

**STATEMENT OF TOM JAWETZ**

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**BEFORE THE**

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY**

**SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY**

**REGARDING**

**PART II OF H.R. 1889, PRIVATE PRISON INFORMATION ACT OF 2007**

**PRESENTED ON**

**JUNE 26, 2008**

Good afternoon. My name is Tom Jawetz and I am the immigration detention staff attorney for the National Prison Project (NPP) of the American Civil Liberties Union Foundation (ACLU). The ACLU is a non-partisan organization with hundreds of thousands of members and 53 affiliates nationwide. For more than 80 years, the ACLU has fought to defend the Constitution and our precious civil liberties against assault. One of our most important tools is the Freedom of Information Act, which allows members of the public to obtain vitally important information about government activity. But in a world where privatization of core governmental functions—including the management of our prisons and jails—is on the rise, more and more information is being shielded from public disclosure.

I would like to thank Chairman Scott and members of the subcommittee for inviting me here today to speak about the critical need for oversight and accountability over the private prison industry, and the importance of the Private Prison Information Act. The value of the proposed legislation can be measured by many different metrics; by increasing the public's access to information in the hands of for-profit prison companies, Congress would empower the public to monitor unacceptable risks to public safety and police fraud and abuse of government funds. Most importantly for purposes of my testimony, the bill also would—for the first time—shine a light into the darkest recesses of our society. Because while our nation's prisons already too often lack necessary transparency, particularly given the enormous powers that staff exercise, privately-run prisons are open to even less scrutiny, and yet are often the most worrisome.

My work as the Immigration Detention Staff Attorney for the NPP puts me at the center of two important trends in incarceration: the incredible growth in the use of detention for people facing administrative immigration charges, and the federal government's increasing reliance on private prison companies to house those immigrants. From Fiscal Year 2001 to the present, the average daily immigration detention population has increased more than 63%,<sup>1</sup> and the total number of people detained by Immigration and Customs Enforcement (ICE) in any given year has tripled.<sup>2</sup> At the same time, private prison companies like Corrections Corporation of America (CCA), GEO Group, and Cornell Corrections have received lucrative contracts to house tens of thousands of civil immigration detainees around the country. CCA recorded nearly \$1.5 billion in revenue last year, 13% of which came from contracts with ICE, while GEO earned \$1.2 billion in total revenue with ICE responsible for 11% of the company's operating revenue.<sup>3</sup>

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<sup>1</sup> *Compare Review of Department of Justice Immigration Detention Policies: Hearing before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 107th Cong. 18 (2002) (statement of Joseph R. Greene, Acting Deputy Executive Associate Commissioner for Field Operations, Immigration and Naturalization Services) (average daily detention population in Fiscal Year 2001 was 19,533) with Dana Priest and Amy Goldstein, *System of Neglect*, WASHINGTON POST, May 11, 2008 (approximately 33,000 detainees held by ICE on any given day).

<sup>2</sup> *Id.* (“Since 2001, the number of detainees over the course of each year has more than tripled to 311,000, according to ICE and the Government Accountability Office.”)

<sup>3</sup> Leslie Berestein, *Detention Dollars: Tougher Immigration Laws Turn the Ailing Private Prison Sector into a Revenue Maker*, SAN DIEGO UNION-TRIBUNE, May 4, 2008.

At the ACLU, we hear from detainees, immigration attorneys, and community advocates about the problems faced by immigration detainees. We sift through these complaints to identify facilities that are particularly egregious—problems that require an immediate response. It is, therefore, striking that of the three immigration detention lawsuits filed by my office over the past 18 months, all three have involved facilities run by CCA—the country’s largest for-profit prison company, and by far the biggest player in the privatization of immigration detention. Two of the lawsuits have alleged that CCA’s San Diego Correctional Facility was dangerously overcrowded for a period of years and that medical care at the facility was and is grossly inadequate. A third set of lawsuits alleged that conditions at the Hutto Family Detention Center—a former medium-security prison run by CCA—were terribly inappropriate for the population being held at the facility. The ACLU’s original ten plaintiffs included children as young as three years old who were forced to wear prison uniforms and were confined to their cells for up to 12 hours each day because of numerous head counts. The children had little access to education or exercise and no pediatrician was available on-site.

Although immigration detainees are held at facilities all over the United States, the privatization boom appears to be focused heavily along our southern border. Last month I had the opportunity to visit two privately-run detention facilities in south Texas—the Willacy County Detention Center, also known as “Tent City” or “Ritmo,” and the South Texas Detention Complex. Willacy is run by Management and Training Corporation (MTC), a Utah-based private prison company that gained some notoriety when its former director was tapped to set up the now-infamous Abu Ghraib prison in Iraq.<sup>4</sup> Willacy currently houses 2,000 immigration detainees in ten 200-person tents and another 1,000 detainees in a new, prison-like building. Until the tents were modified last Fall to add one small window per housing unit, the detainees were completely deprived of natural light. Walking through the compound, it is easy to see that tears in the walls of the tents have been repaired with tape, so it is unsurprising that detainees complain of water seeping into their living quarters when it rains. Yet records pertaining to how MTC maintains or repairs the tents are completely unavailable to the public. Last year, a local news station obtained records showing that dozens of detainees had complained that they were being fed rotten food that was crawling with maggots.<sup>5</sup> Copies of MTC’s logbooks recording those complaints were obtained directly from security guards who went to the media with their story. Had the guards not come forward, those records never would have surfaced under our current laws, and the public might never have learned that our federal tax dollars were being spent on serving maggot-ridden food to civil detainees.

The South Texas Detention Complex in Pearsall, Texas is run by the GEO Group, and it houses just over 1,900 detainees. Last month, a local news station uncovered evidence that GEO guards

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<sup>4</sup> Kim Cobb, *Ex-Head of TDCJ Set Up Iraq Jail; ‘Checkered’ Career Raises Questions*, HOUSTON CHRONICLE, May 16, 2004.

<sup>5</sup> KGBT, *Detention Center Food Problems*, Aug. 2, 2007, available at <http://www.detentionwatchnetwork.org/node/332>.

were sexually assaulting female detainees at the facility.<sup>6</sup> According to the report, GEO guards pressured the women by threatening to have them deported if they did not agree to the guards' sexual advances. One GEO guard who reportedly impregnated a detainee was terminated as a result of his actions; the pregnant detainee was deported to Guatemala. At least one GEO guard and one ICE officer told the reporter that they were fired after they complained internally about the sexual assaults. All records in the possession of ICE pertaining to sexual abuse at the facility should be available to the public under our current FOIA law. But any records possessed by GEO Group—which told the reporter that it had no knowledge of sexual assault complaints at the facility—may never be revealed publicly.

Over the past 18 months, the issue that has gained the most public attention when it comes to immigration detention is poor medical care and avoidable deaths. Back in June 2007, the *New York Times* revealed that over 60 people had died in ICE custody since 2004.<sup>7</sup> The day after that story broke, the ACLU filed a Freedom of Information Act request with various government agencies including the Department of Homeland Security. The request sought records pertaining to detainee deaths, including any reports of investigations into such deaths. In January, ICE produced approximately 800 pages of documents, which included a list containing the names and locations of last detention for 66 deceased detainees. For at least 19 of those 66 detainees, the location of last detention was a facility run by a private prison company. And yet only a single piece of paper produced to the ACLU by ICE appears to have been generated by one of the for-profit companies that run these facilities. It is simply inconceivable that none of these 19 in-custody deaths generated so much as a single investigative report by CCA, GEO, or Cornell Corrections, but if that were the case would not that be of importance to the public? Assuming investigative reports do exist, the question becomes whether ICE failed to produce records in its possession or whether the private prison companies failed to turn over all of their relevant documents to ICE. That first question can be addressed through FOIA litigation against ICE, and is not relevant to the pending bill. But the second question goes to the heart of the Private Prison Information Act. Without the ability to demand such records directly from the private prison companies, how can the public ever be confident that it is receiving all of the information to which it is entitled?

There is one change to this bill that I would recommend, and I believe it is entirely consistent with the drafter's intent. As it is currently written, the bill applies to “nongovernmental entities contracting with the Federal Government to incarcerate or detain Federal prisoners in a privately owned prison or other correctional facility.” Section 2(d) defines the term “privately owned prison or other correctional facility” to include facilities that “incarcerate or detain prisoners pursuant to a contract with . . . Immigration and Customs Enforcement.” The problem with this language is that the more than 300,000 people detained by ICE each year are detainees, not

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<sup>6</sup> WOAI, *Claims of Sexual Assault at Immigration Facility*, May 6, 2008, available at [http://www.woai.com/content/troubleshooters/story.aspx?content\\_id=2690837e-5c2a-4ea0-92dd-2e64a54996b2](http://www.woai.com/content/troubleshooters/story.aspx?content_id=2690837e-5c2a-4ea0-92dd-2e64a54996b2).

<sup>7</sup> Nina Bernstein, *New Scrutiny As Immigrants Die in Custody*, NEW YORK TIMES, June 26, 2007.

“prisoners.”<sup>8</sup> Unless the bill is amended, there is a risk that privately owned facilities housing federal immigration detainees pursuant to a contract with ICE will not be required to comply with the terms of this bill. Sections 2(a), (b), and (d) should be amended to include the words “and detainees” after the word “prisoners.”

On behalf of the ACLU, I would like to thank the Subcommittee for taking the time to explore this important issue, and I urge Congress to pass this bill with the aforementioned amendment. I look forward to the opportunity to answer your questions.

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<sup>8</sup> See 28 U.S.C. 1915(h) (defining the term “prisoner” to refer to “any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole probation, pretrial release, or diversionary program”). Accord 18 U.S.C. 3626(g); 28 U.S.C. 1915A(c); 42 U.S.C. 1997e(h).