

A TOXIC RELATIONSHIP: PRIVATE PRISONS AND U.S. IMMIGRATION DETENTION



DETENTION
WATCH NETWORK

ACKNOWLEDGEMENTS

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About Detention Watch Network

Detention Watch Network (DWN) is a national coalition of organizations and individuals working to expose and challenge the injustices of the United States' immigration detention and deportation system and advocate for profound change that promotes the rights and dignity of all persons. Founded in 1997 by immigrant rights groups, DWN brings together advocates to unify strategy and build partnerships on a local and national level to end immigration detention.

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INTRODUCTION

The U.S. immigration detention system is the largest in the world, with Immigration and Customs Enforcement (ICE) under the Department of Homeland Security (DHS) holding hundreds of thousands of people each year in a sprawling network of over 200 detention facilities. However, in addition to being remarkable for its size, the U.S. immigration detention system is an outlier for the degree to which it has been privatized. As of August 2016, 73 percent of immigrants held in ICE custody were in facilities operated by private prison companies,¹ and the remaining facilities often contract with other private companies for services such as food, guards, and even medical care. The relationship between ICE and private contractors has been disastrous for immigrants, as well as for American taxpayers, who pay more than \$2 billion each year to maintain the detention system.² Although a lack of due process, inhumane and sometimes fatally inadequate conditions, and a woeful lack of both oversight and transparency are endemic to the entire system, privatization has exacerbated each of these problems.

The immigration detention system has not been alone in exploring partnerships with private prison companies. In 1996 the Bureau of Prisons under the Department of Justice (DOJ) also began contracting with private prison companies, specifically Corrections Corporation of America (CCA) who are currently attempting a re-brand to CoreCivic, The GEO Group, Inc. (GEO) and Management and Training Corporation (MTC), to run a network of segregated immigrant-only prisons that eventually grew to include 13 facilities in seven states.³ However, in August 2016, the DOJ announced that it would begin phasing out these contracts and ending its reliance on privately-run prisons.⁴ The announcement was

the combined result of a decrease in the number of people incarcerated in federal facilities, a critical report by the DOJ Office of Inspector General,⁵ damning investigative reporting on deaths as the result of medical neglect and other serious deficiencies,⁶ years of careful research and advocacy by non-profit organizations,⁷ and organizing and resistance by the people incarcerated in the facilities.⁸

In the aftermath of this announcement, the spotlight quickly turned on ICE, which contracts with the exact same companies, as well as a few other smaller ones, to run the vast majority of its detention centers. In fact, ICE's entanglement is even more convoluted; while ICE contracts directly with private prison companies for some detention facilities, many are sub-contracted to a private prison company through a local government acting as a contracting middleman. Not surprisingly, whether directly or indirectly contracted, nearly identical complaints have been lodged against these companies' facilities within the immigration detention system, including fatal medical neglect, abusive solitary confinement, and other misconduct and mismanagement. In the wake of the DOJ announcement, it was clear that DHS should promptly follow DOJ's lead in disentangling itself from its private prison contractors. On August 29, 2016, DHS Secretary Jeh Johnson announced that a subcommittee of the Homeland Security Advisory Council (HSAC Subcommittee) had been tasked with reviewing whether DHS should also begin severing ties with private prison companies, with the final report due by November 30, 2016.⁹

In response, Detention Watch Network (DWN), along with many other organizations and people directly affected by the current immigration detention regime, submitted a mountain of

evidence about the problems with a detention system driven by profiteering to the HSAC Subcommittee. This report seeks to synthesize and make public that information. The report details four fundamental problems with the use of privately-run detention centers, as our research indicates that private contractors:

- Seek to maximize profits by cutting costs—and subsequently critical services—at the expense of people’s health, safety, and overall well-being;
- Are not accountable, and often do not bear any consequences when they fail to meet the terms of their contracts;
- Exert undue influence over government officials, and push to maintain and expand the immigration detention system;
- Are not transparent, and in fact, fight hard to obscure the details of their contracts and operations from the American public.

The privatization of immigration detention creates perverse incentives for incarceration. DHS must take steps to end all profiteering in the immigration detention system by reducing reliance on immigration detention and ending direct and indirect contracts with private companies.

Specifically, DHS should:

1. Immediately cease its current expansion of the immigration detention system. ICE must not sign any new contracts, including with private prison companies;
2. Decline to award any contract renewals or rebids for existing facilities to private detention operators;
3. Immediately modify all contracts without end dates to include an end date no later than one year after modification;
4. Not replace phased out contracts with additional county jail contracts, but rather take

immediate and aggressive action to reduce the number of people held in immigration detention. DHS should start by ending family detention; ending the detention of asylum-seekers, providing a bond hearing for all detained individuals, and narrowing its interpretation of mandatory detention.¹⁰

INHUMANE CONDITIONS

Detention Watch Network, in collaboration with the American Immigration Lawyers Association, the CARA Family Detention Pro Bono Project, Community Initiatives for Visiting Immigrants in Confinement (CIVIC), Grassroots Leadership, and the National Immigrant Justice Center submitted declarations and complaints reflecting the experiences of 42 individuals who were or are held in privately run detention facilities to the HSAC Subcommittee.¹¹ The experiences of these 42 individuals are a small sample of the egregious conditions and violations that we hear about regularly, but powerfully illustrate the degree to which private prison contractors fail to ensure the safety and dignity of the immigrants held in their facilities. Key themes from their testimonies include inadequate medical care, mistreatment and abuse in its many forms, poor quality of food and sanitation, language access concerns, and lack of accountability for problems at the facilities.

Of the 42 individuals represented in these declarations, 76 percent expressed complaints regarding medical care. Several of these complaints involved extensive delays in being seen by the medical unit. Another frequent complaint was being told to drink water to treat various medical conditions, including earaches, knee pain, post-surgery fever and vomiting, and a broken finger. Multiple complaints involved basic medical incompetence, such as an individual detained at the CCA-operated Otay Mesa Detention Facility in San Diego, CA who stated



photo: Steve Pavey

that the facility mixed up his medicine with the medication of someone else with a similar name at least six times.¹² Another individual was told to submit a request—which routinely took two days for processing—in order to request a bandage for an open burn wound.¹³ A woman detained at CCA's South Texas Family Residential Center in Dilley, TX stated that two medical personnel pricked her with a needle seven times in an attempt to provide her with intravenous fluids and laughed each time they were unable to locate a vein, despite her crying out in pain. Though they finally inserted a tube after finding a vein in her other hand, an Emergency Medical Technician later removed the tube and showed her that the needle was bent, and that the medical personnel did not know how to insert the tube.¹⁴ At least one complaint points to the potentially fatal consequences of inadequate medical care, including an individual detained at the GEO-operated Adelanto Detention Facility in Adelanto, CA who reported that facility staff refused to

transfer her to the hospital after she experienced heart-related symptoms that caused her to lose consciousness.¹⁵

The frequency and consistency of medical complaints are particularly alarming in light of evidence that failures to refer individuals to higher level care contributed to multiple recent deaths in detention.¹⁶ Among these are: Evalin-Ali Mandza who died after staff at a GEO facility in Colorado waited nearly an hour to call 911 after he began experiencing chest pain¹⁷ and Manuel Cota-Domingo who died after an eight hour delay in transferring him to the emergency room by staff at CCA's Eloy facility in Arizona.¹⁸

These findings are further echoed in a new report about detention in the Deep South, which included interviews with immigrants detained at three privately-run detention facilities, including the LaSalle Detention Facility where three people died in the first half of 2016.¹⁹ Interviews from

all three facilities uncovered significant and life-threatening delays or denials of medical and mental health care.²⁰ Providing further clarity about potentially fatal indifference at LaSalle, an interviewee reported that “one detainee tried to hang himself in the dorm. The code was called but no administrators came.”²¹

Thirty-one percent of the individuals represented in the declarations submitted to the HSAC Subcommittee reported mistreatment and abuse in various forms, including verbal abuse, employee theft, retaliation, abusive solitary confinement, and sexual harassment and assault. An individual detained at the GEO-operated Karnes Family Residential Center in Karnes City, TX stated in her declaration that her daughter had been touched inappropriately by an employee at the facility’s day care center twice, and that this had also happened to two other children detained at the facility.²² In another example, an 18-year-old detained at the LaSalle Corrections-operated Irwin County Detention Center in Ocilla, GA stated that she was placed in solitary confinement for three days after reporting that she had been verbally harassed by other detained people on account of her perceived sexual orientation. The experience in solitary confinement was especially traumatizing to her as a survivor of rape and domestic violence.²³ In an example of employee theft, an individual detained at the CCA-operated Otay Mesa Detention Facility stated that officers at the facility had been caught stealing money from envelopes that family members had sent to detained people for their commissary accounts.²⁴

These trends are repeated in other compilations of interviews and testimony. The use of solitary confinement, both due to overcrowding and as inappropriate or disproportionate punishment, is particularly consistent. For example, several

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individuals held at the LaSalle Corrections-operated Irwin Detention Facility in Georgia reported that they were placed in administrative segregation upon arrival for several days until there were spaces available in the housing units, with one person reporting that he was in segregation for 10 days when he first arrived at Irwin.²⁵ A transgender woman detained at Eloy in a housing unit with 250 men reported that the guards and men would watch trans women shower, and they were written up when they tried to put up curtains. She was sexually harassed by a man in the housing unit and when she reported it she was told to deal with it because there was no space to move her to; when she contested this decision, she was sent to solitary confinement for two days and then returned to the same housing unit where she was being harassed. The man who had harassed her then physically and sexually assaulted her in retaliation for reporting the harassment in the first place. After being taken to the hospital, she was placed in solitary confinement for a week and faced bullying by guards and other detained people.²⁶

Food and sanitation were also common concerns and present in 17 percent of the declarations submitted to the HSAC Subcommittee. An individual detained at the GEO-operated Adelanto Detention Facility in Adelanto, CA stated that the facility provides expired food; for example, a pizza served two weeks after the expiration date on the box.²⁷ Another individual

detained at the GEO-operated Karnes Family Residential Center stated that there were sometimes worms in the beans and rice, swarms of flies in the kitchen and no disinfectant to clean the tables.²⁸

Although the declarations submitted to the HSAC Subcommittee point to inhumane conditions, the degree to which cost-cutting is a driver is perhaps best shown by a series of sexual assaults by a CCA guard at the Hutto Detention Facility in Texas between 2009 and 2010, who serially assaulted women during unscheduled stops on the way to the airport. This abusive and criminal activity continued undetected because, in violation of the contract between CCA and ICE, the guard was not required to have another guard in the transport van with him.²⁹

Cost-cutting is also visible in the medical staffing decisions these companies make. Although CCA and GEO have gone to great lengths to hide information about their medical staffing,³⁰ the limited information available does indicate that there are frequent and long-term vacancies for

A transgender woman detained at Eloy in a male housing unit was sexually harassed by a man in her unit. When she reported it, she was sent to solitary confinement for two days and then returned to the same housing unit. The man who had harassed her then physically and sexually assaulted her in retaliation. After being taken to the hospital, she was placed in solitary confinement for a week and faced bullying by guards and other detained people.

contractually-required positions,³¹ creating a dangerous administrative limbo which allows facilities to pass inspection while also saving money on personnel costs.

These concerns of inadequate medical care, mistreatment, and poor sanitation and food quality are compounded by the absence of meaningful oversight of private detention contractors, explored in more detail in a later section of this report. Ten percent of the individuals represented in the declarations raised concerns about transparency, with three individuals stating that facility staff make cosmetic fixes in preparation for inspections and visits from members of Congress. One individual detained at the GEO-operated Karnes Family Residential Center stated that facility staff were notified in advance of an inspection, so guards gave detained women and children stuffed animals, provided them with more coffee and food, and placed covers on tables to prepare for the inspectors' visit. She stated that after the inspectors left, the guards took all the stuffed animals back from the children.³²



photo: photo: Alonso Yáñez/La Opinión

CONTRACTING AND OVERSIGHT

As concerning as the conditions inside privately operated detention facilities described above are, the fact that they continue unimpeded is perhaps even more alarming. ICE's inability or unwillingness to address these serious problems has several causes, including poor contracting practices and a woefully inadequate inspections process.

Recent litigation and research regarding nearly 100 detention facility contracts by the National Immigrant Justice Center has revealed the details of ICE's convoluted contracting system.³³ Among other important findings, researchers uncovered widespread indirect contracting, a lack of clarity about which detention standards govern many facilities, and a shocking number of indefinite contracts.

ICE contracts directly with private prison companies for fewer than 10 detention facilities.³⁴ The majority of privately-run detention facilities are contracted indirectly with either local governments or the U.S. Marshals Service (USMS) acting as a middleman. This contracting model creates additional barriers to both accountability and transparency, but also allowed private companies to avoid open competition for the contracts. Even though the ultimate beneficiary is a private company, ICE is able to circumvent open competition requirements by taking advantage of special processes for agreements between governmental entities. Forty percent of CCA's contracts were obtained through a non-competitive process; 30 percent through this indirect contracting model.³⁵

In addition to often allowing an end-run around competitive bidding, numerous ICE contracts don't indicate which of the three versions of detention standards³⁶ currently in use are in place

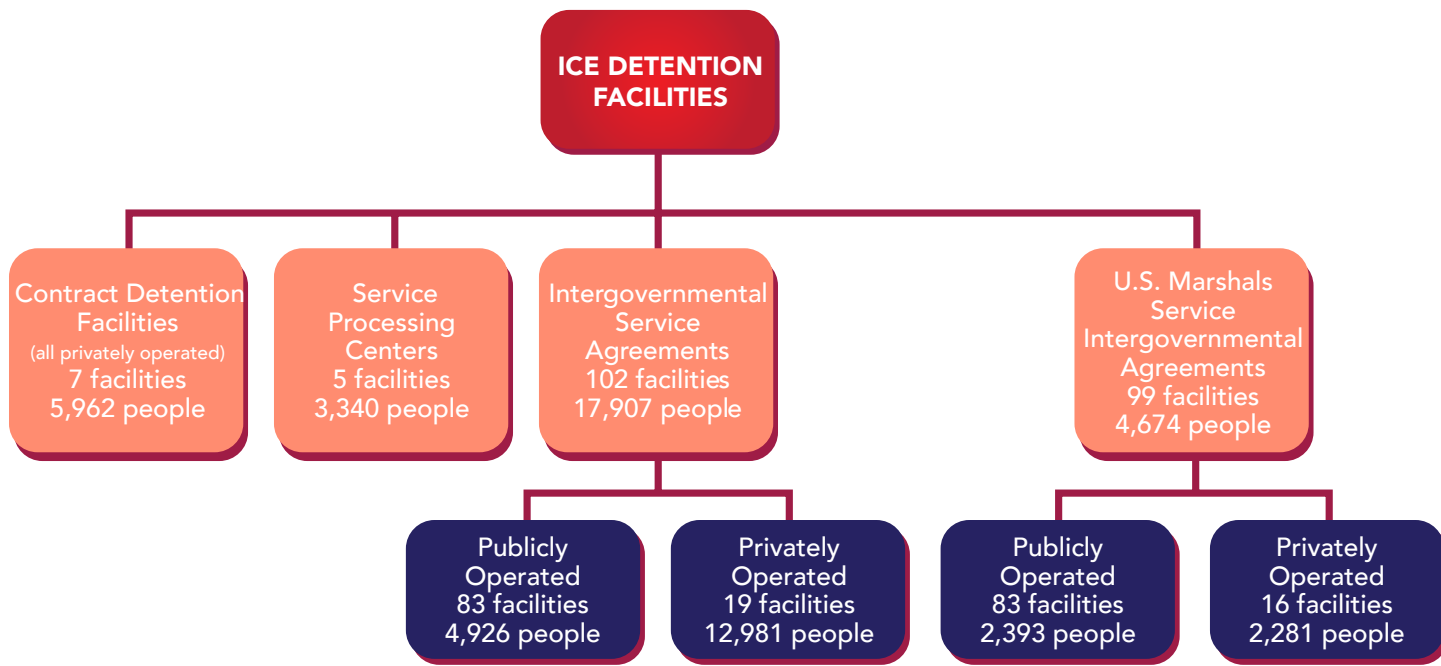
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at the facility.³⁷ The versions include: the National Detention Standards (NDS) from 2000 which are the lowest level and least comprehensive, the Performance Based National Detention Standards from 2008 (PBNDS 2008) or the Performance Based National Detention Standards from 2011 (PBNDS 2011). Although the newer standards contain more robust protections, including sexual assault prevention guidelines and more detailed standards governing solitary confinement and hunger strikes, they are still derived from prison standards, and therefore replicate many of the deplorable conditions and troubling human rights failings endemic to the criminal justice system. Furthermore, they are not codified and are therefore not easily enforceable. Despite these deficiencies, the level of standard included in a contract still conveys important information about ICE's ability and willingness to manage a contractor-run detention system.

Both ICE and the private prison companies frequently point to the fact that all directly contracted private facilities are theoretically compliant with either PBNDS 2008 or PBNDS 2011. However, this doesn't account for the effect of indirect contracting; at least 14 indirectly contracted private facilities are only contracted to meet the bare minimum of detention standards.³⁸

Regardless of which level of standards are included in the contract, the vast majority of

Ice Detention Contracts By Number Of Facilities And Average Daily Population, FY16



*Data obtained from an ICE facilities matrix dated December 8, 2015 and does not include new ICE facilities (Kankakee County Jail, Torrance County Detention Center, Prairieland Detention Center, Nevada Southern Detention Center, and Allen Parish Public Safety Complex) or significant expansion in the number of detention beds at Charleston County Detention Center, Coastal Bend Detention Facility, Denver Contract Detention Facility, Florence Correctional Center, Glades County Detention Center, Immigration Centers of America-Farmville, Johnson County Law Enforcement Center, La Salle County Regional Detention Center, Jena/LaSalle Detention Facility, Pine Prairie Correctional Center, Western Tennessee Detention Facility, Willacy County Regional Detention Center, and Yakima County Jail. Privately-operated facilities are italicized.

contracts do not include robust penalty provisions to help ensure that the standards are met, and a significant number, including those for at least nine privately-run facilities, don't include a contract end date.³⁹ ICE has rarely elected to terminate a contract during its term. Instead, if ICE engages to demand improvements at all, it does so during contract renewals and rebids, essentially giving a free pass to these nine facilities.

Finally, ICE contracts, particularly those with private prison companies, are also plagued by the inclusion of guaranteed minimums. Guaranteed minimums are contractual provisions which obligate ICE to pay for a specified number of beds, regardless of whether or not those beds are being used at any given time. Often, ICE then receives a "discount" for any people detained above the guaranteed minimum number, incentivizing even higher levels of detention disguised as a more efficient use of government

resources. Ninety-three percent of known guaranteed minimums benefit a private prison company.⁴⁰ At least 20 contracts with private companies contain a guaranteed minimum,⁴¹ affecting at least 11,936 people.

The inclusion of guaranteed minimums, which essentially act as taxpayer funded profit insurance for detention contractors, is no accident. In 2005, CCA noted in its Security and Exchange Commission filing that its inability to control occupancy rates at its facilities was a risk for its revenue and profitability.⁴² Guaranteed minimums are the contractual solution to this problem. While guaranteed minimums may not technically control occupancy rates, they financially incentivize stable or increased detention numbers, and provide guaranteed minimum revenue for the company, protecting it against any shifts in immigration policy or movement toward decarceration.

In addition to poor contracting practices, extensive research into ICE's inspections process has also shown that ICE does not provide effective oversight over its contractors. Instead, ICE's inspections process allows the numerous failings of the detention system to fall through the cracks, while avoiding consequences, independent oversight, and transparency. Failing the most basic of requirements for an adequate oversight process, ICE's inspections are not independent. Rather than having an independent agency conduct inspections of its detention facilities, ICE's inspections are done internally or by contractors hired and paid by ICE, raising concerns about impartiality.⁴³ Those concerns are further heightened by the fact that inspection reports may be edited before they are finalized and submitted to ICE's Detention Monitoring Unit by the inspections contractor.⁴⁴ These edits are not tracked, and ICE officials report not knowing the frequency or types of edits that occur between an initial inspection and when the inspections contractor submits the inspection report.

However, beyond independence, ICE's inspections are of poor quality and seem designed to allow facilities to pass. By announcing its inspections in advance, ICE gives facilities the opportunity to make cursory changes to conceal serious problems.⁴⁵ Moreover, inspectors check for the existence of policies and often take facility staff at their word without evaluating the implementation of critical functions such as medical care and grievance procedures, or even checking easily verified safety infrastructure such as fire alarms. As most inspections don't include interviews with detained people, their perspective is not incorporated into the inspections findings either.⁴⁶ Taken together, these create a checklist culture in which inspectors are ticking items off a long list rather than fully and comprehensively examining

the lived reality of people detained at the facility. The effects of the checklist culture are perhaps best demonstrated by the repeat finding that indoor rooms with windows count as providing outdoor recreation because air from the outside can enter the room.

Moreover, indirect contracting—in which a local government or the USMS hold a contract with ICE and then turn around to sub-contract with a private prison company—has allowed private companies to exploit an inspections loophole. Within the detention standards, many individual requirements are italicized, meaning that facilities contracted through intergovernmental service agreements (again, those where a local government or the USMS hold the contract with ICE) do not have to meet the requirement, but rather the spirit of the requirement. When a private prison company is sub-contracted to run one of these facilities, they retain the ability to meet the spirit of the requirement as opposed to the requirement itself. This loophole is further stretched by a lack of awareness or attention to detail on the part of the inspectors. In numerous instances, rather than indicating how a facility met the intent of an italicized standard, the inspector simply wrote "N/A."

Given these findings, it is not surprising that ICE's inspections fail to uncover serious problems at detention facilities. At least seven facilities implicated in medically negligent deaths received passing ratings from ICE inspections, both before and after the deaths occurred, even when the death investigation found facilities failed to meet medical care standards and explicitly identified the deaths as preventable.⁴⁷ Even when severe deficiencies are discovered and named in an inspection or death review, ICE has not terminated contracts or used available penalties, but rather

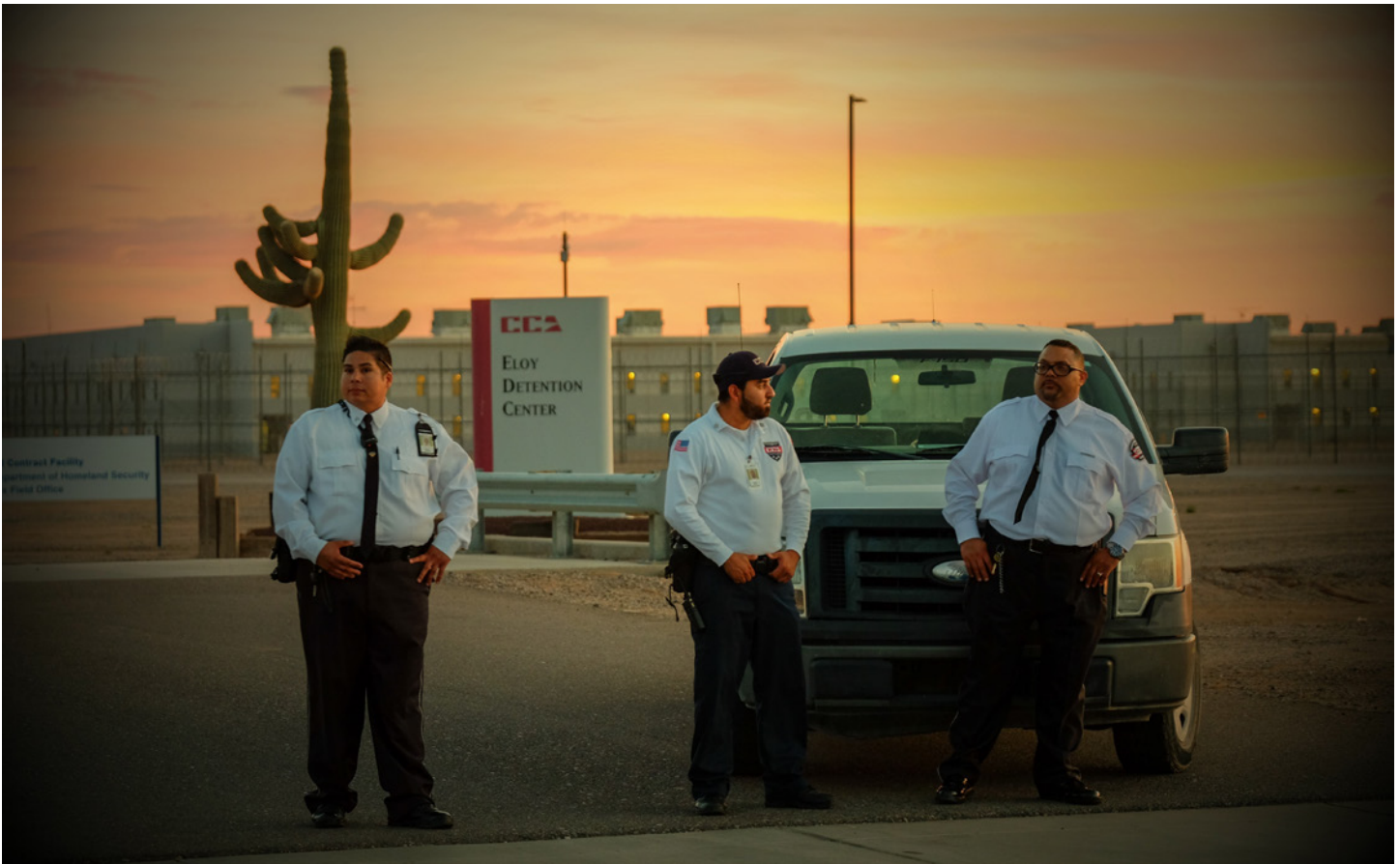


photo: Steve Pavey

continued to send immigrants to be held in unsafe conditions. Former ICE senior officials have also expressed concern about the relationship between the companies and ICE, and the quality of privately-run facilities.⁴⁸

Evidence of ICE's unwillingness to cut ties, even in the face of well documented and egregious failings at a facility, are clearly demonstrated in the case of Eloy. Eloy is, by far, the deadliest detention facility in the system, with 14 documented deaths since 2003, including numerous suicides.⁴⁹ As early as 2012, and potentially earlier, inspectors flagged concerns about suicide prevention at Eloy.⁵⁰ Then in 2013, Elsa Guadalupe-Gonzalez committed suicide at Eloy; two days later, Jorge Garcia Mejia also committed suicide in a different housing unit. Death reviews conducted after the two suicides found that confusion about who should call 911 lead to delays in the placing the call after both suicides, and that Eloy didn't have

a suicide prevention plan, among other serious shortcomings.⁵¹ In 2015, José de Jesús Deniz Sahagun also committed suicide at the facility. Horrifyingly, but unsurprisingly, the subsequent death review found that Eloy still did not have a suicide prevention plan at the time of his death.⁵² It's difficult to imagine what additional information would be required to trigger a contract termination, and yet, at the time of writing, over a thousand immigrants continue to be held at this dangerous facility.

INFLUENCE PEDDLING AND A REVOLVING DOOR

While conditions, oversight, and contracting deficiencies are not limited to privately-run detention facilities, the private sector does have its own methods of exerting influence over decision-makers. These include campaign contributions, massive lobbying expenditures, and revolving door politics. In 2008 CCA and GEO received

\$307 million combined in revenue for running immigration detention facilities. By 2015 it had more than doubled to \$765 million.⁵³

Although the final numbers for the 2016 election cycle are not yet available, by the end of June, GEO had contributed \$464,000 and CCA had contributed \$210,000 to the 2016 congressional and presidential races.⁵⁴ During each of the 2006, 2008, 2010, 2012, and 2014 cycles, CCA and GEO contributed at least \$500,000 to federal elections combined,⁵⁵ and in some cases, much more. During the 2014 cycle, CCA contributed to 23 senators and 25 representatives, and GEO Group contributed to 10 senators and 28 representatives.⁵⁶

Digging into specific contributions provides more insight into the influence these companies exert. This is perhaps most clear as it relates to the detention bed quota, which has been included in DHS's budget since 2009 and requires that ICE maintain an average of 34,000 detention beds.⁵⁷ This provision has been a key driver of increased immigration detention over the last eight years and, as an increasing percentage of immigration detention has been privatized (from 25 percent in 2005⁵⁸ to 49 percent in 2009⁵⁹ to 73 percent in 2016⁶⁰), a key driver of private prison profits as well. Engagement by private prison companies specifically on the detention bed quota indicates that they are not just influencing which entities get detention facility contracts, but are actively shaping policy decisions about the scope of the detention system overall.

For GEO, the detention bed quota seems to drive at least some campaign contributions. In the 2014 election cycle, GEO was Representative Cuellar's (D-TX) biggest contributor giving \$15,550.⁶¹ As of mid-September 2016, GEO was again slated to be

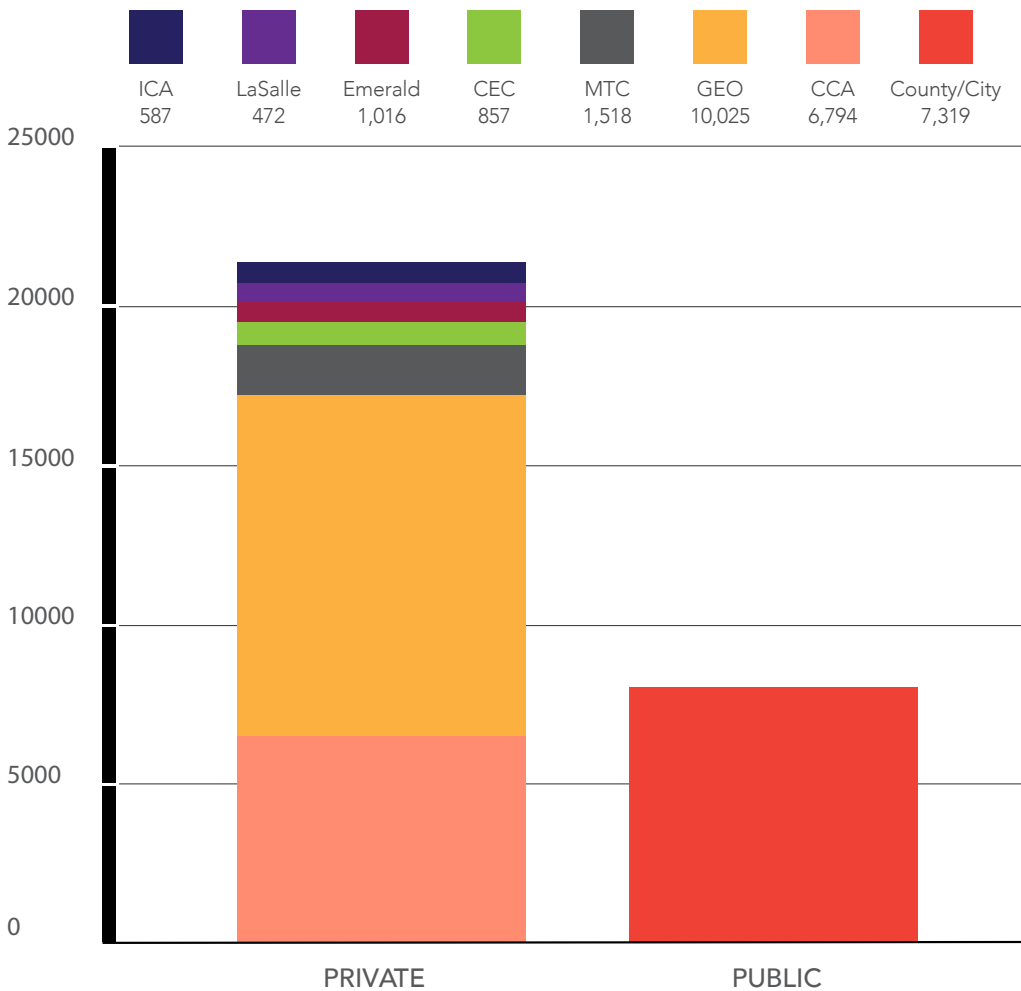
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Rep. Cuellar's largest donor, having already contributed \$15,090.⁶² This is significant because Rep. Cuellar is on the Homeland Security Appropriations Subcommittee, which continues to insert the immigration detention quota in the budget and shapes the way in which it is interpreted. CCA has also sought to maintain the detention bed quota. Between 2006 and 2015, CCA spent \$8.7 million and GEO spent \$1.3 million in quarters where they directly lobbied the DHS Appropriations Subcommittee.⁶³

CCA and GEO have both invested in federal lobbying beyond their specific focus on supporting the detention bed quota. In addition to lobbying on appropriations, in 2015, CCA lobbied against the Justice Is Not For Sale Act, which would have banned private prisons at the federal, state, and local levels, and the Private Prison Information Act which would have removed the exemption that allows private prison companies to avoid disclosing the details of its contracts or information about what goes on inside its facilities.⁶⁴

In 2015 alone, the two companies hired 20 lobbyists in DC at \$1.6 million⁶⁵. In October 2016, GEO dramatically expanded its lobbying capacity, hiring three new firms, including David Stewart and Ryan Robichaux of Bradley Arant Boult Cummings,⁶⁶ both of whom are former staff of Senator Jeff Sessions and will be focused on federal contracts with private prisons. Seventy percent of CCA and GEO lobbyists have previously worked on the Hill.⁶⁷

FY16 Immigration Detention ADP, Private vs. Public Operators



**This data was obtained from an ICE facilities matrix dated December 8, 2015 and does not include new ICE facilities (Kankakee County Jail, Torrance County Detention Center, Prairieland Detention Center, Nevada Southern Detention Center, and Allen Parish Public Safety Complex) or significant expansion in the number of detention beds at Charleston County Detention Center, Coastal Bend Detention Facility, Denver Contract Detention Facility, Florence Correctional Center, Glades County Detention Center, Immigration Centers of America-Farmville, Johnson County Law Enforcement Center, La Salle County Regional Detention Center, Jena/LaSalle Detention Facility, Pine Prairie Correctional Center, Western Tennessee Detention Facility, Willacy County Regional Detention Center, and Yakima County Jail. Privately-operated facilities are italicized.*

The revolving door also exists between the federal agencies issuing contracts and private prison companies. David Venturella, former Assistant Director of ICE, is now the Executive Vice President for Corporate Development at GEO, and Julie Myers Wood, a former DHS Assistant Secretary for ICE, is now on GEO's board.⁶⁸ Mary Loiselle, formerly of ICE, is the Program Director for GEO's new alternative to detention program for immigrant families.⁶⁹ Both CCA and GEO have had numerous additional people in senior leadership positions who were formerly high level government officials, including multiple Directors of the Bureau of Prisons, General Counsel for DHS, Director of the U.S. Marshals Service, and more.⁷⁰

Beyond these pay to play schemes, ICE's ability and willingness to hold its contractors to even the most minimal of standards is completely undermined by the depth of its reliance on them. Especially coupled with the requirements of the detention bed quota, any leverage ICE has is significantly weakened. With 73 percent of detention facilities operated by private prison companies, and the remaining facilities subcontracting out for services like food, guards, and medical care, any threat of significant financial penalties or large scale termination is undermined by the companies' awareness of how much ICE—at least given its current way of operating—needs them.

TRANSPARENCY

The entire detention system is plagued by a lack of transparency. ICE does not proactively disclose most of its facility inspections, contracts, death reviews, or even basic statistics to the public. Nor is vital information about suicide attempts, hunger strikes, work program stoppages, use of solitary confinement, use of force, or other significant information readily available. In fact, to date these documents have only been available through slow-moving and resource intensive Freedom of Information Act (FOIA) requests and litigation.⁷¹

Within a broader culture of secrecy, private prison contractors have been particularly effective at avoiding scrutiny. As detailed above, ICE relies heavily on indirect contracting, which allows private companies to operate detention facilities while on the surface ICE contracts with a public entity—either a local government or USMS.⁷²

Private companies have typically been able to take advantage of a FOIA loophole, Exemption 4, meant to protect commercial trade secrets to persuade the government to hide many of the terms of their contracts, leaving the public in the dark about the costs and staffing plans for these facilities.

ICE's fundamental opposition to transparency, spurred on by its top contractors, is perhaps best illustrated by DWN and the Center for Constitutional Rights' (CCR) current FOIA litigation⁷³ in which the government essentially acted as free counsel for its private detention contractors. After refusing to respond to a FOIA request until ordered to do so by a judge, ICE began producing documents, but heavily redacted all detention facility contracts, claiming that they could withhold pricing information and staffing plans under FOIA Exemption 4.

Private contractors are openly proclaiming what we've long known: that they are actively seeking to shape government detention policy and the scope of government secrecy, protecting their own interests and profits at the expense of immigrant communities and the American public.

When DWN and CCR filed a motion challenging these redactions, ICE justified them based on the contractors' position that release of the information could cause them "substantial competitive harm." Notably, ICE's legal position depended heavily on the opinions and arguments of private contractors themselves, four of the largest of whom submitted sworn declarations attesting to the need for secrecy and the perils of public awareness of terms in government contracts. In GEO's case, David Venturella, a former ICE official who is now the Senior Vice President of Business Development at GEO, submitted a declaration claiming that public view of the lucrative contract terms between GEO and the government would harm the "detention market," as if protecting private prison profits was the role of the courts. Relying on these declarations, ICE adopted the position of its private contractors as its own throughout the litigation.

In July 2015, the Federal Court in *DWN v. ICE* ruled that the details of government contracts with private detention companies, specifically the per diem payments and staffing plans associated with each contract, are not exempt from public release under FOIA. ICE chose not to appeal and the issue, which ICE should never have defended in the first place, was on the cusp of resolution, with ICE preparing to disclose the improperly-redacted information.

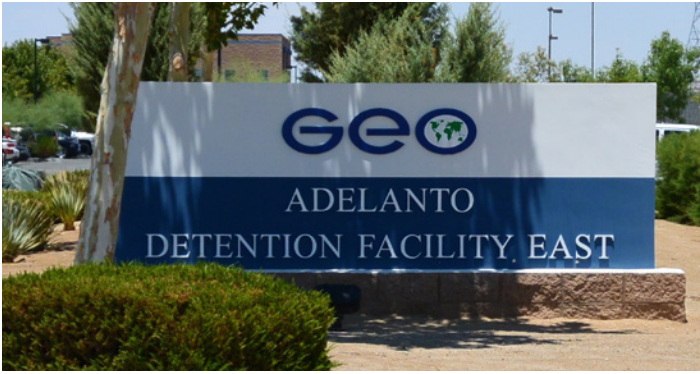


photo: Community Initiatives for Visiting Immigrants in Confinement (CIVIC)

Instead, GEO and CCA filed a motion to intervene in the case, which was granted in September 2016, and are appealing the lower court's ruling to the Second Circuit Court of Appeals. This has now created a rather remarkable situation. Private contractors are challenging the district court's interpretation of the federal government's obligations under FOIA, even though the federal government is not. In doing so, the private contractors are openly proclaiming what we've long known: that they are actively seeking to shape government detention policy and the scope of government secrecy, protecting their own interests and profits at the expense of immigrant communities and the American public.

CONCLUSION

The problems within the immigration detention system, and the degree to which they are exacerbated by ICE's entanglement with private prison companies is clear. Throughout the system, we see evidence that these companies seek to maximize their profits by cutting costs at the expense of people's health, safety and well-being; are not accountable and don't experience consequences for even severe deficiencies; exert undue influence over government officials and immigration policy; and fight tooth and nail to avoid even minimal transparency. These are not problems that can be addressed through reform,

but only through completely ending the U.S. government's relationship with and reliance on private prison companies.

The privatization of immigration detention creates perverse incentives for incarceration. The Department of Homeland Security (DHS) should take steps to end all profiteering in the immigration detention system by reducing reliance on immigration detention and ending direct and indirect contracts with private companies.

Specifically, DHS should:

1. Immediately cease its current expansion of the immigration detention system. ICE must not sign any new contracts, including with private prison companies;
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4. Not replace phased out contracts with additional county jail contracts, but rather take immediate and aggressive action to reduce the number of people held in immigration detention. DHS should start by ending family detention; ending the detention of asylum-seekers, providing a bond hearing for all detained individuals, and narrowing its interpretation of mandatory detention.⁷⁴

Terminating these contracts will not fix all the problems within the United States' massive immigration detention system, but it is an important first step. It is simply unacceptable to put profit over people, especially when it comes to the deprivation of liberty.

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