



July 13, 2018

Re: July 16, 2018 Courts, Corrections and Justice Committee hearing regarding privately operated prisons in New Mexico with contracts to house federal immigration detainees

Dear Members of the Courts, Corrections and Justice Committee:

As the Trump administration builds up and deploys its violent deportation force, our New Mexico state government is uniquely positioned to protect the civil and human rights of immigrants in our state.

One of the most important steps that the legislature can take now is to ensure that immigrants and immigrant families are not detained or incarcerated in unconstitutional and dangerous conditions in New Mexico. Ultimately, we end all immigration detention in our state. Short of that, our state government must put a moratorium on all immigration detention expansion in New Mexico and inspect and monitor immigrant detention in private prisons in our state—a responsibility that Immigration and Customs Enforcement (ICE) has wholly neglected.¹

ACLU of New Mexico’s History of Detention Monitoring and Recent Litigation against Private Prisons that detain Immigrants

I write on behalf of the American Civil Liberties Union of New Mexico (ACLU-NM), a membership organization with more than 13,000 card-carrying members in our state. Since 1962, we have fought to defend and preserve the individual rights and liberties of the people of New Mexico guaranteed by our federal and state constitutions. With nearly two million members nationwide, our organization strives to advance the principles that every individual’s rights must be protected equally under the law, regardless of race, religion, gender, gender identity, sexual orientation, disability or national origin.

In the past few years, as the Department of Homeland Security has increasingly relied upon the private prison industry to detain immigrants and immigrant families, the national ACLU and ACLU-NM have been watching.

For years, the ACLU’s national office and state affiliates have documented deaths, suicides, sexual abuse, solitary confinement, and denial of medical care in ICE’s sprawling network of privately-run detention facilities.² The ACLU of New Mexico has written extensively on private

¹ U.S. Department of Homeland Security, Office of Inspector General, “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements” (June 26, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

² See, e.g., ACLU Reports on Immigration Detention, <https://www.aclu.org/other/aclu-reports-immigration-detention>; Human Rights Watch, the American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, “Code Red The Fatal Consequences of Dangerously Substandard Medical Care in

detention in the Otero County Processing Center, the Otero County Prison Facility, Cibola County Correctional Center, and the former family detention center in Artesia.³

Since 2003, nearly 200 people have died in ICE custody, including at least seven in 2018 alone—one of those tragic deaths occurring right here in our state less than two months ago. Many of these deaths were in privately run facilities. As the ACLU and other national organizations noted in the June 2018 report, *Code Red The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention*,

more people died in immigration detention in fiscal year 2017 than any year since 2009, and the most recent detailed information we have about immigration detention deaths shows that they are still linked to dangerously inadequate medical care.⁴

ACLU affiliates across the country regularly litigate against private prison companies that contract with ICE over sexual assault, inadequate medical care, limitations on access to counsel, and other human rights issues in detention facilities across the country. Despite this, privately run immigrant detention centers continue to be hotbeds for abuse and neglect.

Over the past several years the ACLU of New Mexico has witnessed firsthand the horrendous and punitive conditions in which immigrants are incarcerated in private prisons in our state, devoid of any oversight. These facilities include the Cibola County Correctional Center (“CCCC”), run by Core Civic (formerly the Corrections Corporation of America or “CCA”) and the Otero County Processing Center (“OCPC”), run by Management and Training Corporation (“MTC”). These facilities regularly fail to ensure that detainees’ most basic rights are met, thus necessitating regular intervention by the ACLU.

On numerous occasions we have advocated on behalf of detainees to secure access to medical care, legal representation and due process. In other instances we have been forced to file lawsuits based on egregious violations of detainees’ rights. Recently, we filed two separate petitions for habeas corpus on behalf of individuals detained at CCCC based on their prolonged detention in conditions that violate their constitutional rights. These include:

- A habeas petition on behalf of a political activist from the Democratic Republic of the Congo who was beaten, tortured, and imprisoned for his opposition to the current dictatorship there. After witnessing the murders of two of his compatriots in front of his

Immigration Detention” (June 20, 2018), <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>.

³ See, e.g., ACLU of New Mexico Regional Center for Border Rights, “Outsourcing Responsibility: The Human Cost of Privatized Immigration Detention in Otero County” (Jan. 2011), <https://www.aclu-nm.org/en/publications/outsourcing-responsibility-human-cost-privatized-immigration-detention-otero-county>; Micah McCoy, ACLU of New Mexico Communications Director, “The Shame of Family & Child Detention” (Winter 2014), <https://www.aclu-nm.org/sites/default/files/wysiwyg/winter2014torch.pdf>; Katie Hoepfner, ACLU of New Mexico Lead Writer, “Jail over Justice” (March 28, 2018), <https://www.aclu-nm.org/en/news/jail-over-justice>.

⁴ Human Rights Watch, the American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, *Code Red*, supra n.2.

eyes, the individual sought asylum in the United States. While in detention in Cibola, despite suffering from tuberculosis, the facility failed to provide him with adequate medical care, including necessary medications. At one point, he was placed in solitary confinement without explanation for two weeks--five days of which he was cruelly forced to lie on the cold concrete floor without clothes.⁵

- A habeas petition on behalf of an asylum seeker who was the victim of horrific violence in Guatemala on account of his Mayan descent, a historically brutalized and displaced indigenous group in that country. The individual suffers from a traumatic brain injury as a result of that violence and is suffering from severe pain, vertigo, loss of vision, persistent headaches, and cognitive difficulties. Despite these symptoms and a neurologist's recommendation that he receive care outside of the facility, Cibola has denied him that care for well over a year.⁶

In addition, staff of the ACLU have witnessed the prolonged denial of Hepatitis C treatment to a detainee which was only provided after the ACLU advocated on the individual's behalf. Further, just over a month ago, Roxsana Hernández, a 33-year-old transgender woman, died in CCCC custody.⁷ According to ICE, Ms. Hernández died as a result of dehydration, pneumonia, and other HIV-related complications. But with proper medical treatment, no one should die from these conditions. This week, the ACLU sent a demand letter to the U.S. Attorney's Office for the District of New Mexico, ICE, and CoreCivic on behalf of a transgender detainee who has been in solitary confinement in CCCC for more than 45 days and attempted to commit suicide.

The substandard conditions and treatment of detainees in CCCC are well-established. Both *The Nation* and *The Guardian* have investigated and documented the gross medical neglect that has occurred at that facility for years.⁸ In fact, after 16 years of operating as a federal prison, in 2016 the Bureau of Prisons abruptly ended Core Civic's (then CCA's) contract with the facility after *The Nation's* in-depth investigation shed light on the facility's longstanding pattern of medical neglect that led to the deaths of several inmates. However, soon after, the same facility reopened as an ICE detention center. Despite the change in populations housed there, the horrendous conditions and treatment persists.

Similarly, the substandard conditions of OCPC are also well-documented. In December 2017, the Office of the Inspector General ("OIG") of the Department of Homeland Security issued a scathing report that shed light on inhumane conditions at several ICE facilities across the

⁵ ACLU of New Mexico, "ACLU-NM Seeks Release of Congolese Asylum Seeker Held in Cibola," (June 22, 2018), <https://www.aclu-nm.org/en/press-releases/aclu-nm-seeks-release-congolese-asylum-seeker-held-cibola>.

⁶ ACLU of New Mexico, "ACLU-NM Petitions Court to Release Detainee for Critical Medical Treatment (December 7, 2017), <https://www.aclu-nm.org/en/press-releases/aclu-petitions-court-release-detainee-critical-medical-treatment>.

⁷ AP, "Transgender migrant dies in custody in N.M." (May 30, 2018), http://www.santafenewmexican.com/news/local_news/transgender-migrant-dies-in-custody-in-n-m/article_51af17db-3b42-5438-97cb-e5c512a4dec8.html.

⁸ *The Nation*: <https://www.thenation.com/article/ice-plans-to-reopen-the-very-same-private-prison-the-feds-just-closed/>; *The Guardian*: <https://www.theguardian.com/us-news/2016/nov/01/jose-jaramillo-private-immigration-prisons-medical-care>

country, OCPC being one of them.⁹ The report noted that OCPC misused solitary confinement, confined people in filthy conditions, and denied detainees access to telephones, inhibiting their ability to connect with legal counsel, family members and the government itself. Additionally, deplorable and dangerous conditions for pregnant woman have been documented at OCPC.¹⁰ One detainee reported that she experienced nausea, vomiting, weakness, headaches, abdominal pain and vomited blood, yet was denied adequate medical attention.¹¹

In the past month, the ACLU of New Mexico met with ten detained fathers at OCPC who were violently separated from their young children at the border. In trying to speak with their detained children, their families, and the children's case managers, the fathers face a nearly insurmountable hurdle: they must pay to make phone calls. OCPC's telecommunications contractor charges exorbitant rates for telephone calls and the fathers said that they had no money and could not dial toll-free numbers. The fathers wept as they spoke of their young children, worrying about how and where they are. One father sobbed as he said, "I need to speak with my daughter. I need to know how she is. But every time I ask the guards [at OCPC] to give me a call, they say, 'you've already had your call.'" When the ACLU of New Mexico met with him at the end of June, the father had been detained for 35 days and had spoken with his daughter only once.

Federal immigrant detainees are entitled to the protections of both our federal and state constitutions, yet these rights are habitually violated at both CCCC and OCPC. The horrific treatment of federal civil detainees in these facilities is a stain on our great state. New Mexico has a strong and proud tradition of being ahead of the curve in protecting the constitutional rights of the people within our state's borders, with no exceptions depending on an individual's national origin. We cannot rely on the federal government to adequately oversee conditions in immigrant detention centers. It is up to us as a state to step in where the federal government will not to protect the lives of migrants incarcerated in these facilities. To continue to allow them to operate unsupervised and with impunity is to acquiesce to grave violations of rights against a vulnerable population.

The ACLU of New Mexico urges the legislature to pass legislation that would abolish immigration detention in our state. Short of that, the ACLU of New Mexico urges the legislature to: (1) put a moratorium on immigration detention expansion in New Mexico; (2) empower the Attorney General or his or her designee to oversee immigration detention in our state, including conducting periodic, thorough, and unannounced reviews of detention facilities where immigrants, immigrant families, or unaccompanied immigration children are detained, and

⁹ Office of the Inspector General, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>

¹⁰ Buzz Feed News, *Pregnant Women Say They Miscarried In Immigration Detention And Didn't Get The Care They Needed* (July 9, 2018), https://www.buzzfeed.com/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump?utm_term=.htAN7BnbjO#.mpz19o80DX

¹¹ Complaint to the Department of Homeland Security by various advocacy organizations regarding treatment of pregnant detainees at immigrant detention centers, available at: https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_increasing_numbers_of_pregnant_women_facing_harm_in_detention.pdf

providing an annual report of those reviews to the legislature; and (3) appropriate adequate funding to enable the Attorney General or his or her designee to carry out this oversight.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maria Martinez Sanchez", with a stylized flourish extending to the right.

Maria Martinez Sanchez
Staff Attorney