The Case Against Private Detention Facilities in New Mexico

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The Role of Private Prison Companies in New Mexico

In the 1990s New Mexico witnessed one of the nation's biggest surges in the use of private prisons, a national trend for which New Mexico was an epicenter. Privatization was intended to address overcrowding and poor conditions, and accelerated when the State of New Mexico began to view private prisons as a development tool in rural areas. In New Mexico, the shift to private prisons came on the heels of the state’s worst prison riot,\(^1\) and one of the worst in the nation. Evidence of corruption in the state prison system,\(^2\) promises of reform, and cost cutting fed the private prison building boom.\(^3\) Additionally, the new facilities were built under the untested pretext that rural prison hosting would drive economic growth and create jobs.

The early promises of improved conditions,\(^4\) cost savings, and economic development for New Mexico, however, were not realized by privatization. Department of Justice and Government Accounting Office reports show that private prisons provide almost no cost savings and what meager “savings” are achieved is accomplished by reduced staffing and lower wages,\(^5\) both problems that have plagued New Mexico. That kind of “savings” means dangerous conditions due to understaffing and fewer and lower paying jobs for New Mexicans. Private contractors also have only tenuous commitments to local communities. When profits are low, private prison companies often seek to maneuver out of contracts, or modify them to seek greater incentives to ensure their gains, all at the expense of local economies.

By 2007, New Mexico had the highest rate of private prison use in the country. At that time the Legislative Finance Council already found there were no savings for using private prisons. New Mexicans were paying more, not less. Since 2012, some states experienced a drop in their private prison populations. In the last twenty years, New Mexico experienced a 72% increase in its private prison population, the highest percentage of any state. By 2019, half of New Mexico’s inmates were held in privately-run facilities.\(^6\) Now it is closer to 60%. The profit motive driving this trend in New Mexico is clear in light of the fact that nationally, both state and federal prison populations are decreasing over the last few years.\(^7\)

The pandemic has severely curtailed civil immigration detention. Three New Mexico facilities house those held in Immigration and Customs Enforcement (ICE) custody. In fact, the Cibola County Correctional Center and the Torrance County Detention Facility both

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3. Logan, Private Prisons.
closed as prison facilities, only to reopen as private ICE detention centers. As peak incarceration began to wane after 2009, private prison corporations sought to tap into a new market of detaining migrants. Yet the vast expansion of immigrant detention to fill beds peaked a year ago with just more than 55,000 people being held daily in the U.S. immigration detention system. At just under 20,000 in ICE custody today, that population is now the lowest it has been since the second Bush administration, and it continues to decline.

Between 2000 and 2016, Arkansas, Kentucky, Maine, Michigan, Nevada, North Dakota, Utah and Wisconsin banned private prisons. California and Illinois have done so more recently. Yet New Mexico remains the state most reliant on private prisons. And New Mexicans are still paying more for private facilities, while private prison contractors avoid paying federal and state taxes.

In addition to the financial costs, the human cost of the state’s privatized carceral system has been death, egregious abuses of human and civil rights, and now, a major public health threat from a network of poorly managed facilities that are petri dishes for disease cultivation and spread.

According to the New Mexico Corrections Department, the state has 15 prisons and detention centers representing 12,021 incarceration beds. Of those, 7 are run by private prison corporations (see Table 1), representing 7,247 incarceration beds constituting 60% of the total. Three private prison contractors operate in New Mexico: CoreCivic, GEO Group, and Management and Training Corporation (MTC). In New Mexico, CoreCivic operates 40% of private prison beds, MTC operates 35%, and Geo Group operates the remainder. CoreCivic has the largest number of confirmed cases of COVID-19 nationwide, followed by GEO Group and MTC.

Table 1 Privately-run prisons and detention centers in New Mexico.

<table>
<thead>
<tr>
<th>Name</th>
<th>City</th>
<th>County</th>
<th>Population</th>
<th>Operator</th>
<th>Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cibola County Correctional Center</td>
<td>Milan</td>
<td>Cibola</td>
<td>Federal/State</td>
<td>CoreCivic</td>
<td>1129</td>
</tr>
<tr>
<td>Guadalupe County Correctional Facility</td>
<td>Santa Rosa</td>
<td>Guadalupe</td>
<td>State</td>
<td>GEO Group</td>
<td>610</td>
</tr>
<tr>
<td>Lea County Correctional Facility</td>
<td>Hobbs</td>
<td>Lea</td>
<td>State</td>
<td>GEO Group</td>
<td>1266</td>
</tr>
<tr>
<td>Northwest New Mexico Correctional Center</td>
<td>Grants</td>
<td>Cibola</td>
<td>State</td>
<td>CoreCivic</td>
<td>823</td>
</tr>
<tr>
<td>Otero County Prison Facility</td>
<td>Chaparral</td>
<td>Otero</td>
<td>Federal/State</td>
<td>MTC</td>
<td>1420</td>
</tr>
<tr>
<td>Otero County Processing Center</td>
<td>Chaparral</td>
<td>Otero</td>
<td>Federal</td>
<td>MTC</td>
<td>1089</td>
</tr>
<tr>
<td>Torrance County Detention Facility</td>
<td>Estancia</td>
<td>Torrance</td>
<td>Federal/State</td>
<td>CoreCivic</td>
<td>910</td>
</tr>
</tbody>
</table>

11 Craig, “NM Rural Prison Hosting.”
While nationally the number of people being incarcerated is declining, private prison corporations continue to treat New Mexico as a bastion for their business model of incarcerating people for profit. Despite a long sordid history of serious and chronic problems in privately-run facilities, exacerbated by a global pandemic, private prison corporations continue to advance their profiteering while failing to fix abundantly documented problems.

The purported benefits to state and local economies have not materialized, while the difficulties in holding private prison corporations accountable to local interests and needs have only grown. Because of all of these reasons, it is time to end the experiment of privately-run prisons, jails and detention facilities in New Mexico.
High Costs: Private Prisons are Expensive

Cost-savings was a major reason cited for seeking to build privative prisons in New Mexico. But private prisons have a long history of charging New Mexico with higher per diem rates. The Legislative Finance Committee found that between 2001-2007 state spending on private prison contracts increased 57%, “largely due to contract price increases,” and that private prison companies were charging New Mexico higher rates than other states, including adjacent Texas.\(^{13}\)

In 2008, the Legislative Finance Committee stated that “private prisons cost more than they should due to poorly constructed contracts and lack of competitive procurement.”\(^{14}\) Furthermore, they noted that the New Mexico Department of Corrections had “not restructured private prison agreements that would lower costs and assure savings from privatization.” For Lea County Correctional Facility and Guadalupe County Correctional Facility, both GEO Group managed facilities, the department was reviewing contract amendments but these amendments did not address cost control. In 2012, the Legislative Finance Committee found that the department of corrections still did not implement cost-savings in modifying contracts with private prisons regarding staffing.

Private prison contractors are incentivized to seek higher populations in their facilities. In New Mexico, private prisons only house individuals below custody level III and they receive lower per diems than if they held higher custody individuals. Perhaps that explains why private facilities tend to have higher capacity rates than state-run facilities – they tend to be more full and stay full. This may relate to a disturbing finding of the Legislative Finance Committee that release eligible individuals who remain in custody past their release dates are overwhelmingly held in private prisons. These contractors charge more, and hang on to individuals who should be released to get paid more than they should.

In 2012, GEO Group and Corrections Corporation of America (CCA, now CoreCivic), incurred $1.6 million in penalties for understaffing, contract violations, and holding inmates beyond their release date. Most of the infractions were at the Lea County Correctional Facility in Hobbs but also included the Northeast New Mexico Detention Facility in Clayton. At the New Mexico Women’s Correctional Facility in Grants, CCA was fined for retaining inmates after their release date. Lawmakers estimated that Gov. Bill Richardson’s administration, which on the promise of cost savings welcomed private prisons into the state, overlooked as much as $18 million in fines that could have been collected from private prison contractors in the state.

It merits consideration that alternatives to incarceration and detention cost less than keeping people in prisons. For Fiscal Year 2018, the average cost per inmate per day in New

\(^{13}\) Fleischmann et al., “Corrections Department Review of Facility Planning Efforts and Oversight of Private Prisons and Health Programs.”

Mexico prisons was $111 or $40,515 per year. The average cost of a supervised individual was $4 or $1460 per year, a significant difference. In 2018, the Legislative Finance Committee found that for each individual that can be transitioned from incarceration to supervision, the state stands to save $39,055. Implementing alternatives to detention would greatly ease the overall number of individuals in prisons, reducing incarceration costs, and making the transition away from costly private prisons easier.
The Real Economic Impacts on Surrounding Communities

- The presence of multiple large private prisons in Cibola and Otero Counties objectively produces no meaningful change in unemployment.
- Private prison contractors offer fewer and lower-paying jobs, of poor quality, often producing chronic understaffing in facilities.

The belief that placing incarceration facilities in rural areas stimulates local rural economies is a myth that was developed and perpetuated during the prison boom of the 1980s-1990s. When examined in local and regional studies, results consistently show that small rural towns that host new prisons experienced more unemployment, greater poverty, and less growth than similar small rural towns that did not host prisons.\(^\text{15}\)

New Mexico is not an exception to these studies that empirically show that communities that host prisons do not benefit economically. New Mexico legislators are repeatedly told that privately-run prisons and detention centers are good for economic development, that they create jobs and generate revenue for counties. Concerns over closing privately-run facilities often hinge on counties losing jobs, but that is simply not true.

A recent study shows that Otero and Cibola counties, the two non-metro counties that host the largest number of private prison beds, do not have significantly lower unemployment rates than adjacent non-metro counties.\(^\text{16}\) The presence of multiple large private prisons in these counties objectively produces no meaningful change in unemployment. The majority of those employed at the two Otero County facilities live in El Paso, Texas, not Chaparral or Alamogordo, New Mexico. The employment boom that was promised when facilities such as the ones in Otero were built simply has not materialized.

The myth that private prisons provide jobs to rural counties is further busted when we consider that what few jobs do arrive are of poor quality and often do not go to local communities. The inability to recruit New Mexicans for supposedly coveted jobs with private prisons points to problems with these jobs. For example, at the Northeast New Mexico Correctional Center in Clayton, though jobs needed to be filled at the facility, they remained empty. Geo Group claimed they were unable to offer competitive salaries to recruit and maintain staff.\(^\text{17}\) Anecdotally there are reports that many of the people who work at this facility come from adjacent Texas.

Chronic understaffing also contributed to poor conditions at Cibola County Correctional Center prior to its closure as a Bureau of Prisons facility to an ICE facility. In fact, in a 2013


\(^{16}\) Craig, “NM Rural Prison Hosting.”

\(^{17}\) McKee, “Clayton Prison Operations to Move Under State Control.”
deposition related to a wrongful death lawsuit against CoreCivic, the warden of the Cibola facility at the time stated "In that particular facility in a remote area of New Mexico, it was always difficult to maintain staffing".  

Otero County Commissioner George Matherly indicated in a February 2020 meeting that the warden at Otero County Processing Center has no trouble finding employees for the facility, and there was consensus by those at the meeting that it was due to the large labor pool in El Paso, Texas. New Mexicans in rural areas are not benefiting from the few job opportunities these places may provide.

In Chaparral, advocates who visited the Otero County Processing Center spoke to individuals detained at the facility who did heavy landscaping work, laid foundation and built a shade structure for staff, performed welding, maintained and repaired the building, and cleaned inside the facility, in addition to cooking, doing laundry, and providing haircuts. These activities are all performed as part of the voluntary work program, in which individuals are paid $1 per day for 8 hours of work. Most if not all of these tasks could easily provide much needed work for Chaparral residents, but it is difficult for residents to compete with such cost-saving wages paid to detained immigrants.

For those that do find employment at privately-run facilities, they face other problems. In a lawsuit filed against MTC, 122 detention officers who either have worked or currently work at Otero County Prison Facility allege that MTC violated the Fair Labor Standards Act and the New Mexico Minimum Wage Act. They were not paid for some of their work activities. On February 4, 2020, the plaintiffs won their appeal in the 10th circuit. Despite knowing that officers at the facility were indeed working beyond their eight hour shifts to do required work, MTC did not want to pay them for that work. The lawsuit is still underway. It merits mention that the litigation was initiated in 2016. These employees have had to go to great lengths to try to receive just pay for their labor.

Often cited as a key reason to allow private prison companies to expand in New Mexico, and against closing privately run facilities, the creation of good-paying jobs is demonstrably not true in New Mexico.

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18 Laughland, “Man’s DeathHints at Wretched Medical Care in Private Immigration Prisons.”
19 Otero County Commission Meeting February 13, 2020, viewable at https://www.youtube.com/watch?v=sgqiktTNCNM&t=6902s (pertinent audio is at 6:20:22)
20 MTC, “Building Up Men at the Otero County Processing Center Through New Opportunity.”
21 Based on conversations between people detained and Margaret Brown Vega and Nathan Craig.
22 Hollister, “Litigating ICE’s ‘Voluntary Work Program.’”
24 Aguilar et al. v MTC.
A Destabilized Industry: Private Prison Companies are Financially Risky

- Nationally private prison companies are performing poorly, and experiencing financial trouble.
- These financial troubles resonate in New Mexico when profit losses prompt these companies to back out or seek to renegotiate their contracts, often on short notice.

Nationwide private prison corporations are destabilized financially, and this creates local problems. Recent developments serve to illustrate the precarious financial situation of these companies:

Even with the increase in detention of migrants under the Trump Administration, a shift that has benefitted private prison contractors, the stocks of both Geo Group and CoreCivic lost two-thirds of their value since 2017.  

In a US Security and Exchange Commission (SEC) filing for FY 2019, and in direct contradiction to public interests, CoreCivic stated that its interests were not in seeing the out-of-control numbers in its facilities decrease: “The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, the expansion of alternatives to incarceration and detention, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by criminal laws.” CoreCivic, as other private prison contractors, prioritize their business interests which are often in contradiction to state and community interests in criminal justice reform.

The GEO Group warned investors in an SEC filing for FY2019 that if other banks stopped doing business with the company because of increased public resistance to the private detention industry, it “could have a material adverse effect on our business, financial condition, results of operations and the market price of our securities”.

In April 2020, CoreCivic’s credit rating fell to BB-, a notch lower on the scale already colloquially known as “junk” bond status. In June of 2020, CoreCivic announced that it had suspended dividends to investors after its stock value dropped nearly 51 percent over the past year, and 250% since 2017. The company is underperforming the market, earnings have dropped 54% in the last quarter, and two months later in August, the company was demoted from the S&P Midcap 400 index, to the S&P SmallCap 600. In July of 2020, Fitch, [Junk Bonds - What You Need to Know about Junk Bond Ratings.]

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27 “The GEO Group, INC Form 10-K for the Fiscal Year Ended in December 2019.”
28 Foguel, Boyd, and Lin, “Fitch Downgrades CoreCivic’s IDR to ‘BB-‘; Negative Outlook.”
29 CFI, “Junk Bonds - What You Need to Know about Junk Bond Ratings.”
31 Smith, “Why CoreCivic Stock Popped 10% This Morning.”
the American Credit Rating Agency, downgraded CoreCivic’s ratings and its rating outlook from stable to negative.\(^{32}\)

In addition to the withdrawal of the eight major U.S. banks that accounted for 87% of loans and credit available to private prison companies, recent announcements by regional and foreign banks to cut financial services and lending to private prison operators due to environmental, social and governance concerns have weakened CoreCivic and GEO Group’s access to bank financing.

The GEO Group has seen its stock plummet over 40% since the beginning of March, “even as US stocks have largely recovered from the corona-induced market sell-off.” According to the Motley Fool earlier this summer, “as investors sold CoreCivic, they also sold shares of The GEO Group” in predicting similar risks to the company’s fundamental business model.\(^{33}\) In 2020 alone, largely as a result of the slowdown in detention due to the global pandemic, U.S. private prison corporations lost more than $1 billion in market value.\(^{34}\)

Fitch notes that the private prison sector not only faces negative headwinds from social pressures, but longer-term correctional trends as governments are shifting away from imprisonment of non-violent offenders and toward rehabilitation and re-entry for minor drug offenses and other misdemeanors.\(^{35}\) State and community interests seek to move away from costly and problematic mass incarceration, and those shifts cause financial problems for private prison contractors that rely on expanding incarceration for their bottom line. Simply put, New Mexico’s interests conflicts with those of private prison contractors.

These financial troubles resonate in New Mexico when profit losses prompt these companies to back out of their contracts within the state, often on short notice, or to renegotiate contracts for their benefit. This has happened several times in New Mexico. The most recent attempt to withdraw from a contract, at the onset of the global pandemic by MTC, shows blatant disregard for matters of public health in the quest for profit.

\(^{32}\) Foguel, Pappas, and Boyd, “Fitch Downgrades CoreCivic’s IDR to ‘BB’; Revises Outlook to Negative.”
\(^{33}\) Brewer, “Why The GEO Group Stock Fell 10% at the Open on June 17.”
\(^{34}\) Vandevelde, “Us Prisons Industry Hit as Detentions Slow.”
\(^{35}\) Foguel, Pappas, and Boyd, “Fitch Downgrades CoreCivic’s IDR to ‘BB’; Revises Outlook to Negative.”
Economic and Liability Consequences for Counties and the State

- Abrupt closures of private prisons in Estancia, Clayton, and an attempted closure in Otero, create problems for counties.
- New Mexico has had difficulty recovering fines levied against private prison contractors, and private prison companies seek ways out of paying taxes.
- Litigation has left the state and counties open to liability.

When private prison contractors are in trouble financially, they often seek to renegotiate their contracts with counties and states, and in some cases federal agencies. They often ask for more money or other forms of financial assistance while stating their intent to end their contracts if such concessions are not made. These veiled threats become realities, and in New Mexico private contractors have ended their contracts abruptly, leaving our county and state government to quickly jump in to address the situation.

Both GEO Group and CoreCivic sought to avoid paying their state gross receipts taxes. They both filed lawsuits or tax protests, heard by the New Mexico Taxation and Revenue Department to completely avoid or lessen their state tax burden. Even worse, accumulated fines for violations and wrong-doing are not paid to the state by these contractors, forcing New Mexico to file lawsuits for penalties that the companies seek to ignore. Cost-cutting measures or failure to abide by facility standards creates the conditions for further litigation, in which the counties and/or states may be named as defendants.

CoreCivic: Abrupt Closures and Unpaid Fines

In August 2017, CoreCivic threatened to close Torrance County Detention Facility (Estancia, NM) if 300 empty beds could not be filled in a 2-month timeframe. Torrance County was faced with hundreds of thousands of dollars in losses due to the closure, which was finalized in October 2017. In 2018, New Mexico sued CoreCivic for $3.6 million owed in gross receipts taxes, interest and penalties that went unpaid while they operated Torrance. Despite the fact that Torrance County contracted with ICE to reopen the facility in July of 2019, even the Mayor of Estancia acknowledged that the agreement could be terminated with just 4 months’ notice. For all its potential profit-making, incarcerating migrants is an inherently risky business, subject to changes in migration patterns, political will, and federal policy.

As of August 2018, CoreCivic owed more than $3.6 million in gross receipts taxes, interest and penalties to the NM state government.

36 Corrections Corp. of Am. of Tenn., Inc. v. State, 170 P. 3d.
37 Mexican, “Company Plans to Close Private Estancia Prison, Lay Off 200.”
38 Oxford, “New Mexico Trying to Recover $3.6m from Private Prison Company.”
39 Swetlitz, “Locking down Revenue: Estancia, New Mexico.”
40 Oxford, “New Mexico Trying to Recover $3.6m from Private Prison Company.”
MTC Problems: Attempt to Illegally Amend Contract

On March 23, 2020 MTC contacted Otero County to tell them they were losing money, could not make their bond payments, and sought financial concessions due to a drop in the number of people detained in Otero County Processing Center. On March 31, 2020 they formally gave 180-day notice to terminate their contract to manage the processing center, effective September 27, 2020. Because federal laws closed the southern Border, and grave health concerns raised by the pandemic hindered their ability to transfer people to the facility or house large numbers of people, management of the facility was no longer financially viable. It is important to note that terminating their contract required them to amend it. Together, MTC and Otero County amended the contract, but did not do so legally. As a result, on August 20, 2020 MTC rescinded their termination notice with Otero County, and renegotiated a new contract with ICE that includes a guarantee for a minimum number of beds filled and a new pricing scheme. These developments went largely unnotice publicly.

GEO Group Problems: Understaffing, a Riot, and Departure

In June 2019 Geo Group announced it would cease operating the Northeast New Mexico Correctional Facility (Clayton, NM) because it could not recruit or retain sufficient staff due to lower pay compared to state corrections jobs. New Mexico fined Geo Group $150,000 for not meeting staffing requirements. In 2017, as a result of chronic understaffing, a major riot occurred inside the facility. This resulted in litigation against Geo Group brought by a guard, as well as by an inmate whose throat was slit during the riot, who included the New Mexico Department of Corrections in his lawsuit.

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41 Oxford.
42 Clarke, “GEO Group Cancels Contract to Run New Mexico Private Prison.”
43 Haywood, “Ex-Guard Accused of Abetting Inmate Sues New Mexico, Jail Operator.”
44 Bliss, “New Mexico Riot Raises Questions About Private Prison Company’s Competence.”
Long Histories of Poor Conditions, Abuses, and Resulting Litigation

The current pandemic makes even more acute the problems already widespread in facilities managed by private prison corporations. In 2016, the Department of Justice Office of the Inspector General found that federal prisons managed by private corporations had more safety and security incidents than comparable Bureau of Prison institutions. In New Mexico, MTC, CoreCivic and GEO Group lost, settled out of court, or are currently defendants in major lawsuits filed by plaintiffs seeking justice for wrongdoing that ranges from violations of labor laws to wrongful death.

On July 7, 2020, the Human Rights Defense Center (HRDC) sued MTC, the New Mexico Corrections Department, and GEO Group, for verdicts and settlement related to all claims or lawsuits brought against MTC and GEO in the past decade. Despite HRDC efforts to use New Mexico’s Inspection of Public Record Act to rightfully obtain these documents, private prison corporations are refusing to comply. These businesses actively take measures to hide their wrongdoing from the public, including violating our state’s robust open government laws. Given the willingness of private prison company CEO’s to lie, including to Congress, this dishonest evasiveness comes as no surprise. These companies’ deceptiveness is a danger to our state.

CoreCivic: Medical Neglect and Deaths

In New Mexico, the Cibola County Correctional Center figured prominently in a series of investigations into medical neglect and deaths in private prisons. These investigations played a key role in the federal government’s 2016 decision to end all contracts with private prison corporations to operate its federal prisons.

Cibola County Correctional Center was previously a correctional prison that was shut down in October 2016 due to inhumane conditions and medical neglect that resulted in several inmate deaths. The Cibola facility accumulated more repeat deficiencies in health services than any other private federal prison in operation, with deadly consequences.

Shortly after closing, Cibola County Correctional Center was reopened by the current federal administration to detain individuals for ICE. In 2018, Roxsana Hernandez, a 33-year-old transgender woman, who an independent autopsy indicates was beaten while in ICE

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47 Haywood, “Rights Group Sues New Mexico Corrections Department, Private Prison Operators” In the case of MTC the suit only seeks information where payments totaled more than $1000.
48 Wessler, “Federal Officials Ignored Years of Internal Warnings About Deaths at Private Prisons.”
49 Wessler.
50 Laughland, “Man’s Death Hints at Wretched Medical Care in Private Immigration Prisons.”
custody, eventually succumbed to HIV-related complications arising from medical neglect at the CoreCivic run facility and while in the custody of four other private contractors involved in her transfers between facilities. The family filed a wrongful death lawsuit, which continues to be litigated. Still, fatal medical neglect continued, and continues.

In 2019, the Department of Homeland Security Office of the Inspector General conducted unannounced inspections of four ICE detention facilities, including Cibola County Correctional Center. They found that the Cibola facility improperly used solitary confinement, was plagued by numerous complaints of verbal abuse, had a faulty grievance system, had worn and torn mattresses, and was not issuing the proper footwear. Their violations ran the gamut from serious to mundane.

But the Cibola County Correctional Center is not the only problematic CoreCivic facility in New Mexico. A state inmate formerly housed at the Northwest New Mexico Correctional Center in Grants sued CoreCivic, claiming officials allowed six other inmates to assault him for more than 10 minutes without intervening and that the facility took more than a week to provide him care for injuries he received during the attack. The complaint filed in 2019 in U.S. District Court alleges that a corrections officer employed by CoreCivic played a role in the assault and that Warden Betty J. Judd observed the incident. The lawsuit is one of at least a dozen filed in state and federal courts in 2019 by prisoners against CoreCivic, Judd or the state Corrections Department about treatment they receive at the hands of CoreCivic employees in Grants.

**MTC: Deaths and Cover-Ups**

MTC has been at the center of several high-profile lawsuits and investigations. In New Mexico alone, MTC-run facilities have been implicated in a number of troubling incidents. At the Santa Fe County Jail there were three suicides (Tyson Johnson, Juan Ignacio-Sanchez, Michael Martinez), a death (Dickie Ortega), a rape and two sexual assaults (Veronica Sanchez, Victoria Griego, against Brian Orr), and a class action suit regarding strip searches, all resulting in millions of dollars being paid out by MTC to victims.

In 2019 two individuals died as a result of MTC’s medical neglect at Otero County Processing Center. After weeks of requesting medical care, Johana Medina León was released from ICE custody to her deathbed. Then MTC and ICE worked to mask the mishandling of her

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52 Lavers, “Family of Transgender Woman Who Died in ICE Custody Files Federal Lawsuit.”
54 Haywood, “Inmate Sues Private Prison Operator After Alleged Attack in New Mexico.”
55 Craig and Brown Vega, “Why Doesn’t Anyone Investigate This Place?: Complaints Made by Migrants Detained at the Otero County Processing Center, Chaparral, NM Compared to Department of Homeland Security Inspections and Reports,” 63–74.
56 Levin, “Trans Woman Who Died After Illness in Us Custody Had Asked to Be Deported, Family Says.”
medical care from Congressional staffers who visited the facility. Samuelino Pitchout-Mavinga suffered MTC’s acute medical neglect while at Otero County Processing Center before he was transferred to Torrance County Detention Facility. Upon arrival, he was quickly taken to the hospital and eventually died from a condition that could have been easily treated had it been addressed at the Otero facility.

In 2017, the Department of Homeland Security Office of the Inspector General found that the MTC-managed Otero County Processing Center exhibited unsanitary conditions, had non-working telephones, improperly used solitary confinement, and maintained a negative climate in which detained persons were mistreated.

In 2016, Rafael Barcenas-Padilla, a Mexican national, died due to MTC’s medical neglect at Otero County Processing Center.

**GEO Group: Neglect and Retaliation**

In August of 2019, Lea County Correctional Facility was put on a series of lockdowns after four inmates suffered serious assaults by other inmates at the prison. Understaffing is often what permits these kinds of assaults to occur, and as shown below, GEO has a history of understaffing the Lea County facility. Understaffing is a common method private prison companies seek to reduce costs.

In September of 2018, Lea County Correctional Facility staff retaliated against inmates who participated in non-violent civil disobedience as part of a nationwide prison strike. Despite such activity being constitutionally protected speech, officials limited access to food and hygiene items, and kept the facility on lockdown. The protests were in response to GEO Group staff limiting familial visits and harassing those visiting people imprisoned at the facility.

In 2014, a Los Lunas man with a history of mental illness hanged himself after being held in solitary confinement for five months at the GEO Group-managed Guadalupe County Correctional Facility in Santa Rosa. The United Nations special rapporteur of the Human

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57 Moore, "NEW: Staffers for @MartinHeinrich and @tomudall Met with ICE Officials and Warden of Otero County Processing Center on Friday to Discuss Treatment of Transgender Detainees. Officials Never Mentioned Johana, Trans Woman Who Fell Ill 3 Days Earlier and Died on Saturday. Pic.Twitter.Com/T4UA4gsoU0."

58 Aleaziz, "A French Man Has Died While At A Hospital In ICE Custody."

59 DHS OIG, "Concerns about ICE Detainee Treatment and Care at Detention Facilities."

60 Long and HRW, "Code Red."

61 Tucker, "Serious Assaults at GEO Prison."

62 Cantú, "DOC Limiting Lea County Prisoners’ Showers, Meals as Group Punishment."

63 Haywood, "Family of Santa Rosa Prisoner Who Hanged Himself Settles with Psychiatrist."
Rights Council on torture and other cruel, inhuman or degrading treatment recognizes 15 days in solitary as tantamount to torture. In November 2011 the state of New Mexico imposed fines of $1.1 million against GEO Group for failing to maintain adequate staffing levels at Lea County Correctional Facility. In March 2012 the state imposed another fine of nearly $300,000 for the company’s failure to properly staff guards and health care workers; some positions had remained vacant for two months or longer. As discussed above, understaffing is dangerous.

64 “Solitary Confinement Should Be Banned in Most Cases, UN Expert Says”; Méndez, “Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment,” 9, 17, 22, 23.
65 DOJ, “Three Former Wackenhut Employees Convicted of Civil Rights Violations.”
Public Health Threat: Privately-Run Facilities and COVID-19

- As of October 14, 2020, 97% of positive COVID-19 cases in New Mexico correctional facilities are in privately run facilities.
- The New Mexico Department of Health has had greater difficulty overseeing outbreaks in privately-run facilities.

The poor conditions in privately-run facilities are made worse when disease outbreaks occur. The current global pandemic has made these facilities even more dangerous to the health of those detained, those who work there, and surrounding communities.

Nationally, prisons, jails and detention centers are hotspots for COVID-19 outbreaks. By October 6, at least 143,243 people in U.S. prisons (both state and federal) tested positive for COVID-19, and at least 1211 died. Over 6,548 individuals held in ICE detention facilities contracted the virus, and the 8 reported deaths are an obvious undercount. In June, the Department of Homeland Security's Office of Inspector General issued a new report on COVID-19 in ICE detention, which begins by noting that the number of positive cases "has risen dramatically" and that ICE detention facilities are unable to practice social distancing or to properly quarantine infected individuals. In July, the heads of the top four private prison corporations testified before a congressional committee that nearly 1,000 of their employees had tested positive for COVID-19.

The novel COVID-19 pandemic makes very stark that carceral spaces are highly vulnerable to disease spread. Unintentionally, employees often introduce the virus to those who are detained, who are held in congregate settings with few protections. Transfers between facilities then propagate the virus.

As an economy of scale, private prison corporations rely on imprisoning the greatest number of people possible, while cutting their costs to maximize profit. Often leading to violations of CDC guidelines, these cuts have resulted in inadequate (not providing basic

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68 DHS OIG, “Early Experience with COVID-19 at ICE Detention Facilities.”
69 Rosenberg, "Nearly 1,000 U.S. Immigration Detention Center Employees Test Positive for Coronavirus"; Rice, Oversight of ICE Detention Facilities: Examining ICE Contractors’ Response to COVID-19.
hygiene supplies such as soap), and in some cases wholly inappropriate (continued transfers, including of individuals showing COVID-19 symptoms), responses to hinder disease spread.  

73 In sum, these companies have been lax on testing and care while being heavy handed on discipline and punishment. As a result of reckless and harmful corner cutting, private prison corporations share the bulk of the blame for putting incarcerated people as well as the surrounding communities at great risk. Nationwide, the average number of COVID-19 cases per 100,000 prisoners is much higher in private prisons than in state or federal facilities.  

74 As of October 14, 2020, of the 1,448 total cases of COVID-19 in New Mexico correctional facilities, 97% (1,397) of them are of individuals held in privately-run facilities.  

75 There is an inherent conflict between the private contractors’ need to make money, and New Mexico’s responsibility to protect the public health of its communities.

CoreCivic and COVID-19: Retaliation and Outbreaks

On July 27, 2020, the New Mexico State Department of Health (NMDOH) announced 170 positive cases at Cibola County Correctional Center.  

76 This largely contributed to New Mexico’s highest count of daily positive cases to date. An August 14 letter from New Mexico’s Congressional Delegation expressed serious concerns about the significant rise in positive cases among inmates and staff there, noting that as of August 12, COVID-19 cases at the Cibola County Correctional Center accounted for 84% of all positive cases in Cibola County.  

77 As of September 2, NMDOH reported 324 cases of COVID-19 at the facility out of a total of 398 cases in Cibola County.  

78 When people detained there understandably expressed concerns about not receiving medical treatment for COVID-19 symptoms, CoreCivic staff responded by deploying pepper spray on them.

As of September 2, ICE confirmed that there were 55 cases of COVID-19 in the Torrance County Detention Facility. Facility warden Chad Miller “was adamant that his company would not permit universal testing of the ICE and US Marshal holds.”

79 In response to a peaceful hunger strike launched by those detained in the Torrance facility to protest their vulnerability to COVID-19 and poor conditions at the facility, CoreCivic staff pepper sprayed the protestors.  

80 In front of a House congressional committee, Damon Hininger, CEO of CoreCivic, denied any such incident only to be confronted by members of Congress with

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76 Office of the Governor Michelle Lujan Grisham, “Updated New Mexico COVID-19 Cases.”


79 Gould, “Inmates at Cibola County Prison Protest Care Amid Pandemic.”

80 Michaels and Morel, “‘We Sent 500 Tests. They Don’t Answer Calls.’”

81 Swetlitz, “‘Screaming for Help.’”
media reports and the words of a CoreCivic spokesperson confirming that pepper spray was in fact used against those detained at the Torrance County facility.\(^82\) This is just one example of the willingness of the heads of these businesses to lie to Congress during an official hearing to hide problems of their own making within their facilities.

**MTC and COVID-19: Largest Outbreak**

Otero County Prison Facility and Otero County Processing Center in Chaparral, New Mexico, are both managed by MTC. The prison facility holds people detained by the New Mexico Department of Corrections and the U.S. Marshals, and the processing center holds migrants detained by ICE. There are 6 confirmed COVID-19 deaths at the Otero County Prison Facility, and the facility’s west wing dedicated to housing state inmates reported an 80% infection rate on June 24, 2020.\(^83\) So many prisoners became infected that, on June 21, 2020, they made up 30% of the entire state’s total new infections. As of October 14, 2020 949 people detained at the two Otero facilities tested positive for COVID-19.\(^84\)

Kathy Kunkel, secretary of the New Mexico Department of Health (NMDOH) received reports from an advocate that in the first months of the COVID-19 pandemic, persons detained at Otero County Processing Center had to clean their own quarters, were not getting hygiene supplies, that bedding was not being washed, social distancing was impossible, and though people were showing symptoms they were not being tested.\(^85\) NMDOH offered help and expertise including sending 500 COVID-19 tests to the processing center, but MTC and ICE turned down testing assistance and did not answer calls from state health officials. Secretary Kunkle implored ICE to stop transfers to prevent the spread;\(^86\) ICE continued with the transfers and a major outbreak occurred. ICE claimed that Otero County Processing Center medical personnel maintained open lines of communication. NMDOH disagrees and email records bear this out.

In July, testifying before the House Homeland Security Committee, president and CEO of MTC Scott Marquardt claimed his company worked closely with state and local health departments and “administered multiple rounds of extensive testing” at Otero County Processing Center. But he failed to acknowledge that most of the tests came from New Mexico.

On September 16, MTC’s Otero County Processing Center Warden, Dora Orozco penned two letters to the editor in local papers stating that she and her staff were appalled by the reporting regarding the 500 tests. She asserted that “this story was a complete

\(^{82}\) Lanard, “Prison CEOs Just Claimed They Had No Clue Their Guards Pepper-Sprayed Hundreds of Immigration Detainees.”

\(^{83}\) Haywood, “Nearly 80% of State Inmates at Otero County Prison Facility Infected.”


\(^{85}\) Michels, “RE EXT Alarming Situation at Otero County Processing Center in Chaparral NM (1).”

\(^{86}\) Michaels and Morel, “We Sent 500 Tests. They Don’t Answer Calls.”
misrepresentation of the facts,” claimed to have been in “regular contact” with NMDOH, to
have tested over 1000 detained persons, and to having zero COVID-19 cases at the facility
for weeks. On September 14, before Warden Orozco wrote her letter, ICE reported two
active COVID-19 cases at the processing center while NMDOH reported four new cases -
facts that reveal the deceptive nature of MTC’s public statements. Tests at the facility are
still below NMDOH-recommended levels. Because transfers continue, a new outbreak has
started again at the facility, with 18 new cases at the facility as of October 14.88

GEO Group and COVID-19: Lack of Testing

Lea County Correctional Facility in Hobbs, New Mexico and Guadalupe County Correctional
Facility in Santa Rosa, New Mexico are the two state prisons managed by the private prison
corporation GEO Group. Although for months there was a suspiciously low number of
COVID-19 cases reported at these facilities, as of October 14, 2020 75 individuals have
tested positive for COVID-19 at Lea County Correctional Facility. The GEO Group is currently
facing a class action lawsuit that claims investors incurred losses in the shares of the
company due its poor handling of the COVID-19 outbreak.89

In August, GEO Group and ICE, working together, allegedly tried to suppress testing in order
to avoid having to proactively address COVID-19 at the Mesa Verde facility in California.
Though ICE and GEO Group could have tested everyone in Mesa Verde for COVID-19,90 they
chose not to because it would have forced them to drastically reduce the total number of
people held in the facility in order to make room to isolate those who tested positive. This
is a stark example of how a business model based on incarcerating large numbers of people
for profit works against the interest of those detained, staff, and surrounding communities.
Given this behavior, it is tempting to suggest that only the lack of public scrutiny in Hobbs
and Santa Rosa has kept similar behaviors from coming to light in New Mexico.

The prolonged health state of emergency in which we live has exposed the problems with
allowing private prison companies to operate. New Mexican’s can’t afford to put our
community’s lives at risk for the purpose of profit.

87 Orozco, “Letters to the Editor”; Orozco, “Letters to the Editor: From Otero County Processing Center.”
89 Robbins, Geller, Rudman & Dowd LLP, “GEO Group, Inc. Class Action Lawsuit.”
90 Tapper, “ICE Resisted Coronavirus Testing to Avoid Releasing Detainees.”
New Mexicans Want an End to the Business of Private Incarceration

New Mexicans are tired of these businesses operating in our state. They extract profit and labor for their benefit while providing measly pittances for our communities at best, or leaving our counties facing financial difficulties at worst. Private prison corporations have a well-documented history of human and civil rights abuses that make our state complicit in the mistreatment of those in their custody.

With our current struggle to contain the COVID-19 virus in New Mexico, privately-run facilities are a grave public health threat. Private prison contractors have mismanaged and caused some of the worst outbreaks in our state. Private prison companies are not good business, and they are not good for the economic, social, or medical well-being of New Mexicans.

- We ask our New Mexico legislators to sponsor and support legislation to end contracts with private contractors to operate prisons, jails and detention centers in New Mexico.
- We call on New Mexico Attorney General Héctor Balderas to investigate private companies contracted to operate prison, jail, and detention facilities for breaches of New Mexico laws. These companies do not keep people under their custody safe, and they must be held accountable.
- We ask Governor Michelle Luján Grisham to sign into law a ban on private incarceration in New Mexico, and to work toward decarceration.
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