Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

March 11, 2015

The Honorable Sheila Jackson Lee
U.S. House of Representatives
2252 Rayburn HOB
Washington, DC 20515

Re: Private Prison Information Act of 2015

Dear Representative Jackson Lee:

We, the undersigned criminal justice, civil rights and public interest organizations and law firms, respectfully request that you reintroduce the Private Prison Information Act during the 114th Congress. As you know, this bill, which would extend Freedom of Information Act (FOIA) reporting obligations to private corrections companies that contract with federal agencies—including the U.S. Bureau of Prisons, Immigration and Customs Enforcement (ICE) and the U.S. Marshals Service—is a critical first step in bringing transparency and accountability to the for-profit private prison industry. The bill also would extend FOIA reporting responsibilities to state and local corrections agencies that hold federal prisoners.

With respect to for-profit private prisons, we are deeply troubled by the secrecy with which the contract corrections industry continues to operate. Whereas the U.S. Bureau of Prisons (BOP) and state departments of corrections are subject to the Freedom of Information Act and state public records statutes, respectively, private prison firms that contract with public agencies generally are not. This lack of public transparency is indefensible in light of the nearly $5.5 billion in federal contracts that Corrections Corporation of America (CCA) and The GEO Group (GEO)—the two largest for-profit prison firms—have been awarded in the last five years alone.

This issue has received recent renewed attention, including a Feb. 2014 report by Citizens for Responsibility and Ethics in Washington, "Private Prisons: A Bastion of Secrecy," which called for greater transparency in the private prison industry. Further, in October 2014, the *Boston University Law Review* published "Private Prisons, Private Records," which concluded, "Private prisons should no longer be permitted to evade public scrutiny due to a technical distinction concerning their legal status. The industry's opacity presents a fundamental obstacle to effective oversight by depriving the public of the ability to properly and empirically assess industry performance." The need for greater transparency in the private prison industry was also the subject of a July 23, 2014 investigative project by MuckRock, a collaborative news site.

We are encouraged by your re-introduction of the Private Prison Information Act last year, which was reported by Mother Jones, The Crime Report, The Marshall Project, the Center for Prison Reform, and the National Freedom of Information Coalition.

If private prison companies like CCA and GEO would like to continue to enjoy taxpayer-funded federal contracts, then they must be required to adhere to the same disclosure laws applicable to their public counterparts, including FOIA.

Why should private prison firms, which are funded exclusively with taxpayer dollars, be any less accountable to the public than federal corrections agencies such as the Bureau of Prisons or ICE? We contend that because the for-profit private prison industry relies almost entirely on taxpayer support, and performs the inherently governmental function of incarceration—depriving people of their liberty—the public has a right to access information related to private prison operations. **In short, the government should not be allowed to contract away the public's right to know with respect to housing federal prisoners and detainees in privately-operated facilities.**

There is little taxpayer-accessible information that allows us to evaluate the performance of private corrections firms in comparison to the public sector. Though the private prison industry routinely cites its record in terms of efficiency and safety relative to public agencies, it nonetheless refuses to disclose the very information required to substantiate its most basic claims of success. Disclosure statutes that provide the public with access to information pertaining to the operations of private prisons are vital if reasonable comparisons are to be made between the private and public sectors.

As just one example, Professor Jacqueline Stevens at Northwestern University filed a FOIA request with ICE, seeking copies of grievance logs at the CCA-operated Stewart Detention Center—documents that would be subject to FOIA at public facilities. ICE responded on July 18, 2013, stating that "A search of the ICE Office of Enforcement and Removal Operations (ERO) was conducted and no records responsive to your request were found." This illustrates how the current system of submitting FOIA requests to federal agencies for records maintained by private prison contractors is inadequate, as some records are only kept by the contractors.

The time to reintroduce and pass this bill is now. Privately-operated facilities holding federal prisoners have grown 600 percent faster than state-level contract facilities since 2010, and now represent the fastest-growing corrections sector. Moreover, business from federal agencies like the Bureau of Prisons, U.S. Marshals Service and ICE now accounts for a greater percentage of revenue among private prison companies than ever before. CCA and GEO Group both receive more than 40% of their gross revenue from the federal government.

In the past, critics of the Private Prison Information Act have argued that its passage would set a "dangerous precedent" with respect to FOIA overreach. In his 2008 testimony before the House Subcommittee on Crime, Terrorism and Homeland Security, Michael Flynn, the Director of Government Affairs for the Reason Foundation, testified that applying FOIA to private prison companies could open the "floodgates" to other federal contractors and, by extension, their contractors and suppliers. "Thousands of individuals, small and large businesses, provide services to the government and products to the government at great efficiency for the taxpayers [and] all of that could be opened up to the FOIA process," he claimed. He neglected to mention that the Reason Foundation has received funding from private prison companies, including CCA

and GEO, and ignored the fact that the Private Prison Information Act would apply solely to contract facilities that house federal prisoners – not to any other federal contractor.

We squarely reject these unfounded assumptions, as the Private Prison Information Act would apply narrowly and judiciously. It is unlikely that this bill, if enacted, would unwittingly extend FOIA provisions to other private contractors, because private prison firms perform a unique function relative to other private companies. To our knowledge, no other type of private industry is contracted exclusively by the public sector to perform an essential governmental function such as incarceration.

Further, revisions to the Private Prison Information Act since previous versions make it a more focused bill. The bill now only applies to "information pertaining to facility operations and to prisoners," which addresses concerns that private prison firms might be subject to FOIA requests concerning their corporate financial data or other records not directly related to their operation of correctional facilities. The bill includes definitions for "contract facility" and "federal prisoner," and, as with previous versions of the legislation, all of the existing exceptions and exemptions under FOIA would apply to contract facilities under the Private Prison Information Act.

That private corrections firms are supported exclusively by government contracts and enjoy the benefits of operating within an artificial government contract-driven market makes them the perfect candidates for FOIA compliance. In most economic sectors there is a free market analogue for the many kinds of services that governments typically provide. A field such as education, for example, has a robust market of existing non-profit and for-profit organizations and agencies willing to provide services to a market of potential buyers that includes both individuals and governments.

Such is not the case with for-profit, private corrections firms.

The private prison industry is fundamentally different in that no citizen can freely purchase incarceration services as a private individual. There is no natural market for incarceration services; the entire market would cease to exist without direct government intervention in the form of taxpayer-funded contracts to private companies that operate correctional facilities.

We, the undersigned, submit that because private prison firms are ultimately functionaries of the government, they must comply with the same FOIA requirements as their public counterparts. We therefore ask that you reintroduce the Private Prison Information Act during the 114th Congress, and we stand willing to support your bill. Should this letter generate any questions, please contact Christopher Petrella at 860-341-1684 or cpetrella@post.harvard.edu, or Alex Friedmann, associate director of the Human Rights Defense Center, at 615-495-6568 or afriedmann@prisonlegalnews.org.

Respectfully,

American Friends Service Committee

American Society of News Editors

Architects/Designers/Planners for Social Responsibility

Asian Americans Advancing Justice - Asian Law Caucus

Association of Alternative Newsmedia

Black & Pink

Charles Hamilton Houston Institute for Race & Justice at Harvard Law School

Civil Rights Clinic, Michigan State University College of Law

Coalition for Prisoners' Rights

Colorado Criminal Justice Reform Coalition

Colorado Prison Law Project

Criminal Defense Clinic, CUNY School of Law

D.C. Prisoners' Project

Demos

Detention Watch Network

Enlace / National Prison Divestment Campaign

Florida Justice Institute

HEARD

Human Rights Defense Center

In the Public Interest

John Howard Association of Illinois

Justice for Families

Justice Strategies

JustLeadership USA

Koob & Magoolaghan

Legal Action Center

Lewisburg Prison Project

Media Alliance

Middle Ground Prison Reform

Muckrock (a collaborative news group)

National Center for Lesbian Rights

National CURE

National Freedom of Information Coalition

National H.I.R.E. Network

National Lawyers Guild Mass Incarceration Committee

New England First Amendment Coalition

Partnership for Safety and Justice

Pennsylvania Institutional Law Project

Prison Activist Resource Center

Prison Policy Initiative

Private Corrections Institute

Private Corrections Working Group

Public Interest Law Group, PLLC

Southern Center for Human Rights

Texas Civil Rights Project

Texas Criminal Justice Coalition

Texas Jail Project

The Center for Church and Prison

The Fortune Society

The Legal Aid Society

The Real Cost of Prisons Project

The Sentencing Project

UC Davis School of Law Immigration Law Clinic

Urbana-Champaign Independent Media Center

Vermonters for Criminal Justice Reform