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People Over Private Prisons New Mexico

Closing private prisons and not transitioning them to public facilities, but shuttering them entirely, is an important step in reducing New Mexico's incarcerated population, and an important piece in tackling New Mexico's and the US's problem of mass incarceration. Private detention and immigration detention are both symptoms of mass incarceration.

New Mexico is home to 11 prisons: 7 are currently publicly operated, and 4 are privately operated. Recently the state announced that two of those – Guadalupe County Correctional Facility and the Northwest New Mexico Correctional Center – will transition to public operation.

But in New Mexico there are federal populations held in private prisons. One of the private prison facilities, the Otero County Prison Facility, holds people in US Marshals Custody. New Mexico is also home to 3 other privately-run facilities that house federal populations for civil immigration purposes: Cibola County Correctional Center, in Milan; Torrance County Detention Facility, in Estancia – both owned and operated by CoreCivic; and the Otero County Processing Center, operated by Management & Training Corporation (MTC). Citing profit-based incentives to incarcerate and substandard conditions in privately operated criminal detention facilities, under Executive Order the Department of Justice is phasing out private contractors for the Bureau of Prison and the US Marshals.¹ Similarly, New Mexico has come to the conclusion that private contractors are more costly, not just financially but in terms of the human cost of their substandard facilities. If that is the case, then why would we allow these contractors to operate in civil detention settings when we are phasing them out in corrections settings?

Why ALL Private Prison Contracts Must be Eliminated

We can learn a lesson from the federal government. In 2016, when the then Obama Administration ended private contracts for Bureau of Prison facilities, the Cibola County Correctional Center in Milan closed, and reopened to hold people in US Marshals and ICE custody. A key reason for closing the facility was medical neglect that led to multiple fatalities. Not long after the facility reopened as an ICE detention center, another death due to medical negligence occurred. By allowing the contractor to transition to a different incarcerated population the problems were not solved. We are already seeing indications in other states that CoreCivic and GEO Group are looking to make new contracts with other government agencies

¹ Executive Order on Reforming our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities, January 26, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>

to fill facilities when DOJ contracts end. The DOJ's decision to phase out private contracts does not apply to the Department of Homeland Security. Rather than truly tackling mass incarceration, at the federal level, patchy approaches to ending contracts will result in a game of musical chairs as private contractors seek to find any population that they can incarcerate to maintain their profits.²

In New Mexico, such a scenario means that private prison beds will be used for immigration detention. As has already happened in New Mexico, privately operated facilities will become ICE detention facilities—and the problems will persist. In the three existing immigration detention facilities in New Mexico chronic and systemic human and civil rights abuses are well-established. Three years ago this committee devoted a session to Privately Operated Prisons in New Mexico with Contracts to House Individuals in Federal Immigration Custody. For over four hours, this committee heard directly from dozens of survivors of these facilities and community members whose loved ones were detained and abused in these facilities. The private prison companies who were invited to speak did not even bother to show up. At the close of that hearing, legislators and representatives from the Attorney General's office acknowledged that the problems with these contractors was pressing and that the state should consider litigation. Unfortunately, to our knowledge this never materialized. Instead, more people have since died, been assaulted or abused, and gone hungry in these facilities. If the New Mexico Department of Corrections views private prisons as dangerous, plagued by chronic understaffing leading to, in the words of Secretary Tafoya Lucero, a "terrifying situation",³ why would the state allow their continued operation with federal incarcerated populations, including New Mexico residents? The same chronic understaffing and terrifying situation exist at immigration detention facilities in our state.

Volatility and Economic Concerns Remain unless ALL Private Contracts Are Ended

In the past four years I have seen less concern among legislators for abuses and rights violations than for the economic issues of these detention centers. So let us turn to those now. The strongest opposition to phasing out private detention contracts in New Mexico comes from the counties that host immigration detention facilities – Cibola, Torrance, and Otero Counties. County commissioners authorize contracts that create a relationship of dependency on private for-profit prison companies. These counties have repeatedly been at the whim of the needs and bottom lines of private contractors. Torrance County Detention Facility closed in October of

² Breaking Down Biden's Order to Eliminate DOJ Private Prison Contracts, August 27, 2021.
<https://www.brennancenter.org/our-work/research-reports/breaking-down-bidens-order-eliminate-doj-private-prison-contracts>

³ As New Mexico regains control of some private prisons, questions remain, July 24, 2021.
https://www.santafenewmexican.com/news/local_news/as-new-mexico-regains-control-of-some-private-prisons-questions-remain/article_6f5094e4-e8af-11eb-8bb9-bf9fb8d84e68.html

2017 after CoreCivic gave the county two months to fill 300 empty beds. They reopened in 2019 to detain immigrants, and have a guaranteed minimum that ensures they are paid for a full facility even when the facility is half empty. In March of 2020 MTC gave Otero County 6 months' notice to close the Otero County Processing Center because federal immigration enforcement and the pandemic reduced the number of people detained at the facility, and it was no longer financially viable to maintain the contract. Since then MTC and the county engaged in a series of contract negotiations to appease their bond holders. In the most recent public filing on the Otero bonds dated October 1, the Trustee, U.S. Bank, focuses on the fluctuating and low occupancy rate at the facility and expresses uncertainty about the agreement with the federal government to ensure a guaranteed minimum. The sole concern at these facilities is to ensure they turn a profit, and in the case of Otero, that they make money to pay off tens of millions of dollars of debt that Otero County holds. Justifiably, New Mexico does not want to pay for empty beds. While empty ICE beds are not directly charged to the state, it is still an expense for which New Mexican federal income tax payers are footing the bill. These facilities are an infrastructure that is clearly not needed. The New Mexico Finance Authority recognizes revenue bond investments with these companies as volatile. The New Mexico Educational Retirement Board divested from private prisons investments, because these stocks are now rated as junk bonds, the companies can't pay their shareholders, and they are on the brink of failing. We argue that private prison companies fail at both incarceration and at serving as economic drivers for rural communities. Again, why are we permitting them to still operate here?

The Need for a More Complete View of Private Prisons in New Mexico

ICE and US Marshals facilities were largely forgotten in discussions of a private prison moratorium in the last legislative session. That must change, or these companies will continue to operate in New Mexico, and possibly expand their operations, remaining a liability to our counties and our residents. For example, the Torrance County Commissioners are defendants, along with CoreCivic, in litigation against them for pepper-spraying migrants held in civil detention at Torrance County Detention Facility.⁴

Currently the capacity for immigration detention in facilities in our state is more than 2000 individuals. That incarcerated populations includes New Mexicans, many long-term residents and in some cases individuals with New Mexico families – people to whom the legislature has a constitutional responsibility to protect. Right now they are being allowed to languish in

⁴ Immigrant Rights Organizations Sue CoreCivic and Torrance County for Chemical Attack on Asylum-Seekers Engaged in Peaceful Hunger Strike at Torrance County Detention Facility, May 13, 2021. <https://www.aclu-nm.org/en/press-releases/immigrant-rights-organizations-sue-corecivic-and-torrance-county-chemical-attack>

dangerous conditions so that these contractors can make money. Dangerous conditions should not be permitted anywhere, whether corrections or civil contexts.

Unlike the Biden Administration's order, New Mexico must prohibit all contracts with private detention entities so that they do not operate any kind of facility in our state. We must strike the authority that now exists in state law that permits these contractors to run and manage incarceration facilities in New Mexico.