration Policy, Center for American Progress

Tae Johnson, Assistant Director for Custody Management, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement .

Kevin Landy, Assistant Director, Office of Detention Policy and Planning, U.S. Immigration and Customs Enforcement

Harley G. Lappin, Executive Vice President and Chief Corrections Officer, CoreCivic

Joanne Lin, Legislative Counsel – Washington Legislative Office, American Civil Liberties Union

Adam Loiacono, Enforcement and Removal Operations Law Division Chief, Office of the Principal Legal Advisor, U.S. Immigration and Customs Enforcement

Megan Mack, Civil Rights and Civil Liberties Officer, U.S. Department of Homeland Security

Natasha Metcalf, Vice President of Partnership Development, CoreCivic

Philip T. Miller, Deputy Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement

John Morton, Former Director, U.S. Immigration and Customs Enforcement

Jim Murphy, Acting Assistant Director for Prisoner Operations Division, U.S. Department of Justice

Captain Luzviminda Peredo-Berger, Deputy Assistant Director of Clinical Services and Medical Director, ICE Health Service Corps, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement

Scot Rittenberg, Deputy Associate Director, Office of Professional Responsibility, U.S. Immigration and Customs Enforcement

Dana Salvano-Dunn, Director for the Compliance Branch, U.S. Department of Homeland Security

Kika Scott, Director, Office of Budget and Program Performance, U.S. Immigration and Customs Enforcement

Margo Schlanger, Professor, University of Michigan Law School

Dora B. Schriro, Commissioner, Connecticut State Police

Katie Shepherd, Legal Fellow, American Immigration Council

Mary Small, Policy Director, Detention Watch Network

Marc Stern, Affiliate Assistant Professor, University of Washington

Carl Takei, Staff Attorney for the National Prison Project, American Civil Liberties Union

Donna Twyford, Assistant Chief, U.S. Customs and Border Patrol

David Venturella, Senior Vice President, The GEO Group, Inc.

Andrea Washington, Special Assistant to the Chief of Staff, U.S. Immigration and Customs Enforcement

Bill Weinberg, Head of Contracting Activity, Office of Acquisition, U.S. Immigration and Customs Enforcement

Jeremy Wiley, President and Managing Director of Federal Partnerships, CoreCivic

Arizona Site Visit

Juan Miguel Cornejo, Former Detainee, Puente

Lauren Dasse, Executive Director, Florence Immigrant and Refugee Rights Project

Will Gaona, Policy Director, ACLU

Carlos Garcia, Director, Puente

Jacinta González, Field Director, Not 1 More

Lydia Guzman, Family Resource Coordinator/Emergency Services, Chicanos Por La Causa

Reyna Montoya, Organizer, Puente

Jovana Renteria, Legal Director, Puente

Ruben L Reyes, Lawyer, American Immigration Lawyer Association

Rigoberto Rodriguez, Former Detainee, Puente

Delia Salvatierra, Lawyer, Salvatierra Law Group

Jaime Valdéz, Former Detainee, Puente

APPENDIX C – ADVOCATE LETTERS AND SUBMISSIONS FROM PUBLIC

American Civil Liberties Union Letter to the HSAC
Community Initiatives for Visiting Immigrants in Confinement
CoreCivic
The GEO Group, Inc.
Faith Communities
Grassroots Leadership
Dr. Marc Stern
Margo Schlanger
National Immigrant Justice Center
United Nations High Commissioner for Refugees
Combined recommendations from

Adelante Alabama Worker Center
National Immigration Project of the National Lawyers' Guild
The Southern Poverty Law Center

Combined recommendations from

American Civil Liberties Union
American Immigration Council
American Immigration Lawyers Association
Center for American Progress
Detention Watch Network
Grassroots Leadership
Human Rights First
National Immigrant Justice Center
Women's Refugee Commission

Combined Letter from

Human Rights Campaign
Immigration Equality
National Center for Lesbian Rights
National Center for Transgender Equality
National Latina Institute for Reproductive Health
National LGBTQ Task Force
National Immigrant Justice Center
Trans Pride Initiative



October 26, 2016

Ms. Karen Tandy, Subcommittee Chair
Privatized Immigration Detention Facilities Subcommittee
Homeland Security Advisory Council
U.S. Department of Homeland Security
Nebraska Avenue Complex
3801 Nebraska Avenue NW
Washington, DC 20528

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

KARIN JOHANSON
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

RE: ACLU calls on HSAC to urge immediate moratorium on expansion of immigration detention

Dear Chairwoman Tandy and members of the HSAC Privatized Immigration Detention Facilities Subcommittee:

Thank you for giving us the opportunity to meet with you in early October. In the intervening weeks since our meeting, alarming developments have arisen that have direct bearing on the charge given to this HSAC Subcommittee – whether DHS should end the use of private prisons. In October, DHS Immigration and Customs Enforcement (“ICE”) has aggressively expanded the use of private prison contractors and has locked DHS into long-term contracts, at the very same time that this Subcommittee is investigating the problem and preparing its report for the Secretary. Based on media reports and private prison job announcements, it appears that ICE has executed, or is close to finalizing, detention contracts for at least 3,600 privately-run beds in October alone.

It is extremely troubling that ICE is moving full steam ahead in increasing privatized immigration detention beds precisely at the time that this Subcommittee is studying whether DHS should end the use of private prisons. We urge the Subcommittee to press DHS to issue a moratorium on any expansion of immigration detention. Specifically ICE should not enter into any new detention contract or any contract renewal involving a private prison company or county jail. ICE should also be restrained from increasing the number of detention beds at any existing facility run by a private prison company or county jail.

- 1) DHS recently executed a contract with private prison company CCA to detain up to 1,200 immigrants at a notorious New Mexico prison that had its contract with the Bureau of Prisons severed in 2016.**

The ACLU recently learned that ICE has entered into a brand new contract with Corrections Corporation of America (“CCA”), one of the nation’s

largest private prison companies, to detain up to 1,200 immigrants at Cibola County Correctional Center in Milan, New Mexico. These new CCA detention beds are expected to come online within the next 30 days, and CCA is currently hiring a new “correctional officer” at the Cibola prison.¹ Significantly, as recently as September 2016, CCA had operated a private prison at Cibola County Correctional Center. In July 2016 the Bureau of Prisons (“BOP”) terminated the CCA contract, and the last prisoners were removed from Cibola in September.

The Cibola facility has long been known to be one of the most problem-prone prisons in the nation. *The Nation* and the Investigative Fund have documented at least three questionable deaths at the Cibola prison. One prisoner died after a long delay in medical care following a heart attack. Another prisoner hanged himself after being left alone and untreated in a cell even though officials had previously flagged him as suicidal.²

Beyond the prisoner deaths, the Cibola prison accumulated more demerits than any other private facility for repeated and systemic violations in the medical unit. For months on end, the Cibola prison operated without a single medical doctor. On five separate reviews, BOP monitors found that CCA had not appropriately treated inmates with TB. On three separate reviews, BOP monitors found that Cibola’s HIV care was not up to federal standards.³

When BOP severed the Cibola contract in July 2016, this marked only the fourth time in the last decade that BOP had terminated a contract prior to the end of the contract period.⁴ However, just as the final BOP prisoners were transferred out of Cibola in September, CCA seized the opportunity to convert its contract, virtually overnight, into a new ICE contract to detain up to 1,200 immigrants in the very prison that was deemed unfit for prisoners.

The Cibola prison case illustrates how CCA is literally operating a revolving door – shuttling out prisoners one month, shuttling in immigration detainees the next month. Under this new CCA/Cibola contract, ICE has taken the place of BOP, and immigration detainees have taken the place of federal prisoners. But CCA and the Cibola prison remain exactly the same.

The CCA/Cibola conversion from a BOP contract to an ICE contract, virtually overnight, makes it undeniably clear that DHS plans to continue doing business with private prison companies without regard to a prison’s record of abuses, deaths, or poor conditions.

¹ “Correctional Officer” (Milan, NM) job notice, posted Oct. 19, 2016 at <http://jobs.cca.com/milan/correctional-officer/jobid10524584-correctional-officer-jobs>.

² For an extensive discussion of the poor medical care and mental health care record at the Cibola facility, please see Seth Freed Wessler, *The Feds Will Shut Down the Troubled Private Prison in a ‘Nation’ Investigation*, THE NATION, Aug. 15, 2016, <https://www.thenation.com/article/feds-will-shut-down-troubled-private-prison-in-nation-investigation/> [attached as Exhibit A].

³ *Id.*

⁴ *Id.*

2) DHS recently renewed a five-year contract for CCA to run a mass family detention facility comprised of 2,400 beds.

In recent weeks, ICE renewed and extended the mass family detention contract at Dilley, Texas to run through September 2021. For the next five years CCA will continue to operate the 2,400-bed facility to detain Central American children and mothers seeking refugee protection. The Dilley contract is a no-bid, fixed-price, middleman-dependent contract with CCA.⁵ Like its 2014 predecessor contract, the new Dilley contract uses Eloy, Arizona as a middleman for this Texas-based facility—an arrangement that one legal academic described as “twisting and distorting the procurement process past recognition.”⁶ On a conference call with investors, the CEO of CCA gloated about the Dilley contract renewal, calling the timing of the renewal “notable with this ongoing [HSAC Subcommittee] review” and expressing confidence that HSAC and DHS would “come to the same conclusion that, we've been a really, really good tool for ICE.”⁷

Astonishingly, this CCA contract extension came only weeks after the DHS Advisory Committee on Family Residential Centers recommended that DHS end family detention and overhaul immigration policies to safeguard child welfare⁸ and at the same time that this HSAC Subcommittee is actively evaluating whether DHS should end the use of private prisons.

The Dilley contract extension makes it patently clear that DHS plans to continue doing big business with private prison companies at the expense of the most vulnerable in our midst -- Central American children and mothers who remain detained for months, sometimes longer than a year, as they pursue their asylum claims in court.

3) Since summer 2016, ICE has increased the number of detention beds at existing facilities run by private prison corporations.

The ACLU has recently learned that ICE has increased the number of detention beds at four facilities run by for-profit prison corporations. Specifically, ICE has expanded detention capacity at GEO Coastal Bend Detention Facility, Texas; LaSalle County Regional Detention Center,

⁵ Jamie McGee, *CCA announces ICE contract extension*, THE TENNESSEAN, October 18, 2016, <http://www.tennessean.com/story/money/2016/10/18/cca-announces-ice-contract-extension/92355068/>.

⁶ Chico Harlan, *Inside the administration's \$1 billion deal to detain Central American asylum seekers*, WASHINGTON POST, Aug. 14, 2016, https://www.washingtonpost.com/business/economy/inside-the-administrations-1-billion-deal-to-detain-central-american-asylum-seekers/2016/08/14/e47f1960-5819-11e6-9aee-8075993d73a2_story.html.

⁷ Jamie McGee, *CCA announces ICE contract extension*, THE TENNESSEAN, October 18, 2016, <http://www.tennessean.com/story/money/2016/10/18/cca-announces-ice-contract-extension/92355068/>.

⁸ U.S. IMMIGRATION CUSTOMS ENFORCEMENT, *Report of the DHS Advisory Committee on Family Residential Centers*, Sept. 30, 2016, <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>; U.S. IMMIGRATION CUSTOMS ENFORCEMENT, *Report of the DHS Advisory Committee on Family Residential Centers – Recommendations Only*, Sept. 30, 2016, <https://www.ice.gov/doclib/sevis/pdf/acfrcDraftSubcommRecmdOnly.pdf>.

Louisiana; Willacy County Regional Detention Facility, Texas; and Torrance County Detention Facility, New Mexico/Texas. All of these facilities have existing ICE contracts, and the new detention beds have been added since June 2016.

4) DHS officials are scrambling to find 5,000 more prison beds and are willing to waive national immigration detention standards and rape prevention requirements.

Beyond increasing direct contracts with private prisons, DHS officials have been trying to buy more county jail space for immigration detention purposes. In at least a few cases, ICE is seeking to contract with a county which in turn will subcontract with a for-profit prison company. There is even discussion of waiving ICE national detention standards and 2003 Prison Rape Elimination Act requirements for these beds.⁹ As one official put it, “They’re scraping the bottom looking for beds.”¹⁰

ICE is presently working to buy jail space in Youngstown, Ohio; Aurora, Colorado; Robstown, Texas¹¹; and Glen Burnie/Anne Arundel, Maryland.¹² CCA has already posted nine job notices for the Youngstown facility, including detention officer and unit manager jobs.¹³ Beyond these contracts in-the-works, ICE in October started detaining 75 immigrants at Kankakee County jail outside Chicago¹⁴ even though no ICE contract had been executed.

The accelerated growth of detention and the rapid expansion of detention facilities is cause for tremendous concern. The use of detention facilities that are exempt from even the most basic detention standards –and/or utilized without a formal agreement – raises obvious concerns, including questions about what detention and medical standards (if any) are being applied to the facility, what mechanisms (if any) ICE is using to monitor conditions in the facility, and how the facility can be held accountable for deaths, inhumane conditions of confinement, and other lapses.

⁹ Devlin Barrett, *Record Immigrant Numbers Force Homeland Security to Search for New Jail Space*, WALL STREET JOURNAL, October 21, 2016, <http://www.wsj.com/articles/record-immigrant-numbers-force-homeland-security-to-search-for-new-jail-space-1477042202>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Amanda Yeager, *Council passes residential rehabilitation bill, delays vote on immigrant detention resolution for the second time*, CAPITAL GAZETTE, Oct. 17, 2016, <http://www.capitalgazette.com/news/government/ph-ac-cn-county-council-1018-20161017-story.html>.

¹³ OHIO JOBS AT CCA, <http://jobs.cca.com/ohio-jobs> (last visited Oct. 25, 2016).

¹⁴ Dimitrios Kalantzis, *Kankakee County jail housing immigrant detainees*, DAILY JOURNAL, October 12, 2016, http://www.daily-journal.com/news/local/kankakee-county-jail-housing-immigrant-detainees/article_40320b12-79d5-5779-96be-94d4fe63f4ba.html.

ACLU Recommendations

In the face of these alarming developments, this HSAC Subcommittee has an urgent and critical role to play in putting the brakes on DHS's expansion of its immigration detention capacity. Recent events have made it patently clear that ICE is moving at lightning speed to dramatically scale up its detention capacity and is willing to do business with any operator including for-profit prison companies.

First and foremost, **DHS/ICE should halt all negotiations and execution of any detention contracts, with immediate attention to contracts involving facilities at Cibola/Milan (NM); Youngstown (OH); Kankakee (IL); Aurora (CO); Robstown (TX); and Glen Burnie/Anne Arundel (MD).**

Second, DHS should take immediate proactive steps to end the following contracts involving for-profit prison corporations; two of these contracts are due to expire in the very near future:

- *South Texas Detention Complex*, Pearsall, Texas: This contract with the Geo Group ("GEO") is set to expire on November 30, 2016. There is a long and extensive record of detainee abuse at the Pearsall detention facility. Human Rights Watch, in their report *Detained and at Risk*, documented rampant sexual abuse and harassment at the Pearsall facility. Numerous detainees reported being subjected to frequent sexual abuse in 2008.¹⁵ More recently in 2014, a GEO employee who had worked at the Pearsall detention facility for four years was found guilty of sexually abusing a detainee while working together in the kitchen.¹⁶ That same year a transgender woman told reporters that while detained at the Pearsall facility, she was sexually assaulted and verbally harassed time and again by detention guards and detainees.¹⁷
- *Otay Mesa Detention Center*, San Diego, California: This contract with CCA is set to expire on June 30, 2017. In 2015, fifteen detainees, many of whom were asylum seekers fleeing persecution, participated in a hunger strike to protest their indefinite detention. Protesters had been locked up for months, some for years, while pursuing their asylum claims in court—with no idea if or when they

¹⁵ HUMAN RIGHTS WATCH, *Detained and at Risk*, Aug. 25, 2010, <https://www.hrw.org/report/2010/08/25/detained-and-risk/sexual-abuse-and-harassment-united-states-immigration-detention>.

¹⁶ Guillermo Contreras, *Ex-Jail Worker Guilty in Inmate Sex Abuse Trial*, SAN ANTONIO EXPRESS NEWS, Sept. 17, 2014, <http://www.mysanantonio.com/news/local/article/Ex-jail-worker-guilty-in-inmate-sex-abuse-trial-5762538.php>.

¹⁷ Cindy Carcamo, *Transgender Asylum-Seekers Often Mistreated in Detention, Study Finds*, LOS ANGELES TIMES, Mar. 23, 2016, <http://www.latimes.com/local/lanow/la-me-ln-transgender-immigrants-20160323-story.html>.

would ever be released.¹⁸ In 2014 a community group that runs a visitation program for detainees reported that ICE had attempted to silence them after the group warned of alleged sexual assault, neglect, and harassment taking place at the Otay Mesa detention facility. After being informed of the potential abuse, ICE tried to end the visitation program completely unless the group was willing to sign a confidentially agreement that would require them to “defend” and “indemnify” ICE and CCA from any liability “arising” out of their volunteer work.¹⁹

- *Eloy Detention Facility in Arizona.*²⁰ This CCA-run facility, one of the largest detention facilities in the nation, has the dubious distinction of being the deadliest facility, with 14 detainees dying inside the Eloy facility since 2003. In 2012, a routine annual inspection evaluated Eloy’s suicide prevention policies. The inspectors found that Eloy’s suicide watch room—the place where people at the most acute risk of suicide are supposed to be housed and whose chief purpose is to deny them the means to kill themselves—contained “structures or smaller objects that could be used in a suicide attempt.”

The following year, Elsa Guadalupe-Gonzalez hanged herself in one of Eloy’s general population units. Two days later, Jorge Garcia-Mejia hanged himself in a different general population unit. ICE conducted death reviews afterward, which found that “confusion as to who has the authority to call for local emergency medical assistance” led to delays in CCA staff calling 911 after each suicide. The reviews also found that CCA and ICE staff failed to conduct an appropriate debriefing of medical and security staff after the two suicides, and that Eloy lacked a formal suicide prevention plan. Over two years later, in May 2015, José de Jesús Deniz Sahagun committed suicide in his cell just hours after a doctor had removed him from suicide watch.²¹ ICE’s death review found that Eloy still had not adopted a suicide prevention plan at the time of Mr. Deniz Sahagun’s death.²²

Beyond the highest immigration detainee death rate, Eloy detainees have suffered sexual assault and abuse. In 2011 the ACLU of Arizona sued on behalf of a transgender woman who was intimidated, harassed, and sexually assaulted by a CCA guard while

¹⁸ Kate Linthicum, *Dozens of Asylum-Seeking Immigrants Stop Eating to Protest Detention*, LOS ANGELES TIMES, Dec. 2, 2015, <http://www.latimes.com/local/lanow/la-me-ln-immigrant-hunger-strike-20151202-story.html>.

¹⁹ Erika Eichelberger, *Watchdog: Feds Are Muzzling Us for Reporting Alleged Immigrant Detainee Sex Abuse*, MOTHER JONES, Mar. 19, 2014, <http://www.motherjones.com/politics/2014/03/ice-sexual-abuse-immigrant-detention-oversight>.

²⁰ Please see Exhibit B for a detailed summary of numerous cases of deaths, suicides, and denial of medical care inside the Eloy Detention Facility.

²¹ For a detailed summary of Mr. Deniz Sahagun’s death, please see Exhibit B.

²² Carl Takei, Michael Tan, & Joanne Lin, AMERICAN CIVIL LIBERTIES UNION, *Shutting Down the Profiteers*, Sept. 2016, <https://www.aclu.org/report/shutting-down-profiteers-why-and-how-department-homeland-security-should-stop-using-private>.

detained at the Eloy facility.²³ Ms. Guzman-Martinez was sexually assaulted twice – once in 2009 involving a guard who forced her to ingest his ejaculated semen and threatened to deport her if she did not comply with his demands. Ms. Guzman-Martinez immediately reported the assault to detention staff and the Eloy Police Department, and the CCA guard was eventually convicted in Pinal County Superior Court of attempted unlawful sexual contact.²⁴

Despite this sexual assault, CCA and ICE did nothing to protect her from further abuse. In a separate incident that took place in April 2010, Ms. Guzman-Martinez was sexually assaulted by a male detainee in the same all-male housing unit where she was subjected to the first assault. After she reported the second assault to the police, Ms. Guzman-Martinez was released from ICE custody.

Third, we urge this Subcommittee to issue extremely clear recommendations that set forth constitutionally-sound detention policies that will survive the test of time, and not be contingent on the specific circumstances of any given time. HSAC should adopt the policy recommendations set forth in the white paper *Shutting Down the Profiteers: Why and How DHS Should Stop Using Private Prisons*.²⁵ This paper (attached as Exhibit C) proposes a clear, comprehensive plan for how ICE can reduce its reliance on detention enough to free itself from its private prison contracts.²⁶ This would include the following policy changes. We have included estimates of the likely detention population reductions associated with each policy change, as follows:

- **End family detention and detention of asylum seekers** (11,000 to 15,000 people);
- **End prolonged detention without bond hearings** (at least 4,500 people);
- **Interpret the mandatory custody statute to permit a range of custodial options, and apply it only to immigrants recently convicted of serious crimes who do not have meritorious immigration cases** (5,000 to 10,000 people); and
- **Stop imposing exorbitant, unaffordable bonds** (at least 1,300 people).

These common-sense reforms would avoid wasteful detention spending at the cost to American taxpayers, while establishing constitutionally sound detention policies. Moreover, all of these policy reforms could be

²³ *ACLU of Arizona Files Lawsuit on Behalf of Transgender Woman Sexually Assaulted by CCA Guard*, Dec. 5, 2011, <https://www.aclu.org/news/aclu-arizona-files-lawsuit-behalf-transgender-woman-sexually-assaulted-cca-guard>.

²⁴ *Id.*

²⁵ Carl Takei, Michael Tan, & Joanne Lin, AMERICAN CIVIL LIBERTIES UNION, *Shutting Down the Profiteers*, Sept. 2016, <https://www.aclu.org/report/shutting-down-profiteers-why-and-how-department-homeland-security-should-stop-using-private>.

²⁶ Carl Takei & Joanne Lin, AMERICAN CIVIL LIBERTIES UNION, *Homeland Security Must Stop Using Private Prisons for Immigration Detention. Here's How to Do It*, October 3, 2016, <https://www.aclu.org/blog/speak-freely/homeland-security-must-stop-using-private-prisons-immigration-detention-heres-how>.

implemented by DHS under its existing authorities, without any new legislation.

Finally, many national lawmakers including leading Members of Congress have called on DHS to end the use of private prisons. Congressional lawmakers have introduced legislation, held press conferences, penned op-eds, and sent letters to DHS – pushing for an end to profit-driven immigration detention. For a compendium of congressional actions, please see Exhibit D.

The stakes could not be higher for this HSAC report. At a time when BOP is severing ties with the private prison industry, DHS is becoming more entangled with the private prison industry. We thank you for giving us the opportunity to offer our expertise, and urge HSAC to press DHS to issue a moratorium on the expansion of immigration detention.

Sincerely,



Joanne Lin
Legislative Counsel
Washington Legislative Office



Carl Takei
Staff Attorney
National Prison Project

Attachments:

Exhibit A – *Nation* Investigation: Cibola County Correctional Center

Exhibit B – Instances of Abuse at the Eloy Detention Center

Exhibit C – *Shutting Down the Profiteers* ACLU Report

Exhibit D – Compendium of Congressional Actions Regarding the Use of Privatized Detention



Community Initiatives for Visiting Immigrants in Confinement (CIVIC)
P.O. Box 40677
San Francisco, CA 94140
T: 385-212-4842
www.endisolation.org

October 3, 2016

Karen Tandy, Subcommittee Chair
Privatized Immigration Detention Facilities Subcommittee
Homeland Security Advisory Council
Department of Homeland Security

RE: Support for Eliminating Privatized Immigration Detention Facilities

Dear Ms. Karen Tandy and the Homeland Security Advisory Council (HSAC) Subcommittee,

The Department of Homeland Security tasked your subcommittee with evaluating whether U.S. Immigration & Customs Enforcement (ICE)'s current policy and practices concerning the use of private immigration detention facilities should be eliminated. Community Initiatives for Visiting Immigrants in Confinement (CIVIC) is pleased to strongly support the elimination of private immigration detention facilities for the reasons stated below.

CIVIC is a national nonprofit organization, and we work exclusively in the immigration detention context. We visit people in detention weekly, monitor human rights abuses, elevate stories, build community-based alternatives to detention, and advocate for system change. We have affiliated visitation programs in over 40 immigration detention facilities in 19 states. We also were the official co-sponsor of the recent California bill, SB 1289 – The Dignity Not Detention Act, which was vetoed last week by Governor Jerry Brown. SB 1289 would have prohibited local governments from contracting with private companies to detain immigrants for profit in California. In Governor Brown's veto message, he explained that he was vetoing the bill because the appointment of your subcommittee indicated to him that "a more permanent solution to this issue may be at hand," and he urged "federal authorities to act swiftly because he has "been troubled by recent reports detailing unsatisfactory conditions and limited access to counsel in private immigration detention facilities."¹

¹ https://www.gov.ca.gov/docs/SB_1289_Veto_Message.pdf

A. Studies show that immigrants detained in for-profit prisons are less likely to receive visits from family members, more likely to have those visits prematurely cut, and more likely to receive poor medical care and be thrown into solitary confinement.

Few studies have attempted to determine the quality of private as compared to public prisons, and even fewer have evaluated this within the U.S. immigration detention system. We encourage your subcommittee to review and analyze all the incident logs, disciplinary logs and files, grievance logs and files, health clinic logs, and personnel records for all 210 immigration detention facilities as part of an effort to measure the quality of care at these immigration detention facilities. However, because we know that many immigrants in detention do not file grievances or complaints through the formal grievance procedures because of fear of retaliation, we have tried to provide you here with some statistical studies to illuminate the problems with privately-run immigration detention facilities. It should be noted that public immigration detention facilities also have their own problems that need review.

Professor Caitlin Patler of UC Davis and Nicholas Branic recently completed a study, "Legal Status and Patterns of Family Visitation During Immigration Detention." Their findings will be published in 2017 in the peer-reviewed journal *RSF: The Russell Sage Journal of the Social Sciences*. (See Attachment A for the paper). This study aimed to examine, for the first time, patterns of family visitation among immigrants who experience immigration detention lasting approximately six months or longer. Specifically, they sought to answer the following research questions: 1) What factors influence whether detained parents have any contact at all (e.g. letters, phone calls, or visits) with their children? 2) What factors influence whether detained parents have face-to-face visitation with their children? 3) Does the legal status of a detained parent's child predict visitation?

The authors draw empirically from data collected in 2013-14 from 462 immigrant parents who had been detained for six months or longer in California. The four detention facilities in which immigrants in the study were held—three jails and one privately operated facility, each subcontracted by ICE to house detained immigrants—represent the universe of facilities housing long-term detainees in the federal judicial district in California where the study took place. The authors calculate three regression models. First, they use logistic regression to predict the odds of 1) any contact with children (e.g. letters, phone calls, visits, or news from others) and 2) any in-person visits with children. The authors then use negative binomial regression to examine 3) what predicts the number of visits a detainee will receive from his or her children. Several sets of findings emerge from the analysis.

Overall, the key results of the study suggest that being held in a private detention facility reduces the likelihood of face-to-face visitation with children as well as the number of visits. Specifically, compared to detainees held in city- and county-operated facilities, individuals held in a private detention facility experienced a nearly 60 percent decrease in the odds of any child visitation ($p < .001$), after controlling for other variables. In addition, respondents housed in a private detention facility experienced an approximately 59 percent decrease in the expected



number of visits while held in detention ($p < .01$), after controlling for other variables.

Importantly, these findings are not just a matter of distance. Indeed, being housed in a private facility is still a strong and statistically significant predictor of visitation even after controlling for distance from the respondent's city of arrest (a proxy for their home city) to the facility.

CIVIC has found similar results. Out of the 43 facilities in which CIVIC-affiliated programs visit, 37 percent are private immigration detention facilities. Private immigration detention facilities tend to prematurely cut visitation times and have longer wait times for family and community members than public immigration detention facilities. We are happy to provide the subcommittee with more specific data.

In addition, between April 1, 2016, and September 30, 2016, CIVIC interviewed and monitored 94 people for reported human and civil rights abuses. Specifically, we interviewed and remained in contact with 47 immigrants detained in four private immigration detention facilities. The four private facilities included the Adelanto Detention Facility (GEO Group) in California, the Elizabeth Detention Facility (CCA) in New Jersey, the Imperial Regional Detention Facility (MTC) in California, and LaSalle Detention Facility (GEO Group) in Louisiana. CIVIC also interviewed and remained in contact with 47 immigrants detained in four municipal jails. The four municipal jails included the Theo Lacy Facility in California, the Hudson County Jail in New Jersey, the Bristol County Detention Center in Massachusetts, and the Etowah County Detention Center in Alabama.

Over the course of the six months, we received a total of 64 complaints from people detained in the four county jails and 81 complaints from the people detained in the for-profit facilities. Our data indicated that people in immigration detention are exposed to sexual and physical abuse at about the same rate in both the for-profit and county facilities. However, private facilities tend to have significantly more complaints about the over-reliance on solitary confinement as a tool for punishment as well as inedible food.

	Privatized	County
Medical	14	12
Legal	6	4
Prolonged Detention	17	12
Phone Access	2	4
Physical & Sexual Abuse	7	7
Religious Freedom Violations	0	1
Solitary Confinement > 14 days	7	1
Retaliatory Transfers	1	4
Inedible Food	17	3
Unsanitary conditions	4	5
Abuse of Family Members	2	3
Other	4	8

B. Our government at all levels has underwritten private prison expenses by passing laws and maintaining contracts that guarantee a minimum number of beds and circumvent open market competition, while also ensuring private prisons remain exempt from taxpayer oversight by refusing to include them in the federal disclosure system or to include robust penalty provisions in government contracts.

The U.S. government detains approximately 400,000 immigrants each year in a network of 210 jails and private prisons. Immigrants in detention include asylum seekers, victims of human trafficking, and legal permanent residents with longstanding community ties. Immigration detention is technically a civil form of confinement, and thus, immigrants in detention lack many of the safeguards of the criminal justice system. They have no right to a court-appointed attorney, a free phone call, or a speedy trial. Forty-six percent of immigrants are transferred away from family and friends, and 84% lack attorneys. Many go without any form of visitation from the outside community. Inadequate medical care and human rights abuses have contributed to over 160 reported deaths in custody since 2003.

i. How private immigration detention contracts are structured:

Seventy-three percent of all ICE immigration detention beds in the United States are operated by for-profit prison corporations,² up from 49 percent in 2009.³ ICE structures contracting in one of two ways: either ICE contracts directly with the prison corporation or uses a local municipality as a middleman. For example, in California, ICE has a direct contract with Corrections Corporation of America (CCA) for the Otay Detention Facility in San Diego. Also in California, ICE contracts with the City of Adelanto and the City of McFarland to detain a total of nearly 1,400 immigrants per day. These two cities in turn contract with GEO Group, who owns and operates the immigration detention facilities. This method of contracting means that the private prisons are able to circumvent open market competition; for instance, GEO Group did not have to compete with any other company or service provider for the federal dollars appropriated for those 1400 beds in California. A CCA Vice-President admitted that 30 percent of its federal contracts are obtained through this type of non-competitive bids.⁴

Despite this three-way contracting scheme, for-profit immigration detention facilities make billions in profits every year, while the counties and cities involved in the intergovernmental service agreements experience little financial or economic gain. For example, GEO Group stands to make over \$45M each year for imprisoning 1300 immigrants, paying the City of Adelanto only about \$225,000 per year. With the expansion of the Adelanto Detention Facility to 1940 beds in 2015, GEO Group expects to generate \$21 million in additional annualized revenue from this expansion, according to the company's annual report. As private prisons such as GEO Group and CCA have converted their corporate structure to a Real Estate

² Steven Nelson, "Private Prison Companies, Punched in the Gut, Will Keep Most Federal Business." U.S. News & World Report, August 18, 2016, <http://www.usnews.com/news/articles/2016-08-18/private-prison-companies-punched-in-the-gut-will-keep-most-federal-business>.

³ http://grassrootsleadership.org/sites/default/files/reports/quota_report_final_digital.pdf

⁴ <https://ccrjustice.org/sites/default/files/attach/2015/12/Dkt%2091.Verhulst%20CCA%20Declaration.pdf>

Investment Trust (REIT), they also do not pay income tax and have other special tax advantages that do not contribute to the growth of the California economy.⁵

ii. Federal and local government oversight of private prisons:

Federal government regulation of these private prisons is toothless and sporadic due to the comfortable relationship between regulators and the regulated. As a former deputy director of ICE recently pointed out, for-profit prison companies have been hiring former immigration officials⁶ to help them secure favorable contract terms. Therefore, the vast majority of private immigration detention contracts do not include any robust penalty provisions for failing to meet government standards.

In addition, ICE's Performance-Based National Detention Standards are not legally enforceable. And as 340 organizations recently pointed out in a letter to DHS:

"The ineffective inspections process ICE uses has consistently failed to identify and correct problems inside these facilities. Further, the vast majority of ICE facility contracts do not include any robust penalty provisions. This incentivizes private companies to minimize facility costs by rationing basic necessities for detained individuals, including medical care. Even when severe deficiencies are discovered, ICE has not terminated contracts or used available penalties, but rather continued to send immigrants to be held in unsafe conditions. Even former ICE senior officials have expressed concern about the relationship between the companies and ICE, and the quality of privately-operated facilities."⁷

Moreover, the public and local legislators have no mechanism for oversight of the facilities. Private, for-profit immigration detention facilities are not transparent to the public because they are not subject to the Freedom of Information Act or most if not all state open records request. Since 2005, legislators have introduced the Private Prison Information Act (PPIA), a federal bill that would subject private prisons to the same open records laws as publicly operated facilities. Yet each hearing has been met with staunch resistance because CCA has spent more than \$7 million lobbying against various incarnations of the Private Prison Information Act.⁸

iii. Private prison lobby:

The private prison industry has a powerful lobby, which is responsible for much of the state and federal legislation that has expanded immigration detention and the mass incarceration system as a whole. According to research by Grassroots Leadership, between 2008 and 2014, CCA

⁵ <http://www.forbes.com/sites/mattstroud/2013/01/31/why-would-a-prison-corporation-restructure-as-a-real-estate-company/#4dffaff22cca>

⁶ <http://www.latimes.com/nation/la-na-immigration-detention-20160906-snap-story.html>

⁷ http://www.endisolation.org/blog/wp-content/uploads/2016/09/DHS-Private-Prisons-Sign-on-Letter-2016_09_14-FINAL.pdf

⁸ <http://grassrootsleadership.org/cca-dirty-30#18>

spent \$10,560,000 in quarters where they lobbied on issues related to immigrant detention and immigration reform. Of that amount, CCA spent \$9,760,000—61 percent of total private prison lobbying expenditures—in quarters where they directly lobbied the DHS Appropriations Subcommittee, which maintains funds for immigration detention bed space nationally. GEO Group also lobbies on immigration and immigrant detention issues, spending \$460,000 between 2011 and 2014 in quarters when they lobbied on these issues.⁹

Private prisons operate under a perverse incentive, where some are guaranteed a minimum number of human beings in their facility at all times, ensuring their profits at the expense of the federal taxpayer. For example, GEO Group is guaranteed a minimum of 975 beds for its Adelanto Detention Facility.¹⁰ The private detention contracts are designed to incentivize filling the most beds at all times, regardless of whether an immigrant is actually a flight risk or there is any real reason to hold them in a detention facility. As they are accountable first and foremost to their shareholders, and not to the public, they have a perverse incentive to cut corners.

iv. About GEO Group, CCA, and MTC:

Last year, GEO Group Inc. and CCA, the two largest private prison corporations in the country, reported revenues of \$1.84 billion¹¹ and \$1.79 billion,¹² respectively. These same companies have lobbied for a Congressional mandate requiring that 34,000 immigration detention beds be maintained (and paid for with tax dollars). Below is a little more information about these two corporations as well as Management & Training Corporation (MTC). It should be noted that ICE uses other private prison corporations, such as Emerald and Ahtna Technical Services.

GEO Group:

GEO Group has failed to uphold ICE's own Performance-Based National Detention Standards and maintain a minimum level of care in both its immigration detention facilities and in its other facilities. For example, in 2012, twenty-six members of Congress requested an investigation of the GEO-operated Broward Transitional Center in Florida (an immigration detention facility) after hearing reports of inadequate medical care for detained immigrants.¹³ The same year, the Department of Justice released a report finding "systematic, egregious, and dangerous practices," including inadequate medical care, at a GEO facility in Mississippi.¹⁴ At another GEO facility in Pennsylvania, seven people died in less than two years, with several resulting in

⁹ http://grassrootsleadership.org/sites/default/files/reports/quota_report_final_digital.pdf

¹⁰ http://www.endisolation.org/wp-content/uploads/2015/11/CIVIC_DWN-Adelanto-Report_old.pdf

¹¹ <http://www.businesswire.com/news/home/20160217005503/en/GEO-Group-Reports-Fourth-Quarter-Year-End-2015>

¹² <https://globenewswire.com/news-release/2016/02/10/809594/0/en/CCA-Reports-Fourth-Quarter-and-Full-Year-2015-Financial-Results.html>

¹³ Letter from Congressional Members Demanding an Investigation of Broward Transitional Center, Sept. 13, 2012 (noting, among other reports, that a woman "was returned to her cell on the same day she had emergency ovarian surgery and that she suffered bleeding and inadequate follow-up care").

¹⁴ Department of Justice: Civil Rights Division, Investigation of the Walnut Grove Youth Correctional Facility, 20- 33, Mar. 20, 2012, available at <http://www.justice.gov/crt/about/spl/documents/walnutgrovefl.pdf>.

lawsuits alleging that the facility failed to provide adequate medical care.¹⁵ In 2011, GEO was held civilly liable in a wrongful death action brought by the estate of an inmate at a GEO facility in Oklahoma.¹⁶ There are dozens more suits ranging from allegations of inmate death to abuse to medical neglect that have been filed against GEO, many of which are settled before trial.¹⁷

Example: Adelanto Detention Facility (GEO Group)

At the Adelanto Detention Facility (GEO Group), CIVIC has documented a pattern and practice of medical abuse/neglect. With the ACLU of Southern California, we filed a complaint¹⁸ with the Office for Civil Rights and Civil Liberties (CRCL) at the Department of Homeland Security (DHS) in May 2015 detailing how GEO Group has failed to live up to the PBNDS. The systemic breakdowns at the Adelanto Detention Facility have led to numerous cases in which the health of immigrants was placed at unnecessary risk. We here summarize a small sample of the cases we have documented in the past few years:

- Denial of care to a detainee with Hepatitis C because “his length of stay was uncertain”;
- Denial of a medically-necessary helmet for a detainee with severe epilepsy who is prone to violent seizures;
- Denial of treatment to a detainee with a serious hip infection because “it was too expensive” and that ultimately developed into a life-threatening condition that required a 6-week hospitalization;
- Failure to perform diagnostic tests on a detainee suffering from extreme headaches, dizziness and temporary losses of vision;
- Denial of meal accommodations and sufficient pain medication for a detainee suffering from a severe form of sickle-cell anemia;
- Denial of surgery to correct mobility issues in a stroke victim’s arm;
- Failure to sanitize catheters that medical staff required a partially paralyzed, wheelchair bound detainee to recycle, resulting in a urinary tract infection and hospitalization;¹⁹
- Denial of back surgery for a detainee with a slipped disc because “the injury occurred in prison,” and his “stay at Adelanto will be brief”;
- Delayed treatment for a detainee with a severe case of valley fever after he had informed medical staff that his condition requires regular monitoring and specialized care.

¹⁵ See Alex Rose, “A changing of the guard at county prison,” Daily Times News, Jan. 4, 2009, available at <http://www.delcotimes.com/general-news/20090104/a-changing-of-the-guard-at-county-prison>.

¹⁶ Estate of Ronald S. Sites, deceased v. The GEO Group, Inc., available at <http://www.sec.gov/Archives/edgar/data/923796/000119312513087892/d493925d10k.htm>.

¹⁷ Private Corrections Working Group/Private Corrections Institute: List of GEO Group Lawsuits, available at <http://www.prwatch.org/news/2013/09/12255/violence-abuse-and-death-profit-prisons-geo-group-rapsheet#sthash.WHKaqen8.dpuf>

¹⁸ <https://www.aclusocal.org/wp-content/uploads/2015/05/NGO-letter-re-Adelanto-medical-care.pdf>

¹⁹ Congresswoman Judy Chu (D-CA) was particularly concerned about this incident, and included CIVIC’s Christina Fialho’s testimony in a Congressional letter to DHS. See http://chu.house.gov/sites/chu.house.gov/files/documents/Gerardo_Corrales_Affidavit_Fialho.pdf.



Congresswoman Judy Chu (D-CA) and 28 other Congressional representatives sent their own letter to the director of ICE in May 2015, explaining how “GEO’s failure to provide adequate medical care to detainees at Adelanto resulted in the death of at least one detainee, Mr. Fernando Dominguez...Recently, we learned that Raul Ernesto Morales-Ramos, an individual who was detained for five years, died after GEO failed to diagnose and treat his intestinal cancer.”²⁰ In fact, ICE’s Office of Professional Responsibility determined that Mr. Dominguez’s death was caused by “egregious errors” committed by GEO Group medical staff, including “failure to perform proper physical examinations in response to symptoms and complaints, failure to pursue any records critical to continuity of care, and failure to facilitate timely and appropriate access to off-site treatments.” The Office of Detention Oversight concluded Mr. Dominguez’s death “could have been prevented and that the detainee received an unacceptable level of medical care while detained at ACF.”²¹

CRCL did conduct a three-day investigation in December 2015 of the Adelanto Detention Facility, resulting in a change in the medical provider at Adelanto. The current provider is Correct Care Solutions, a private medical provider that works in local, state, and federal detention facilities. The CEO of this new medical company previously was a Senior Vice President at GEO Group.²² CIVIC conducted a tour of the Adelanto Detention Facility on March 23, 2016, and medical care had not improved. Approximately, 130 immigrants signed up to speak with CIVIC, and the medical complaints we heard were devastating. One man suffers from severe migraines, and has begun experiencing seizures while in detention. The seizures have left parts of his body numb, requiring him to use a wheelchair to move. Our volunteers who spoke with this man could see the discoloration on his hands. He explained his pain level: “I have chronic nerve damage. My legs burn so bad I feel the flesh falling off.” He has been provided with medication and the wheelchair, but the medical unit has told him that they think he is faking—a common refrain we here in response to legitimate, even life-threatening medical issues. Another man requires cataract surgery, and although the medical unit scheduled him for surgery, he was told that the machine did not work on the day of his surgery. No future date has been set for his surgery, despite repeated requests.

CIVIC also has documented poor food (including maggots in the meat), poor hygiene, physical abuse, religious freedom violations, and denial of access to counsel at the Adelanto Detention Facility. In one extreme instance, a man was beaten so severely by a GEO Group officer that he had to temporarily use a wheelchair. And on at least three separate occasions, attorneys and legal assistants including CIVIC’s Christina Fialho (a California attorney) were denied access to their clients at Adelanto.²³ For more information on CIVIC’s independent monitoring of Adelanto, please visit www.endisolation.org/adelanto.

²⁰ <https://www.documentcloud.org/documents/2165708-adelanto-letter.html>

²¹ See http://www.ice.gov/doclib/foia/odo-compliance-inspections/adelantoCorrectionalFac_Adelanto-CA-Sept_18-20-2012.pdf.

²² <http://www.bloomberg.com/research/stocks/private/person.asp?personId=22091551&privcapId=11128002>

²³ https://www.aclusocal.org/wp-content/uploads/2015/08/Final-Ltr-to-GEO-re_-denial-of-attorney-access.pdf; see also <http://blog.endisolation.org/archives/1030>.

Corrections Corporation of American (CCA):

CCA is no better. Medical neglect has contributed to miscarriages and death. Since 2003, there have been at least 32 deaths at CCA-run immigration detention facilities.²⁴ At the Eloy Detention Center in Arizona, which is run by CCA, Pablo Gracida-Conte died in 2011 after four months of worsening, untreated medical problems including vomiting after every meal; a doctor who participated in the federal investigation by the Office for Detention Oversight concluded that Mr. Gracida's death could have been prevented.²⁵ In 2012, while serving a one-year sentence at the CCA-run Dawson State Jail in Dallas, Texas, Autumn Miller gave birth to a premature infant girl into a toilet with no medical personnel present. Three weeks prior to giving birth, Miller's request for a pregnancy test and Pap smear were ignored. The infant lived only 4 days.²⁶ CCA also has a long history of wage violations and poor treatment of employees. For example, on August 13, 2014, a federal court in Kentucky unsealed a settlement in a wage and hour lawsuit filed against CCA where CCA was required to pay \$260,000 to supervisors who claimed they were denied overtime and required to work extra hours without compensation. CCA entered into a consent decree with the Equal Employment Opportunity Commission on October 1, 2009, agreeing to pay \$1.3 million to settle allegations of sexual harassment and retaliation involving female employees at the Crowley County Correctional Facility in Colorado. In California, at the Otay Detention Facility, CCA settled lawsuits alleging wage and hour violations in 2000.²⁷

Example: Otay Detention Center (CCA)

At the Otay Detention Center (CCA), CIVIC has documented sexual assault and harassment. One transgender woman who was detained at Otay explained that a male guard would watch her take showers. When this woman complained about this behavior to CCA staff, nothing was done. Another person in detention at Otay explained that a female CCA officer would take detainees to a room without video or audio recording to have sex. This person in detention caught the female officer engaged in this sexual act, and the officer told this person to remain silent or she would make sure that this person was deported.

When CIVIC's affiliated visitation program, SOLACE, tried to raise others cases of serious sexual assault and harassment to the head of CCA and ICE, CCA and ICE responded by requiring SOLACE members to sign away their First Amendment rights before visiting at Otay again. After CIVIC stepped in to help SOLACE, the visitation program was reinstated and volunteers did not have to sign the form in question, but the underlying issue of the sexual assault was never properly addressed.²⁸

²⁴ <https://www.prisonlegalnews.org/news/2015/jun/20/32-deaths-cca-operated-immigration-detention-facilities-include-least-7-suicides/>

²⁵ <https://www.detentionwatchnetwork.org/sites/default/files/reports/Fatal%20Neglect%20ACLU-DWN-NIJC.pdf>

²⁶ <http://grassrootsleadership.org/cca-dirty-30#30>

²⁷ <http://grassrootsleadership.org/cca-dirty-30#33>

²⁸ <http://www.motherjones.com/politics/2014/03/ice-sexual-abuse-immigrant-detention-oversight>

CCA's response to CIVIC visitors and to the people in detention who raise issues of sexual harassment is no surprise. CCA has encouraged its own shareholders to vote against transparency measures. In 2012, CCA's board of directors unanimously recommended shareholders vote against a shareholder resolution that would require the company to report on what CCA was doing to reduce incidents of rape and sexual abuse in its for-profit prisons.²⁹

Management & Training Corporation (MTC)

MTC, the smallest of the three major private immigration detention corporations in the United States, has also been held civilly liable for illegal strip searches, sexual harassment, wrongful death, medical malpractice, and racial discrimination, among others.³⁰ A Department of Justice review in March 2003 of the Santa Fe County Jail (MTC) criticized MTC's medical care for inmates and concluded some conditions violated their constitutional rights. These examples point to a long history of failures of oversight in the private prison industry due to perverse incentives to generate profit by cutting corners.

Example: Imperial Regional Detention Facility (MTC)

At the Imperial Regional Detention Facility (MTC), there is only one medical doctor on staff. Only one of 55 women and men CIVIC spoke with after a tour of the facility on March 3, 2016, recalled meeting with the doctor. All other medical requests were handled by nurses, and it usually took 3-7 business days to see the nurse after submitting a medical request form. Many people in detention also complained about the poor dental care. One man had to wait eight months to see a dentist for a toothache. Another man who had braces on his teeth was told that he would have to wait to be released for continued care because it would cost too much; he had been in detention for over a year. Some men explained that they had submitted grievances to ICE and/or MTC, but most said they were afraid of reprisal.

C. Eliminating private immigration detention facilities will allow the federal government to begin focusing on developing and funding true community-based alternatives to immigration detention.

Critics of ending for-profit immigration detention facilities and well-meaning advocates have expressed concern that the ending private immigration detention facilities will result in mass transfers of people. This will not happen for two main reasons.

First, the elimination of private immigration detention facilities would occur over a reasonable period of time that would allow ICE and its private immigration detention contractors and municipal middlemen the flexibility to phase out the facility at the end of each contract. Most contracts are five-year contracts. Second, while these private prison contracts are being phased out, the federal government can work with community groups and nonprofits to expand

²⁹ <http://grassrootsleadership.org/cca-dirty-30#18>

³⁰ http://www.privateci.org/private_pics/MTC%20claims%202008.pdf



community-based alternatives to detention so that ICE will have the option to release people into the care of an alternative to immigration detention at the end of each private immigration detention contract. Over the last few years, the U.S. government has been moving towards developing, implementing, and funding community-based alternatives to detention to move away from our country's over-reliance on mass incarceration as a response to migration.

What is a community-based alternative to detention? Community-based alternative to detention programs are run by community groups or nonprofits in a similar manner to the federal Refugee Resettlement Program. Instead of being detained, immigrants are allowed to remain living with family. If they are recent asylum seekers without family, then they are housed with volunteers or in group homes while the courts process their immigration cases. CIVIC views community-initiated alternative to detention programs as similar to the ad hoc Refugee Task Force, which was comprised of ethnic and religious groups in the 1970s and gave rise to today's robust federal Refugee Resettlement Program. In other words, our community-initiated programs are the precursor to a system where detention is replaced by federally funded, community-based alternatives.

Since the 1990s, the federal government has recognized the viability of community-based ATDs. This acknowledgement was a driving force behind the Gang of Eight's decision to include a provision in the 2013 immigration reform bill that passed the Senate to clarify that all immigrants, including those who fall under mandatory immigration detention, can be released on alternatives to immigration detention.

More recently, ICE has started to provide funding for alternatives to immigration detention, as Congress has begun to appropriate funds for this specifically. Just this year, ICE awarded an \$11 million program contract to GEO Care, another subsidiary of GEO Group, to provide social, medical, and legal services to 1,500 mothers and children (now 800 due to the lack of forethought and proper budgeting by GEO Care) who would otherwise be detained. Advocates have deep concerns about the viability of allowing a private prison company to run an ATD, and the success of this program is not yet known. However, ICE also is exploring ways to expand ATDs to other vulnerable populations and partner with groups outside of the private prison industry.

For example, in 2013, Lutheran Immigration and Refugee Services (LIRS) and U.S. Conference of Catholic Bishops both signed Memorandum of Understanding with ICE to administer self-funded alternatives to detention pilot programs. LIRS administered its program in New York/Newark area and in San Antonio. USCCB administered its program in Baton Rouge and Boston.

Local municipalities also are beginning to research ways they can be involved in a true community-based alternative to detention. For example, earlier this year, the City Council of Santa Ana voted to appropriate city funds to conduct a study on how it could be involved in an



alternative to immigration detention and on how it could re-use its jail, which currently functions as an immigration detention facility.

In addition, the Democratic Party in its 2016 platform pledged to “ensure humane alternatives for those who pose no public threat” and “recognized that there are vulnerable communities within our immigration system who are often seeking refuge from persecution abroad, such as LGBT families, for whom detention can be unacceptably dangerous.”

For all the foregoing reasons, CIVIC strongly urges this subcommittee to eliminate private immigration detention facilities.

If you require additional information, please do not hesitate to contact us at
CFialho@endisolation.org or at 385-212-4842.

Sincerely,

A handwritten signature in blue ink that reads "Christina M. Fialho".

Christina M. Fialho
Co-Founder/Executive Director
Community Initiatives for Visiting Immigrants in Confinement (CIVIC)



Damon T. Hininger
President & Chief Executive Officer

November 22, 2016

**Attention: U.S. Department of Homeland Security Advisory Council's
Subcommittee on Privatized Immigration Detention Facilities**

Dear Committee Members:

U.S. Immigration and Customs Enforcement (ICE) has core responsibilities that are vital in promoting homeland security and public safety. However, the agency continues to face increasingly complex challenges in a budget-constrained atmosphere. ICE officials at all levels are under tremendous pressure to do more, to do better, to do it faster and to do it with less. To meet their goals, they need flexible, problem-solving alternatives.

For more than three decades, CoreCivic¹ has been an innovative, dependable partner for ICE. We bring the scale, experience and professionalism needed to take on and solve tough government problems in cost-effective ways. We often meet demands others cannot because we're flexible, responsible and can work fast.

Flexibility

Flexibility is particularly important in our partnership with ICE, both from a fiscal and policy perspective.² As policies change over time, ICE can easily alter its use of our services, both in terms of mission and capacity. Flexibility has fiscal benefits as well, as ICE can task CoreCivic with meeting capacity needs without needing to spend taxpayer dollars on building new facilities. Likewise, ICE mitigates the risk of having unneeded facilities on hand when the need for capacity drops. Conversely, without the flexible solutions that companies like ours provide, ICE would need billions of dollars to build facility capacity, and it would require the creation of a workforce the size of the Transportation Security Administration to appropriately manage it.

Accountability and Oversight of Conditions

CoreCivic has long understood its role in the federal immigration detention system to be a public trust, and we embrace our accountability to ICE. CoreCivic facilities are contractually required and held accountable to federal Performance-Based National Detention Standards (PBNDS) and Family Residential Standards (FRS). Additionally,

¹ Formerly Corrections Corporation of America

² To be very clear, under a longstanding, zero-tolerance policy, CoreCivic does not lobby for or against — or take any position on — policies or legislation that would determine the basis for or duration of an individual's or detention.

six of CoreCivic's eight ICE-contracted facilities are contractually required to achieve and maintain independent accreditation from the American Correctional Association.

To ensure compliance and accountability, ICE maintains full-time, on-site staff who monitor conditions and contractual performance. These officials have unfettered access at all times to detainees and residents, CoreCivic staff, and all areas of the facility. Currently, there are more than 500 ICE officials assigned to CoreCivic's eight contracted facilities.³ ICE regularly conducts both scheduled and unannounced inspections and audits at the facilities with its staff or with independently contracted monitors. While CoreCivic does not provide the medical care in our ICE-contracted facilities, we work to ensure that every detainee is facilitated access to the care he or she needs. Healthcare in these facilities is provided through the ICE Health Services Corps (IHSC).

Helping Address a Humanitarian Crisis

Facilities like ours help ensure vulnerable populations get housing and due process in a safe, humane environment. For example, as part of its efforts to address the unprecedented humanitarian crisis on our southwest border, ICE partnered with CoreCivic to build and operate the South Texas Family Residential Center (STFRC) in Dilley, Texas.

In the first half of 2014, tens of thousands of Central Americans poured over the U.S.-Mexico border seeking asylum. This unprecedented influx led to what President Obama called an "urgent humanitarian situation" in June of 2014. The influx overwhelmed U.S. Department of Homeland Security (DHS) facilities, and children slept on floors, received no educational programming and were allowed few outdoor recreation opportunities.

ICE approached several potential partners, urgently requesting bids to house its growing immigrant family population in an appropriate setting. CoreCivic was the only company to respond. We went to tremendous lengths to provide a solution to the crisis, marshalling internal resources and scores of external partners to ultimately site, design, build and staff a safe, humane and appropriate facility in less than three months – all to ICE's rigorous specifications. For example, STFRC provides comprehensive pre-K through 12th grade instruction, and recreation areas include four indoor gyms, three outdoor park areas, soccer fields, and handball, basketball and volleyball courts.

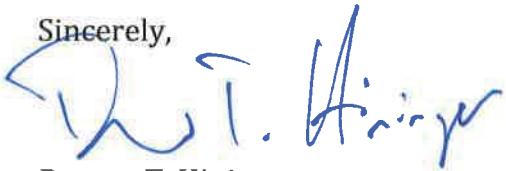
The recent renewal of the STFRC contract demonstrates ICE's confidence in our ability to provide a safe and humane environment for this vulnerable population, as well as its continued need for such a solution. Likewise, our recent agreement to begin housing detainees at our Cibola facility in New Mexico helps ICE address a critical, emergent need for capacity and is a strong example of the flexibility we can provide. A document

³ This figure does not include staff totals for other federal agencies with on-site presence, such as Executive Office for Immigration Review (EOIR) staff and detainee health services staff.

that expands further on these and other benefits CoreCivic provides to ICE is attached following this letter.

For more than 30 years, CoreCivic has provided innovative, dependable solutions for ICE. We are one tool available to the agency to help achieve its mission in a cost-effective way. Eliminating this tool, however, would create significant challenges for the safe, humane and appropriate housing of detainees and residents. We encourage the subcommittee to keep all options on the table for ICE leaders, particularly ones like ours that provide great flexibility.

Sincerely,



Damon T. Hininger
President & Chief Executive Officer

Enclosure



CORECIVIC STATEMENT TO THE U.S. DEPARTMENT OF HOMELAND SECURITY ADVISORY COUNCIL'S SUBCOMMITTEE ON PRIVATIZED IMMIGRATION DETENTION FACILITIES

U.S. Immigration and Customs Enforcement (ICE) has core responsibilities that are vital in promoting homeland security and public safety. However, the agency continues to face increasingly complex challenges in a budget-constrained atmosphere. ICE officials at all levels are under tremendous pressure to do more, to do better, to do it faster and to do it with less. To meet their goals, they need problem-solving alternatives that are flexible above all.

For more than three decades, Corrections Corporation of America (CCA) has been an innovative, dependable partner for ICE. We bring the scale, experience and professionalism needed to take on and solve tough government problems in cost-effective ways. We often meet demands others cannot because we're flexible, responsible and can work fast.

That flexibility is particularly important in our partnership with ICE, both from a fiscal and policy perspective. As policies change over time, ICE can easily alter its use of our services, both in terms of mission and capacity. Flexibility has fiscal benefits as well, as ICE can task CCA with meeting capacity needs without needing to spend taxpayer dollars on building new facilities. Likewise, ICE mitigates the risk of having unneeded facilities on hand when the need for capacity drops.

Conversely, without the flexible solutions that companies like ours provide, ICE would need billions of dollars to build facility capacity, and it would require the creation of a workforce the size of the Transportation Security Administration to appropriately manage it.

CCA AND ICE: A 30-YEAR PARTNERSHIP

With a partnership spanning more than three decades, ICE is one of CCA's first and longest standing government partners. During the course of this close partnership, CCA has developed a flexible organizational and operational posture that allows the company to respond rapidly and efficiently to meet ICE's changing needs for immigrant detention capacity.

CCA provides ICE with on-demand, flexible solutions that meet ICE's capacity needs, while allowing the federal government to avoid the upfront capital expenditures, near-term risks and long-term obligations associated with immigrant detention facilities. For more than 30 years, CCA has provided a turn-key capacity solution to ICE that includes the siting, design, financing, construction, management, maintenance and, when necessary, closure of immigration detention facilities. By insulating the federal government and taxpayers from these costs and risks, while lending ICE the flexibility to meet present and future fluctuations in capacity requirements, CCA has become an invaluable tool to the federal government in

the safe and humane management of an ever-changing federal immigrant detention population.

Today, ICE relies on CCA for the safe and humane housing of more than 8,700 individuals on behalf of ICE. These 8,700 individuals in ICE custody are housed at eight CCA owned and operated facilities¹ where ICE is the sole or primary contracting partner. CCA also maintains additional capacity at other facilities around the country on an as needed, as available basis. These eight CCA-owned and operated facilities are:

Arizona
Eloy Detention Center

California
Otay Mesa Detention Center

Georgia
Stewart Detention Center

New Jersey
Elizabeth Detention Center

Texas
Houston Processing Center
Laredo Processing Center
South Texas Family Residential Center
T. Don Hutto Residential Center

ACCOUNTABLE AND FLEXIBLE

CCA has long understood its role in the federal immigration detention system to be a public trust, and the company embraces its accountability to ICE. Strict oversight by ICE officials at all CCA facilities means real-time monitoring of the integrity of CCA operations and practices, and ensures the benefits of partnership with CCA extend beyond ICE to taxpayers and the individuals housed in CCA facilities.

Accountable

CCA's ICE-contracted facilities are contractually required and held accountable to federal Performance-Based National Detention Standards (PBNDs) and Family Residential Standards (FRS). Additionally, six of CCA's eight ICE-contracted facilities are contractually required to achieve and maintain independent accreditation from the American Correctional Association. Five of the six facilities are ACA accredited with an average accreditation score of 99.4% (the sixth facility, Otay Mesa, will be eligible to apply for accreditation in 2017).

To ensure compliance and accountability, ICE maintains full-time, on-site staff who monitor conditions and contractual performance. These officials have unfettered access at all times to detainees and residents, CCA staff, and all areas of the facility. Currently, there are more than 500 ICE officials assigned to CCA's eight contracted facilities.² ICE regularly conducts both scheduled and unannounced inspections and audits at the facilities with its staff or with independently contracted monitors.

In addition to strong oversight from ICE and independent monitors, CCA has a rigorous internal quality assurance department that conducts unannounced inspections to ensure

¹ Of the eight ICE-contracted facilities operated by CCA, seven are owned by the company and one is leased.

² This figure does not include staff totals for other federal agencies with on-site presence, such as EOIR staff and detainee health services staff.

facilities are meeting or exceeding the level of quality and safety expected by both the company and ICE. CCA also has an established Human Rights Policy that is taught to staff and publicly accessible online at: <http://www.cca.com/Media/Default/documents/Social-Responsibility/Protecting-Inmate-and-Detainee-Rights/Human-Rights-Policy-Statement-2014.pdf>

Flexible

For more than three decades, CCA has met the changing needs of our longstanding ICE government partner by being responsive and flexible.

In 2005, CCA rapidly took in more than 1,100 detainees for ICE when Hurricane Wilma forced their temporary displacement from threatened and damaged ICE detention facilities in Florida. At the request of ICE and in response to its changing capacity needs, CCA remissioned its T. Don Hutto Residential Center (TDHRC) in Taylor, Texas in 2006 to accommodate housing immigrant families. Later, in 2009, the facility once again remissioned for the housing of adult female detainees, for which ICE continues to utilize the facility to this day.

As part of its efforts to address the unprecedented humanitarian crisis on our southwest border, ICE partnered with CCA to build and operate the South Texas Family Residential Center (STFRC) in Dilley, Texas (see more information in 'Southwest Border' section).

Capex Avoidance

The capacity provided by CCA to safely house the more than 8,700 detainees currently in the company's care and custody represents a significant savings in Capex expenses that the federal government would otherwise have to incur to provide the same capacity. Building, staffing and operating new facilities to replace all of the capacity currently provided by the private sector would cost ICE billions of dollars and result in costly long-term obligations. By contracting for capacity and services from private providers like CCA, ICE is able to avoid being locked into those obligations and utilize the flexibility of the private sector to meet its changing needs.

Build-to-suit Capacity and Services

Individuals detained by the federal government for entering the country illegally are civil commitments subject to civil – not criminal – proceedings to determine their status for either remaining in the U.S. or being repatriated to their country of origin. Accordingly, individuals whom ICE decides to detain during this process need and deserve to be housed in a facility that is appropriate to their civil commitment.

The eight ICE-contracted facilities that CCA operates are civil detention and residential facilities, designed to meet the unique needs of the individuals they house, including but not limited to:

- Appropriate space to accommodate visits from family, legal counsel and advocacy services.

- Access to immigration courts so that individual cases can be presented and reviewed.
- Access to onsite medical, dental and mental health services, as provided separately by ICE.
- Provision of recreational, educational, religious and cultural activities.
- Access to law library and general library resources.
- Daily provision of meals that meet or exceed dietary requirements.

HUMANITARIAN CRISIS ON OUR SOUTHWEST BORDER

In the first half of 2014, tens of thousands of Central Americans poured over the U.S.-Mexico border seeking asylum. This unprecedented influx led to what President Obama called an “urgent humanitarian situation” in June of 2014.

By late spring of 2014, the U.S. Department of Homeland Security (DHS) was overwhelmed by the influx of unaccompanied children, resulting in the need to house them in Border Patrol processing facilities. These facilities were designed to comply with federal law limiting a child’s stay to 72 hours, yet thousands of children were housed in these facilities for weeks awaiting processing. Children slept on the floor, received no educational programming and were allowed few outdoor recreation opportunities.

By June 2014 DHS was in crisis, overwhelmed and unable to manage or house the influx of unaccompanied minors. However, in the same month, DHS stopped its practice of releasing immigrant mothers with children apprehended along the border – despite the lack of housing for this vulnerable population, which often included infants and toddlers. In late June, ICE opened a hastily converted federal law enforcement training barracks in Artesia, New Mexico to house mothers and children.

The conditions in the 25-year-old training barracks were never intended to meet the needs of vulnerable populations, and the facility quickly drew criticism. ICE did not offer basic education to children at the facility until October 2014, three months before it was closed.

In September 2014, ICE approached several vendors, urgently requesting bids to house its growing immigrant family population in an appropriate setting. CCA was the only company to respond to ICE’s request for a purpose-built (i.e., not retrofitted), civil residential facility specifically designed for immigrant mothers and children. CCA went to tremendous lengths to provide a solution to the crisis, marshalling internal resources and scores of external partners to ultimately site, design, build and staff a safe, humane and appropriate facility in less than three months – all to ICE’s rigorous specifications.

CONCLUSION

For more than three decades, CCA has provided flexible, innovative, dependable solutions for ICE. We are one tool available to the agency to help achieve its mission in a cost-effective way. Eliminating this tool, however, would create significant challenges for the safe, humane and appropriate housing of detainees and residents. We encourage the subcommittee to keep all options on the table for ICE leaders, particularly ones like ours that provide great flexibility.



October 18, 2016

U.S. Department of Homeland Security - HQ
Homeland Security Advisory Council (HSAC)
Privatized Immigration Detention Facilities Subcommittee
3801 Nebraska Ave. NW, MS-385
Washington, DC 20016

Corporate Headquarters

One Park Place, Suite 700
621 Northwest 53rd Street
Boca Raton, Florida 33487

TEL: 561 893 0101
866 301 4436

www.geogroup.com
dventurella@geogroup.com

Dear HSAC Members:

Thank you for affording the GEO Group (“GEO”) the opportunity to participate in the Homeland Security Advisory Council subcommittee meeting of October 13, 2016 and for allowing us to share information about our company and to answer your questions.

As a follow-up, I wanted to provide the subcommittee with additional information and data in response to several of the questions and issues presented during our discussion.

One of the comments made during our meeting focused on GEO’s background in the operation of correctional facilities; and more specifically noting that this was not the appropriate expertise for the purposes of managing and operating facilities for non-criminal, civil detention. It is important to reiterate, GEO is a broad and diverse service provider offering our clients comprehensive solutions to manage and care for diverse populations whether criminal or civil.

As previously highlighted in our written submission, our company was not founded in the penal corrections industry, as our first client was the former Immigration and Naturalization Service (INS). Our first facility (Aurora INS Processing Center) was uniquely designed to provide a secure residential (non-penal) environment for non-criminal aliens. Since that time, we have been selected by federal, state, local and international clients to provide a wide array of services ranging from substance abuse counseling, cognitive behavior therapy and evidence based treatment, re-entry and re-integration services, as well as youth and family services. The breadth and depth of our expertise and experience allows us to support many different clients and their varying needs.

In the area of oversight and compliance, the Immigration and Customs Enforcement Agency (“ICE”) has assigned full-time, dedicated Detention Service Managers (DSM) at eight of our facilities. This is in addition to the on-site presence of the ICE contracting officer and the annual audits and inspections conducted by ICE as referenced in our written statement. The DSM reports to ICE’s Detention Management Division in Washington, DC and is independent from the local ICE field office and staff. The DSM position was created to ensure detention service providers, both private and public, adhere and comply with ICE’s National Detention Standards. On a daily basis, GEO works with the DSM to identify and resolve any issues that are determined to be inconsistent with the applicable detention standards.

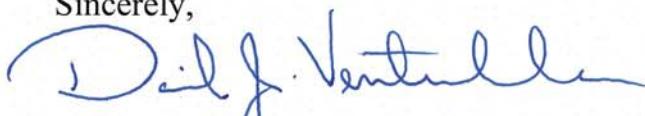
As it relates to staff training, each ICE contract contains very specific requirements for those who are authorized by ICE to perform such services under the contract. These requirements include mandatory ICE training (PBNDS 2011) and certification of successful completion. Each employee approved by ICE to perform services under the contract must successfully complete sixty hours of basic training prior to Entry on Duty (EOD) and forty hours of on-the-job training. Within sixty days of completing the initial one hundred training hours, GEO staff will complete another forty hours of training. Each new employee will complete another forty hours of training within the first year of duty directly related to the employee's position and focus on relevant job skills. All GEO staff will complete a total of 180 hours of training within their first year of employment and then forty additional hours of refresher training thereafter on an annual basis. Professional staff (e.g., medical) must maintain all applicable federal, state, and local licensure, credentialing and continuing education requirements necessary to perform services under the contract.

Furthermore, as we stated during our meeting, employees within our company are not considered "interchangeable" and those individuals who work under a non-ICE contract cannot perform any services pursuant to an ICE contract without first receiving clearance from ICE and certifying completion of the training requirements referenced above.

We also recognize that one of the areas to be examined by the subcommittee is whether the use of privately operated detention facilities makes fiscal sense. When comparing the annual cost of operating an ICE owned facility to a privately owned and operated facility, an ICE facility is significantly more expensive to operate. Since ICE eliminated the detention officer job series many years ago, ICE now outsources all aspects (except medical) of its owned facilities to private sector partners. Additionally, ICE separately procures guard and transportation services, food service, janitorial services, detainee uniforms and welfare items, maintenance services, capital repairs, etc. In total, the average daily bed cost ranges from \$200.00 to over \$300.00 when all costs are accounted for in the daily rate. In comparison, the privately owned and operated facilities includes all of the necessary services and facility costs to support ICE's requirements at an average daily bed cost ranging from \$65.00 to \$130.00 depending on its location.

Lastly, we want to re-extend our invitation to tour any and all of our facilities remains open to the members of the subcommittee. I hope these additional insights are helpful in your evaluation process and please do not hesitate to contact me directly if you should require additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "David J. Venturella".

David J. Venturella
Senior Vice President, Business Development and Government Relations

[REQUEST EDIT ACCESS](#)

Faith Communities Urge DHS Secretary Jeh Johnson to Stop Using Private Prisons.

The undersigned members of faith communities welcome the Department of Homeland Security Secretary Jeh Johnson's (DHS) decision to review and evaluate private prison companies that detain immigrants. Overwhelming evidence has repeatedly proven the abysmal human rights records from private prisons. We urge Secretary Johnson to follow the lead of the Department of Justice, which decided to end its reliance on contracting with private prison companies due to widespread reports of abuse and safety and security concerns.

We believe this is an important first step in ending the atrocious conditions faced by immigrants who are detained by DHS Immigration Customs Enforcement (ICE) for deportation. Many of our allies have released reports demonstrating that none of the approximately 250 private facilities that contract with ICE provided adequate protection from physical and sexual abuse. They also found that the private companies do not provide basic medical care, adequate nutrition, and exercise, or allow sufficient access to legal resources. In fact, some of the same facilities with significant health and safety violations reviewed by the Justice Department's Inspector General report, <https://oig.justice.gov/reports/2016/e1606.pdf> are being used to incarcerate immigrants.

Faith leaders across the country remain appalled at the deplorable conditions and shameful treatment provided to detained immigrants. These private facilities profit from another's suffering through overpriced phone services, lack of decent medical care, along with the inadequate daily food and basic needs. It is clear that fundamental human rights are not being upheld. We believe every child of God has inherent worth and dignity and should never be exposed to such inhuman treatment. We hope and pray that DHS will end contracts with private prison companies now.

The faith community cannot in good conscience stand by as we see the constant abuse of immigrants in detention, many of whom are members of our communities and congregations. We have been part of the struggle to close down these facilities whose sole purpose is to profit from the blood and tears of immigrant families.

We strongly urge Secretary Johnson to stop contracting with private prisons to detain immigrants today. We will stand with you throughout this process to stop using private facilities to house immigrant detainees.

* Required

Immigrant detainee



Name of Organization/Faith Leader *

Your answer

Authorized person

Your answer

Email address *

Your answer

Contact number

Your answer

Page 1 of 1

SUBMIT

Never submit passwords through Google Forms.

October 14, 2016

Dear HSAC Privatized Immigration Detention Facilities Subcommittee,

As you investigate the appropriateness of the continued use of private immigration detention facilities, we believe it is vital that you consider the troubling impact of private prison lobbying expenditures on the growth of the entire immigrant detention system, the percentage of the industry that is privatized, and the maintenance and increase of the congressionally-mandated bed quota.

Grassroots Leadership is an Austin, Texas-based national organization that works reduce reliance on incarceration and detention and reduce the undue influence of prison profiteering on the immigration and criminal justice system. For more than 15 years, we have monitored the growth of the immigration detention system in the United States, and issued a series of reports and publications on the impact of private prison corporations on our nation's immigration enforcement system.

The following are some key findings from Grassroots Leadership's 2015 report, *Payoff: How Congress Ensures Private Prison Profit with an Immigrant Detention Quota*.

Private prison corporations have seized a greater portion of the immigration detention system since the onset of the immigrant detention quota. Privately owned beds have increased 13% and today, 9 out of the 10 largest immigrant detention centers are private, with 8 owned by only two corporations.

Two private prison corporations dominate the immigrant detention industry and are making record profits at the expense of communities and taxpayers. Since the end of 2007, the GEO Group has increased their profits by 244%, and Corrections Corporation of America (CCA) by 46% over the same time period.

A large portion of this profit comes from federal immigrant detention. Together, CCA and GEO made almost \$478 million in revenue in 2014 from ICE detention. CCA derived 44% of their total revenue from three federal agencies with correctional and detention responsibilities: the BOP, ICE, and USMS. Private estimates suggest that the private prison industry will acquire 80% of any future immigrant detention bed increases.

The private prison industry is reinvesting this profit in Congress to protect their bottom line, and has spent an enormous amount of money lobbying on immigrant detention and appropriations policies. Together, between 2008-2014 CCA and GEO have spent more than \$11 million in quarters when they lobbied on immigration issues and CCA spent nearly \$10 million during the same time period in quarters when they lobbied on the DHS Appropriations Committee, the point of control for the quota.

Nearly all new family detention beds are privately operated. GEO and CCA's newly opened detention centers in Karnes and Dilley, Texas are currently under expansion to have the capacity to detain 3,600 refugee mothers and children, at enormous profit to these corporations.

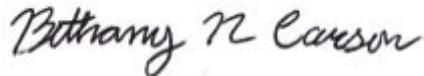
The only way to stop this cycle is to end the quota and dramatically reduce the use of detention. Until then for-profit prison companies will continue to reap millions and spend those profits lobbying Congress to protect their bottom line.

We also ask that you examine the revolving door between Department of Homeland Security, Immigration and Customs Enforcement, and private prison corporations. The report details a troubling instance of the revolving door between the DHS and private prison lobbyists. The Ridge Policy Group, which spent \$200,000 from 2007-2014 lobbying for the GEO Group, is headed by Tom Ridge, the first Secretary of Homeland Security.

Several other top ICE officials have taken key posts at private prison corporations since leaving the agency, including Julie Myers Wood, former Assistant Secretary of Homeland Security for Immigration and Customs Enforcement who now serves on GEO Group's board, and David Venturella, former assistant director at ICE and now Executive Vice President for Corporate Development at the GEO Group.

Finally, we request that you advise DHS not to renew contracts for facilities whose contracts expire while this review is taking place, notably the contract for the 1904 bed GEO-operated South Texas Detention Complex (STDC) in Pearsall, Texas which is scheduled to expire on November 30, 2016. The Payoff report contains testimony from Muhammad Nazry (Naz) Mustakim, a valued Waco, Texas community member and advocate, who was detained at STDC for 10 months under harsh conditions. Facility guards wear army uniforms and verbal abuse is reportedly constant. Other abuses reported in Naz's testimony include inaccessible and inadequate medical care, extremely limited mobility and recreation time, small concrete wall recreation areas where injuries were common, terrible food, and frequent threats of solitary confinement.

Sincerely,



Bethany Carson
Immigration Policy Researcher and Organizer
Grassroots Leadership

Marc F. Stern, MD, MPH
1100 Surrey Trace Drive SE
Tumwater, Washington 98501, USA
(360) 701-6520
mfstern@uw.edu

October 18, 2016

Karen Tandy, Chairwoman
Privatized Immigration Detention Facilities Subcommittee
Homeland Security Advisory Council

via email

Dear Chairwoman Tandy and members of the Homeland Security Advisory Council, Privatized Immigration Detention Facilities Subcommittee:

Thank you for inviting me to speak to the Subcommittee regarding private detention facilities (PDF). I am providing this letter in response to your request for a telegraphic summary of the best ways to either eliminate or continue use of PDFs. As I did before the Subcommittee, I am limiting the scope of my opinion to the provision of health care. As such, there is some degree of mismatch between the question before the Subcommittee and my response because there are a number of different health care models used within PDFs, i.e. health care may be provided by the private (for-profit) operator of the facility, a different private vendor, or the Public Health Service (PHS) via the ICE Health Services Corps (IHSC). In this letter recommendations, I will consider PDFs as facilities in which the custody function is run and staffed by for-profit vendors (regardless of whether the vendor contracts directly with ICE or via an IGSA with local government). I will contrast these with county jails, which are facilities in which the custody function is run and staffed by local government. The standard I use in judging the necessity of these recommendations is a health care system which provides safe patient care by meeting the requirements of the 8th Amendment and a minimally acceptable community standard for provision of health care.

Observations/Foundation:

- Based on the approximately 30 detention facilities with which I am familiar, health care provided in the PDFs is generally not safe. However, it is no more unsafe than care generally provided to ICE detainees in county jails.
- Care provided by IHSC is generally much better, though there are some exceptions, e.g. Eloy.
- As happens in jails and prisons, because health care is not the “mission” of the detention operation, patient safety is given little weight – if any – in the calculus of DHS’s business decisions, such as selecting a detention facility with which to contract.
- There is discontinuity of care as patients transition from Customs and Border Protection (CBP) to Immigration and Customs Enforcement (ICE) jurisdiction.

Recommendations:

If ICE aborts use of PDFs

- This must be accomplished by attrition or by transferring detainees to Service Processing Centers with available capacity. If it is accomplished instead by moving detainees to county jails, at best, it will not improve patients safety, and at worst, it will degrade patient safety if those county jails are already at, or beyond, capacity.

If ICE aborts or does not abort use of PDFs (the same recommendations apply in either case)

- Discontinue housing detainees (under any model) in health care resource-challenged areas of the country, such as Florence, Arizona.
- Vest IHSC with the authority it needs to ensure patient safety within an organization whose mission is not health care:
 - To avoid discontinuity of health care during the almost invariable patient transfer from CBP to ICE custody, IHSC should have purview over detainee health care from the moment of detention until the moment of release, i.e. while individuals are in CBP or ICE custody.
 - IHSC should become a DHS Component with its leader reporting directly to the Secretary.
 - IHSC should provide advice and consent before ICE enters into any new or renewed arrangement for housing detainees. Such consent should extend to the health care-related parts of the housing contract, which should include meaningful and timely repercussions for failure to perform.
 - IHSC should have the authority (and resources – see below) to monitor the quality of health care delivered to ICE detainees in any facility; the practice of contractually engaging non-governmental for-profit vendors to conduct formal monitoring should be discontinued.
 - In that monitoring role, IHSC should have the authority to receive and approve corrective action plans (including approving the time frame for completion of such plans), monitor compliance with the plan, and invoke sanctions for non-compliance. Such sanctions need to include the ability to unilaterally close (or order the removal of detainees from) a detention facility, much the same as any local health authority has the ability to close a restaurant that presents a risk to the public health.
 - IHSC should have the authority to make exchanges between PHS and General Service positions, as needed, to fill those positions.
- Provide IHSC the resources it needs to execute the above authority, to include:
 - Adequate number and type of appropriate clinical staff to care for patients;
 - Adequate number of administrative staff to support operations;
 - Adequate number and type of staff (including nurses and doctors) to monitor health care delivery with sufficient frequency and robustness;
 - Rapid security clearance (days vs months) of new employees or other staff (e.g. trainees or instructors from academic institutions) IHSC requires to conduct business.
- Until such time as the above-described system of new authority and resources is operating smoothly and at steady state, patients are safe, and avoidable deaths are prevented, the Secretary should seek input from an external independent health authority (e.g. Bureau of Prisons) about the state of the detention health care system.

Thank you for the opportunity to help inform your Subcommittee's work. Please feel free to contact me if you have any further questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc F. Stern".

Marc F. Stern, MD, MPH

MARGO SCHLANGER

Henry M. Butzel Professor of Law

Phone: 734-615-2618

Email: mschlanc@umich.edu

Affiliation for identification purposes only.

910 Legal Research Building

625 South State Street

Ann Arbor, Michigan 48109-1215

Memo to: Homeland Security Advisory Council, Privatized Immigration Detention Facilities
Subcommittee

Date: October 17, 2016

Thank you for the opportunity to speak with you last week over the phone and to follow up with this written summary of my views on the important questions before you. I hope this brief statement is helpful to you and I remain available to share my thoughts further, orally or in writing, on your request.

In case it's useful, I'll begin with a few sentences about my background. I have worked on improving conditions of confinement in jails and prisons for two decades; my first lawyer job (post clerkship) was in the Civil Rights Division of the U.S. Department of Justice, seeking to remedy systematic violations of civil rights of jail and prison inmates across the country. Since then I have worked on jail and prison reform in many capacities, and currently serve as the court-appointed settlement implementation monitor in a statewide prison conditions lawsuit in Kentucky; I am also on the Advisory Board for the Vera Institute's Reimagining Prison initiative. My involvement in immigration detention began when I served as the DHS Officer for Civil Rights and Civil Liberties (CRCL) for two years beginning January 2010; in that role, I revamped CRCL's relationship with ICE, including the office's detention investigation and monitoring processes, and was deeply involved in various DHS detention reform initiatives. After I returned to my academic post at the University of Michigan, I continued to work for two years as a Special Government Employee, providing advice to Secretary Janet Napolitano on, particularly, the Department's regulation to implement the Prison Rape Elimination Act and its directive relating to use of solitary confinement for ICE detainees. I am currently a member of the DHS Advisory Committee on Family Residential Centers, which last week submitted to ICE a detailed set of recommendations relating to family detention reform.

I want to emphasize five points:

1. *The difference between the BOP and ICE, and the need to avoid jail for immigrant detainees.*

As you know better than I, your subcommittee was established in the aftermath of the U.S. Department of Justice's announcement that the federal Bureau of Prisons will phase out private prison contracts. For DOJ, the alternatives to private facilities are facilities BOP itself runs. But ICE does not have the current capacity to run its own facilities, and seems unlikely to be able to build that capacity. So for ICE, outsourcing could be extremely difficult to avoid. And if ICE continues to outsource detention operations—just not to corporations like CCA and GEO—the likely partners would be county jails. That hypothetical switch would be adverse to detainee welfare and interests.

In my experience, putting to one side the Family Residential Centers (and perhaps Hutto, which started out as a Family Residential Center), dedicated immigrant detention facilities feel and are run very much like prisons. The physical environment is prison-like in layout, finishes, colors, lighting, fixtures. The day-to-day schedule is prison-like, although there is less opportunity for detainee activity than in some prisons. Operations and rules are prison-like: there are, for example, frequent scheduled counts and routine daily locked-down time. Detainees communicate with staff by using “kites”—ordinary prison-speak for a written request. The comparisons could go on and on.

This prison-like setting is far more secure, supervised, and regimented than is in fact needed for staff and detainee safety. But the alternative of jail is not better; it is far worse. In county jails, detainees are not treated *similarly* to inmates; they are treated *as* inmates. Moreover, jails are, systematically, more chaotic, more dangerous, and more idle than prisons. The rates of assault and suicide are higher in jails than in prisons, and the level of amenity is lower. Ask just about anyone who has done both jail time and prison time; jail time is harder. So while below, I recommend to you various ways to improve immigration detention, DHS would make things worse, not better, if the outcome of your review was that detainees currently housed in prison-like privately operated settings were sent, instead, to jails.

2. A better model: lower custody, more detainee autonomy, smaller facilities.

It would be better by far to largely abandon *both* jail and prison as the paradigms for immigrant detention, and think instead about other, less-penal types of facilities—halfway houses or group homes, for example. For a very large majority of ICE detainees, there’s really no reason to run a facility with the level of supervision criminal detention requires; the population just does not need that type of custody or control. Halfway houses or group homes are a far better fit. They are small, much more civil, and typically (though not always) run by people who have a service-provision orientation rather than a custodial/correctional orientation. In 2010, when I was head of CRCL, I gathered together experts from all different types of civil detention for a day-long session with ICE. The experts agreed that the two keys to non-punitive conditions are small size and social service orientation of staff. (I am trying to locate my notes on this gathering; if I find them, I will forward them to you.) The point is not that detainees need lots of services; some do, but most do not. And mostly, of course, they are being held pending their quite speedy removal. The point is that staff should have a thoroughly non-punitive orientation; they should understand their role to be facilitating safe custody that is as non-onerous as possible. This means that ICE (and its contracting partners) should value a social work background more than correctional experience. In these kinds of settings, detainees would have more control over their daily schedule, their food, their clothing, etc. The fence around the facility might be prison-like—but facility operation would not.

Of course some detainees will need a higher level of custody. But it should be possible for ICE—with the assistance of the National Institute of Corrections, which has very long and robust experience in such matters—to construct a validated objective custody classification instrument that channels into appropriate settings the small minority of detainees who pose a danger to others. Currently, ICE facilities systematically over-supervise detainees who would be classified to very low custody even if they were in a prison (except for the risk of flight caused by their immigration situation).

3. Expanding what constitutes “custody” or “detention”

The driver of many of ICE detention’s problems—and of the difficulty of imagining an end to operational outsourcing—is the large detainee population, which responds directly to the congressional detention bed mandate. But ICE could think about “custody” or “detention” more broadly, so that various types of supervision count. Home confinement, ankle monitors, even other kinds of supervision shouldn’t be thought of as alternatives *to* detention but as alternative types *of* detention. Confinement inside a fence could then be reserved for people facing near-immediate removal, or who are truly dangerous. This would be a much better system.

4. Separating long- and short-term detention

Regardless of the size of the behind-the-fence population, ICE really should separate facilities that hold people for a few days pending removal and those that house would-be immigrants for longer terms while they contest their cases. What conditions of confinement are needed varies greatly depending on the length of confinement. Idleness, for example, is not a huge hardship for a couple of days—but for someone confined for months on end, it is a huge strain. Short- and long-term custody should have different features, and practically (if not absolutely necessarily in theory), that should mean different facilities.

5. Quality control difficulties relating to outsourcing

Finally, I think it’s important to understand that ICE’s current outsourcing model clearly undermines policy responsiveness (without much difference that I am aware of between public and private partners). When a facility is operated according to a contract, the result is extreme friction when circumstances change or new information or approaches arise. Contracts tend to be pretty specific, and appropriately so. That means contracting partners have a ready way to resist change, and improvements suffer. For example, ICE has faced high hurdles to its implementation of the DHS Prison Rape Elimination Act regulation. So I don’t mean to minimize how difficult it would be to limit ICE’s detention outsourcing. But it should be counted on the plus side of the ledger that increased operational flexibility would be one likely result.

Again, my thanks for the opportunity to share my thoughts; please let me know if I can be of any further assistance.

October 10, 2016

Privatized Immigration Detention Facilities Subcommittee
Homeland Security Advisory Committee
Office of Partnership and Engagement
U.S. Department of Homeland Security

Re: Materials Submission and Recommendations regarding Contract and Inspections Practices in Immigration and Customs Enforcement Detention

Dear Chairwoman Tandy and members of the Homeland Security Advisory Committee (HSAC) Subcommittee:

On behalf of the National Immigrant Justice Center (NIJC), I write to thank you for your commitment to a thorough investigation into the Department of Homeland Security's detention system. NIJC provides direct legal services and information to more than 4,000 men and women detained annually in U.S. Immigration and Customs Enforcement (ICE) custody at local jails in the Midwest and throughout the country. Through this work, NIJC staff directly encounters how ICE's facilities lack oversight, transparency, and basic protections for the men and women in our government's care.

Informed by these observations, NIJC has engaged in prolonged FOIA litigation and in-depth reviews of hundreds of government contracts and inspection reports in an effort to shed light on the U.S. immigration detention system. The result of these efforts is a series of groundbreaking reports, revealing systemic problems in immigration detention contracting and inspections. We enclose these reports for your review.

In addition, there are serious questions as to whether DHS even has the legal authority to enter into detention agreements with private prison companies. The Immigration and Nationality Act (INA) includes a specific and detailed scheme outlining the government's ability to enter into cooperative agreements for the construction and management of detention space for those in administrative detention. 8 U.S.C. §1103(a)(11). The INA, unlike the statute that applies to the Bureau of Prisons (BOP), does not allow for the agency to enter into such agreements with private prison companies. *Compare* 8 U.S.C. § 1103(a)(11) *with* 18 U.S.C. § 4013.

The enclosed policy brief and reports will provide information to assist your investigation. These reports reveal a civil detention system that is punitive in nature, lacking in transparency, and generally operating in a manner that appears to value profit over human life. **Given the urgency and scope of this problem, we urge you to interpret your mandate as broadly as possible and consider both the type of facility ICE uses to detain individuals as well as the breadth and harmful excess of ICE's exercise of its detention authority.**

Enclosed please find the following documents to aid your review:

- ***Freedom of Information Act Litigation Reveals Systemic Lack of Accountability in Immigration Detention Contracting and Oversight*** (Aug. 2015) provides a detailed picture of ICE's contracting system, drawn from a review of more than 90 detention facility

contracts.¹ The findings include a lack of clarity as to which set of detention standards govern at which facilities and a staggering number of facilities operating with indefinite contracts under outdated standards. Notably, this report highlights ICE's common practice of contracting with local governments which then subcontract the facility's administration to a private prison company, shielding DHS and these companies from public taxpayer scrutiny and accountability.²

- **Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse** (Oct. 2015) illustrates the troubling results of a review of five years of ICE inspection reports for 105 of the largest immigration detention centers.³ The report reveals that facilities rarely fail inspections that could place contracts at risk under a 2009 congressional mandate requiring that ICE discontinue contracts with facilities that fail two consecutive inspections, even where violations of ICE detention standards and unexplained deaths have been publicly documented. Facilities are routinely informed of inspections in advance, inspection reports are often lacking and/or inconsistent, and even these sub-par inspections are largely conducted using outdated standards.
- **Fatal Neglect: How ICE Ignores Deaths in Detention** (Feb. 2016) tells the tragic story of ICE's failure to ensure the provision of adequate medical care in its facilities resulting in the unnecessary loss of life.⁴ This report compares ICE death investigations and facility inspection reports to demonstrate that ICE's violations of its own medical care standards played a significant role in eight deaths at immigration detention facilities between 2010 and 2012. Six of the eight deaths occurred at privately-operated facilities; all facilities but one passed inspections following the reported death.
- **ICE's Failed Monitoring of Immigration Detention Contracts** (Sept. 2016) presents the results of a review of three years of ICE Office of Detention Oversight (ODO) detention facility inspections, raising serious questions regarding oversight.⁵ ICE's own data suggests the agency is delaying the release of inspection results in spite of a 2009 congressional mandate requiring that ICE discontinue contracts with detention facilities that fail two consecutive inspections. Approximately 40 percent of facilities with long-pending inspection ratings are operated by private prison companies. At the Eloy Detention Center in Arizona, for example (operated by the Corrections Corporation of America), ICE has not publicly

¹ Claudia Valenzuela & Tara Tidwell Cullen, *Freedom of Information Act Litigation Reveals Systemic Lack of Accountability in Immigration Detention Contracting and Oversight*, National Immigrant Justice Center (NIJC), Aug. 2015, <http://bit.ly/2bTUoSG>.

² For one particularly egregious example of this practice, see Chico Harlan, "Inside the Administration's \$1 billion deal to detain Central American asylum seekers," *Washington Post* (Aug. 14, 2016), available at https://www.washingtonpost.com/business/economy/inside-the-administrations-1-billion-deal-to-detain-central-american-asylum-seekers/2016/08/14/e47f1960-5819-11e6-9aee-8075993d73a2_story.html.

³ Claudia Valenzuela, Tara Tidwell Cullen & Mary Small, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, NIJC & Detention Watch Network (DWN), Oct. 2015, <http://bit.ly/2cGZerO>.

⁴ Jennifer Chan, Mary Small & Carl Takei, *Fatal Neglect: How ICE Ignores Deaths in Detention*, NIJC, DWN & American Civil Liberties Union, Feb. 2016, <http://bit.ly/detentiondeaths>.

⁵ Jennifer Chan, "ICE's Failed Monitoring of Immigration Detention Contracts," NIJC, Sept. 2016, <http://bit.ly/2e21Csm>.

released any inspection results since 2012 despite 14 deaths at the facility since 2003 and previous findings of significant lapses in medical care.⁶

Based on these findings, we believe **DHS must end its reliance on private prisons for immigration detention.** Even this measure will not remedy the violations of civil and human rights that immigrants in detention endure every day in a system that is replete with accountability and transparency failures.

We therefore urge the Subcommittee to:

- 1) **Continue and deepen your engagement with the community during your investigation.** In addition to continued meetings with non-governmental organizations, we urge you to meet with currently and formerly detained individuals and their family members.
- 2) **Adopt the following recommendations necessary to reform the detention system:**
 - Eliminate ICE's dependence on private prisons, reduce unnecessary detention, and implement civil detention. Problems will persist as long as ICE effectuates its civil detention system exclusively in reliance on a penal model. ICE must reduce its detained population and can do so safely by releasing asylum seekers, people with criminal convictions who pose no risk to the community, individuals facing prolonged detention, and vulnerable populations including those with medical or mental health issues and LGBTQI individuals. For those who remain detained, ICE should pursue a civil detention model similar to Office of Refugee Resettlement (ORR) shelters for unaccompanied children.⁷
 - Eliminate ICE Enforcement and Removal Office (ERO) inspections. ERO inspections give an appearance of accountability and oversight, but fail to meaningfully hold facilities accountable for failure to meet standards. Instead, ERO funding should be allocated to an independent entity like the DHS Office of the Inspector General to conduct annual inspections that will ultimately determine whether facilities continue to receive funding according to the 2009 congressional mandate.
 - All ICE contracts should include robust penalties that make payment contingent on performance. Currently, ICE compensates facilities regardless of whether they meet

⁶ ICE only publicly provides inspections conducted by the Office of Detention Oversight (ODO), which do not determine congressional funding of detention facilities. Despite years of litigation, ICE refuses to release ICE Enforcement and Removal Operation (ERO) inspections, whose findings determine congressional funding.

⁷ See, e.g. Dr. Dora Schriro, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* (Oct. 6, 2009), available at <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>. This report provides a roadmap for developing a system suited to the purpose of immigration detention (identifying “important distinctions between the characteristics of the Immigration Detention Population in ICE custody and the administrative purpose of their detention – which is to hold, process, and prepare individuals for removal – as compared to the punitive purpose of the Criminal Incarceration System” and identifying “the opportunity for ICE, in coordination with stakeholders, to design and implement a detention system with policies, facilities, programs, and oversight mechanisms that align with the administrative purpose of Immigration Detention”). See also American Bar Association, *ABA Civil Immigration Detention Standards* (2012), available at <http://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmdetstds.authcheckdam.pdf>.

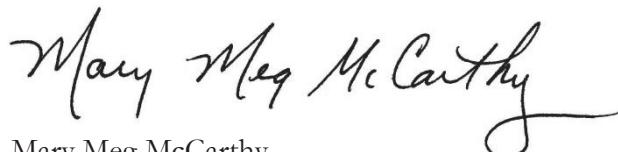
standards.

- Improve the quality of inspections. Inspectors should investigate facilities over a longer period of time (e.g. one business week as opposed to three days); facilities should not receive advance notice of inspections; inspectors should investigate actual conditions as opposed to determining whether facilities have written policies in place that comply with standards; and inspectors should permit advocates and detained individuals to weigh in on the inspections process, and *meaningfully* address and investigate concerns raised by advocates and detained individuals in inspection reports.
- Ensure transparency of the detention system. All inspections and death reviews should be made available to the public within three months of being finalized, and ICE should regularly report to the public on detention statistics and significant incidents, including hunger strikes, suicide attempts, and work stoppages.

Thank you for your consideration of these critical issues. We look forward to a follow up meeting with men and women impacted personally by immigration detention.

Please do not hesitate to be in contact with my colleague Heidi Altman at holtzman@heartlandalliance.org or (312) 718-5021 if NIJC can provide further assistance as you review DHS's use of private prisons.

Sincerely,



Mary Meg McCarthy
Executive Director
312-660-1351
mmccarthy@heartlandalliance.org

Enclosures:

1. **Report:** Freedom of Information Act Litigation Reveals Systemic Lack of Accountability in Immigration Detention Contracting and Oversight
2. **Report:** Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse
3. **Report:** Fatal Neglect: How ICE Ignores Deaths in Detention
4. **Policy Brief:** ICE's Failed Monitoring of Immigration Detention Contracts



Observations by the United Nations High Commissioner for Refugees For the Department of Homeland Security - Homeland Security Advisory Council Subcommittee

The Office of the United Nations High Commissioner for Refugees (UNHCR) commends the Department of Homeland Security (DHS) for initiating a review of whether DHS should continue to contract with private companies in the operation of immigration detention facilities. UNHCR acknowledges the fundamental importance of regular review of policies on deprivation of liberty and appreciates the Subcommittee's invitation to provide information.

This inquiry is of central interest to UNHCR, given the sharp rise in the number of asylum-seekers in the U.S. detention system, primarily in privately-operated facilities. Asylum-seekers, as of June 2016, now make up more than half of those in U.S. immigration detention.¹ UNHCR is concerned that current U.S. government oversight of privately-operated facilities is insufficient to ensure that these facilities meet appropriate detention standards, and urges the Subcommittee to recognize that there are effective ways to manage immigration beyond overuse of detention.

UNHCR appreciates the important steps the U.S. has taken over a number of decades to protect refugees and asylum-seekers. The United States is one of 12 countries currently participating in UNHCR's global Beyond Detention Strategy, aimed at reducing the detention of asylum-seekers worldwide.² In that context, as reported by UNHCR, the U.S. has made progress, including in protection of unaccompanied children.³ UNHCR recommends that the Subcommittee build on this active tradition of promoting and protecting human rights in the course of its review of the use of private detention facilities in the United States.

I. The Subcommittee Should be Guided by International Legal Obligations to Asylum-Seekers

The United States is a party to the 1967 Protocol related to the Status of Refugees (1967 Protocol), through which it is bound to the 1951 Convention related to the Status of Refugees (1951 Convention).⁴ The U.S. has incorporated these obligations into U.S. law under the Immigration and Nationality Act.⁵ The international agreements provide that:

¹ U.S. Immigration and Customs Enforcement, Weekly Departures and Detention Report, June 20, 2016, <https://oversight.house.gov/wp-content/uploads/2016/07/ICE-Weekly-Departures-and-Detention-Report1.pdf>.

² UNHCR, *Progress Report mid-2016. Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees, 2014-2019*, August 2016, <http://www.refworld.org/docid/57b850dba.html>.

³ *Id.*

⁴ See UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, 4 (2015), available at <http://www.unhcr.org/3b73b0d63.html>.

⁵ Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(42) (2006).

- Every person has the right to freedom of movement and liberty of person;⁶
- States may not impose penalties on asylum-seekers for illegal entry or presence;⁷ and
- States may not restrict the movement of asylum-seekers beyond what is necessary.⁸

In 2012, UNHCR issued the current Detention Guidelines, which reflect the state of international law on the detention of asylum-seekers. The Guidelines state that:

- Detention of asylum-seekers is an “exceptional measure,”⁹ and each case must be individually assessed;¹⁰
- All detention facilities must be subject to independent state monitoring and inspection;¹¹
- Conditions of detention must be “humane and dignified,” and¹²
- Children, pregnant women, and nursing mothers should not be detained at all.¹³

The Guidelines speak specifically to the use of private contractors in detention, prescribing oversight and noting as a baseline that national authorities “remain accountable as a matter of international law.”¹⁴

II. UNHCR’s Recommendations in the Context of Asylum-Seekers in the United States

- 1) *UNHCR recommends that, in the event that private facilities continue to be used, the Subcommittee urgently prioritize more robust independent oversight and monitoring.*

UNHCR is concerned that current DHS practices do not effectively ensure oversight of private detention facilities. A 2014 GAO report, for example, indicates that ICE lacked “appropriate controls” for tracking facility costs, and inspection results for facilities varied without explanation.¹⁵ UNHCR notes that some States have developed thorough expertise in the area of inspection, which may serve as a model for meaningful change.¹⁶

The 2012 Detention Guidelines indicate that states must ensure they can effectively oversee the activities of private contractors.¹⁷ Oversight should occur through the provision of adequate

⁶ 2012 Detention Guidelines, Guideline 2.

⁷ 1951 Convention, Art. 31(1)

⁸ *Id.*

⁹ 2012 Detention Guidelines, at 6.

¹⁰ 2012 Detention Guidelines, Guideline 4.2

¹¹ *Id.* at Guideline 8.

¹² *Id.* at Guideline 8.

¹³ *Id.* at Guideline 9.2, 9.3.

¹⁴ *Id.* at 31.

¹⁵ U.S. Government Accountability Office, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards*, GAO-15-153, 28-35 (Oct. 2014), <http://www.gao.gov/assets/670/666467.pdf>.

¹⁶ Hindpal Singh Bhui, Global Detention Project, *Can Inspection Produce Meaningful Change in Immigration Detention?* Working Paper No.12, May 2016, available at: <https://www.globaldetentionproject.org/can-inspection-produce-meaningful-change-in-immigration-detention>

¹⁷ *Id.* at 32.

independent monitoring and accountability mechanisms, including “termination of contracts or other work agreements where duty of care is not fulfilled.”¹⁸

As a baseline condition of operating privately-managed detention facilities, UNHCR recommends that DHS take the necessary measures to ensure that:

- Activities of private contractors are effectively overseen;
 - Adequate independent monitoring and accountability mechanisms are applied;
 - Contracts or other work agreements where duty of care is not fulfilled are terminated.
- 2) *UNHCR recommends that the Subcommittee ensure that conditions of detention meet international standards, whether in private or government facilities.*
- UNHCR is particularly concerned that conditions of detention in some U.S. facilities—both public and private—fail to meet international standards. Women asylum-seekers interviewed by UNHCR in 2015¹⁹ noted that detention in U.S. facilities caused them to consider abandoning their asylum claims and returning to face persecution. As one Mexican woman noted, “it is better to be free and to die by a bullet than to suffer and die slowly in a cage.”²⁰
- Under the 2012 Detention Guidelines, “conditions of detention must be humane and dignified,” and “should not be punitive in nature.”²¹ Such conditions apply to both state-run and privately-operated facilities and must include proper complaint mechanisms.²² The Subcommittee should recommend that all private or public facilities meet international standards.
- 3) *UNHCR recommends that the Subcommittee recognize that detention of asylum-seekers must be an exceptional measure subject to individualized assessment.*

UNHCR is deeply concerned that since 2009, there has been a 340% increase in the number of asylum-seekers placed in U.S. detention centers.²³ In particular, the increase in detention of asylum-seeking families, the vast majority of whom are in facilities run by private companies, represents an area of concern to UNHCR.²⁴ The surge in the use of privately-run facilities and the 34,000 bed mandate are driving factors in the sharp increase in detention of asylum-seekers.

Under the 2012 Detention Guidelines, detention of asylum-seekers is an “exceptional measure,” constituting a “last resort,”²⁵ and each individual case must be judged on necessity, reasonableness, and proportionality.²⁶ The 34,000 bed mandate can be seen as incompatible with a concept of individualized assessment.

¹⁸ *Id.* at 32.

¹⁹ UNHCR, WOMEN ON THE RUN, October 2015.

²⁰ UNHCR, WOMEN ON THE RUN, 47, October 2015.

²¹ 2012 Detention Guidelines, at Guideline 8.

²² *Id.* at Guideline 8.

²³ U.S. Department of Homeland Security, Detained Asylum Seekers: Fiscal Year 2014 Report to Congress, September 9, 2015.

²⁴ Report 114-215, Department of Homeland Security Appropriations Bill, 2016.

²⁵ 2012 Detention Guidelines, at 6.

²⁶ 2012 Detention Guidelines, Guideline 4.2

UNHCR recommends that the Subcommittee take into account this worrying upswing in the detention of particularly vulnerable groups when considering the question at hand. The use of privately-run facilities, and the corresponding growth in detention, has placed asylum-seekers at risk. This stands in contrast to the U.S.’s international obligations and its longstanding tradition of support for asylum-seekers and refugees.

UNHCR urges the Subcommittee to recognize that there are more effective ways to manage immigration than overuse of detention. UNHCR notes that alternatives to detention—many of which are already used in the U.S.—can be cost-effective tools in ensuring asylum-seekers comply with immigration hearings.

UNHCR welcomes the interest of DHS in its review of private prison companies, and thanks the Subcommittee for its invitation to submit observations. UNHCR stands ready to offer any further observations or guidance, or to respond to any questions the Subcommittee might have.

- Contact: Alice Farmer, Protection Officer (farmera@unhcr.org)



October 14, 2016

Chair Karen Tandy
Mr. Marshall Fitz
Mr. John Kelly
Ms. Kristine Marcy
Mr. Christian Marrone
Mr. David A. Martin
Mr. William Webster
Members, Homeland Security Advisory Council
Privatized Immigration Detention Facilities Subcommittee
Department of Homeland Security
HSAC@hq.dhs.gov

CC: Jeh Johnson, Secretary, Department of Homeland Security
Sen. Patrick Leahy

VIA EMAIL

Re: Conditions of Confinement and Due Process Violations at Privatized Immigration Detention Facilities in the South

Dear Members:

We write to provide input to the Privatized Immigration Detention Facilities Subcommittee's ("Subcommittee") review of policy and practices concerning privatized immigration detention facilities and evaluation of whether the use of such facilities should be eliminated by the Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE").¹ We raise specific concerns regarding abusive conditions of confinement, due process violations, and lack of transparency in private immigration detention facilities located in the Deep South. In light of the rampant abuses and rights violations endemic to these facilities, the civil nature of immigration detention, and the lack of transparency and accountability by these contractors, we urge the Department to eliminate the use of private contractors to operate immigrant detention facilities.

¹ Department of Homeland Security, Homeland Security Advisory Council—New Tasking, 81 Fed. Reg. 60,713 (Sept. 2, 2016).

I. Background

The Southern Poverty Law Center (“SPLC”), the National Immigration Project of the National Lawyers’ Guild (“NIPNLG”), and the Adelante Alabama Worker Center are non-profit organizations that provide pro bono legal representation to and advocate on behalf of immigrants, including those detained in immigration detention facilities. The Southern Poverty Law Center has litigated numerous conditions of confinement cases in the Deep South; our current docket includes a class action lawsuit on behalf of all 25,000 inmates in the custody of the Alabama Department of Corrections alleging the denial of medical and mental health care in violation of the 8th Amendment. The National Immigration Project provides technical assistance to the bench and bar, litigates on behalf of noncitizens as amicus curiae in the federal courts, hosts continuing legal education seminars on the rights of noncitizens, and is the author of numerous practice advisories as well as Immigration Law and Defense and three other treatises published by Thompson West. Through its membership network and its litigation, the National Immigration Project is acutely aware of the problems faced by detained by noncitizens.

Over the course of the last seven months, we have participated in facility tours, investigated conditions of confinement, and conducted in-depth interviews with over 250 detainees at six immigration detention facilities in the Deep South. These facilities included three immigrant detention facilities managed by private prison corporations: Irwin County Detention Center in Ocilla, Georgia, which is operated by LaSalle Corrections; LaSalle Detention Facility in Jena, Louisiana, which is operated by the GEO Group (“GEO”), and Stewart County Detention Center in Lumpkin, Georgia, which is operated by the Corrections Corporation of America (“CCA”).

We chose to focus our investigation on facilities in the Deep South for three reasons. First, as the birthplace of the convict leasing system, this region has a particular and singular history with the exploitation of detained or incarcerated people of color for private gain. Immigration prisons have become part of the long standing Southern corrections experiment because immigrant detention is such a lucrative sector of the prison industry. The South is also an emerging destination for new immigrants, and has experienced the largest increase in its foreign-born population in the country today, while simultaneously bearing the brunt of new state anti-immigrant laws. Second, the Deep South currently leads the nation in the mass incarceration of people of color, including immigrants.² Private contractors capitalize on the punitive, “lock ‘em up and throw away the key” culture that permeates state and federal law enforcement in this region. Finally, the three private facilities we investigated, like so many detention facilities in the Deep South, are located in impoverished rural communities two to three hours away from any major metropolitan area. These communities lack any infrastructure or social services to support the detained population, and there are few immigration lawyers or lawyers of any kind in these communities. As a result, these facilities are able to operate with minimal public scrutiny, and the detainees in these facilities are among the most isolated in the country.

² Peter Wagner, Prison Policy Initiative, *Tracking State Prison Growth in 50 States* (2014), available at <http://www.prisonpolicy.org/reports/overtime.html> (noting the South’s consistently higher rate of incarceration than other regions of the United States).

The complete results of our investigation will be published in a forthcoming report. We write now to bring our preliminary findings to the attention of this Committee as it considers the crucial question of whether, in light of the Department of Justice’s (“DOJ”) decision to terminate its contracts with private providers for poor performance, the Department of Homeland Security (“DHS”) should do the same and cease to house immigrant detainees in privately operated facilities. Notably, the same operators serve both DOJ and DHS, with CCA and the GEO Group dominating both markets. Based on the findings set forth below, it is clear that the same failures that afflicted private prisons contracted by the federal Bureau of Prisons plague the private immigrant detention facilities contracted by DHS.

II. Findings

A. GEO, CCA and LaSalle Corrections fail to provide safe and humane conditions for civil immigration detainees.

During the course of our investigation, we found that the GEO Group, LaSalle Corrections, and CCA are unable to ensure safe and humane conditions for civil immigrant detainees at the Irwin County Detention Center, the LaSalle Detention Facility, and the Stewart County Detention Center, respectively. Our investigation of these three private facilities in the Deep South revealed the following:

1. Private providers at the three facilities reportedly fail to provide adequate medical and mental health care.

Immigrant detainees at LaSalle, Irwin and Stewart are subject to significant and life-threatening denials of medical, dental, and mental health care, including delays or denials in medication, diagnostic testing, and treatment that may rise to the level of deliberate and systemic indifference. Detainees at all three facilities reported significant challenges to receiving medical attention, including failure to respond quickly and appropriately to medical emergencies. In the first half of 2016 alone, three detainees at LaSalle Detention Center died in custody.³ Their deaths may be attributable at least in part to the failure to provide timely and adequate medical care. This lack of appropriate attention in emergencies also included an incident of attempted suicide by a detainee at LaSalle Detention Center. As another detainee reported, “one detainee tried to hang himself in the dorm. The code was called but no administrators came.”

Medical personnel also failed to provide care to detainees, resulting in serious complications. At Irwin Detention Center, several detainees were denied the opportunity to obtain the necessary

³ Press Release, U.S. Immigration and Customs Enforcement, ICE Detainee Dies at Louisiana Hospital (Jan. 25, 2016), available at <https://www.ice.gov/news/releases/ice-detainee-dies-louisiana-hospital> (death of Saul Enrique Banegas-Guzman); Press Release, U.S. Immigration and Customs Enforcement, ICE Detainee Passes Away after Suffering Heart Attack (Mar. 18, 2016), available at <https://www.ice.gov/news/releases/ice-detainee-passes-away-after-suffering-heart-attack-0> (death of Thongchay Saengsiri); Press Release, U.S. Immigration and Customs Enforcement, ICE Detainee Passes Away at Louisiana Hospital (Jun. 2, 2016), available at <https://www.ice.gov/news/releases/ice-detainee-passes-away-louisiana-hospital> (death of Juan Luis Boch-Paniagua).

and correct medical diagnostic tests required by the facility as a precondition for treatment for chronic and life-threatening conditions. For example, officials at Irwin refused to provide the correct diagnostic tests and provide cancer treatment to a detainee who had been diagnosed with prostate cancer in 2011, and who also suffered from severe kidney problems. Although the detainee provided proof of his prior cancer diagnosis, detention center officials refused to provide treatment. After filing several grievances and complaints with officials, medical personnel provided him with the wrong diagnostic test, leading officials to erroneously declare him “cancer-free” and further deny proper medical attention.

In another example, a detainee at Stewart Detention Center reported that he had broken his clavicle while detained, but was denied medical treatment for several months. Specifically, he reported that the medical clinic at Stewart Detention Center refused him care, despite the fact that he was bleeding and had a visibly broken bone. Only after a hunger strike in the facility brought additional scrutiny to the facility was the detainee sent to the doctor, who advised him that the clavicle could have been reset earlier, but now required surgery. Detainees at LaSalle Detention Center further reported that facility staff actively discouraged them from attempting to access care. As one detainee noted, “They shout at people. People are scared to go to sick call because they yell, ‘Why did you go to sick call?’ People with serious medical problems are not getting proper care.”

Detainees in all three of the facilities reported that medical staff routinely provide only ibuprofen or Tylenol in response to most complaints, and fail to diagnose or treat serious underlying medical conditions, as well as those that emerge or worsen in detention. Several female detainees at LaSalle Detention Center reported difficulty obtaining treatment or diagnostic tests for painful breast and ovarian cysts, and said that they were told to take ibuprofen instead. One detainee at LaSalle reported that he did not receive his HIV medication for at least six days upon transfer to the facility. Detainees at Stewart reported significant delays of two weeks or more in receiving prescribed medication, including medication for serious kidney conditions, blood sugar issues, and diabetes.

At all detention centers we investigated, detainees with chronic medical conditions that require careful monitoring of diets, such as diabetes, reported inability to obtain medically appropriate meals. Those detainees with specific medical dietary requirements, including those with diabetes, renal conditions, or in need of low-sodium diets, as well as religious restrictions, reported great difficulty in obtaining special meals. In addition, individuals at these facilities complained that food portions were small, and that most detainees were forced to supplement their diets by purchasing items from commissary, which are operated by the private prison companies and contribute to their profit margin.

Moreover, the obstacles listed above inhibit the ability of particularly vulnerable populations, such as the elderly, people with mental illness, people with physical disabilities, and LGBTQ individuals to seek needed medical care that they need.

2. Private providers at all three facilities reportedly use excessive force and abuse segregation.

Guards employed by the private contractors perpetuate uniquely dangerous instances of abuse of force, retaliation, and excessive use of segregation and lockdown by detention center staff and ICE officers. Detainees lack of protection from violence within the facilities.

Detainees at all facilities we investigated reported feeling unsafe in their units, where guards were unwilling to intervene in fights. Detainees at LaSalle reported a high incidence of aggressive and abusive discipline by guards, including the use of tasers, pepper spray, and tear gas against detainees. Detainees at Stewart and Irwin noted that guards overuse the threat of segregation and lockdown. “The officials are disrespectful,” noted one detainee at Stewart. “It seems like they always come to work angry and threaten us with ‘the hole.’” Another detainee at Stewart recalled seeing someone sent to segregation “just for sitting in the wrong space in the chow hall.”

Immigrant detainees located in private detention facilities in the South have staged multiple protests hunger strikes in the past year seeking attention for poor conditions and due process issues, including prolonged adjudication and detention, and failure to grant parole or bond. Detainees reported that guards responded aggressively to hunger strikes, immediately placing detainees into segregation and seeking force feeding orders. During a protest at Stewart Detention Center in September 2015, authorities reportedly attempted to quell the protest by shooting detainees with rubber bullets and other projectiles,⁴ and placed approximately 100 detainees in segregation. Since then, the facility has faced multiple hunger strikes and protests, resulting in lockdowns throughout the facility.

Detainees at LaSalle reported similar responses to hunger strikes. As one detainee at LaSalle remembered, “GEO forces you to eat food, they threaten you by bringing handcuffs. ICE said that if you don’t eat they will put you in federal prison for a long time. One man who spoke out was deported to India. He was 77. Another Bangladeshi man was deported. He was 27. Guards tasered them. No one helped.”

ICE standards restrict the use and conditions of segregation in detention for administrative and disciplinary purposes.⁵ Several detainees complained, however, that they were placed in administrative segregation upon arrival at Irwin, a clearly impermissible use of segregation. These detainees reported that they were placed into solitary for several days until space in residential units became available. One detainee reported that he had been placed in segregation for ten days while awaiting placement at the facility.

⁴ Roque Planas, Undocumented Immigrants Decry Solitary Confinement at Georgia Detention Center, Huffington Post, Oct. 14, 2015, available at http://www.huffingtonpost.com/entry/immigrants-solitary-confinement-georgia-detention-center_us_561d83cbe4b0c5a1ce61044d.

⁵ ICE, 2011 Performance-Based National Detention Standards § 2.12 (Special Management Units) (2011).

3. Private contractors at LaSalle, Stewart, and Irwin fail to provide basic nutrition and sanitary facilities.

Our investigation also revealed serious concerns with the quality and quantity of food, water, and clothing provided to detainees at these private facilities. Our tours confirmed these concerns. In particular, detainees at Stewart Detention Center reported concerns regarding the water at the facility, which is discolored and has led to illness upon consumption. Detainees at all facilities reported becoming ill from spoiled food; several reported receiving expired food, food with mold on it, and in some cases, with worms and insects. Detainees at all of facilities we investigated also complained of facilities without appropriate heat or cooling, with leaks and mold, and where facilities fail to provide adequate cleaning materials to detainees.

4. Private providers fail to provide accessible housing or accommodations for elderly detainees or those in wheelchairs.

Of particular concern, our investigation also revealed that detention facilities were ill-equipped to provide care and accommodations for detainees with disabilities. For example, detainees reported that LaSalle provides little to no support for disabled and elderly detainees, resulting in serious neglect. One detainee recalled the plight of an elderly male detainee confined to a wheelchair. “He did not get assistance from guards, only from other detainees,” he recalled. “He needed help bathing, dressing and eating. When the center was inspected, they put him in a separate cell and said he was receiving care. He came back to our cell later and had not been cleaned for 5 days.”

5. Private immigrant detention facilities fail to provide access to adequate legal resources.

Immigrant detainees in the regions we investigated have among the lowest rates of legal representation in the entire country: only six percent of detainees in the Stewart, Georgia, and Oakdale, Louisiana immigration courts are represented by counsel.⁶ These courts, moreover, have the lowest grants of relief in the country: the Oakdale and Stewart immigration courts granted only five and six percent of all asylum applications, respectively, in contrast with a 48 percent grant rate nationwide.⁷

Despite this lack of access to counsel, detainees in these facilities face uniquely high barriers to access to facility law libraries, legal materials, and mail. No Legal Orientation Program is available at Irwin Detention Center, which has the capacity to house approximately 1,000 detainees a day. Detainees at all facilities reported that legal materials available in the law libraries are very outdated; that country condition reports vital for asylum applications were several years old; and that few of the materials are available in Spanish. Postings of contact information for consular offices and pro bono resources were routinely out of date. Detainees at Stewart reported that the warden had limited access to photocopies, making it impossible for

⁶ Ingrid Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 Univ. Penn. L. Rev. 1 (2015).

⁷ U.S. Dep’t of Justice, Executive Office for Immigration Review, FY 2015 Statistics Yearbook t.K2 (2016).

detainees to obtain three copies per document required for court filings. Detainees at all facilities reported difficulties in receiving and sending mail. Several detainees noted that they had not received letters or documents sent to them by family members, including documents critical to their legal cases.

6. Private contractors who operate in the Deep South capitalize on denials of bond, parole, and other alternatives to detention.

DHS should consider the experience of the DOJ, which has implemented sentencing reform that has significantly reduced the federal Bureau of Prison's population, allowing the agency's phase-out of private facilities. In contrast, DHS has increased the number of immigrant detainees and lengthened time in detention by pursuing aggressive enforcement and restrictive detention policies, including limited release of individuals on bond, parole, and other alternatives to detention.⁸ DHS's aggressive enforcement policies, coupled with its construction of the so-called "bed mandate" that all 34,000 beds be filled to capacity on any given night, drives the sellers' market for private providers. To the extent that ICE Director Sarah Saldana has argued that DHS needs to contract with private providers to accommodate the detained population, this is a problem of DHS's own making. Demand for detention space is nearly entirely the result of DHS's own needlessly aggressive enforcement choices, many of which contravene existing policies.

Once immigrants enter custody in the Deep South, they are more likely to stay detained than detainees in other parts of the country. Detainees at private facilities in the South face unique difficulties in obtaining opportunities for release on bond, parole, and alternatives to detention, particularly in comparison to national averages. ICE's national directive outlining parole criteria for asylum seekers provides that an arriving asylum seeker determined to have a credible fear of persecution should generally be paroled from detention if his or her identity is established, and if the individual poses neither a flight risk nor a danger to community.⁹ Nationally, 5.8 percent of detainees received parole in FY 2015. However, in spite of the large number of individuals we encountered who fit this profile, virtually no one from these private detention facilities were released on parole in FY 2015. No detainees were granted parole at Stewart or LaSalle in FY 2015, and only 0.2 percent were granted parole at Irwin.¹⁰

Immigrants at private detention centers in the South are also far less likely to be released on bond than detainees nationwide. Nationally, 10.5 percent of detainees were released on bond. At Stewart Detention Center, only 5.2 percent of detainees were released from detention on bond. At the Irwin County Detention Center, it was 7.7 percent of detainees.¹¹ When detainees at these

⁸ See American Civil Liberties Union, *Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons* 3 (2016).

⁹ See Human Rights First, Detention of Asylum Seekers in Georgia, Sept. 22, 2016, available at <http://www.humanrightsfirst.org/resource/detention-asylum-seekers-georgia>.

¹⁰ Southern Poverty Law Center, *Immigrant Detainees in Georgia More Likely to Be Deported Than Detainees Elsewhere* (2016), available at <https://www.splcenter.org/news/2016/08/23/immigrant-detainees-georgia-more-likely-be-deported-detainees-elsewhere>. Additional calculations by Southern Poverty Law Center, based on same data set.

¹¹ *Id.*

facilities were able to receive bond, it was set at an amount much higher than the national average. Nationally, the initial bond for detainees was \$8,200 in FY 2015. At Stewart Detention Center, however, the average bond was 67 percent higher: \$13,714, an inaccessibly high amount for the vast majority of detainees. At Irwin County Detention Center, the average bond was 41 percent higher, at \$11,637.¹²

The private providers reap an inordinate profit from DHS's insistence on maintaining these facilities at or near capacity. As multiple studies have shown, alternatives to detention cost a fraction of detention in a facility, and can be very effective at ensuring detainees compliance with conditions of release.¹³ Private providers are truly the only beneficiaries of DHS's aggressive enforcement.

III. Recommendations

Based on the preliminary results of our investigation, we offer the following recommendations. It is important to emphasize that a more robust inspections process, while helpful, will not address these deep rooted and systemic problems facing detained immigrants in private prisons.

- 1. DHS should terminate the use of private contractors for immigration detention.**
 - DHS should end the use of private detention facilities, and drastically reduce the use of immigration detention.¹⁴ Funding for immigration detention should instead shift to community based alternatives.
 - DOJ and DHS should end the practice of detention as a first resort, and instead establish a nationwide practice of bond hearings after six months.
 - ICE must abide by the 2009 Directive for Parole of Arriving Aliens Found to Have a Credible Fear of Persecution and Torture. ICE should prioritize the release of disabled and elderly individuals on alternatives to detention options.
- 2. Should it choose to continue to utilize private detention facilities, DHS must ensure greater transparency and accountability in its contracting practices, and immediately terminate individual facility contracts for continued non-compliance.**
 - ICE must publicly release all information pertaining to detention contracts and ensure that any bidding process be publicly accessible and transparent. DHS should ensure that any

¹² *Id.*

¹³ See, e.g. Lutheran Immigration and Refugee Service, *Alternatives to Detention (ATD): History and Recommendations* (2015) available at <http://lirs.org/wp-content/uploads/2015/03/LIRS-Backgrounder-on-Alternatives-to-Detention-3-25-15.pdf>.

¹⁴ See American Civil Liberties Union, *Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons* (2016).

detention facility inspections process is transparent. Notably, all of facilities we investigated received passing grades upon inspection by government compliance inspectors, with little to no accountability for private contractors.¹⁵ DHS should ensure that any facility inspections and death review is available to the public within three months of being finalized.

- ICE should also remove guaranteed minimums, tiered pricing or any other provisions that could function as a local lockup quota, from all detention contracts. ICE should include penalties for facilities where DHS finds substantial non-compliance. ICE should terminate contracts within 60 days for those facilities with repeat findings of substantial non-compliance, including inadequate or less than the equivalent median score in two consecutive inspections.
- 3. DHS must ensure constitutional minimums are met by developing and enforcing strict compliance standards for conditions at all detention facilities, including those operated by private contractors.**
- As the government's existing system for monitoring detention conditions and rights of detained immigrants is severely deficient, DHS should promulgate legally binding regulations to ensure the uniform and humane treatment of immigration detainees in all facilities. In the meantime, DHS should consistently apply the 2011 Performance Based Detention Standards to all facilities used by ICE and discontinue contracts where current standards are not being met.
- 4. DHS must strengthen requirements for medical care at all facilities, including privately operated facilities.**
- DHS must ensure that a full-time doctor is located on site in every detention facility, and ensure that detainees are properly and consistently referred to competent healthcare providers within the facility in which they are detained and outside the facility as needed. DHS should revise all detention standards, including the Performance-Based National Detention Standards (PBNDS 2011), to require that medical care providers be held responsible for meeting the health care needs of individuals in ICE custody as opposed to simply providing "access" to health care. PBNDS 2011 medical care standards should be revised to meet or

¹⁵ Please note that inspection reports and contracts are not generally available to the public, and can only be obtained through the filing of a Freedom of Information Act (FOIA) request, which has significantly limited the public's ability to gain greater understanding into private immigration detention facilities. The following sources represent the most recently available DHS ERO inspection reports that we could locate. See, e.g. DHS, Enforcement and Removal Operations, Performance-Based National Detention Standards Worksheet for Over 72 Hour Facilities, Irwin County Detention Center (2012) (concluding that the facility "meets standards"); DHS, Enforcement and Removal Operations, Performance-Based National Detention Standards Worksheet for Over 72 Hour Facilities, LaSalle Detention Center (2012) (same); DHS, Enforcement and Removal Operations, Performance-Based National Detention Standards Worksheet for Over 72 Hour Facilities, Stewart County Detention Center (2011) (concluding that the facility "meets standards"), available at <http://immigrantjustice.org/TransparencyandHumanRights>.

exceed all analogous National Commission on Correctional Health Care standards for prison and jail health care.

- DHS should also separate Immigrant Health Service Corps (IHSC) from ICE's authority. IHSC dictates the medical treatments that may be approved or denied for immigrant detainees. In the alternative, DHS should revamp the responsibilities of the IHSC to conform to broader ICE detention standards and accepted legal, medical, and human rights standards on medical care, and ensure that IHSC is directly responsible for providing medical care. DHS should further require mental health screenings that properly identify detainees with psychiatric conditions, including post-traumatic stress disorder. ICE should prioritize releasing individuals with mental health illnesses on alternatives to detention options that will allow for treatment of the illness or disability. DHS should prohibit placing such detainees in isolation or seclusion at any detention facility.

5. DHS must end the misuse of solitary confinement at all detention facilities, including those operated by private providers.

- If individuals cannot be safely detained as part of the general population, they should not be held in detention. Alternatives to detention must be utilized in these cases. Solitary confinement should not be used for individuals with mental health and chronic medical conditions, LGBT individuals, and other vulnerable populations for whom release or alternatives to detention are more appropriate. DHS should also prohibit the use of disciplinary segregation for individuals with a serious mental illness and instead provide psychiatric care to the individual. DHS must drastically limit the use of punitive and administrative segregation. This practice should be a rare occurrence, not a daily practice.
- DHS must track the use of solitary confinement for all detained individuals, regardless of length of segregation or special vulnerabilities, to assess prevent abuse and release this information publicly to promote transparency. Independent, third parties should be engaged in the oversight process.
- DHS must require immigration detention facilities to properly investigate accusations against detained individuals before placing them in disciplinary segregation. DHS must also require facilities to afford individuals an opportunity to confront the evidence against them. DHS must provide all information to the detained individual relating to the alleged infraction.
- DHS must eliminate the use of restraints in all detention facilities.

6. DHS must ensure that all detention centers, including privately operated centers, end abuse of force.

- DHS must ensure that all detention facilities comply with the PBNDS use of force guidelines.

- Any grievances or complaints filed (verbally or in writing) involving an alleged use of force by a jail officer must be investigated in accordance with policies laid out in the PBNDS. Officers' statements should not automatically be deemed more credible than any witness' statements. These statements and investigation should be considered in relation to past conduct or patterns of conduct by the officers involved. Incidents involving inappropriate use of force should be automatically referred to internal affairs at ICE, Office of Civil Rights and Civil Liberties, and the Office of the Inspector General.
- Establish an early intervention system to correct officers who use excessive force by investigating officers who receive two or more complaints in the past month, by investigating officers who have two or more use of force incidents or complaints in the past quarter, requiring officers to attend re-training and be monitored by an immediate supervisor after their first quarterly report, and terminating an officer following multiple reports.

7. DHS must ensure food and water safety at all immigration facilities, including those operated by private providers.

- DHS must conduct environmental and safety reviews and tests of water in all facilities, and require immediate remediation by operators upon failure to meet appropriate federal standards. DHS must evaluate the quality of food in each facility and change contractors upon failure to meet standards for safety, and penalize vendors for failure to provide proper and medically appropriate meals for detainees.
- DHS should evaluate commissary prices in each facility and publish commissary prices in each facility. Revenue generated from commissary should be diverted into programming and commissary prices must be reduced.

8. DHS must strengthen access to counsel and legal materials for all immigrant detainees, including those held in privately operated facilities in the rural Deep South.

- DHS must require that detention facilities, particularly those in remote locations, allow counsel to schedule calls or video sessions with detained immigrants. DHS must also establish clear avenues for individuals to receive, sign, and review legal documents in detention.
- DHS must provide up-to-date legal information and books in law libraries in both English and Spanish. Facilities must allow community organizations to donate legal materials, resources, and books to libraries. Access to the law library must be available at least once a day, for at least 3 hours, during daytime hours, and should not conflict with recreation.
- DHS must establish requirements for programming for detained individuals within all facilities, including educational and/or vocational classes.

We appreciate your prompt attention to these very serious matters and would appreciate the opportunity to further engage with the Subcommittee. Please contact Eunice Cho at eunice.cho@splcenter.org, (404) 521-6700, and Paromita Shah at paromita@nipnlg.org, with any questions.

Sincerely,



Lisa Graybill
Deputy Legal Director
Southern Poverty Law Center
1055 St. Charles Ave. Ste. 505
New Orleans, LA 70130



Eunice Cho
Staff Attorney
Southern Poverty Law Center
1989 College Ave. NE
Atlanta, GA 30317



Paromita Shah
Associate Director
National Immigration Project
National Lawyers' Guild
14 Beacon St. Ste. 602
Boston, MA 02018



Jessica Vosburgh
Director
Adelante Alabama Worker Center
2104 Chapel Hill Rd.
Birmingham, AL 35216

October 13, 2016

Dear Chairwoman Tandy and members of the HSAC Privatized Immigration Detention Facilities Subcommittee,

Thank you for the opportunity to present information to the Subcommittee. We are submitting this additional material in response to your request for a bullet-point list of the best ways to either eliminate or continue the use of private prison companies by DHS to detain immigrants.

At the outset, we reiterate our opposition to the continued use of private prisons by DHS. Those reasons are based on a number of factors that characterize ICE's detention outsourcing, including: the structural impediments to accountability and transparency, unacceptable conditions of confinement, the penal approach to detention, revolving door problems, and influence-peddling by contractors.

Our answer to the question posed is that no matter what the HSAC recommends with respect to the continued use of private prisons, no reforms to the broader detention system can truly be effective unless and until DHS becomes less dependent on detention itself and less dependent on any one type of contractor (for example private prisons). The fact that so many people are detained on any given day makes it exceedingly difficult for ICE to conduct effective oversight of these facilities, especially given the current ICE and DHS management, oversight, and accountability structure. And the fact that so few private prison contractors hold so many detained immigrants throughout the country means that DHS lacks meaningful leverage over these providers when negotiating contracts or attempting to take corrective actions.

We are aware that ICE Director Saldaña has publicly stated that the congressional mandate to maintain 34,000 beds prevents ICE from reducing private facility use. However, we do not agree that the bed mandate prevents DHS from dramatically reducing the use of private facilities. Given that ICE now appears to have an overall capacity of 44,453 beds, ICE can end contracts for thousands of private beds without violating the bed mandate. Furthermore, stating as fact that the government currently depends on a model that is woefully inadequate, should not prevent change to a more efficient, humane and fiscally responsible model. We therefore strongly urge you to recommend that DHS take a more forceful position in opposing the congressional bed mandate and state clearly that the mandate restricts, rather than strengthens, the Department's ability to effectively manage immigration enforcement and detention operations.

At the Subcommittee meeting, you clarified that the scope of your inquiry is limited to examining the specific question of whether to eliminate private facilities for immigration detention. We believe that effectively addressing the question you've been given requires an examination of DHS's dependence on private prisons within the context of the Department's dependence on detention itself, in addition to any one type of detention. To the degree that the Subcommittee finds itself limited by any existing constraints, we ask you to state explicitly in your report how these constraints narrowed the scope of your inquiry so that the Department and the public understand the basis for your recommendations.

Key recommendations:

- ICE should immediately begin to reduce its reliance on private prisons by closing contracts as they come up for renewal or re-bid. Terminated or expired contracts should not be replaced with new or expanded contracts with local jails.
 - The contracts for the GEO-operated South Texas Detention Complex in Pearsall, TX, a facility with well documented problems, ends on November 30, 2016. ICE's first action should be to decline to renew this contract.
 - ICE should proactively move to end the numerous indefinite contracts for facilities operated by private prison companies.¹
- ICE should move quickly to decrease its detention capacity by at least 10,000 beds, prioritizing ending contracts with private prison companies. ICE should decrease the number of people currently held in detention by:
 - Ending the use of family detention, in line with the recent recommendations of the DHS Advisory Committee on Family Residential Centers;
 - Ending the excessive and often lengthy detention of asylum-seekers;
 - Ending prolonged detention without bond hearings;
 - Interpreting the mandatory custody statute to permit a range of custody options (including alternatives to detention), and apply the mandatory custody statute only to immigrants recently convicted of serious crimes who lack meritorious immigration cases; and
 - Stopping the imposition of exorbitant bonds on indigent immigrants that keep individuals detained solely due to their inability to pay.
- DHS should publicly oppose the congressional bed mandate, and make clear the ways in which the mandate limits ICE's ability to make smarter choices about detention or negotiate with its contractors (either private prison companies or local governments).
- DHS should immediately transform ICE's inspections and accountability processes by:
 - Ending the use of sub-contracting; all contracts must be with the facility operator to mitigate blame-shifting as an obstacle to accountability;
 - Including in all contracts robust financial penalty and termination clauses; and
 - Including in the inspection regimen not simply scheduled inspections, but also unannounced inspections, conducted by a truly independent qualified entity, that include interviews with detained people and local stakeholders serving the facility, consider outcomes and not just the existence of policy, and are made publicly available.

Thank you again for the opportunity to present information to the Subcommittee. Many of our organizations are submitting additional information that we hope will be of use. As a group or individually, we would be glad to provide you with any additional information or clarification that you may need.

¹ According to the most recent information we have from ICE, this includes: Caldwell County Detention Center, East Hidalgo Detention Center, Eloy Detention Center, Irwin County Detention Center, Jack Harwell Detention Center, Jena/LaSalle Detention Facility, Polk County Adult Detention Facility, Rolling Plains Detention Center, and Stewart Detention Center.

Sincerely,

American Civil Liberties Union (contact Joanne Lin at jlin@aclu.org)

American Immigration Council (contact Royce Murray at RMurray@immcouncil.org)

American Immigration Lawyers Association (contact Greg Chen at gchen@aila.org)

Center for American Progress (contact Tom Jawetz at tjawetz@americanprogress.org)

Detention Watch Network (contact Mary Small at msmall@detentionwatchnetwork.org)

Grassroots Leadership (contact Bob Libal at blibal@grassrootsleadership.org)

Human Rights First (contact Eleanor Acer at AcerE@humanrightsfirst.org)

National Immigrant Justice Center (contact Heidi Altman at haltman@heartlandalliance.org)

Women's Refugee Commission (contact Michelle Brané at michellebrane@wrcommission.org)

October 28, 2016

Sarah E. Morgenthau
Executive Director of Homeland Security Advisory Council
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20528

Re: Privatized Immigration Detention Facilities Subcommittee, End the Use of Private, For-Profit Detention Facilities

Dear Members of the Privatized Immigration Detention Facilities Subcommittee,

On behalf of the undersigned organizations, we write in response to the Department of Homeland Security (DHS) creation of the subcommittee of the Homeland Security Advisory Council (HSAC). We are pleased that the subcommittee is undertaking this review and believe it provides the opportunity for DHS to follow the Department of Justice's (DOJ) lead and swiftly end its reliance on private, for-profit prisons. The review and recommendations produced by the subcommittee may provide the critical step towards alleviating the abuse and other inhumane conditions that many individuals, and particularly lesbian, gay, bisexual, and transgender (LGBT) immigrants, face in private detention facilities.

U.S. Immigration and Customs Enforcement (ICE) heavily rely on private, for-profit corporations to operate its facilities. Currently, 73 percent of all detained immigrants are held in private, for-profit facilities.¹ The immigration detention system has grown exponentially over the past 20 years from fewer than 7,500 beds in 1995 to over 40,000 beds today.² The significant increase in bed space and spending to sustain the current model has largely been funded by the American tax payer, costing more than \$2 billion today.³

Moreover, the profit-motive to detain more individuals places immigrants, including LGBT immigrants, at risk of being arbitrarily detained to ensure a corporation's profits. For example, the Prairieland Detention Center, a new private detention facility in Alvarado, Texas, will

¹ Steven Nelson, *Private Prison Companies, Punched in the Gut, Will Keep Most Federal Business*, U.S. News & World Report (Aug. 18, 2016), <http://www.usnews.com/news/articles/2016-08-18/private-prison-companies-punched-in-the-gut-will-keep-most-federal-business>.

² Sharita Gruberg, *How For-Profit Companies Are Driving Immigration Detention Policies*, Center for American Progress (Dec. 18, 2015), <https://www.americanprogress.org/issues/immigration/report/2015/12/18/127769/how-for-profit-companies-are-driving-immigration-detention-policies/>. See also Devlin Barrett, *Record Immigrant Numbers Force Homeland Security to Search for New Jail Space* Wall St. J. (Oct. 21, 2016 5:30AM), <http://www.wsj.com/articles/record-immigrant-numbers-force-homeland-security-to-search-for-new-jail-space-1477042202>.

³ *Id.*

include a transgender housing pod, the second in the nation.⁴ ICE has a guaranteed revenue deal with Emerald Correction Management LLC, the privately held detention corporation overseeing Prairieland. The deal guarantees Emerald will receive \$89.25 per day for each of a minimum of 525 beds, regardless of whether the beds are filled.⁵ However, the detention facility is intended to hold up to 707 immigrants, 3 dozen of whom will be transgender immigrants.⁶ Such a deal maximizes profits for a private company but is glaringly inconsistent with efforts to limit the detention of vulnerable individuals.

We encourage the subcommittee to consider the use of community-based alternatives to detention when crafting its recommendations in order to decrease ICE's demand for private prison beds. The question of privatization cannot be addressed apart from the size of the detained population. There are not enough ICE owned and operated detention facilities to house the more than 24,000 immigrants currently detained in private facilities. Should the subcommittee recommend DHS end its reliance on private detention facilities without addressing the current scale of detention, the likely result would be to spread these immigrants between local jails across the nation. This is not a better or less costly alternative to private detention facilities.

While detention costs around \$160 per person per day, alternatives are significantly cheaper at 17 cents to \$17 per person per day.⁷ In June 2015, 35 members of Congress urged U.S. Secretary of Homeland Security Jeh Johnson to develop community-based alternatives for vulnerable populations, including LGBT individuals, who experience very high rates of abuse in detention.⁸ It is critical that alternatives used are community based supervision programs, including individual case management and referrals to legal, psychological, and other culturally competent support services. These community-based programs support appearance in court by helping people understand their legal obligations while eliminating the risks to health and safety posed by detention. Community-based programs also reduce collateral damage of detention, such as children of detainees being displaced or detainees losing their job.

As the subcommittee conducts its review, it should consider the substantial evidence that the problems found at privately run Bureau of Prisoner (BOP) facilities often plague privately run ICE facilities as well. ICE contracts with the same private prison companies as the BOP, and

⁴ See Dianne Solis, *Transgender Unit, Guaranteed Revenue Deal Raise Questions About New Alvarado Immigrant-Detention Center*, Dallas Morning News (Sep. 26, 2016), <http://www.dallasnews.com/news/immigration/2016/09/26/south-dallas-new-detention-center-immigrants-raises-questions>

⁵ *Id.*

⁶ *Id.*

⁷ National Immigration Forum, *The Math of Immigration: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies* 11 (2013), <http://immigrationforum.org/wp-content/uploads/2014/10/Math-of-Immigration-Detention-August-2013-FINAL.pdf>.

⁸ Letter from Members of the United States Congress to U.S. Homeland Security Secretary Jeh Johnson (Jun. 23, 2015), <https://www.scribd.com/doc/306165410/Honda-Hirono-and-Grijalva-Letter-to-DHS-Secretary-to-Protect-LGBT-Immigrant-Detainees>.

reports indicate that ICE has long provided inadequate oversight and accountability. Privately run immigration detention facilities have been linked to a failure to identify serious health needs, the provision of substandard medical care resulting in death, a failure to prevent suicide attempts and suicides, a failure to report and respond to sexual assault, and a failure to provide adequate access to legal services.⁹

LGBT individuals are among those most vulnerable to abuse in confinement. The Bureau of Justice Statistics found non-heterosexual inmates in prisons are 10 times more likely to be sexually victimized by other inmates and over twice as likely to be sexually victimized by staff.¹⁰ Data from 2011-2012 showed that more than one-third of transgender individuals being detained in prisons, jails, and ICE detention facilities reported sexual abuse.¹¹ While separate data is not available for immigration detention, a recent GAO report found that 1 in 5 substantiated incidents of sexual abuse in detention involved a transgender victim.¹²

Analysis by the Center for American Progress found that in FY2015 ICE chose to detain 88 percent of LGBT individuals in immigration proceedings notwithstanding the fact that they were not subject to mandatory detention.¹³ While DHS has directed that detention for vulnerable populations, including LGBT immigrants, be reduced, many continue to be held as so-called “mandatory detainees,” some for many months or even years.

To make it possible for DHS to phase out reliance on private prisons, we encourage the subcommittee to consider and provide recommendations to DHS on reducing the detention population. For example, DHS should work with DOJ to provide automatic bond hearings for all ICE detainees detained for six months or longer, as is currently done in the Ninth and Second Circuits.¹⁴ When given bond hearings, more than one half of ICE detainees have been ordered released on conditions set by immigration judges.¹⁵ Bonds should also take the detainee’s ability to pay into account, so that detainees are not detained unnecessarily simply because they cannot afford to pay. In addition, DHS should revise its interpretation of mandatory custody under

⁹ U.S. Gen. Accounting Office, GAO 14-38, *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse* (2013), <http://www.gao.gov/products/GAO-14-38> [hereinafter *Immigration Detention*].

¹⁰ Allen J. Beck et al., Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12* (2013), <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf> [hereinafter *Sexual Victimization*].

¹¹ *Id.*

¹² *Immigration Detention*, *supra* note 9.

¹³ Sharita Gruberg, *ICE Officers Overwhelmingly Use Their Discretion to Detain LGBT Immigration*, Center for American Progress (Oct. 26, 2016), <https://www.americanprogress.org/issues/lgbt/reports/2016/10/26/291115/ice-officers-overwhelmingly-use-their-discretion-to-detain-lgbt-immigrants/>.

¹⁴ See, e.g., *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015); *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015).

¹⁵ Am. C.L. Union, Rodriguez, et Al. v. Robbins, et Al. – *Prolonged Detention Fact Sheet 2* (2015), <https://www.aclu.org/other/rodriguez-et-al-v-robbins-et-al-prolonged-detention-fact-sheet?redirect=rodriguez-et-al-v-robbins-et-al-prolonged-detention-fact-sheet>.

Section 236 of the Immigration and Nationality Act of 1965 to include supervision of individuals through alternative forms of custody that are short of physical, jail-like detention.

We urge the subcommittee to consider and incorporate these above points in its final recommendations. These recommendations have the potential to greatly improve the fair and safe treatment of vulnerable immigrants, including LGBT immigrants. We appreciate the opportunity to weigh in at this time. Thank you for considering our letter. If you should have any questions, please contact Breanna Diaz (202-423-2881 or breanna.diaz@hrc.org) and Harper Jean Tobin (202-745-2303 or hjtobin@traanseqality.org).

Sincerely,

Human Rights Campaign
Immigration Equality
National Center for Lesbian Rights
National Center for Transgender Equality
National Latina Institute for Reproductive Health
National LGBTQ Task Force
National Immigrant Justice Center
Trans Pride Initiative