



June 23, 2017

Gabor Rona, Chairperson-Rapporteur  
Working Group on the Use of Mercenaries as a Means of Violating Human Rights and  
Impeding the Exercise of the Right of Peoples to Self-Determination  
Office of the High Commissioner for Human Rights  
Palais Des Nations  
1211 Geneva 10  
Switzerland

Dear Chairperson-Rapporteur Rona,

Thank you for the opportunity to address the Working Group and to provide further information through this questionnaire. The ACLU's responses to the Working Group's questions follow:

***General Questions***

1. In the country(ies) or region(s) which you work in, is there any private security company (PSC) operating either fully or partially in places of deprivation of liberty? Please indicate in which country and in which type of facility (prison/juvenile detention centre/detention facilities for irregular migrants, etc), and the name of the company.

Yes, there are numerous such companies in the United States. For-profit companies that have contracts to operate prisons, jails, or immigrant detention centers in their entirety in the United States include:

- **GEO Group**, a publicly-traded transnational company that operates prisons, jails, immigration detention facilities, re-entry facilities, and provides re-entry and surveillance services such as GPS tracking.
- **G4S**, a publicly-traded transnational company that provides an extremely broad range of privatized security and detention services. In the United States, they operate entire facilities only in the juvenile detention sector, but provide security staffing in other places of deprivation of liberty, including immigration detention facilities.
- **Management and Training Corp.**, a privately-held company that operates prisons, jails, and immigration detention facilities in the United States, as well as re-entry facilities in the United Kingdom.
- **CCA/CoreCivic**, a publicly-traded company that operates prisons, jails, immigration detention facilities, and re-entry facilities. Although the company previously had multiple prison contracts in the United Kingdom and Australia, it has significantly scaled back its international operations and currently holds a 50% ownership interest in a single prison management contract in the UK.

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Additionally, both publicly- and privately-operated prisons, jails, and immigration detention facilities frequently contract out various subsidiary functions such as medical and mental health care, commissary and related financial services, food service, and prisoner telephone service. Some of these companies are transnational. For example, MHM Services and Centene are involved in a joint venture (dubbed “Centurion”) to provide medical care in prisons and jails. Centene is a publicly-traded, transnational health care and insurance corporation that contracts with governments worldwide. Similarly, Securus Technologies is a transnational prison technology company that provides prisoner telephone service, video “visitation” services (akin to a Skype video call), and similar services in the United States, Canada, and various Latin American countries.

In general, outsourcing of these subsidiary functions creates a high risk of predatory practices. The outsourcing of prison telephone services, for example, has led to incarcerated people and their families paying grossly inflated rates that are far higher than typical telephone rates in the outside world.<sup>1</sup> Notably, although the Federal Communications Commission took significant steps to regulate the prison phone industry during the Obama administration, the U.S. Court of Appeals for the D.C. Circuit recently vacated many of these regulations.<sup>2</sup>

2. Is the PSC responsible for the overall operation of the facility or does it provide only a specific or particular service(s) to the facility? If the latter, please provide information on the type of services provided.

See response # 1 above.

3. Does the PSC provide services to a State-operated facility and if so, what are these services?

See response # 1 above.

4. Are you aware of situations where a PSC performs functions in relation to disciplinary measures and proceedings?

Yes, in the United States, when a government agency contracts out the operation of a prison, jail, or immigration detention facility to a private company, it also delegates the authority to both decide and carry out disciplinary measures. This includes extraordinarily severe measures that raise human rights concerns—such as imposing the punitive use of solitary confinement—and disciplinary measures that can cause an individual to remain in prison longer than s/he would otherwise stay.

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<sup>1</sup> See Prison Policy Initiative, *The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry* (Sept. 11, 2012), [https://static.prisonpolicy.org/phones/price\\_to\\_call\\_home.pdf](https://static.prisonpolicy.org/phones/price_to_call_home.pdf); Prison Policy Initiative, *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry* (May 2013), [https://static.prisonpolicy.org/phones/price\\_to\\_call\\_home.pdf](https://static.prisonpolicy.org/phones/price_to_call_home.pdf).

<sup>2</sup> See *Global Tel\*Link v. Federal Communications Commission*, -- F.3d --, No. 15-1461, 2017 WL 2540899 (D.C. Cir. June 13, 2017); Victoria Law, *\$15 for 5 Minutes: How Courts are Letting Prison Phone Companies Gouge Incarcerated People*, THE INTERCEPT (June 16, 2017).

This creates a risk that the companies will use this authority in ways that increase their profits without serving legitimate public goals. Indeed, according to a recent study of prisons in Mississippi, prisoners held in private prisons received significantly more disciplinary infractions than prisoners in public prisons. This pattern held true across every demographic, offense, and sentence length category. Apparently because of the greater use of disciplinary infractions in private prisons, people held in private prisons remained in prison approximately 4 to 7 percent longer than equivalent individuals in public prisons. The private prisons, however, did not have any greater impact on recidivism than their public counterparts.<sup>3</sup>

5. What are the driving factors for the use of private companies in places of deprivation of liberty? In your opinion, has there been an increase in the use of private companies? Please provide country specific information if available.

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In the United States, private prisons are inextricably intertwined with the rise of mass incarceration from the 1970s to the present. The modern private prison industry began in 1983 with the founding of the U.S.-based company Corrections Corporation of America. But it was not until the 1990s and 2000s that the industry began to metastasize. In 1990, there were fewer than 8,000 people held in criminal custody private prisons in the United States.<sup>4</sup> By 2015, there were more than 126,000.<sup>5</sup> This represents an approximately 1600% increase over this 25-year period, coinciding with a period of enormous growth in the U.S. prison population generally. It also coincides with the increasing reliance on detention in civil immigration enforcement proceedings. Indeed, in 2001, as this growth was reaching its peak, a report funded by the U.S. Department of Justice attributed the growth of the private prison industry to “the overriding desire of many states and local governments to rapidly increase desperately needed prison bed capacity and to reduce prison operational costs.”<sup>6</sup>

Accordingly, it should not be surprising that U.S. private prison companies essentially admit that their business model depends on high rates of incarceration. For example, as GEO Group acknowledges in its 2016 10-K financial disclosure to the U.S. Securities and Exchange Commission, “a material decrease in occupancy levels at . . . our facilities could have a material adverse effect on our revenues and profitability.”<sup>7</sup> GEO Group’s earlier SEC filings made clear what kinds of policy and social changes could bring about such reductions in profitability: “[A]ny changes with respect to the decriminalization of drugs and controlled substances could affect the number of persons arrested, convicted, sentenced and incarcerated, thereby potentially reducing demand for correctional facilities to house them. Similarly, reductions in crime rates could lead to reductions in

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<sup>3</sup> See Anita Mukherjee, *Impacts of Private Prison Contracting on Inmate Time Served and Recidivism*, Social Science Research Network (August 10, 2016), <https://ssrn.com/abstract=2523238>.

<sup>4</sup> American Civil Liberties Union, *Banking on Bondage: Private Prisons and Mass Incarceration*, 11 (Nov. 2011).

<sup>5</sup> E. Ann Carson & Elizabeth Anderson, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Prisoners in 2015*, NCJ 250229, at 28 Appendix Tbl. 2 (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

<sup>6</sup> JAMES AUSTIN & GARRY COVENTRY, BUREAU OF JUSTICE ASSISTANCE, EMERGING ISSUES ON PRIVATIZED PRISONS, 13 (NCJ 181249, 2001), <http://www.ncjrs.gov/pdffiles1/bja/181249.pdf> [<https://perma.cc/N2WY-E6E7>].

<sup>7</sup> GEO Group, Form 10-K Annual Report for the Fiscal Year Ended December 31, 2016, at 37.

arrests, convictions and sentences requiring incarceration at correctional facilities. Immigration reform laws . . . could also materially adversely impact us.”<sup>8</sup>

6. Please provide information on the number of individuals who are held in facilities operated fully or partially by PSCs in the aforementioned country. In comparison, what is the population of detainees in equivalent State-run facilities?

In the United States, each of the fifty states operates its own state prison system for people convicted of state crimes. The federal prison system is a separate system that holds people convicted of federal crimes; it is overseen by the Federal Bureau of Prisons (BOP), an agency of the U.S. Department of Justice. Meanwhile, immigration detention facilities comprise another independent system; such facilities can be overseen either by Immigration and Customs Enforcement (ICE) or by Customs and Border Protection (CBP), with ICE being responsible for all facilities intended to hold people for more than 72 hours. Both ICE and CBP are agencies of the U.S. Department of Homeland Security. U.S. state prison officials rely on private prison companies to widely varying degrees. In 2015, for example, Texas state authorities held 14,293 people in private prisons and Florida state authorities held 12,487 people in private prisons, while nineteen U.S. states did not rely on private prisons at all.<sup>9</sup> A chart of private prison reliance by state prison systems, compiled by the Bureau of Justice Statistics (available online at <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5869>), is below:

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State	Prisoners held in private prisons (absolute number)	Prisoners held in private prisons (percentage)	Source
Alabama	398	1.3%	Bureau of Justice Statistics, National Prisoner Statistics, 2014–2015.
Alaska/c	593	11.1%	(same as above)
Arizona	6,471	15.1%	(same as above)
Arkansas	0	~	(same as above)
California	2,195	1.7%	(same as above)
Colorado	3,987	19.8%	(same as above)
Connecticut/c	524	3.3%	(same as above)
Delaware/c	0	~	(same as above)
Florida	12,487	12.3%	(same as above)
Georgia	7,953	15.2%	(same as above)
Hawaii/c	1,340	22.8%	(same as above)
Idaho	545	6.8%	(same as above)

<sup>8</sup> GEO Group, Form 10-K Annual Report for the Fiscal Year Ended January 2, 2011, at 33.

<sup>9</sup> E. Ann Carson & Elizabeth Anderson, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Prisoners in 2015*, NCJ 250229, at 28 Appendix Tbl. 2 (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

Illinois	0	~	(same as above)
Indiana	4,204	15.4%	(same as above)
Iowa	0	~	(same as above)
Kansas	0	~	(same as above)
Kentucky	0	~	(same as above)
Louisiana	3,152	8.7%	(same as above)
Maine	0	~	(same as above)
Maryland	30	0.1%	(same as above)
Massachusetts	0	~	(same as above)
Michigan	0	~	(same as above)
Minnesota	0	~	(same as above)
Mississippi	3,946	20.9%	(same as above)
Missouri	0	~	(same as above)
Montana	1,490	40.4%	(same as above)
Nebraska	0	~	(same as above)
Nevada	/	~	(same as above)
New Hampshire	0	~	(same as above)
New Jersey	2,863	14%	(same as above)
New Mexico	3,026	42.2%	(same as above)
New York	0	~	(same as above)
North Carolina	29	0.1%	(same as above)
North Dakota	427	23.8%	(same as above)
Ohio	6,050	11.6%	(same as above)
Oklahoma	7,446	26.1%	(same as above)
Oregon	/	~	(same as above)
Pennsylvania	605	1.2%	(same as above)
Rhode Island/c	0	~	(same as above)
South Carolina	14	0.1%	(same as above)
South Dakota	22	0.6%	(same as above)
Tennessee	5,172	18.4%	(same as above)
Texas	14,293	8.7%	(same as above)
Utah	0	~	(same as above)
Vermont/c	/	~	(same as above)
Virginia	1,568	4.1%	(same as above)
Washington	0	~	(same as above)
West Virginia	0	~	(same as above)
Wisconsin	0	~	(same as above)
Wyoming	267	11%	(same as above)

a/Includes prisoners held in the jurisdiction's own private facilities and private facilities in another state.

b/Includes federal prisoners held in nonsecure, privately operated facilities (9,153) and prisoners on home confinement

(3,122). Excludes persons held in immigration detention facilities pending adjudication.

c/Prisons and jails form one integrated system. Data include total jail and prison populations.

The U.S. federal government relies more heavily on private prisons than any U.S. state. A chart of the relevant agencies, compiled from various sources, is provided below:

<b>Federal Agency</b>	<b>Prisoners/detainees held in private prisons (absolute number)</b>	<b>Prisoners/detainees held in private prisons (percentage)</b>	<b>Source</b>
Federal Bureau of Prisons	34,934	17.8%	Bureau of Justice Statistics, National Prisoner Statistics, 2014–2015.
Immigration and Customs Enforcement	24,567	73%	News reports from 2016 <sup>10</sup>
U.S. Marshals Service	18,061	35.1%	2016 data produced pursuant to Freedom of Information Act <sup>11</sup>

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7. Does the use of PSCs in places of deprivation of liberty have any impact on the increase or decrease in the number of detainees in the facility? Does the profit motive of PSCs have any impact on the length of time individuals spend in a detention facility? Please elaborate.

Yes, as set forth above, a recent study in Mississippi found that people held in private prisons served longer terms of incarceration than comparable people held in public prisons, due to differences in how private prison operators and public authorities issued conduct violations to prisoners.

Many private prison contracts include occupancy guarantees, sometimes referred to as

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<sup>10</sup> 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>.

<sup>11</sup> This number includes both direct-contract private facilities (which had an average daily population of 9,463 prisoners in 2016) and IGA pass-through facilities (which had an average daily population of 8,598 prisoners in 2016). See Hanna Kozłowska, *The private-prison industry has one big client that no one talks about*, QUARTZ (June 13, 2017), <https://qz.com/1002854/the-private-prison-industry-has-one-big-client-that-no-one-talks-about/>.

“lockup quotas,” which require the government to either provide a certain number of prisoners on a daily basis or pay as if the empty prison beds were filled.

A 2015 report by In the Public Interest, a non-governmental organization, reviewed the contracts for 62 different U.S. state and county-level private prisons and jails, and found that 41 (65 percent of the total) contained a minimum occupancy guarantee. These guarantees ranged from 80 to 100 percent of capacity, with many around 90 percent.<sup>12</sup> Similarly, a 2015 report by Detention Watch Network and the Center for Constitutional Rights found minimum occupancy guarantees in many U.S. federal immigration detention contracts, adding up to a nationwide commitment to fill thousands of beds with detained immigrants.<sup>13</sup> No similar survey has been conducted of occupancy guarantees in private prison contracts outside of the United States, but—given the international nature of these companies—it would be surprising if they had not sought or obtained similar guarantees in other countries.

Occupancy guarantees improperly incentivize incarceration and discourage government officials from pursuing alternatives to detention and incarceration. Their purpose is to protect the profit margins of private prison companies, which is not a proper public purpose. And they can improperly prevent private prison companies from suffering financial consequences for gross human rights violations. For example, when Arizona state officials transferred 238 prisoners out of the Kingman private prison in response to documented security failures, the private prison company used the 97% occupancy guarantee in the contract to force the state to compensate the company for the empty beds—even though the beds had gone empty precisely because of the company’s failure to manage the prison appropriately.<sup>14</sup>

8. Please provide any information about the impact of privatization of prisons and detention facilities on the detention and sentencing policies in the country.

The two largest U.S. private prison companies (CCA/CoreCivic and GEO Group) engage in extensive lobbying of federal and state governments and contribute significant amounts of money to both federal and state campaigns for elected office.<sup>15</sup> In particular, within the immigration enforcement context, private prison companies have also engaged in extensive lobbying and other influence-peddling that appears to be aimed at

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<sup>12</sup> In the Public Interest, *Criminal: How Lockup Quotas and “Low-Crime Taxes” Guarantee Profits for Private Prison Corporations*, at 9 (2015), <http://www.njcn.org/uploads/digital-library/Criminal-Lockup-Quota,-In-the-Public-Interest,-9.13.pdf>.

<sup>13</sup> Detention Watch Network & Center for Constitutional Rights, *Banking on Detention: Local Lockup Quotas & the Immigration Dagnet* (2015), <http://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20CCR%20Banking%20on%20Detention%20Report.pdf>.

<sup>14</sup> See Carl Takei, *From Mass Incarceration to Mass Control and Back Again: How Bipartisan Criminal Justice Reform May Lead to a For-Profit Nightmare*, 20 U. PA. J.L. & SOC. CHANGE 125, 144 (2017), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2741932](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2741932). Note that the ACLU’s prior written testimony to the UN cited a pre-publication version of this article with different pagination; corrected citations to the prior written testimony can be produced on request.

<sup>15</sup> David Shapiro, ACLU, *Banking on Bondage: Private Prisons and Mass Incarceration*, at 36-40 (2011), [https://www.aclu.org/files/assets/bankingonbondage\\_20111102.pdf](https://www.aclu.org/files/assets/bankingonbondage_20111102.pdf).

maintaining ICE’s heavy reliance on their industry.<sup>16</sup> They are also making a determined effort to curry favor with the Trump administration. GEO Group contributed \$225,000 to a Trump Super PAC during the election and hired one of President Trump’s top fundraisers as a lobbyist, and both CCA/CoreCivic and GEO Group contributed \$250,000 apiece to Trump’s inauguration committee.<sup>17</sup>

Both CCA/CoreCivic and GEO Group publicly deny that they lobby on certain topics related to their business. CCA/CoreCivic states that it has a policy of not “lobby[ing] for or against policies or legislation that would determine the basis for or duration of an individual’s incarceration or detention.”<sup>18</sup> Similarly, GEO Group states that it “does not take a position on or advocate for or against criminal justice and immigration policy related to criminalizing certain behaviors, determining the length of criminal sentences, or the basis and length of immigration detention policies.”<sup>19</sup> Because these lobbying meetings occur behind closed doors and lobbying disclosure statutes only require relatively general descriptions of their subject matter, it is difficult to independently verify whether these statements are correct or incorrect without the cooperation of one of the participants in any given meeting. However, during the 2013 push for comprehensive immigration reform legislation, GEO Group’s lobbying activities exceeded the limitations that the company claimed it would abide by in its contemporaneous public statements.<sup>20</sup> Moreover, each company’s stated set of limitations on its lobbying activities is quite specific, and appears to leave the companies free to engage in so-called “informational” lobbying that does not explicitly communicate a position for or against specific legislation.

9. In comparison with State-run facilities, how are the conditions and treatment of detainees in privately operated facilities? Please provide information on conditions regarding nutrition, medical care, recreation, disciplinary measures, rehabilitation services, etc.

The chief lesson of the United States’ experience with prison privatization is that handing control of prison to for-profit companies is a recipe for abuse and neglect. Some of the recent examples of reports documenting the dangerous consequences of prison privatization include the following:

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<sup>16</sup> Grassroots Leadership, *Payoff: How Congress Ensures Private Prison Profit with an Immigration Detention Quota*, at 11-13 (Apr. 2015), [http://grassrootsleadership.org/sites/default/files/reports/quota\\_report\\_final\\_digital.pdf](http://grassrootsleadership.org/sites/default/files/reports/quota_report_final_digital.pdf)

<sup>17</sup> See Nicholas Confessore, Nicholas Fandos & Rachel Shorey, *Trump Inaugural Drew Big Dollars from Donors with Vested Interests*, N.Y. TIMES (April 19, 2017), [https://www.nytimes.com/2017/04/19/us/politics/trump-inauguration-sheldon-adelson-fundraising.html?\\_r=0](https://www.nytimes.com/2017/04/19/us/politics/trump-inauguration-sheldon-adelson-fundraising.html?_r=0); Fredreka Schouten, *Private prisons back Trump and could see big payoffs with new policies*, U.S.A. TODAY (February 23, 2017), <https://www.usatoday.com/story/news/politics/2017/02/23/private-prisons-back-trump-and-could-see-big-payoffs-new-policies/98300394/>.

<sup>18</sup> CCA/CoreCivic, *Political and Lobbying Activity*, <http://www.cca.com/investors/corporate-governance/political-lobbying-activity> (last visited June 12, 2017).

<sup>19</sup> GEO Group, *Political Engagement*, [https://www.geogroup.com/political\\_engagement](https://www.geogroup.com/political_engagement) (last visited June 12, 2017).

<sup>20</sup> Lee Fang, *Disclosure Shows Private Prison Company Misled on Immigration Lobbying*, THE NATION (June 4, 2013), <https://www.thenation.com/article/disclosure-shows-private-prison-company-misled-immigration-lobbying/>.



U.S. Department of Justice reports

- U.S. Department of Justice Office of the Inspector General audit of CCA/CoreCivic contract to operate the Leavenworth Detention Center (April 2017)<sup>21</sup>
  - Auditors found that CCA/CoreCivic routinely understaffed the facility, which compromised its ability to maintain safety and security. They also found that staff uninstalled beds prior to an inspection by the American Correctional Association in order to conceal the fact that they were triple-bunking. Auditors concluded that the U.S. Marshals Service (the law enforcement agency within the U.S. Department of Justice that had contracted with CCA/CoreCivic to run Leavenworth Detention Center) failed to actively and continually monitor the company's compliance with the terms of the contract.
- U.S. Department of Justice Office of the Inspector General audit of CCA/CoreCivic contract to operate the Adams County Correctional Center (December 2016)<sup>22</sup>
  - Auditors determined that CCA/CoreCivic's management of the facility was seriously deficient, resulting in major security lapses, including a May 2012 prisoner riot that ended in the death of one correctional officer and injuries to about twenty staff and prisoners. They also found that CoreCivic failed to fill critical medical and dental positions. Between December 2012 and September 2015, the facility had a single physician who was only present 43% of the time.
- U.S. Department of Justice Office of the Inspector General review of the Federal Bureau of Prisons' monitoring of contract prisons (August 2016)<sup>23</sup>
  - This report assessed the Federal Bureau of Prisons' monitoring of the fourteen contract prisons that in December of 2015 held roughly 12% of the total federal prison population. The report noted monitors found more safety and security deficiencies at privately run prisons than at Federal Bureau of Prisons-run facilities, including issues with contraband, discipline, the use of solitary confinement, and grievance procedures. The report also noted that the agency's monitoring process did not sufficiently capture information about medical services in private prisons.

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<sup>21</sup> Office of the Inspector General, U.S. Department of Justice, *Audit of the United States Marshals Service Contract No. DJJODT7C0002 with CoreCivic, Inc., to Operate the Leavenworth Detention Center, Leavenworth, Kansas* (April 2017), <https://oig.justice.gov/reports/2017/a1722.pdf>.

<sup>22</sup> Office of the Inspector General, U.S. Department of Justice, *Audit of the Federal Bureau of Prisons' Contract with CoreCivic, Inc. to Operate the Adams County Correctional Center in Natchez, Mississippi* (December 2016), <https://oig.justice.gov/reports/2016/a1708.pdf>.

<sup>23</sup> Office of the Inspector General, U.S. Department of Justice, *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons* (August 2016), <https://oig.justice.gov/reports/2016/e1606.pdf>.

- U.S. Department of Justice Office of the Inspector General audit of GEO Group/Reeves County contract to operate the Reeves County Detention Center (April 2015)<sup>24</sup>
  - Auditors found that GEO Group failed to adequately staff its health services unit between 2010 and 2013 and over-used solitary confinement as a punitive measure without sufficient evidence of detainee wrongdoing. It also reported that a January 2009 prisoner riot was due in part to GEO Group’s failure to adequately staff the facility.
- U.S. Department of Justice Civil Rights Division findings letter regarding Walnut Grove Youth Correctional Facility, operated by GEO Group, Inc. (March 20, 2012)<sup>25</sup>
  - Following an on-site investigation and with expert consultants, U.S. Department of Justice investigators determined that there were “systematic, egregious, and dangerous practices” at the facility that had been “exacerbated by a lack of accountability and controls.” They concluded that staff were deliberately indifferent to the risks of suicide, physical and sexual assault (from both other juveniles and staff), and the medical and mental health needs of its youth. The report highlights the particular vulnerability of juveniles to sexual victimization and brutal physical violence by staff.

#### Selected ACLU and other NGO reports

- Human Rights Watch, *Systemic Indifference* (May 2017)<sup>26</sup>
  - This report details substandard medical care at immigration detention facilities (particularly at privately-run facilities) based on interviews with detainees and their families as well as experts’ reviews of medical records and autopsies. Human Rights Watch found that lapses in medical care were largely the result of underqualified medical staff and barriers to care (such as language translation) that resulted in needless delays for individuals who needed urgent care. It also concluded that the lack of oversight by government monitors and inadequate data collection allowed the problem to worsen and makes several policy recommendations for federal, state, and local entities to increase monitoring and to end inhuman practices such as solitary confinement.
- Detention Watch Network, *A Toxic Relationship* (December 2016)<sup>27</sup>

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<sup>24</sup> Office of the Inspector General, U.S. Department of Justice, *Audit of the Federal Bureau of Prisons Contract No. DJB1PC007 Awarded to Reeves County, Texas to Operate the Reeves County Detention Center I/II Pecos, Texas* (April 2015), <https://oig.justice.gov/reports/2015/a1515.pdf>.

<sup>25</sup> Civil Rights Division, U.S. Department of Justice, *Findings Letter Regarding Investigation of the Walnut Grove Youth Correctional Facility* (March 20, 2012), <https://www.justice.gov/sites/default/files/crt/legacy/2012/04/09/walnutgrovefl.pdf>

<sup>26</sup> Human Rights Watch, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention* (May 2017), <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

<sup>27</sup> Detention Watch Network, *A Toxic Relationship: Private Prisons and U.S. Immigration Detention* (December 2016),

- This report developed from an attempt to synthesize and make public the voluminous evidence presented by NGOs and advocacy groups to a subcommittee of the Homeland Security Advisory Council that was tasked with reviewing whether the Department of Homeland Security should begin severing ties with private prison companies. The report details four fundamental problems with the use of privately-run detention centers. Research indicates they: (1) seek to maximize profits by cutting costs—and subsequently critical services—at the expense of people’s health, safety, and overall well-being; (2) are not accountable, and often do not bear any consequences when they fail to meet the terms of their contracts; (3) exert undue influence over government officials, and push to maintain and expand the immigration detention system; and (4) are not transparent, and in fact, fight hard to obscure the details of their contracts and operations from the American public. The report concludes with steps that DHS must take to end all profiteering in the immigration detention system by reducing reliance on immigration detention and ending direct and indirect contracts with private companies.
- ACLU, *Shutting Down the Profiteers* (September 2016)
  - This report details why and how the Department of Homeland Security should stop using private prisons. It states that Immigration and Customs Enforcement (ICE) has never been able to ensure safe and humane conditions consistent with a civil detention model but that privately run facilities have incentives to cut medical staffing and deny care in ways that exacerbate these abuses. Additionally, the report outlines numerous policy recommendations, through which ICE can substantially reduce detention populations, thereby eliminating the need for reliance on private prisons.
- American Friends Service Committee, *Community Cages* (August 2016)<sup>28</sup>
  - This report sheds light on the ways in which for-profit prison corporations have rebranded themselves as providers of rehabilitative services and have thus been able to expand their holdings in the community corrections area. The report goes on to discuss a continually growing market for new companies to take advantage of lucrative government contracts for corrections services such as electronic monitoring and residential re-entry. Lastly, this document demonstrates how profit motives pose a serious threat to the movement to end mass incarceration; the report makes a strong case for the nationwide examination of these trends to ensure that reform efforts are actually reducing unnecessary and prolonged involvement in the criminal justice system.

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[http://www.detentionwatchnetwork.org/sites/default/files/reports/A%20Toxic%20Relationship\\_DWN.pdf](http://www.detentionwatchnetwork.org/sites/default/files/reports/A%20Toxic%20Relationship_DWN.pdf).

<sup>28</sup> American Friends Service Committee, *Community Cages: Profitizing Community Corrections and Alternatives to Incarceration* (August 2016), <https://afscarizona.files.wordpress.com/2016/08/communitycages.pdf>.

- ACLU, Detention Watch Network, and National Immigrant Justice Center, *Fatal Neglect* (February 2016)
  - From an analysis of 24 ICE death reviews, and a presentation of eight specific cases deemed non-compliant with medical standards, this report describes how ICE ignores deaths in detention. Most of the deaths examined took place in private prisons. After tracing the timeline and facts for the aforementioned cases, the report calls on ICE to: immediately reduce immigration detention, improve delivery of medical care, ensure that inspections provide meaningful oversight, and increase transparency of inspections, deaths, and serious medical incidents.
- ACLU, *Warehoused and Forgotten* (June 2014)
  - This report documents the ACLU's multi-year investigation into five "Criminal Alien Requirement" (CAR) prisons in Texas. These institutions are unusual in that they are some of the only federal prisons operated by for-profit companies instead of being run by the Bureau of Prisons (BOP); they house exclusively non-citizens; and they are low-custody institutions with lesser security requirements than the medium and maximum-security institutions run directly by BOP. The report highlights failures in oversight and accountability, while illustrating a level of secrecy that makes it clear why reporting on the abuses that occur in these facilities is necessary to bring any modicum of public scrutiny.
- ACLU, *Banking on Bondage: Private Prisons and Mass Incarceration* (November 2011)
  - This report traces the rise of the for-profit prison industry over the past 30 years, demonstrating that private prisons reaped lucrative profits as incarceration rates reached historic levels. The report then focuses on the supposed benefits associated with private prisons, showing that the assertion that private prison companies provide demonstrable economic benefits and humane facilities is debatable at best. Lastly, the report discusses the tactics, such as extensive lobbying and questionable financial incentives, which private prison companies have used to obtain control of more and more human beings and taxpayer dollars.
- Detention Watch Network and Community Initiatives for Visiting Immigrants in Confinement, *Abuse in Adelanto* (October 2015)<sup>29</sup>
  - This report details maltreatment at an immigration detention facility in the rural community of Adelanto, California. The institution, operated privately by the GEO Group, has come under scrutiny by advocates both for inhumane conditions as well as negligent deaths. This report relies on detainee complaints and identifies the top three issues at Adelanto as: prolonged detention, medical abuse and neglect, and a lack of access to legal representation and the law library. The report also describes four

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<sup>29</sup> Detention Watch Network and Community Initiatives for Visiting Immigrants in Confinement, *Abuse in Adelanto: An Investigation into a California Town's Immigration Jail* (October 2015), <http://www.detentionwatchnetwork.org/sites/default/files/reports/CIVIC%20DWN%20Adelanto%20Report.pdf>.

- instances of extreme physical abuse by GEO staff, one death, and one confirmed miscarriage at the facility.
- Grassroots Leadership, *Payoff* (April 2015)<sup>30</sup>
    - The 2010 DHS Appropriations Act mandated that ICE’s budget would be contingent on the maintenance of a level of not less than 33,400 detention beds. This report provides an in-depth assessment of the inception and implementation of the quota, with a specific focus on the role played by for-profit, private prison corporations. These companies have profited handsomely from the artificial stability provided by the quota while contributing millions of dollars in federal lobbying expenditures and campaign contributions to ensure their interests are met. This report also features testimony from people directly impacted by detention and deportation, revealing the human cost of the quota.
  - Grassroots Leadership, *Locked up and Shipped Away* (November 2013)<sup>31</sup>
    - This report examines state governments’ practice of transferring incarcerated people out of their home states to for-profit private prisons across the United States. The research for this report finds that interstate transfers impede rehabilitation by diminishing ties to family and community. California, Vermont, Idaho and Hawai’i are the major U.S. states covered in the report, with a total of 10,500 incarcerated individuals being held in private prisons outside of their home states. The report also shows how state officials justify the transfers by pointing to overcrowding in prisons rather than prioritizing decarceration.
  - Grassroots Leadership, *The Dirty Thirty* (June 2013)<sup>32</sup>
    - As Corrections Corporations of America (CCA) commemorated its 30<sup>th</sup> anniversary in 2013, this report argues that the nation’s oldest and largest for-profit private prison corporation has nothing to celebrate. The report focuses on 30 incidents drawn from the company’s extensive record of prisoner abuse, poor pay and benefits to employees, scandals, escapes, riots, and lawsuits.

#### Investigative journalism

- Seth Freed Wessler, “This Man Will Almost Certainly Die” (January 2016)<sup>33</sup>
  - Following the stories of several prisoners who died in GEO Group facilities in Texas, this article relies on government oversight documents and interviews with former staff, prisoners, and prisoners’ families to

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<sup>30</sup> Grassroots Leadership, *Payoff: How Congress Ensures Private Prison Profit with an Immigration Detention Quota* (April 2015), <https://grassrootsleadership.org/reports/payoff-how-congress-ensures-private-prison-profit-immigrant-detention-quota#1>.

<sup>31</sup> Grassroots Leadership, *Locked Up and Shipped Away: Interstate Prisoner Transfers and the Private Prison Industry* (November 2013), <https://grassrootsleadership.org/locked-up-and-shipped-away>.

<sup>32</sup> Grassroots Leadership, *The Dirty Thirty: Nothing to Celebrate About 30 Years of Corrections Corporation of America* (June 2013), <https://grassrootsleadership.org/cca-dirty-30>.

<sup>33</sup> Seth Freed Wessler, *This Man Will Almost Certainly Die*, THE NATION (January 28, 2016), <https://www.thenation.com/article/privatized-immigrant-prison-deaths/>.

illuminate the human costs of privately run prisons. Wessler describes an overreliance by private prisons on lower-paid medical staff with lesser credentials and training, failures to follow suicide prevention procedures, and other significant deficiencies in the provision of medical and mental health care.

- Shane Bauer, “My Four Months as a Private Prison Guard” (July/August 2016)<sup>34</sup>
  - Mother Jones investigative reporter Shane Bauer spent four months working as a correctional officer in a CCA/CoreCivic prison in Louisiana. This article is a report on CCA’s appallingly terrible management of the facility based on Bauer’s experience, as well as subsequent interviews and documents obtained through open records requests.

10. Are contractual information and performance reports of PSCs operating in places of deprivation of liberty publicly available and accessible?

It is often difficult to access both contracts and performance reports in the United States. The federal Freedom of Information Act does not apply to records that are in the possession of private prison companies—thereby keeping much basic information about private prison operations out of public view, including any performance reports generated by company personnel and not provided to the contracting agency. CCA/CoreCivic has spent millions of dollars lobbying to defeat efforts to close this loophole in the Freedom of Information Act.

Additionally, although contracts and performance reports in the government’s possession are public documents that are can be requested through the federal Freedom of Information Act and similar state open records laws, private prison companies have aggressively litigated to prevent disclosure of these records.<sup>35</sup> Most recently, after the federal government chose to stop fighting disclosure of its immigration detention contracts with CCA/CoreCivic and GEO Group in a Freedom of Information Act lawsuit, the companies sought to intervene in the lawsuit to prevent disclosure of these contracts.<sup>36</sup>

***Vetting, oversight and accountability mechanisms***

11. Is there any process for vetting and assessment of a PSC before it is contracted to operate places of deprivation of liberty?

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<sup>34</sup> Shane Bauer, *My Four Months as a Private Prison Guard*, MOTHER JONES (July/August 2016), <http://www.motherjones.com/politics/2016/06/cca-private-prisons-corrections-corporation-inmates-investigation-bauer/>.

<sup>35</sup> ACLU, *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System*, 58-60 (2014), <https://www.aclu.org/sites/default/files/assets/060614-aclu-car-reportonline.pdf>.

<sup>36</sup> See Center for Constitutional Rights, Detention Watch Network (DWN) v. Immigration Customs and Enforcement (ICE) and Department of Homeland Security (DHS) <https://ccrjustice.org/home/what-we-do/our-cases/detention-watch-network-dwn-v-immigration-customs-and-enforcement-ice-and> (last visited Apr. 17, 2017).

The United States has no uniform national process for such vetting, and while a handful of U.S. states have entirely prohibited the use of private prisons, most impose no special vetting procedures.

To the extent that any vetting takes place, it is done through standard contract negotiation procedures. Most private prison contracts are subject to public bidding laws, which require the issuance of a public Request for Proposal and an open bidding process. During the bidding process, contracting officers are supposed to assess the ability of the company to carry out the tasks required, but to the ACLU's knowledge, this evaluation has not resulted in a company being debarred from bidding based on a history of human rights abuses.

12. Are international human rights principles and standards incorporated into the contracts of PSCs which operate in places of deprivations of liberty?

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Private prison contracts vary widely among both U.S. federal and U.S. state contracting agencies, and the federal government does not impose uniform standards, so it is difficult to generalize. However, the ACLU is not presently aware of any private prison contract that fully incorporates the Nelson Mandela Rules. Most U.S. prison and jail standards are based on standards promulgated by the American Correctional Association (ACA), which is a non-governmental trade association for correctional management agencies and corporations in the United States. These standards continue to evolve, but the fact a facility has been accredited by the ACA is no guarantee that it is actually providing humane conditions of confinement. The ACA accreditation process relies primarily on a review of a facility's written policies, rather than evaluation of its actual practices (which may diverge significantly from written policies). U.S. courts have uniformly held that such accreditation has little or no relevance to the question of whether conditions of confinement comply with the U.S. Constitution. Indeed, a number of U.S. courts have found that conditions in particular facilities are so inhumane that they violate the Constitution's prohibition against cruel and unusual punishment despite the fact that the facilities successfully received ACA accreditation.

13. What mechanism are in place to ensure personnel recruited by PSCs to operate in places of deprivation of liberty possess the right skills and do not have criminal records or records involving human rights abuses?

The U.S. federal government does not impose uniform standards or regulations in this area, so any personnel screening requirements depend upon what the particular federal or U.S. state contracting agency requires in its contract with the PSC.

14. Is there any grievance, accountability and remedy mechanisms for victims of human rights abuses in places of deprivation of liberty where PSCs operate?

The U.S. federal government does not impose uniform standards or regulations in this area, so any grievance, accountability and remedy mechanisms depend upon what the particular federal or U.S. state contracting agency requires in its contract with the PSC.

The most common method that victims of human rights abuses use to redress such violations is to file a lawsuit in the U.S. courts. However, numerous legal barriers make it difficult to secure relief through the judicial system.

Under U.S. law, federal civil rights statutes do subject private prisons and their employees to liability for constitutional violations when they contract with state and local-level agencies.<sup>37</sup> However, private prisons that contract with federal agencies have greater immunity from liability than their government counterparts. In 2001, the U.S. Supreme Court held that the companies themselves are immune from constitutional liability, and in 2012, the Supreme Court barred suits against private prison employees in most situations where they hold federal prisoners or detainees.<sup>38</sup> As U.S. Supreme Court Justice John Paul Stevens wrote in his dissent to the 2001 decision, immunizing private prisons from constitutional liability incentivizes the “corporate managers of privately operated custodial institutions to adopt cost-saving policies that jeopardize the constitutional rights of the tens of thousands of inmates in their custody.” Moreover, the complex contracting arrangements between public agencies and private prison contractors make it more difficult to hold public officials liable for human rights violations that occur in private prisons. Finally, a law known as the Prison Litigation Reform Act makes it more difficult for prisoners than for other persons to enforce their rights in U.S. courts.<sup>39</sup>

15. Do you have any information on oversight mechanisms which are in place to address human rights abuses by PSC personnel?

The U.S. Department of Justice’s Civil Rights Division has the power to investigate human rights abuses in custody, including abuses perpetrated by PSC personnel, and can also negotiate remedial plans and consent decrees with the relevant government authorities to prevent future abuses. However, the Civil Rights Division is only able to investigate a relatively small number of cases nationwide. Moreover, according to recent news reports, the Trump administration has instructed the Civil Rights Division to generally avoid seeking consent decrees in its enforcement efforts.<sup>40</sup>

The U.S. federal government does not impose uniform standards or regulations for PSC contracts or personnel, so any oversight mechanisms outside of Civil Rights Division investigations depend upon what the particular federal or U.S. state contracting agency requires in its contract with the PSC and what investigative authority the relevant U.S. state authorities may have.

16. What are the measures in place to prevent human rights abuses, especially for individuals who need particular attention, including women who are pregnant and nursing mothers, children and juveniles, elderly persons, lesbian, gay, bisexual or transgender individuals, and persons living with disabilities?

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<sup>37</sup> See *Richardson v. McKnight*, 521 U.S. 339 (1997).

<sup>38</sup> See *Minneeci v. Pollard*, 565 U.S. 118 (2012); *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61 (2001).

<sup>39</sup> See Human Rights Watch, *No Equal Justice: The Prison Litigation Reform Act in the United States* (2009), <https://www.hrw.org/report/2009/06/16/no-equal-justice/prison-litigation-reform-act-united-states>

<sup>40</sup> Jessica Huseman & Annie Waldman, *Trump Administration Quietly Rolls Back Civil Rights Efforts Across Federal Government*, PROPUBLICA (June 15, 2017), <https://www.propublica.org/article/trump-administration-rolls-back-civil-rights-efforts-federal-government>.



The Americans with Disabilities Act, the Civil Rights Act, and other generally applicable anti-discrimination statutes do apply to PSCs. However, apart from these general protections, the U.S. federal government does not impose uniform standards or regulations in this area, so any grievance, accountability and remedy mechanisms depend upon what the particular federal or U.S. state contracting agency requires in its contract with the PSC.

Additionally, the Prison Rape Elimination Act provides protections from sexual abuse in custody, many of which are particularly relevant to women and LGBT individuals in custody. However, this statute does not provide a mechanism for enforcement by individual prisoners or detainees; it applies to PSCs through contract mechanisms. Thus, for example, while the statute requires a third-party auditing process, it is the contracting agency's responsibility to ensure that these audits are actually being conducted at the facility and that the PSC takes appropriate corrective actions in response to any findings of deficiencies.

17. Are there any differences between State-operated facilities and those operated by PSCs in terms of oversight, accountability and remedy for human rights abuses and violations?

The structure of the relationship between state/federal agencies and their private prison contractors inherently makes oversight more complex and difficult than oversight of facilities operated by that agency.

In a public prison, there is a direct chain of command that flows in a continuous line from line-level correctional officers up to the warden, who reports to higher-level government officials and ultimately to the commissioner or director of the entire agency.

In contrast, in private prisons, there are two competing chains of command. The line-level correctional officers have a chain of command that leads to the warden, who is a private prison employee who reports to corporate executives. Meanwhile, the government agency will typically have one or more contracting officers or other monitors who (depending on the particular form of oversight) may not even have a daily presence at the prison. Neither the correctional officers nor the warden actually report to the contracting officer. Instead, the contracting officer serves as the main point of contact between the "customer" (i.e., the agency) and the company. Unlike the private prison employees, the contracting officer reports to higher-level government officials and ultimately to the commissioner or director of the entire agency. However, corporate executives may be able to intervene with these higher-level officials to overrule the decisions of the contracting officer. For example, if the contracting officer seeks to impose financial penalties or suspend the contract for violations, corporate executives could directly intervene with the contracting officer's supervisors to avoid having the penalty imposed.<sup>41</sup>

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<sup>41</sup> See Seth Freed Wessler, 'They Knew Something Was Going On,' The Investigative Fund (June 15, 2016), [http://www.theinvestigativefund.org/investigations/politicsandgovernment/2242/%27they\\_knew\\_something\\_was\\_going\\_on%27/?page=entire](http://www.theinvestigativefund.org/investigations/politicsandgovernment/2242/%27they_knew_something_was_going_on%27/?page=entire) (describing such interventions by higher-ranking government officials following conversations with corporate executives).

### *Access to justice and judicial measures*

18. Are you aware of any human rights abuses committed by PSCs personnel? What kind of abuses?

Yes. These abuses are extensive and have been documented by both federal agencies and NGOs. See response to question # 9 above.

19. Has the reported human rights abuse been addressed by any grievance/accountability/remedy mechanism and how? What kind of remedies and reparation, if any, have been provided to the victims?

In the United States, internal agency grievance processes almost never provide reparations to victims of human rights abuses. Typically, the sole method of securing reparations is to sue the agency and corporation for cash damages. However, this is a long and costly process with uncertain results, and there are numerous barriers to legal relief.

20. Please provide information on any investigation and prosecution of PSC personnel who allegedly committed human rights abuses in places of deprivation of liberty.

Although human rights abuses are all too common in U.S. prisons and jails, criminal prosecutions of correctional staff for such abuses are relatively rare occurrences, and prosecutions of private prison guards are especially rare. For example, of the federal official misconduct cases prosecuted by the Civil Rights Division of the U.S. Department of Justice in recent years, none appear to involve private prison personnel.<sup>42</sup> Notably, this is not due to an absence of abuses. Indeed, the Civil Rights Division found in 2012 that staff at a youth prison run by GEO Group, Inc. engaged in “brazen” sexual misconduct with the young people in their custody, on at least a monthly basis.<sup>43</sup>

In some cases, such human rights abuses may lead to criminal prosecution in state or federal courts without involvement by the Civil Rights Division. For example, a GEO Group prison guard was recently sentenced to federal prison for having sexual relations with a prisoner in Texas.<sup>44</sup> However, information about such prosecutions is not tracked in any easily searchable, publicly available central repository.

21. Is there any court case that concern human rights abuses by PSC personnel in places of deprivation of liberty?

Yes, numerous such court cases exist. However, there is no easily searchable, publicly available central repository of such cases. The ACLU is aware of the following recent and ongoing cases:

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<sup>42</sup> See Civil Rights Division, U.S. Department of Justice, <https://www.justice.gov/crt/criminal-section-selected-case-summaries#conduct> (last visited June 14, 2017).

<sup>43</sup> See Walnut Grove findings letter, *supra* note 25.

<sup>44</sup> U.S. Attorney’s Office, Western District of Texas, U.S. Department of Justice, Former Central Texas Detention Facility – GEO Prison Guard Sentenced to Prison for Sexual Abuse of a Ward (June 13, 2017) <https://www.justice.gov/usao-wdtx/pr/former-central-texas-detention-facility-geo-prison-guard-sentenced-prison-sexual-abuse>

- *DePriest v. Walnut Grove Correctional Authority* (Court: U.S. District Court for the Southern District of Mississippi)<sup>45</sup>
  - In November of 2010, the ACLU and the Southern Poverty Law Center filed a lawsuit on behalf of 1,500 young men, ages 13 to 22, sentenced as adults and confined in the Walnut Grove Youth Correctional Facility, then run by GEO Group (which has since been replaced by the Management and Training Corporation). The lawsuit challenged physical and sexual abuse by staff, prolonged solitary confinement, the abuse and neglect of mentally ill youth, and the failure to provide educational services to youth with special needs. Following a 2012 consent decree, all youth under the age of 18 and all vulnerable youth under the age of 20 were moved out of the prison into a state facility. The state permanently closed Walnut Grove in September of 2016.
- *Kelly v. Wengler* (Court: U.S. District Court for the District of Idaho)<sup>46</sup>
  - In February of 2011, the ACLU filed a case against CCA/CoreCivic alleging that the company was deliberately indifferent to inadequate safety and security measures in an Idaho facility, putting prisoners at significant risk of violence. A settlement agreement requiring policy changes and systemic improvements was reached in September of 2011. However, problems persisted, and in May of 2016, the court held the company in contempt of court for violating the security staffing provisions of the settlement and falsifying the relevant staffing records. This contempt finding was later affirmed by the U.S. Court of Appeals for the Ninth Circuit.
- *Castillon v. Corrections Corporation of America, Inc.* (Court: U.S. District Court for the District of Idaho)<sup>47</sup>
  - In 2012, eight prisoners at the same Idaho facility run by CCA/CoreCivic filed suit against the company, alleging that mismanagement and understaffing resulted in them getting attacked and beaten by a prison gang. In February of 2017, a federal jury found that the company was deliberately indifferent to the risk of harm to the prisoners.
- *Dockery v. Epps* (Court: U.S. District Court for the Southern District of Mississippi)<sup>48</sup>
  - In May of 2013, the ACLU, the Southern Poverty Law Center, and the Law Offices of Elizabeth Alexander filed a lawsuit on behalf of prisoners at the East Mississippi Correctional Facility, describing the for-profit prison (currently run by the Management and Training Corporation and formerly by GEO Group) as hyper-violent, grotesquely filthy, and

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<sup>45</sup> American Civil Liberties Union, *C.B. et al. v. Walnut Grove Correctional Authority, et. al.* (June 11, 2015), <https://www.aclu.org/cases/cb-et-al-v-walnut-grove-correctional-authority-et-al>.

<sup>46</sup> American Civil Liberties Union, *Kelly v. Wengler* (May 23, 2016), <https://www.aclu.org/cases/kelly-v-wengler>.

<sup>47</sup> Civil Rights Litigation Clearinghouse, University of Michigan Law School, *Case Profile: Castillon v. Corrections Corporation of America*, <https://www.clearinghouse.net/detail.php?id=12554> (last visited June 16, 2017).

<sup>48</sup> American Civil Liberties Union, *Dockery v. Epps* (September 30, 2015), <https://www.aclu.org/cases/prisoners-rights/dockery-v-epps>.

dangerous. The facility is supposed to provide intensive treatment to the state's prisoners with serious psychiatric disabilities, many of whom are held in long-term solitary confinement. This lawsuit challenges the isolation of the mentally ill; inadequate mental health and medical care; abuse and violence at the hands of the staff; failure to protect prisoners, pervasive filth and unsanitary conditions; and inadequate nutrition and food safety. In September 2015, the Court issued an order certifying the class and subclasses. After touring the facility and reviewing thousands of pages of documents, plaintiffs produced a second set of expert reports in December 2016. Discovery is ongoing and a month-long trial is set for October 2017.

- *Menocal v. GEO Group* (Court: U.S. District Court for the District of Colorado)<sup>49</sup>
  - In October of 2014, current and former civil immigration detainees at the Aurora Detention Facility in Colorado filed a class action lawsuit against GEO Group alleging that the use of forced labor violated the Trafficking Victims Protection Act and that the extremely low pay violated Colorado's minimum wage law and the tort principle of unjust enrichment. According to the lawsuit, GEO Group staff paid detainees \$1 per day to clean the facility, do laundry, prepare meals, and perform clerical work, threatening to place them in solitary confinement if they did not do so. GEO Group moved to dismiss all three claims; in 2015, the court allowed the plaintiffs to proceed with the forced labor and unjust enrichment claims but dismissed the Colorado minimum wage claim. The court also certified the lawsuit as a class action. GEO Group has appealed the decision on class certification to the U.S. Court of Appeals for the Tenth Circuit; this appeal is currently pending.
- Mississippi Racketeer Influenced and Corrupt Organizations Act ("RICO") Cases (Court: Circuit Court for the First Judicial District of Hinds County, Mississippi)<sup>50</sup>
  - In February of 2017, the Attorney General of Mississippi filed eleven civil lawsuits against private prison companies and "individual conspirators," alleging that these companies and individuals had defrauded the state by paying fees to individuals who then provided kickbacks to the Department of Corrections Commissioner in order to get contracts with the department. The lawsuits were filed against Management and Training Corporation, GEO Group, and Cornell Companies, among other private providers.
- *Human Rights Defense Center v. Management and Training Corporation* (Court: U.S. District Court for the Northern District of Ohio)

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<sup>49</sup> Civil Rights Litigation Clearinghouse, University of Michigan Law School, *Case Profile: Menocal v. The GEO Group, Inc.*, <https://www.clearinghouse.net/detail.php?id=14147> (last visited June 16, 2017).

<sup>50</sup> Office of the Attorney General, State of Mississippi, *AG Jim Hood Files RICO Action to Recoup State Funds and Penalties Against All Conspirators in MDOC Prison Bribery Scandal* (February 8, 2017), <http://www.ago.state.ms.us/releases/ag-jim-hood-files-civil-rico-action-to-recoup-state-funds-and-penalties-against-all-conspirators-in-mdoc-prison-bribery-scandal/>.

- In May of 2017, the Human Rights Defense Center filed a complaint on behalf of prisoners at the North Central Correctional Complex, alleging that the Management and Training Corporation violated prisoners' constitutional rights to free speech, due process, and equal protection by refusing to allow them access to books on criminal justice, law, health, and other topics.
- *Owino v. CoreCivic* (Court: U.S. District Court for the Southern District of California)<sup>51</sup>
  - In May 2017, former civil immigration detainees at the Otay Mesa Detention Center in California filed a class action lawsuit against CCA/CoreCivic alleging forced labor and unjust enrichment claims modelled on the *Menocal* case. The company has not yet responded.

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Again, thank you for the opportunity to provide this information to the Working Group.

Sincerely,



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

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<sup>51</sup> See Nick McCann, *Private Immigration Prison Accused of Forced Labor*, COURTHOUSE NEWS (June 6, 2017), <https://www.courthousenews.com/private-immigration-prison-accused-forced-labor/>.