

CC:

Dear President-Elect _____ ,

The National Prison Divestment Campaign is a coalition of over 150 community groups, student and faith-based organizations, labor unions and other civil society organizations that operate on the local, state, national and international levels. We represent nearly 50,000 individuals and have been at the forefront of grassroots organizing and advocacy efforts to defund private prison corporations since 2011. As you prepare to take office, we provide this roadmap to guide your administration's efforts to end for-profit prisons and immigrant detention, including for-profit services associated with the carceral system.

The [# of signatories] signatories of this memorandum have developed a set of recommendations that will lay the groundwork for ending the corporatization of the U.S. mass incarceration and immigration enforcement systems. Specifically, we ask you to:

1. Ensure that the Department of Justice follows through on its commitment to phase out all 12 Bureau of Prisons contracts with private prison companies over the next five years.
2. Phase out all Department of Homeland Security contracts with private prison companies for the operation of immigration detention facilities managed by Immigration and Customs Enforcement over the next five years.
3. Phase out all U.S. Marshals Service contracts with private prison corporations for the operation of prison and jail facilities over the next five years.
4. Terminate all federal contracts with private prison corporations over the next five years, including contracts to operate re-entry and mental health facilities, day reporting centers, and contracts to provide electronic monitoring services, as outlined in the below section, *Federal Private Corrections: By the Numbers*.
5. Terminate all federal contracts with for-profit companies providing services to individuals before, during and after federal incarceration or detention, including providers of food services, health services, commissary, phone, banking services, and transportation.
6. End policies that substantially benefit private prison corporations, and/or have been lobbied for by private prison corporations, including: mandatory detention of immigrants, the immigrant detention bed quota, Operation Streamline, family detention, mandatory minimum sentences, three-strikes laws, truth-in-sentencing laws, and Real Estate Investment Trust (REIT) status for private prisons.
7. Re-direct the more than \$1.7 billion in federal taxpayer money spent yearly on for-profit immigrant detention, incarceration, re-entry, and ankle monitoring into education, mental health, and community-based not-for-profit re-entry and drug addiction treatment services, employment programs, restorative justice programs, and public defenders.
8. Propose financial incentives to state and local governments that commit to reducing their reliance on prisons, jails, probation, and electronic monitoring by innovating diversion, rehabilitative and restorative justice programs in their jurisdictions.
9. Investigate and propose restitution for abuses in private prison facilities.
10. Investigate and propose restitution for policies promoted by private prisons, including: mandatory detention of immigrants, the immigrant detention bed quota, Operation Streamline, family detention, mandatory minimum sentences, three-strikes laws, truth-in-sentencing laws, and others.

We can all agree that our criminal justice and immigration systems are broken and in urgent need of repair. With 2.3 million people in prison, nearly 7 million people under correctional control, and 70 million people with criminal convictions, the United States has just 5% of the world's population, but 25% of its incarcerated population. Private prisons' share of the incarcerated population as of the end of 2014 was 19% on the federal level, and 6.8% on the state level.

Immigrant detention is also now higher than ever before in our history, with more than 38,000 migrants, many of whom seek asylum, in detention each day. Mothers and children are detained in egregious, prison-like conditions as they await their fate in the U.S immigration system. 73% of people in Immigration and Customs Enforcement (ICE) custody are housed within private for-profit detention facilities. Indeed, nine of the ten largest immigrant detention facilities are operated by private prison companies.

This is truly a human rights crisis of unprecedented scale, impacting millions of families.

Unbeknownst to many, the private prison industry has been an enabling force behind this crisis, profiting immensely along the way. In 2014, the two largest private prison companies in the United States, Corrections Corporation of America (CCA)¹ and GEO Group made a combined \$338 million in profits. In the same year, the companies spent at least \$5.9 million on lobbying and contributions to political campaigns. These companies' lobbying of elected and appointed officials have led to policies that increase the number of people in prison and detention, and set individual facility occupancy guarantees that incentivize increased incarceration and detention.

Numerous reports point to negligence on behalf of private prisons companies, which has resulted in human rights abuses of people in their care and prison staff being put at risk, at times resulting in death and disability. The commodification of people within the incarceration and detention systems creates a perverse monetary incentive that is in direct conflict with the public good. For-profit prison companies are beholden to stakeholders and constantly seek to increase profits. The fact that the for-profit company stands to gain more from locking a person up in detention, creates less willingness to utilize alternatives to detention.

We know that ending private corrections and detention will not fully solve the systemic problems of mass incarceration, criminalization of communities of color, and immigrant detention. However, by taking these corporations and their lobbying, campaign contributions, and profiteering out of the equation, we open more space to honestly assess our country's current need for prisons, and to address safety concerns in a way that prevents, rather than causes, harm to our communities.

In August of this year, the Department of Justice (DOJ) released a memorandum instructing a phase-out of 13 Bureau of Prisons (BOP) contracts with private prison corporations. During your campaign **you promised to end private prison contracts at the federal level and acknowledged the need to reduce the nation's reliance on mass incarceration**; a call that was echoed in the Democratic Party platform. This is a move we strongly support. But what does fulfilling this promise look like? How do we do it right? And who will it impact?

¹ In late October, CCA announced its future name change to CoreCivic. Casey Tolan, *The largest private prison company in America is changing its name—but can't escape a troubled record*, FUSION (Oct. 28, 2016), <http://fusion.net/story/364000/cca-corecivic-private-prison-rebranding/>

This memorandum lays out data on the use of private companies in the imprisonment of individuals in the federal criminal justice system, the immigration system, the U.S. Marshals Service, in alternatives to detention, and in post-prison services like re-entry centers. The memorandum then provides further detail supporting each recommendation listed in the introduction.

Now is the time to start to make a change. Your new administration is well-positioned to build on the DOJ's decision. We urge you to be on the right side of history, and follow through on your campaign promises and platform commitments by ending federal ties with private prisons in their entirety over the next five years.

Signed,

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Federal Private Corrections: By the Numbers

The two largest for-profit prison corporations in the United States, Corrections Corporation of America and GEO Group Inc., rely on the federal government as their largest customer: In 2015, 45% of GEO's and 51% of CCA's business was through contracts with the federal government.² In the same year, these two companies received \$3.6 billion in revenue, 48% from federal government contracts.³

Agency & Contract Type	Total Facilities	For-Profit Facilities	Total people under federal control, average daily population	People under for-profit control	Portion of people under for-profit control	Private contracts ending within next 5 years (by 2021)
Bureau of Prisons (BOP) Prisons	110 ⁱ	12 ⁱⁱ	177,489 ⁱⁱⁱ	21,879 ^{iv}	12%	unknown
Immigration & Customs Enforcement (ICE) Detention Centers	637 ^v	28 ^{vi}	37,573 ^{vii}	24,567 ^{viii}	73% ^{ix}	8
U.S. Marshals Service (USMS) Prisons and Jails	1,817 ^x	30 ^{xi}	59,542 ^{xii}	18,477 ^{xiii}	31%	7
BOP Residential Re-entry Centers ^{xiv}	229	70	9,007	2,916	32%	70
U.S. Courts Electronic Monitoring	-	-	6,500 ^{xv}	unknown	unknown	unknown
ICE ISAP Electronic Monitoring	-	-	53,000 ^{xvi}	53,000	100%	1 ^{xvii}

ⁱ Bureau of Prisons, List of Our Locations: Prisons, (accessed Oct. 31, 2016), <https://www.bop.gov/locations/list.jsp>

ⁱⁱ BOP, Contract Prisons, (accessed Oct. 31, 2016), https://www.bop.gov/about/facilities/contract_facilities.jsp

ⁱⁱⁱ As of Nov. 3, 2016. Bureau of Prisons, Statistics (accessed Nov. 3, 2016), http://www.bop.gov/about/statistics/population_statistics.jsp#pop_report_cont

^{iv} *Id.*

^v As of Sept. 2015. TRAC Reports, Inc., New Data on 637 Detention Facilities Used by ICE in FY 2015 (Apr. 12, 2016), <http://trac.syr.edu/immigration/reports/422/#f1>

^{vi} To the best of our knowledge, ICE does not make a list of private facilities they utilize publicly available. For this reason, we used operators' websites and 2015 annual reports to determine the number of private facilities.

Tabulating a total of 28 private facilities is based on the assumption that the annual reports and websites are up-to-date for CCA, GEO, Management & Training Corporation (MTC), Emerald Corrections, Community Education Centers (CEC), LaSalle Corrections, and Immigration Centers of America.

^{vii} As of June 2016. ICE, Weekly Departures and Detention Report, at 9 (June 20, 2016) ("ICE WRD Report"), <https://oversight.house.gov/wp-content/uploads/2016/07/ICE-Weekly-Departures-and-Detention-Report1.pdf>.

² Corrections Corp. of America, Annual Report (Form 10-K) for the fiscal year ended December 31, 2015, 62 (Feb. 25, 2016); GEO Group, Annual Report (Form 10-K) for the fiscal year ended December 31, 2015, 1 (Feb. 2016).

³ CCA, *CCA Reports Fourth Quarter and Full Year 2015 Financial Results*, NASDAQ GLOBE NEWSWIRE (Feb. 10, 2016), <https://globenewswire.com/news-release/2016/02/10/809594/0/en/CCA-Reports-Fourth-Quarter-and-Full-Year-2015-Financial-Results.html>; 1,739,800,000 was total federal revenue for both companies combined.

^{viii} As of August 2016, according to ICE Spokesperson, Jennifer Elzea. Steven Nelson, Private Prison Companies, Punched in the Gut, Will Keep Most Federal Business, U.S. NEWS & WORLD REPORT (Aug. 18, 2016), <http://www.usnews.com/news/articles/2016-08-18/private-prison-companies-punched-in-the-gut-will-keep-most-federal-business>.

^{ix} *Id.*

^x This figure includes facilities operated by private companies and state/local governments, and does not include USMS's utilization of Federal BOP facilities. U.S. Marshals Service, Facts and Figures 2016 (Apr. 29, 2016), <https://www.usmarshals.gov/duties/factsheets/facts.pdf>.

^{xi} To the best of our knowledge, the USMS does not make a list of private facilities they utilize publicly available. For this reason, we used operators' websites and 2015 annual reports to determine the number of private facilities. Tabulating a total of 30 private facilities is based on the assumption that the annual reports and websites are up-to-date.

^{xii} As of 2013. Numbers were acquired through a Freedom of Information Act (FOIA) request performed by the ACLU.

^{xiii} *Id.*

^{xiv} As of October 2016. RRC Contracts Data (BOP, About Our Facilities (accessed Oct. 27, 2016), https://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp) compared to non-profit designations for each entity in Federal Procurement Database System.

^{xv} Approximate, as of 2014. Trent Cornish, Jay Whetzel, Probation Administrators, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts, *Location Monitoring For Low-Risk Inmates--A Cost-Effective And Evidence-Based Reentry Strategy*, 78-JUN Fed. Probation 19 (June 2014).

^{xvi} As of 2016. Department of Homeland Security, Congressional Budget Justification, FY 2017—Volume II, U.S. Immigration and Customs Enforcement, Transportation Security Administration, U.S. Coast Guard, (Mar. 2016), 80, https://www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%202_1.pdf. GEO Care's President Ann Schlarb noted the number was approximately 60,000 on a shareholder call, *The GEO Group's (GEO) CEO George Zoley on Q3 2016 Results - Earnings Call Transcript* (Nov. 3, 2016), <http://seekingalpha.com/article/4019024-geo-groups-geo-ceo-george-zoley-q3-2016-results-earnings-call-transcript>.

^{xvii} All ISAP monitoring is under one ICE contract with BI Inc, a subsidiary of GEO Group.

1. Ensure that the Department of Justice follows through on its commitment to phase out all 12 Federal Bureau of Prisons contracts with private prison companies over the next five years.

On August 18, 2016, Deputy Attorney General Sally Yates directed the BOP to reduce, and ultimately end, its use of private prisons.⁴ Private prisons currently incarcerate 12% of the federal incarcerated population under contracts with the BOP. The BOP's private prison facilities are used to detain immigrants who have been convicted of a crime, including immigration crimes.

Closing private prisons should not lead to a shuffling of people held in private prisons into public prisons. Instead, DOJ should reduce the entire federal prison population by 12% permanently, as an intentional step towards decarceration and the decriminalization of communities across the country.⁵

By holding the DOJ to the decision to phase out private prison contracts, a significant driver of federal incarceration will be permanently removed.

2. Phase out all Department of Homeland Security contracts with private prison companies for the operation of immigration detention facilities managed by Immigration and Customs Enforcement over the next five years.

Private prisons incarcerate approximately 73% of immigrants detained by ICE.⁶ Shortly after the DOJ announcement, DHS Secretary Jeh Johnson tasked a subcommittee of the Homeland Security Advisory Council (HSAC) with evaluating whether ICE should follow DOJ's lead and eliminate use of private immigration detention. As the ACLU has noted, "this task cannot be competently undertaken without a comprehensive assessment of the immigration detention system as well as of the laws, policies, and practices that shape the current detention population. To be meaningful, the HSAC review must put all options on the table."⁷ In support of an end to for-profit immigrant detention, 344 civil society organizations and 250,000 individuals signed on to a September 2016 letter to DHS demanding they end private prison contracts.⁸

Eight private detention facilities under ICE contracts will reach their expiration date within the next five years. We propose allowing the contracts to end, and establishing a plan to refocus immigration enforcement efforts to support people, not profits.

⁴ Memorandum from Sally Yates, Deputy Attorney General, U.S. Department of Justice, regarding Reducing Our Use of Private Prisons (Aug. 18, 2016), <https://www.justice.gov/opa/file/886311/download>

⁵ This can be accomplished by ending the criminal prosecution of immigration crimes, see Section 6b below.

⁶ As of August 2016, according to ICE Spokesperson, Jennifer Elzea. Steven Nelson, *Private Prison Companies, Punched in the Gut, Will Keep Most Federal Business*, U.S. NEWS & WORLD REPORT (Aug. 18, 2016), <http://www.usnews.com/news/articles/2016-08-18/private-prison-companies-punched-in-the-gut-will-keep-most-federal-business>.

⁷ Carl Takei, Michael Tan, and Joanne Lin, American Civil Liberties Union, SHUTTING DOWN THE PROFITEERS: Why and How the Department of Homeland Security Should Stop Using Private Prisons, 3 (Sept. 2016), <https://www.aclu.org/report/shutting-down-profiteers-why-and-how-department-homeland-security-should-stop-using-private>.

⁸ Letter to Jeh Johnson, regarding End the U.S. Department of Homeland Security's Use of Private, For-Profit Immigration Detention Facilities (Sept. 14, 2016), <http://bds.org/wp-content/uploads/DHS-Private-Prisons-Sign-on-Letter-09142016.pdf>.

3. Phase out all U.S. Marshals Service contracts with private prison corporations for the operation of prison and jail facilities over the next five years.

Private prisons incarcerate approximately 31% of individuals detained by the USMS. The majority of these individuals are held pre-trial or are in transport to where they will serve their criminal sentence. The confinement of these individuals is a significant source of income for prison companies: CCA relied on USMS for 16% of its revenue in 2015, and GEO relied on USMS for 12% of its revenue.⁹

Seven private facilities under contract with USMS will reach their expiration date within the next five years. We propose allowing the contracts to end, and establishing a plan to end USMS' remaining contracts with private prisons.

The USMS relationship with private prisons illustrates a key point that we urge your administration to address: the revolving door relationship between the federal government and prison corporations is a barrier to criminal and immigration system reform. For example, President Obama appointed Stacia Hylton as USMS Director in 2010, after she had a \$127,000 consulting contract with GEO Group.¹⁰ Hylton resigned in 2015 amidst controversy over improper use of USMS resources.¹¹ In 2016, she joined the CCA Board of Directors.¹² As noted in a Justice Policy Institute report, "For private prison companies, their connections between the private and public spheres has provided access to the people with the most influence over policies that drive incarceration rates."¹³ We propose closing the revolving door between the private prison industry and federal government by cutting all ties with private prison companies.

4. Terminate all federal contracts with private prison corporations over the next five years, including contracts to operate re-entry and mental health facilities, day reporting centers, and contracts to provide electronic monitoring services, as outlined in the above section, *Federal Private Corrections: By the Numbers*.

Private prisons have expanded into other areas of corrections and detention, including re-entry facilities, surveillance, and mental health. This expansion has been dubbed the Treatment Industrial Complex.¹⁴ Reports have shown that the monetization of community-based services and alternatives to detention has meant both a dangerous reduction in quality of care, as well as the expansion of the systems of state control themselves.¹⁵

⁹ CCA Annual Report, *supra* note 2, at 10. GEO Annual Report, *supra* note 2, at 1.

¹⁰ Justice Policy Institute, GAMING THE SYSTEM: HOW THE POLITICAL STRATEGIES OF PRIVATE PRISON COMPANIES PROMOTE INEFFECTIVE INCARCERATION POLICIES (June 2011), 27, http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf.

¹¹ Maggie Ybarra, *U.S. Marshals director retires amid mismanagement probe*, WASHINGTON TIMES (June 9, 2015), <http://www.washingtontimes.com/news/2015/jun/9/stacia-hylton-us-marshals-director-retires-amid-mi/>

¹² CCA, *CCA Appoints Stacia A. Hylton to Its Board of Directors*, Press Release (Aug. 11, 2016), <https://globenewswire.com/news-release/2016/08/11/863723/0/en/CCA-Appoints-Stacia-A-Hylton-to-Its-Board-of-Directors.html>

¹³ Justice Policy Institute, *supra*, at 28.

¹⁴ Arjun Sethi and Cate Graziani, *Stop the treatment industrial complex*, POLITICO (Mar. 9, 2016), <http://www.politico.com/agenda/story/2016/03/stop-the-treatment-industrial-complex-000061>.

¹⁵ See, Caroline Isaacs, Arizona AFSC, Grassroots Leadership, and the Southern Center for Human Rights, TREATMENT INDUSTRIAL COMPLEX: HOW FOR-PROFIT PRISON CORPORATIONS ARE UNDERMINING EFFORTS TO TREAT AND REHABILITATE PRISONERS FOR CORPORATE GAIN (Nov. 2014), http://grassrootsleadership.org/sites/default/files/reports/TIC_report_online.pdf; Cate Graziani and Eshe Cole, Grassroots

We propose allowing ICE's exclusive contracts with BI Inc. and GEO Care for monitoring and supervision of immigrants to expire.¹⁶ One prison corporation, GEO Group, monitors 100% of immigrants under electronic supervision.¹⁷ Originally designed to ensure that people entangled in the immigration system show up for their court date, electronic monitoring has instead become another source of revenue for private prison corporations, subjecting people to intrusive and painful monitoring while taxpayers cover the cost. In 2011, GEO Group bought BI Inc., the sole provider of ankle monitoring contracts to DHS, for an all cash transaction of \$415 million, with the expectation that the electronic monitoring company would increase its annual revenues by \$115 million.¹⁸ In 2014, ICE renewed its contract with BI Inc., the wholly owned subsidiary of GEO Group, to continue to provide the Intensive Supervision Program (ISAP) for five more years.¹⁹ The abuse and misuse of this program has been widely documented.²⁰ We propose allowing ICE's contracts with BI Inc. for the ISAP program to expire in 2019.

In 2015, the federal government issued a request for proposals (RFP) to fund a case worker program in five cities to support women and children coming out of residential facilities. While many non-profit, community based organizations that were already committed to overseeing the work applied, ICE awarded the \$11 million-per-year contract to GEO Care LLC, a direct subsidiary of GEO Group.²¹ Advocates noted that "Job descriptions of GEO Family Case Managers and Sr. Case Managers confirm ICE's intent. It is clear that first and foremost, 'case managers' are community detention officers, whose primary role is to monitor the lives of released migrants."²² We propose allowing ICE's contract with GEO Care to expire for case management and supervision of immigrants, and that ICE rely exclusively on non-profit, community based organizations for case management and supervision of immigrants.

Leadership, INCORRECT CARE: A PRISON PROFITEER TURNS CARE INTO CONFINEMENT (Feb. 2016), http://grassrootsleadership.org/sites/default/files/reports/incorrect_care_grassrootsleadership_2016.pdf.

¹⁶ Please refer to the ACLU white paper, *supra* at 18, for recommendations on immediately reducing use of electronic monitoring for the coercive supervision of immigrants.

¹⁷ 2016. Department of Homeland Security, Congressional Budget Justification, FY 2017—Volume II, U.S. Immigration and Customs Enforcement, Transportation Security Administration, U.S. Coast Guard, (Mar. 2016), 80, https://www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%20_1.pdf.

¹⁸ GEO Group, *The GEO Group Closes \$415 Million Acquisition of B.I. Incorporated* (Feb. 11, 2011), <http://www.businesswire.com/news/home/20110211005372/en/GEO-Group-Closes-415-Million-Acquisition-B.I.>

¹⁹ GEO Group, *The GEO Group Awarded Contract By U.S. Immigration And Customs Enforcement for the Continued Provision of Services under Intensive Supervision and Appearance Program* (Sept. 10, 2014), <http://www.businesswire.com/news/home/20140910005643/en/GEO-Group-Awarded-Contract-U.S.-Immigration-Customs>

²⁰ See Rutgers School of Law-Newark Immigrant Rights Clinic and American Friends Service Committee, FREED BUT NOT FREE: A REPORT EXAMINING THE CURRENT USE OF ALTERNATIVES TO IMMIGRATION DETENTION (July 2012), <https://www.afsc.org/sites/afsc.civicactions.net/files/documents/Freed-but-not-Free.pdf>;

Kyle Barron and Cinthya Santos Briones, *No Alternative: Ankle Monitors Expand the Reach of Immigration Detention*, NORTH AMERICAN CONGRESS ON LATIN AMERICA (Jan. 6, 2015), <http://nacla.org/news/2015/01/06/no-alternative-ankle-monitors-expand-reach-immigration-detention>; Seth Robbins, *Lawyers: immigrant mothers coerced to wear ankle monitors*, ASSOCIATED PRESS (Jul. 27, 2015), <http://www.bigstory.ap.org/article/bfe798e1336a42459592c2eb55f8a9c2/lawyers-immigrant-mothers-coerced-wear-ankle-monitors>.

²¹ Jason Buch, *ICE announces caseworker program for immigrant families: But deal with prison company draws concern*, SAN ANTONIO EXPRESS-NEWS (Sept. 17, 2015), <http://www.expressnews.com/news/local/article/ICE-announces-caseworker-program-for-immigrant-6512150.php>.

²² Cate Graziani, *ICE's alternatives to detention still benefit for-profit prison companies like GEO* (Dec. 11, 2015), <http://www.texasprisonbidness.org/2015/12/ice%E2%80%99s-alternatives-detention-still-benefit-profit-prison-companies-geo>

Private prisons and for-profit companies detain or house approximately 32% of people in BOP re-entry facilities.²³ We propose that the BOP allow its contracts with all 70 for-profit facilities for re-entry to expire in the next five years, and that BOP rely exclusively on non-profit, community based re-entry facilities.²⁴

Information on the number of individuals under electronic surveillance in the federal criminal system is not readily available, though our communities have experienced an increase in their use in the past several years.²⁵ We propose transparency in this system regarding the number of individuals under surveillance and the contracts for service and technology, and the termination of any existing for-profit contracts for privatized monitoring, probation and parole.

5. Terminate all federal contracts with for-profit companies providing services to individuals before, during and after federal incarceration or detention, including providers of food services, health services, commissary, phone, banking services, and transportation.

Private, for-profit corporations are now involved in—and profiting from—nearly every aspect of incarceration and detention.²⁶ The privatization of these services is relatively new, and has proven to be a failed experiment that jeopardizes the physical, mental, financial health and well-being of inmates and their families. This failed experiment also comes at tax payers’ expense. At every level in the criminal and immigration systems, outsourcing to for-profit companies creates a financial incentive for businesses to extract profit, while stripping incentives to care for the people stuck in the system.

The abusive practices of these corporations to extract money from people who are incarcerated or detained and their families, on top of their contracts with the government, are well documented.²⁷ For example, outsourcing transportation of people in immigration detention to

²³ RRC Contracts Data (BOP, About Our Facilities (accessed Oct. 27, 2016), https://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp) compared to non-profit designations for each entity in Federal Procurement Database System.

²⁴ According to BOP data, *supra* note 22, all 70 will expire by 2021.

²⁵ Nationally, the use of electronic monitoring is sharply on the rise with “more than 125,000 people tracked with the devices on a single day in 2015, up nearly 140 percent from the 53,000 reported on the same day in 2005.” Pew Charitable Trusts, *USE OF ELECTRONIC OFFENDER-TRACKING DEVICES EXPANDS SHARPLY* (Sept. 7, 2016), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/09/use-of-electronic-offender-tracking-devices-expands-sharply>

²⁶ For an overview of ways the system has been privatized, see chart at <https://www.inthepublicinterest.org/private-companies-profit-from-almost-every/>. For list and profiles of companies profiteering from prisons, visit <http://investigate.afsc.org/screens/prisons>.

²⁷ On phone price gauging of inmates and detainees, *see, for example*, Human Rights Defense Center, *Prison Phone Justice* (accessed Oct. 20, 2016), <https://www.prisonphonejustice.org/>. On banking abuses of inmates and detainees, *see, for example*, Erik Larson, *JPMorgan Pays Inmates for Fees on Get-Out-of-Jail Debit Card*, BLOOMBERG (Aug. 2, 2016), <http://www.bloomberg.com/news/articles/2016-08-02/jpmorgan-pays-prison-inmates-who-couldn-t-get-out-of-jail-free>. On abuse in prisoner transport, *see, for example*, Eli Hager and Alysia Santo, *Inside the Deadly World of Private Prisoner Transport*, THE MARSHALL PROJECT (Jul. 8, 2016), <https://www.themarshallproject.org/2016/07/06/inside-the-deadly-world-of-private-prisoner-transport#.JH95SQ5gx>. On abuse and cost-cutting of food service putting inmates’ and detainees’ health at risk, *see, for example*, Tom Perkins, *Something still stinks in Michigan and Ohio’s prison kitchens*, DETROIT METRO TIMES (Feb. 17, 2016) <http://www.metrotimes.com/detroit/something-still-stinks-in-michigan-and-ohios-prison-kitchens/Content?oid=2396672>. On health provider neglect and abuse of detainees and inmates, *see, for example*, Will Tucker, Southern Poverty Law Center, *Profits vs. Prisoners: How the largest U.S. prison health care provider puts lives in danger* (Oct. 27, 2016), <https://www.splcenter.org/20161027/profits-vs-prisoners-how-largest-us-prison-health-care-provider-puts-lives-danger>.

for-profit corporations has resulted in numerous transfers that disrupt the cases of individuals detained, and their access to their legal counsel and their families. Corporations like GEO and TransCor (a subsidiary of CCA) make millions off of providing transportation services, often moving individuals just to meet local quotas.

We propose allowing all private service contracts to end.

6. End policies that substantially benefit private prison corporations, and/or have been lobbied for by private prison corporations, including: mandatory detention of immigrants, the immigrant detention bed quota, Operation Streamline, family detention, mandatory minimum sentences, three-strikes laws, truth-in-sentencing laws, and Real Estate Investment Trust (REIT) status for private prisons.

The political influence and lobbying power of for-profit corporations has long been a roadblock to meaningful efforts to reduce mass incarceration and immigrant detention.²⁸ GEO and CCA have both lobbied and given political contributions for the expansion of policies like the mandatory detention of immigrants and the detention bed quota that would support the use of their facilities, and in turn, create greater profit.

Between 2013 to 2015, GEO spent approximately \$1.9 million dollars on campaign contributions and lobbying the federal government.²⁹ From 2013 to 2015, CCA spent approximately \$3.4 million on campaign contributions and lobbying the federal government.³⁰ Both corporations employ a revolving door strategy, hiring lobbyists that have previously worked for the federal government: in just 2013-2014, 11 out of GEO's 14 federal lobbyists and 30 out of CCA's 39 federal lobbyists were former government staffers.³¹

6a. End Policies that over criminalize: Sentencing Enhancements

We propose ending sentencing enhancements that CCA and GEO have lobbied for at the state level, and which are mirrored at the federal level. As participants in the Public Safety and Elections Task Force of the American Legislative Exchange Council (ALEC), CCA and GEO advanced laws that increased the time served for drug convictions and other crimes: mandatory minimum sentencing, three strikes laws, and truth in sentencing laws.³² These sentencing laws have been disproportionately applied to people of color. While CCA and GEO have been pushed out of ALEC and the Task Force has been disbanded, the two decades reign of mandatory

²⁸ See, In the Public Interest (ITPI), BUYING INFLUENCE: HOW PRIVATE PRISON COMPANIES EXPAND THEIR CONTROL OF AMERICA'S CRIMINAL JUSTICE SYSTEM (Oct. 12, 2016), http://www.inthepublicinterest.org/wp-content/uploads/ITPI_BuyingInfluence_Oct2016.pdf; ITPI, BUYING ACCESS: HOW CORPORATIONS INFLUENCE DECISION MAKERS AT CORRECTIONS CONFERENCES, TRAININGS, AND MEETINGS (Aug. 6, 2016), <http://www.inthepublicinterest.org/buying-access-how-corporations-influence-decision-makers-at-corrections-conferences-trainings-and-meetings/>; 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; Andrea Jones, *The For-Profit Immigration Imprisonment Racket*, ROLLING STONE (Feb. 22, 2013), <http://www.rollingstone.com/politics/news/the-for-profit-immigration-imprisonment-racket-20130222>.

²⁹ ITPI, BUYING INFLUENCE, *supra* note 28, at 9; Center for Responsive Politics data on campaign contributions.

³⁰ *Id.*

³¹ *Id.*

³² Task Force Linked to Harsh Sentencing Laws and Private Prison Firms Disbands Following Public Scrutiny, Boycott, PRISON LEGAL NEWS (Jan. 2014), <https://www.prisonlegalnews.org/news/2014/jan/15/task-force-linked-to-harsh-sentencing-laws-and-private-prison-firms-disbands-following-public-scrutiny-boycott/>

sentencing is largely responsible for creating the current crisis where 160,000 people—or one out of every nine prisoners—are serving life sentences.³³ African Americans make up 12.6% and 33% of the population, respectively.³⁴ Yet, 37% of three strikes prosecutions are of African Americans and 33% are of Latinos.³⁵ These policies mean that there are now more Black people under correctional control—in prison or jail, on probation or parole—than were enslaved in 1850.³⁶

6b. End Crimmigration Polices: Prosecutions for Illegal Entry and Re-entry

We propose ending the federal prosecution of immigrants for the crimes of illegal entry and illegal re-entry by directing the Attorney General to de-prioritize and ultimately end improper entry and re-entry prosecutions. The criminalization of immigration is new, but it has had devastating impacts on hundreds of thousands of peoples' lives. Before 1994, just over 5% of federal prosecutions were related to immigration,³⁷ now, immigration prosecutions are one of the top two prosecuted offenses, with illegal re-entry garnering a possible 20-year prison sentence.³⁸ Grassroots Leadership and Justice Strategies found that since 2005, “nearly three quarters of a million people, have been prosecuted in our federal courts for the crime of improper migration: 412,240 for improper entry and 317,916 for re-entry.”³⁹ Overzealous criminal prosecution has led to profits for private prisons, and criminal bars to legal immigration for immigrants.

6c. End Arbitrary Immigration Policies: Detention Bed Quota

We propose ending the detention bed quota. There is no requirement that an immigrant be detained while their immigration case is pending. However, detention has become the practice since the adoption of the detention bed quota in 2009.⁴⁰ The detention bed quota directs DHS to detain 34,000 individuals in immigrant detention each night. This directive has led to the detention of U.S. citizens, and the denial of due process and access to counsel for immigrants—such as asylum seekers—who are not required by statute to be detained.⁴¹

6d. End Punitive Immigration Policies: Family Detention and Mandatory Detention

We propose ending the detention of families immediately, and ending mandatory detention. Before 1996, the only non-citizens detained were those considered by the government to be a

³³ Ashley Nellis and Jean Chung, The Sentencing Project, LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA (2015), 6, <http://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf>.

³⁴ U.S. Census Bureau, QuickFacts (Apr. 2010), <https://www.census.gov/quickfacts/table/PST045215/00>.

³⁵ Erwin Chemerinsky, John Jay College of Criminal Justice's Center on Media, Crime and Justice Symposium (2011).

³⁶ Opal Tometi and Terence Courtney, Black Alliance for Just Immigration, *The State of Our Communities: Understanding Mass Incarceration and Migrant Detention* (July 2014), http://www.racialequitytools.org/resourcefiles/BAJI_framingpaper.pdf.

³⁷ Admin. Office of the U.S. Courts, Judicial Bus. 1997 Annual Report 188 tbl.D-2, 198.

³⁸ Judith A. Greene, Bethany Carson, Andrea Black, INDEFENSIBLE: A DECADE OF MASS INCARCERATION OF MIGRANTS PROSECUTED FOR CROSSING THE BORDER (July 2016), 2, 36, http://grassrootsleadership.org/sites/default/files/reports/indefensible_book_web.pdf.

³⁹ *Id.* at 2.

⁴⁰ Bethany Carson and Eleana Diaz, PAYOFF: HOW CONGRESS ENSURES PRIVATE PRISON PROFIT WITH AN IMMIGRANT DETENTION QUOTA (April 2015), <http://grassrootsleadership.org/reports/payoff-how-congress-ensures-private-prison-profit-immigrant-detention-quota>.

⁴¹ *Written Statement of the ACLU: Hearing on the Release of Criminal Detainees by U.S. Immigration and Customs Enforcement: Policy or Politics?, Before the H. Comm. on the Judiciary*, 5-6 (Mar. 19, 2013), https://www.aclu.org/files/assets/aclu_statement_for_3_19_house_judiciary_committee_hearing_on_immigration_enforcement_final_3_18_13.pdf; National Immigrant Justice Center, Eliminate the Detention Bed Quota, <http://www.immigrantjustice.org/eliminate-detention-bed-quota> (last visited Sept. 22, 2016).

flight risk or a security threat. There were fewer than 10,000 beds reserved for detained immigrants in facilities around the country. Mandatory detention was expanded in 1996 and strengthened by the Patriot Act after Sept. 11, 2001. It requires that categories of non-U.S. citizens be imprisoned without evaluating the threat they may pose, often without giving them a bond hearing. We propose that you direct ICE to narrowly construe the mandatory detention statute.⁴² The Obama administration's policy of detaining families fleeing violence and seeking asylum must be ended immediately. We join a chorus of voices in proposing that you close all three family detention centers, and release asylum-seeking families to sponsors in the community.⁴³

6e. End Prison Tax Breaks: Close the REIT Loophole for Private Prisons

We propose directing the Internal Revenue Service to revoke Real Estate Investment Trust status from private prisons, and supporting legislative efforts to end tax breaks for prison companies. In 2013, GEO Group and Corrections Corp of America, received REIT status, exempting them from the 35% corporate income tax. In 2015 alone, CCA and GEO avoided paying over \$113 million in taxes.⁴⁴ These companies' income is from incarcerating people, not from real estate, yet their and their investors' assured profits have skyrocketed since qualifying as REITs. CCA and GEO have spent millions lobbying Congress and making campaign contributions to protect their profits, including maintaining this tax loophole.

In July 2016, Senator Ron Wyden introduced the Ending Tax Breaks for Private Prisons Act.⁴⁵ In 2015, Senator Bernie Sanders identified closing the REIT loophole for private prisons and other corporations as one of six actions the Obama Administration could take to raise over \$100 billion in tax revenue over a decade.⁴⁶ Your Administration can direct the IRS to reclassify prison corporations as ineligible for REIT status.

7. Re-direct the more than \$1.7 billion in federal taxpayer money spent yearly on for-profit immigrant detention, incarceration, re-entry, and ankle monitoring into education, mental health and community-based not-for-profit re-entry and drug addiction treatment services, employment programs, restorative justice programs, and public defenders.

Public sentiment is increasingly weighed against carceral models of retribution in favor of forms of redress that provide for safety and sustainability for individuals and society. The caging and surveilling of people of color, immigrants and the poor can be reduced by community-based programs that have been shown to reduce crime and increase public safety long term. These alternatives to prisons and jails include mental health and harm reduction services, vocational training, apprenticeships, youth employment, and restorative justice programs. We propose the

⁴² See, ACLU Whitepaper at 25.

⁴³ See, Letter of 178 House Democrats to Jeh Johnson, Regarding Support to End Family Detention (July 31, 2015), https://lofgren.house.gov/uploadedfiles/dhs_family_detention_letter_7.31.15.pdf; National Immigrant Justice Center, Advocacy Letters, <http://www.immigrantjustice.org/stop-detaining-families#Advocacy%20Letters>

⁴⁴ CCA Annual Report, *supra* note 2. GEO Annual Report, *supra* note 2.

⁴⁵ S.3247, 114th Cong. (2016); Enlace, Ending Tax Breaks for Private Prisons Act (July 2016), http://media.wix.com/ugd/3e7183_2144f8a451b74a99a7fa3c1864e69fae.pdf

⁴⁶ Sanders Asks Obama to Close Six Egregious Corporate Tax Loopholes (Mar. 3, 2015), <http://www.sanders.senate.gov/newsroom/press-releases/sanders-asks-obama-to-close-six-egregious-corporate-tax-loopholes>

redirecting of federal funds spent on cages and surveillance into these alternatives, as well as public defenders for all individuals in criminal and immigration proceedings.

8. Propose financial incentives to state and local governments that commit to reducing their reliance on prisons, jails, probation, and electronic monitoring by innovating diversion, rehabilitative and restorative justice programs in their jurisdictions.

The legacy of the 1994 Crime Bill—which authorized \$12.5 billion (\$19 billion in today’s dollars) to states to increase incarceration and led at least 20 states to dramatically increase their prison populations—as well as other federal policies and programs that criminalize communities across the country and militarize police need to be righted. We recommend that you propose incentives to state and local governments that reduce incarceration rates by promulgating fewer prison sentences and innovating rehabilitative and restorative programs.⁴⁷

9. Investigate and propose restitution for abuses in private prison facilities.

The physical, emotional and monetary injury caused by private prisons to individuals held in their facilities, transport vehicles, and electronic monitoring programs—and to their families—requires investigation and remedy. In addition to closure of private prisons and cancellation of contracts with private prisons, thorough and meaningful remedies are necessary for all those who have been harmed by the practices of private prison companies through the federal government’s devastating thirty year experiment using private prisons. We propose that your Administration begin the process of making whole the individuals who have been harmed by private prisons by investigating the following:

- **Stolen wages.** Private prisons’ practice of paying immigrant detainees to run significant portions of their facilities while paying only a candy bar or \$1 a day made national headlines in 2014.⁴⁸ The DOJ should thoroughly investigate the ways that private prisons have failed to compensate the labor of inmates and detainees within their facilities, with the intent to compensate those individuals for any stolen wages. Where those inmates or detainees died in custody, the compensation should be made to their families.
- **Extended length of incarceration.** The DOJ should investigate the extension of terms of incarceration by people held in privately run immigrant detention and prison facilities. Studies demonstrate that the average person held in a private prison has their stay extended by two to three months.⁴⁹ The DOJ should establish penalties for private prisons for the lost income and emotional duress caused by the extension of time away from their families, communities and jobs.

⁴⁷ For a discussion of possible approaches, see Marbre Stuhly-Butts and Daryl Atkinson, *A Reallocation of Funds at the Federal, State and Local Level From Policing and Incarceration (JAG, COPS, VOCA) to Long Term Community Based Safety Strategies Such As Education, Local Restorative Justice Services, and Employment Programs*, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK POWER, FREEDOM & JUSTICE (2016), <https://policy.m4bl.org/wp-content/uploads/2016/07/Reallocation-of-Federal-Funds-Policy-Brief.pdf>; Lauren-Brooke Eisen and Inimai Chettiar, Brennan Center for Justice, *THE REVERSE MASS INCARCERATION ACT* (2015),

https://www.brennancenter.org/sites/default/files/publications/The_Reverse_Mass_Incarceration_Act%20.pdf

⁴⁸ Max Blumenthal, *Why Immigrant Detainees Are Turning to Civil Disobedience*, THE NATION (May 23, 2014), <https://www.thenation.com/article/why-immigrant-detainees-are-turning-civil-disobedience/>

⁴⁹ Anita Mukherjee, *Do Private Prisons Distort Justice? Evidence on Time Served and Recidivism*, (Mar. 15, 2015), <http://harris.uchicago.edu/sites/default/files/NLSY97/Paper%20sent%20091715.pdf>.

- **Abuse and wrongful death.** The DOJ should investigate all instances of abuse and death within private prison facilities over the last 30 years. The DOJ should seek to recover damages from private prisons, and create a fund accessible to victims and their families.
- **Case review for immigrants who were victims of sexual abuse or assault or other qualifying criminal activity while detained in for-profit facilities.** The U.S. Immigration Customs Enforcement and Citizenship and Immigration Services should review whether immigrants who were victimized during their detainment in for-profit facilities are eligible for U Visas as a result of their mistreatment during detention.

10. Investigate and provide restitution for policies promoted by private prisons, including: mandatory detention of immigrants, the immigrant detention bed quota, Operation Streamline, family detention, mandatory minimum sentences, three-strikes laws, truth-in-sentencing laws, and others.

The policies promoted by private prison companies, as detailed in Section 6 above, should be holistically investigated with the aim to redress their resulting harms. We propose that your Administration begin the process of investing policies promoted by private prisons with the intent to provide restitution for and make whole the individuals and communities who have been harmed by private prisons.

We, in alignment with the Movement for Black Lives, propose that your Administration begin the process of making whole the individuals and communities who have been harmed by private prisons by requesting funding for reparations for the wealth extracted from Black and immigrant communities through policies promoted by private prisons “in the form of corporate and government reparations focused on healing ongoing physical and mental trauma, and ensuring our access and control of food sources, housing and land.”⁵⁰

In closing, Profit has no place in our Criminal and Immigration systems. Ending corporate corrections is one piece of the puzzle to ending our reliance on incarceration and detention, and the criminalization of communities across the country. Ending corporate corrections is a step towards freeing up resources to reinvest in community-based services that are proven to keep our communities safe.

⁵⁰ Movement for Black Lives, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK POWER, FREEDOM & JUSTICE (2016), <https://policy.m4bl.org/reparations/>.