



# How For-Profit Companies Are Driving Immigration Detention Policies

By Sharita Gruberg     December 2015

Surprisingly, the largest detention and supervised release program in the country is not operated by the U.S. Department of Justice, or DOJ, but by the U.S. Department of Homeland Security, or DHS, which oversees the nation's immigration detention program.<sup>1</sup> According to the DOJ, its Federal Bureau of Prisons had nearly 200,000 individuals in custody as of December 2015. On the other hand, DHS's immigration detention program detains around 400,000 people each year.<sup>2</sup>

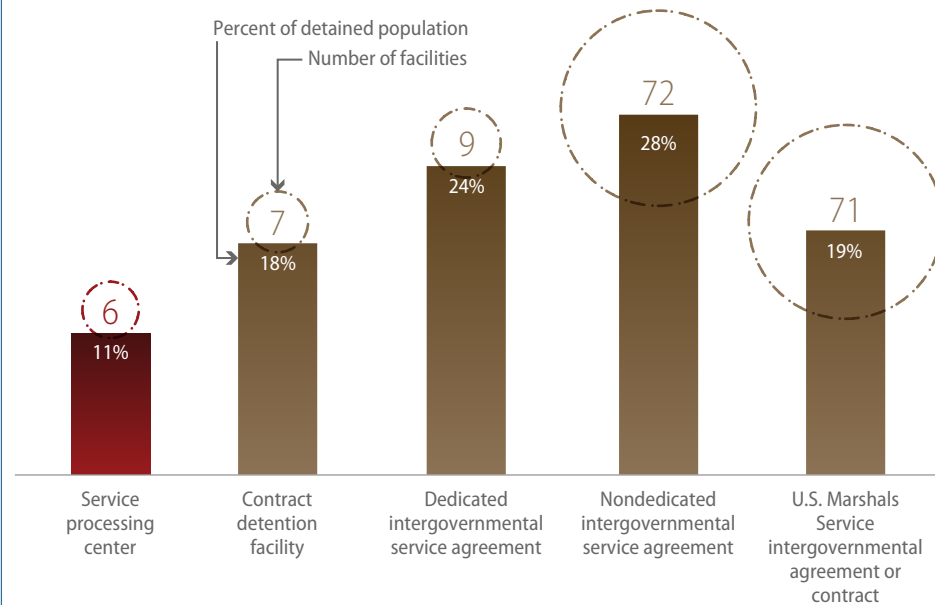
The purpose of the immigration detention program is to hold, process, and prepare individuals for possible deportation. By law, immigration detention must be civil in nature, not punitive.<sup>3</sup> The immigration detention system has grown exponentially over the past 20 years from fewer than 7,500 beds in 1995 to the 34,000 beds mandated by federal law today.<sup>4</sup> These beds are spread across a network of more than 250 detention facilities nationwide, including facilities run by for-profit corporations. DHS's Immigration and Customs Enforcement, or ICE, owns only 11 percent of the beds; 18 percent are housed in for-profit prisons under contract with ICE, and 24 percent are located in facilities owned by state and local governments that exclusively house immigrants for ICE. The rest of the beds are in facilities that also detain people awaiting trial or people serving criminal sentences: 28 percent are in facilities owned by state and local governments, and 19 percent are in space contracted with the U.S. Marshals Service.<sup>5</sup> Some state and local facilities are also subcontracted with for-profit prison companies. A key factor underlying the explosion in the number of immigrants in custody is the expanded role of for-profit prison companies in the U.S. immigration detention system.<sup>6</sup>

The majority of people in immigration detention are low custody priorities and are not security risks, meaning they do not have previous criminal convictions and are not considered flight risks because of strong community ties. From 2010 to 2013, 44 percent of ICE detainees were low custody level, 41 percent were medium custody level, and only 15 percent were high custody level.<sup>7</sup> An in-depth Center for Migration Studies investigation of people held in ICE custody on a single day in 2012 found that less than 10 percent were convicted of violent crimes.<sup>8</sup> Despite the small share of high-priority detainees and the slowdown of unauthorized immigration in recent years, the numbers of beds and people in custody have skyrocketed over the past decade.<sup>9</sup>

FIGURE 1

## Types of immigration detention facilities

ICE-owned facilities account for the smallest percent of the detained population



Source: Government Accountability Office, "Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards," GAO 15-153, Report to Congressional Requestors, October 2014, available at <http://www.gao.gov/assets/670/666467.pdf>.

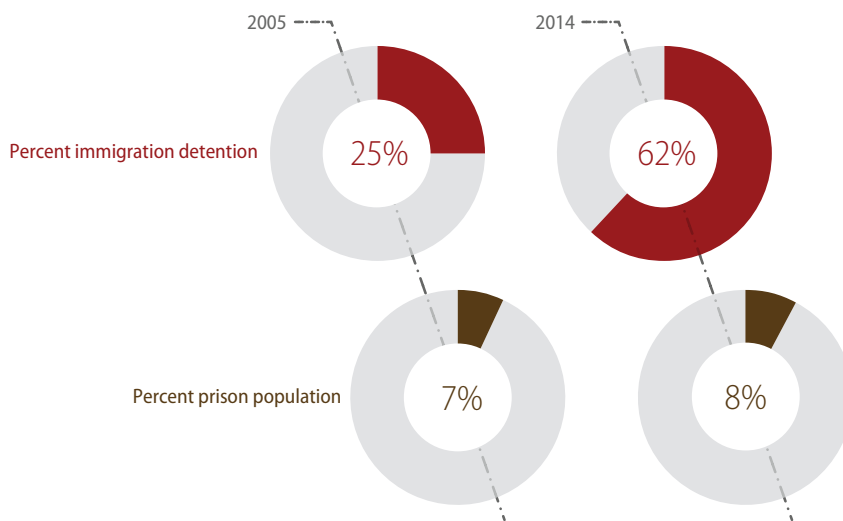
## The expanded role of for-profit prison companies in immigration enforcement

When the U.S. government first contracted with the Corrections Corporation of America, or CCA—the largest private corrections company in the United States—in 1983 to house immigrants, the size of the immigration detention system was significantly smaller than it is today.<sup>10</sup> In 1980, there were just 4,062 detention beds in the entire country, and that number had only risen to 5,532 beds by 1994. In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act, which greatly expanded the categories of immigrants who were deportable and subject to mandatory detention.<sup>11</sup> After the passage of those laws, detention capacity nearly doubled from 8,279 beds in 1996 to 14,000 beds in 1998.<sup>12</sup>

Despite the growth in bed space, for-profit prisons did not begin receiving contracts for many of these beds until 2000. In the late 1990s, CCA was on the verge of bankruptcy, but in 2000, it received the contract to run the Otay Detention Facility outside of San Diego, California, which the company described as “one of the largest contracts ever to be awarded to the private corrections industry.”<sup>13</sup> While things began to improve for CCA after this federal bailout, it still noted in its 2005 Security and Exchange

Commission, or SEC, filing that “Our industry benefits from significant economies of scale. ... Our management team is pursuing a number of initiatives intended to increase occupancy through obtaining new contracts.” CCA also noted in the filing that a decrease in occupancy rates would “cause a decrease in revenue and profitability” and that it “cannot control occupancy levels at our managed facilities.”<sup>14</sup> By 2005, roughly 25 percent of immigrants in DHS custody were held in private prisons; today, 62 percent of all immigration detention beds are operated by for-profit prison corporations.<sup>15</sup> For comparison, 7 percent of federal and state prisoners were held in for-profit prisons in 2005, rising to 8.4 percent by 2014—an increase of just 1.4 percent.<sup>16</sup>

**FIGURE 2**  
**Growth in for-profit immigration detention**  
**compared to U.S. state and federal prison population**

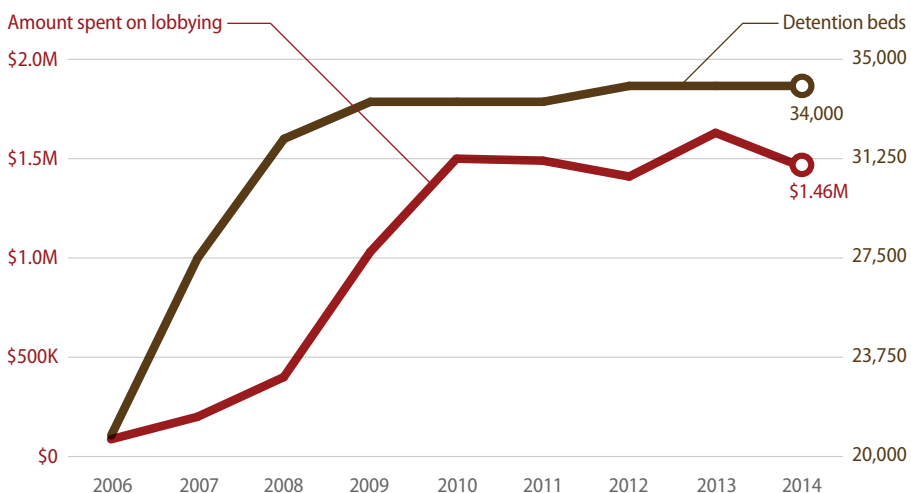


Sources: Bethany Carson and Eleana Diaz, “Payoff: How Congress Ensures Private Prison Profit with an Immigrant Detention Quota” (Austin, TX: Grassroots Leadership, 2015), available at <http://grassrootsleadership.org/reports/payoff-how-congress-ensures-private-prison-profit-immigrant-detention-quota>; Paige M. Harrison and Allen J. Beck, “Prisoners in 2005” (U.S. Bureau of Justice Statistics, 2006), available at <http://www.bjs.gov/content/pub/pdf/p05.pdf>; E. Ann Carson, “Prisoners in 2014” (U.S. Bureau of Justice Statistics, 2015), available at <http://www.bjs.gov/content/pub/pdf/p14.pdf>.

The two largest for-profit prison companies with which the United States contracts to detain immigrants, CCA and Geo Group Inc., have doubled their revenues since 2005.<sup>17</sup> This was not by coincidence. Between 2004 and 2014, CCA spent \$18 million and Geo Group spent nearly \$4 million on lobbying. CCA spent more than \$8.7 million and the Geo Group spent \$1.3 million to lobby Congress solely on Homeland Security appropriations between 2006 and 2015.<sup>18</sup>

**FIGURE 3**  
**Growth in lobbying and detention beds**

Lobbying on U.S. Department of Homeland Security appropriations by for-profit prison companies grew alongside the number of detention beds



Note: 2007 spending data for Geo Group Inc. was not available.

Source: Bethany Carson and Eleana Diaz, "Payoff: How Congress Ensures Private Prison Profit with an Immigrant Detention Quota" (Austin, TX: Grassroots Leadership, 2015), available at <http://grassrootsleadership.org/reports/payoff-how-congress-ensures-private-prison-profit-immigrant-detention-quota>; Analysis by Nick Taxera of lobbying data from the Center for Responsive Politics, on file with author; Office of Inspector General, *Detention and Removal of Illegal Aliens* (U.S. Department of Homeland Security, 2006), available at [https://www.oig.dhs.gov/assets/Mgmt/OIG\\_06-33\\_Apr06.pdf](https://www.oig.dhs.gov/assets/Mgmt/OIG_06-33_Apr06.pdf); Alison Siskin, "Immigration-Related Detention: Current Legislative Issues" (Washington: Congressional Research Services, 2012), available at <https://www.fas.org/sgp/crs/homesecc/RL32369.pdf>; U.S. Department of Justice, *FY2002 Budget Summary: Department of Justice Immigration and Naturalization Service Breached Bond/Detention Fund* (2001), available at [http://www.justice.gov/archive/jmd/2002summary/html/ins\\_breached\\_bond.htm](http://www.justice.gov/archive/jmd/2002summary/html/ins_breached_bond.htm); Government Accountability Office, "Immigration Control: Immigration Policies Affect INS Detention Efforts," GAO/GGD-92-85, Report to the Chairman, Subcommittee on International Law, Immigration, and Refugees, Committee on Judiciary, House of Representatives, June 1992, available at <http://www.gao.gov/assets/160/151988.pdf>; Megan Golden, Oren Root, and David Mizner, "The Appearance Assistance Program: Attaining Compliance with Immigration Laws Through Community Supervision" (New York: Vera Institute of Justice, 1998), available at <http://www.vera.org/sites/default/files/resources/downloads/aap.pdf>.

### Congress ensures consistent demand for detention beds

The millions of dollars that for-profit prison companies poured into lobbying have paid off in a big way, resulting in an increase in the guaranteed minimum number of immigration detention beds, both nationally and within individual facility contracts. Guaranteed minimums addresses the problem CCA noted in its 2005 SEC filing, and these minimums allow the company to control occupancy levels in its facilities. In 2004, the Intelligence Reform and Terrorism Prevention Act sought to vastly increase detention bed space and directed DHS to add an additional 8,000 detention beds annually from 2006 through 2010.<sup>19</sup> Sen. Robert Byrd (D-WV) introduced language in the Department of Homeland Security Appropriations Act of 2010 mandating that DHS “maintain a level of not less than 33,400 detention beds,” a provision known as the bed mandate or bed quota.<sup>20</sup> This quota was raised to 34,000 in the Consolidated Appropriations Act of 2012 and has remained at that level ever since under a series of continuing resolutions that have maintained fiscal year 2012 funding levels for immigration detention.<sup>21</sup> The increase in the number of beds allowed for an enormous surge in the total number of people in immigration detention each year, nearly doubling from 230,000 people in FY 2005 to 440,600 individuals in FY 2013.<sup>22</sup>

The increase in detention bed space coincided with an increase in spending on immigration detention from \$700 million in FY 2005 to more than \$2 billion today.<sup>23</sup> Not surprisingly, this spending increased revenues for CCA and the Geo Group. Federal contracts—including those from the Federal Bureau of Prisons, U.S. Marshals Service, and ICE—accounted for 39 percent of CCA’s total revenues in FY 2005 (\$466.8 million), 43 percent in FY 2010 (\$717.8 million), and 44 percent in FY 2014 (\$724.2 million).<sup>24</sup> While ICE contracts alone accounted for less than 10 percent of CCA’s total revenue in FY 2005 (\$95 million), they rose to 12 percent of revenue in FY 2010 (\$196.6 million) and 13 percent in FY 2014 (\$221 million).<sup>25</sup> U.S. government contracts made up 27 percent of the Geo Group’s revenues in FY 2005, with ICE accounting for 5.5 percent, or \$33.6 million.<sup>26</sup> In FY 2010, the share of Geo Group revenue from federal contracts rose to 35 percent, with ICE alone accounting for 13 percent of revenue, or \$216 million. In FY 2014, federal contracts increased to 42 percent of Geo Group revenue, with ICE accounting for 15.6 percent.<sup>27</sup>

Although DHS Secretary Jeh Johnson and ICE Director Sarah Saldaña have both stated that they understand the bed mandate to mean maintaining 34,000 beds—not necessarily filling them—this interpretation has received pushback from Congress, including from Rep. John Culberson (R-TX), a member of the House Committee on Appropriations’ Homeland Security Subcommittee, who proposed changing the language from “maintain” to “fill.”<sup>28</sup> This distinction matters: If ICE is required to fill 34,000 beds, then it must find 34,000 people each day to fill them, regardless of actual need. If ICE is required to maintain 34,000 beds, it is simply must have 34,000 beds available. During a House Appropriations Committee hearing on the FY 2015 DHS budget, Homeland Security Subcommittee Chairman John “Judge” Carter (R-TX) said, “I agree that you have to have available 34,000 beds under this law. You don’t have to have anybody sleeping in them every night, but they have to be made available.”<sup>29</sup>

## Facility quotas

A report from the Detention Watch Network and the Center for Constitutional Rights revealed that in addition to the congressional daily quota, contracts between ICE and for-profit facilities included a guaranteed minimum number of beds that must be paid for each day.<sup>30</sup> In addition to guaranteed minimums, the contracts stipulated a tiered pricing structure, meaning that ICE actually receives a discounted per-diem rate for each person detained in excess of the guaranteed minimum.<sup>31</sup> This pricing structure incentivizes detaining more people.

A 2009 DHS Office of the Inspector General report found that ICE was not employing a cost-effective strategy for using bed space.<sup>32</sup> In 2014, a U.S. Government Accountability Office, or GAO, report noted that ICE field offices place detainees in facilities that have guaranteed minimum populations whenever possible. According to the GAO report, ICE also monitors the percentage of capacity filled daily, and if it notices that a facility with guaranteed minimums has open space, officials “can call the field office director to find out why the guaranteed minimum is not being met.”<sup>33</sup>

### Quotas create an incentive to detain

The pressure to fulfill both congressional and contractual quotas has resulted in decisions to detain rather than release otherwise eligible immigrants, including vulnerable populations such as asylum seekers. A Center for American Progress analysis of detention placement decisions for lesbian, gay, bisexual, and transgender, or LGBT, immigrants found that although ICE’s automated system provided release as an option in 70 percent of LGBT intakes because of their vulnerability in detention, ICE officers elected to detain LGBT people in 68 percent of those instances, ostensibly to meet bed quotas.<sup>34</sup>

On December 3, Gabriel, a gay El Salvadorian man seeking asylum in the United States, decided to stop fighting his case rather than continue to endure poor treatment after being detained at the CCA-owned Stewart Detention Center in Georgia for six months.<sup>35</sup> He was detained despite the fact that the U.S. State Department’s 2014 human rights report notes widespread violence and discrimination against LGBT people in El Salvador.<sup>36</sup> Although Gabriel passed his credible fear interview—the first hurdle in the asylum process—and qualified for release under ICE’s own parole guidance, the agency refused to release him, claiming that since he was apprehended at the border while attempting to enter unlawfully, he was a detention priority under a 2014 DHS memorandum on immigration enforcement.<sup>37</sup> Significantly, the 2014 DHS memorandum does not state anywhere that it supersedes or rescinds ICE’s parole guidance, but it does say that people apprehended while trying to enter the country illegally must be prioritized for removal “unless they qualify for asylum.”<sup>38</sup> The memo further directs DHS personnel to consider “the totality of the circumstances” when making prosecutorial discretion decisions.<sup>39</sup>

Since mid-October 2015, immigrants held in several for-profit facilities with guaranteed minimum quotas have gone on hunger strikes protesting their prolonged detention due to ICE’s refusal to release asylum seekers who pass credible fear screenings. Many of these hunger strikes were ongoing as of the writing of this issue brief. In all of these detention facilities, ICE must pay for the contractual minimum number of beds whether or not they are filled. In Louisiana’s LaSalle Detention Facility, there is a 770-bed contractual minimum and 14 immigrant detainee hunger strikers. Additionally, 27 women are on a hunger strike at the T. Don Hutto Residential Center in Texas, which

has a 461-bed contractual minimum. The largest hunger strike by far is at the Adelanto Detention Facility in California, which has a 975-bed contractual minimum and more than 300 detainees who have joined the protest.<sup>40</sup> Although it is owned by ICE and not a private company, 54 South Asian men went on a hunger strike in the El Paso, Texas, detention center, which has a 500-bed contractual minimum.<sup>41</sup> Many asylum seekers who participated in the hunger strikes in Texas and Louisiana have been in detention for more than two years.<sup>42</sup>

## Expanded supervision

In 2010, Geo Group Inc. acquired BI Inc., a company with an exclusive ICE contract to provide supervised release, which sometimes employs the use of electronic ankle bracelets. This acquisition made the Geo Group the largest provider of electronic monitoring services in the U.S. corrections industry. Upon adding supervised release services to its business model, Geo Group officials boasted that the company is now able to serve clients “throughout the entire corrections lifecycle.”<sup>43</sup> Julie Myers Wood, who ran ICE from 2006 to 2008, now serves on the Geo Group board and consults for BI Inc.<sup>44</sup> DHS refers to the monitoring services that the Geo Group provides as “alternatives to detention.”<sup>45</sup> However, in practice, monitoring is used as an alternative to release. The result is an increase in the number of people under government supervision, not a decrease in the number of people detained by ICE. Unlike true release, immigrants in these programs must frequently report to an ICE Enforcement and Removal Operations field office, wear an ankle bracelet, or both, severely restricting their mobility. Additionally, they are monitored by a company that stands to profit even more if they are required to return to one of its detention facilities. Ankle bracelets—called “grillettes” or shackles by some forced to wear them—must be charged frequently, are uncomfortable, and stigmatize the wearer due to their association with criminals.<sup>46</sup>

During FY 2014, 48,170 people were in so-called alternatives to detention, including the intensive supervision or electronic monitoring services provided by the Geo Group.<sup>47</sup> In its FY 2016 budget request to Congress, DHS asked for this program to be expanded to 53,000 people per day at an annual cost of \$30.8 million.<sup>48</sup>

The latest move away from truly releasing people and toward expanding the number of people monitored by the Geo Group came in the form of an \$11 million-per-year contract with Geo Care LLC, a subsidiary of the Geo Group, to run a supervised release program for women and children who are released from family detention facilities.<sup>49</sup> Not surprisingly, the Geo Group runs one of these family detention facilities, the Karnes County Residential Center, which it plans to expand to house 626 beds. It is estimated that the expansion will increase the facility’s revenues by \$20 million each year, ensuring that the Geo Group continues to profit from immigrant families, whether they are entering or exiting the Karnes detention facility.<sup>50</sup>

## Detention hurts asylum grant rates

Being denied parole or even bond after a credible fear interview can severely hurt an individual's chances of receiving asylum. The New York Immigrant Representation Study found that legal representation and freedom from detention are the two most significant factors in positive immigration case outcomes.<sup>51</sup> A earlier CAP report found that simply being detained made LGBT asylum seekers more than 10 percent less likely to win asylum.<sup>52</sup> While immigrants in detention are generally far less likely to win their asylum cases than those who are not detained, immigrants held in facilities operated by for-profit prison companies fare especially poorly. The average asylum grant rate is 49 percent nationally, but it is only 13.5 percent for asylum seekers detained in ICE-owned and -operated service processing centers. The grant rate is even lower at for-profit facilities—only 8.1 percent.<sup>53</sup> Poor conditions at these facilities, such as limited access to legal services, could contribute to low grant rates.<sup>54</sup>

**TABLE 1**  
**Asylum grant rates in for-profit detention facilities**

Immigrants in for-profit facilities are nearly 40 percent less likely to be granted asylum than those in ICE-owned facilities

Facility	Location	Owner	Court	Grant rate
Broward Transitional Facility	Pompano Beach, Florida	Geo Group Inc.	Krome Immigration Court	4%
Eloy Federal Contract Facility	Eloy, Arizona	Corrections Corporation of America	Eloy Immigration Court	5%
Florence Correctional Center	Florence, Arizona	Corrections Corporation of America	Florence Immigration Court	5%
Jena/La Salle Detention Facility	Jena, Louisiana	Geo Group Inc.	Oakdale Immigration Court	5%
South Louisiana Correctional Center	Basile, Louisiana	Geo Group Inc.	Oakdale Immigration Court	5%
Joe Corley Detention Facility	Conroe, Texas	Geo Group Inc.	Houston SPC Immigration Court	5%
Stewart Detention Center	Lumpkin, Georgia	Corrections Corporation of America	Stewart Immigration Court	6%
Adelanto Detention Facility	Adelanto, California	Geo Group Inc.	Adelanto Immigration Court	9%
San Diego Correctional Facility	San Diego, California	Corrections Corporation of America	San Diego Immigration Court	12%
Northwest Detention Center	Tacoma, Washington	Geo Group Inc.	Tacoma Immigration Court	25%

Note: While the national average asylum grant rate is 49 percent, it is only 13 percent for detained asylum seekers. The average grant rate is far lower for asylum seekers in for-profit facilities.

Sources: U.S. Department of Justice, "EOIR Immigration Court Listing," available at <http://www.justice.gov/eoir/immigration-court-administrative-control-list> (last accessed December 2015); Executive Office for Immigration Review, *FY 2014 Statistics Yearbook* (U.S. Department of Justice, 2015), available at <http://www.justice.gov/eoir/pages/attachments/2015/03/16/fy14syb.pdf>; U.S. Immigration and Customs Enforcement, *Detained Asylum Seekers Fiscal Year 2009 and 2010 Report to Congress* (U.S. Department of Homeland Security, 2012), available at <https://www.ice.gov/doclib/foia/reports/detained-asylum-seekers2009-2010.pdf>; U.S. Immigration and Customs Enforcement, "ICE Authorized Facilities Matrix" (2015), on file with author.



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## Ineffective oversight at for-profit facilities leads to poor treatment and denial of rights

### National Immigrant Justice Center investigation

Facilities housing immigrants are governed by a patchwork of standards, including the 2000 National Detention Standards, the 2008 Performance-Based National Detention Standards, and the 2011 Performance-Based National Detention Standards.<sup>55</sup> A report from the GAO noted that ICE does not have documentation for why different standards apply to different facilities nor why 125 facilities still fall under the older standards from 2000. Moreover, the GAO report revealed that ICE can choose to waive certain compliance standards for contractors at its discretion.<sup>56</sup> Whether ICE continues to use a facility owned by a local government or a private prison company depends on the facility's compliance with detention standards. In DHS appropriations for FY 2009, Congress specified that any facility found to be less than "adequate" in its two most recent inspections could no longer receive federal funding.<sup>57</sup> An investigation by the National Immigrant Justice Center, or NIJC, and the Detention Watch Network, or DWN, revealed that the number of facilities that failed their inspections dropped significantly after 2009 and no facility has failed twice in a row since the 2009 law. The investigation also revealed that inspectors from the ICE Office of Detention Oversight, or ODO, and ICE Office of Enforcement and Removal Operations, or ERO, are apparently allowed edit the evaluations before they are submitted to a facility's file.<sup>58</sup> The GAO found that these two oversight arms both inspected the exact same 35 facilities in 2013, but their results differed markedly. In those 35 facilities, the ERO uncovered 343 deficiencies while the ODO found a total of 448 deficiencies.<sup>59</sup>

The NIJC and DWN investigation lists several examples of facilities that passed inspections despite egregious violations. For example, the Eloy Detention Center in Arizona, owned by CCA, was found to be in compliance with sexual assault prevention standards in its 2011 ERO inspection. However, the inspector dismissed 10 allegations of sexual assaults in the previous year because they were determined to be "unfounded or unsubstantiated."<sup>60</sup> This is troubling since Eloy is notorious for putting transgender women at risk of sexual abuse by housing them in all-male pods. In 2009, Tanya Guzman-Martinez, a transgender woman, was assaulted by a guard at the Eloy facility. In 2010, she was assaulted again, this time by a male detainee. Although the guard was later convicted, ICE initially determined that Guzman-Martinez's claim against the guard was unsubstantiated.<sup>61</sup> In August 2014, Marichuy Leal Gamino, another transgender woman, reported that she had been raped by her male cell mate at Eloy, and officials at the facility responded by placing her in solitary confinement.<sup>62</sup> Despite the abuse they faced, both women continued to be detained at Eloy for months—a total of eight months for Guzman-Martinez and more than a year for Gamino.<sup>63</sup>

## U.S. Commission on Civil Rights report

In 2015, the U.S. Commission on Civil Rights issued a report on the treatment of detainees held in immigration detention centers. In preparing the report, the commission visited two detention facilities, received significant written and oral testimony, and held a day-long briefing on the possible civil rights violations occurring at these facilities.<sup>64</sup> The commission's report listed numerous incidents in which CCA and the Geo Group failed to adhere to standards on medical care, including a 2012 case in which a man died of a heart attack at the GEO Group-owned Denver Contract Detention Facility.<sup>65</sup> The ODO concluded that the Denver facility “failed to provide [the detainee] access to emergent, urgent, or non-emergent medical care” and that “the staff’s unfamiliarity with the relevant protocol, failure to administer appropriate cardiac medication, and delays in transporting the patient to a higher level care facility all may have been contributing factors to his death.”<sup>66</sup>

This was not an isolated incident. An analysis showed that there were 72 deaths in immigration detention facilities from 2005 to 2009; 23 of which occurred in for-profit facilities.<sup>67</sup> Even though the annual detention population increased and the overall number of deaths in detention facilities dropped to 41 from 2010 to 2015, 24 of those deaths occurred in for-profit facilities—a larger share than in the previous period.<sup>68</sup> Moreover, the data show that deaths have become concentrated in certain for-profit facilities rather than spread across facilities. In July, Rep. Raúl Grijalva (D-AZ) sent a letter to U.S. Attorney General Loretta Lynch requesting an investigation into deaths at the Eloy Detention Center, which has had 14 deaths in detention during the past decade.<sup>69</sup>

The Commission on Civil Rights found that for-profit facilities, when compared to other facilities, failed to adhere to detention standards in the following areas:

- Health care<sup>70</sup>
- Protecting LGBT people from abuse<sup>71</sup>
- Providing nutritious food in sufficient quantities<sup>72</sup>
- Access to legal services<sup>73</sup>

Furthermore, when discussing facilities’ responsibility to prevent and respond to sexual assault under the Prison Rape Elimination Act, or PREA, the commission stated, “It is difficult to determine whether each ICE contractor is complying with PREA standards or even with the appropriately corresponding detention standards specified by its contract even with ICE monitoring and inspection schemes.”<sup>74</sup> It also found a lack of accountability in for-profit facilities’ PREA compliance, as well as a general lack of transparency in DHS’s contracts with private prison companies.

Finally, the U.S. Civil Rights Commission found that some facilities violated the Fifth Amendment rights of immigrants because the detention conditions were punitive in nature, such as punishing people without the due process protections afforded in criminal proceedings. These facilities included the Port Isabel Service Processing Center in Texas, owned by the federal government but operated by Ahtna Technical Services Inc., and the Karnes County Residential Center, owned by the Geo Group.<sup>75</sup>

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## Proposed solutions

Recognizing the inability of for-profit prisons to safely and humanely house immigrants, Sen. Bernie Sanders (D-VT) and Reps. Grijalva and Keith Ellison (D-MN) introduced the Justice Is Not For Sale Act, which would bar the federal government from contracting with private entities, eliminate the bed quota, end family detention, and improve monitoring and inspections of detention facilities.<sup>76</sup> The proposed legislation also notes the particular vulnerability of LGBT people in detention, along with asylum seekers, victims of torture or trafficking, families with minor children, pregnant women, nursing mothers, individuals older than age 65, and individuals with a mental or physical disability.<sup>77</sup> Rather than viewing detention as the default for these groups, the bill states that “a member of a vulnerable population whose needs cannot be adequately met by a detention facility may not be held in a detention facility unless the Secretary [of Homeland Security] determines such placement is in the interest of national security.”<sup>78</sup>

Other congressional efforts have focused on eliminating bed requirements so that bed space is determined by actual need, not arbitrary quotas. These efforts include the Accountability in Immigration Detention Act introduced by Rep. Adam Smith (D-WA) and the Protecting Taxpayers and Communities from Local Detention Quotas Act introduced by Rep. Ted Deutch (D-FL), which both seek to end guaranteed bed minimums in contracts with private prisons.<sup>79</sup>

These bills recognize the enormous influence that for-profit prison companies have in America’s immigration detention system and the ways in which they influence detention priorities, particularly for vulnerable populations such as LGBT people and families, many of whom are seeking asylum.<sup>80</sup> Rather than expanding the number of people under ICE supervision while maintaining the bed quota, immigration detention resources should focus on actual detention needs and improving conditions and oversight.

Fortunately, the Obama administration does not have to wait for Congress to end the nation’s reliance on for-profit facilities to house immigrants. Since DHS contracts with prison companies, the agency should be directed not to accept contracts with guaranteed minimums or tiered pricing. DHS should cease contracting with these compa-

nies when they do not comply with the latest detention standards or fail inspections. Moreover, DHS must improve oversight of facilities to ensure they are thoroughly and independently inspected, that facility ratings are valid, and that compliance issues are quickly resolved. The results of these inspections should also be publicly available. Finally, contracts should be discontinued with facilities that fail to comply with the latest detention standards.

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## Endnotes

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