

Center for Constitutional Rights

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/home/blog/2016/01/29/how-ice-shields-its-financial-dealings-private-prison-contractors-public>

Public Facing Advocacy Writing

The CCR blog

The movement to put private prison contractors out of business won some amazing victories in 2015. In the last two months, responding to organized action by Californias Afrikan Black Coalition and campus Black Student Unions, the University of California announced it would be selling its \$23 million stake in the private prison industry. Just six months ago, in response to months of student protest, Columbia University became the first major university whose trustees have voted to divest from private prisons, selling off their shares of Corrections Corporation of America (CCA). In November, 2015, the City Council and Mayor of Gary, Indiana, refused to support the construction of a new immigrant detention facility proposed by the GEO Group. As organized communities use financial tools to fight the private prison industry, Congressional legislators have followed, sponsoring legislation to end contractual incentives to detain immigrants in privately-operated facilities and to end the governments use of private prisons altogether.

Against this backdrop, Immigration and Customs Enforcement (ICE) is fighting hard to hide from public scrutiny the workings of its contracts with private prison corporations like CCA and GEO. As detailed in [Banking on Detention: Local Lockup Quotas and the Immigrant Dragnet](#), CCRs June 2015 joint report with Detention Watch Network, ICEs contracts with private corporations often include a provision guaranteeing minimum payments. Because ICE has already promised to pay the contractors regardless of whether beds are filled, ICE faces pressure and incentives to funnel the people it arrests to privately operated facilities. Often, these guaranteed minimums are accompanied by tiered pricing provisions contractual terms that lower the prices that ICE pays if the number of detained immigrants in a facility exceeds a certain floor. These pricing schemes function as local lockup quotas and are the foundation of private profiteering off our immigration detention system. But faced with [Freedom of Information Act litigation](#), ICE has refused to let the public see the specifics of these pricing schemes.

Congress conditions over \$5.39 billion in annual funding for ICE on the controversial detention bed quota the requirement that ICE maintain 34,000 detention beds per day. The decisions that ICE makes to spend its detention budget including decisions to place immigrants in the custody of private prison contractors should be publicly accessible. Government contracts are typically open to public view, and indeed ICE posts on its website the terms of many of its detention contracts with public entities such as local and state governments. Yet ICE takes the position that its contract terms with private corporations even though they are located in government agreements and thus cant be private, proprietary information are equivalent to trade secrets that ICE is obliged to protect on behalf of its contractors. Invoking FOIAs Exemption 4, which protects commercial or financial information that is obtained from a person and privileged or confidential, ICE has insisted that revealing unit pricing, bed day-rates, and even staffing plans in government contracts will cause imminent harm to the contractors competitive position. The premise behind hiding the information is to protect proprietary secrets of companies who do business with the government. But once ICE agrees to pay a contractor, that information is no longer the contractors secret its the governments decision, which the public has the right to see. In a move that that could have far-reaching implications for government transparency generally, ICE has claimed that even when ICE negotiates and agrees to pay contractors a stated sum, that information does not belong to the public, but unaccountable private companies.

ICE is arguing that the immigration detention market is competitive, even though the Government Accountability Office, which issued a report noting the high costs of contracting with private prison corporations, believes that there is no real competitive market for detention services. And ICE has produced no credible evidence that disclosing the governments pricing agreements would cause these contractors any harm. But as though to roll back the important strides made by activists this year, ICE has [leapt to the defense of the private prison industry](#), eliciting declarations from private prison corporations to support what are supposed to be independent government decisions on withholding financial information from the public. Indeed, ICEs litigation strategy is indistinguishable from a direct defense of private prison secrecy, and its no wonder: former ICE official David Venturella, once the director of ICEs Enforcement and Removal Operations, is now a high-level executive at the one of the nations two largest private prison contractors, the GEO Group, and Venturella is among the four executives ICE has called on to defend its bid for secrecy. The executives claim that revelation of prices the government has agreed to pay will cause them substantial competitive harm a claim that seems to conflate transparency about government decision-making with injury to hugely profitable private corporations. Indeed, some executives have put forth the preposterous idea that public knowledge of their pricing schemes will lead to a collapse of the detention market altogether because huge publically traded companies like the Geo Group and CCA will withdraw from the market if the competition gets too acrimonious. Leaving aside the fact that its not the judiciarys responsibility to ensure that the private detention market thrives, the executives argument shows them to be remarkably eager to seek government protection, not from unfair competition, but from any threat to their profits. Its unfortunate that ICE endorses this view.

It seems that private prison contractors not only control an increasing share of our unjust immigration system; they now seek to limit the publics access to government contracting decisions and the reach of FOIA itself.

[View the discussion thread.](#)

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