



September 21, 2021

The White House  
Domestic Policy Council Office  
1600 Pennsylvania Avenue  
Washington, DC 20500

**Via email**

**Re: GEO Contract at Western Region Detention Facility**

To the White House Domestic Policy Council Office:

We write to urge you to take immediate action to carry out Executive Order 14006, “Reforming Our Incarceration System To Eliminate the Use of Privately Operated Criminal Detention Facilities,” by ensuring that the United States Marshals Service (“USMS”) does not permit prison corporation The GEO Group, Inc. (“GEO”) to continue operating the Western Region Detention Facility (“WRDF”).

Executive Order 14006 directs the Department of Justice to phase out reliance on privately operated criminal detention facilities, including by ordering the Attorney General not to renew contracts with such facilities. WRDF is a pre-trial federal detention facility in San Diego, California, that GEO is operating under a contract that had been set to expire on September 30, 2021. We were disappointed to learn that, rather than end GEO’s operation of the facility on that date, USMS has agreed to extend GEO’s involvement for another six months.<sup>1</sup> Having had months to prepare to end the contract, this last-minute extension represents a significant step backwards. It is the latest episode in what has become a disturbing pattern of schemes by private prison companies to thwart Executive Order 14006.

The extension provides GEO the opportunity to continue pursuing its ongoing plan to go around the Executive Order by paying the financially strapped City of McFarland, located 250 miles north of San Diego, \$500,000 to contract with USMS for detention services for and then to sub-contract the detention services back to GEO.<sup>2</sup> These legalistic machinations violate the fundamental legal precept that forbids accomplishing indirectly through an agent that which a rule prohibits directly. Evincing an unwavering pursuit of profit, they demonstrate the very “profit-based incentives to incarcerate”

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<sup>1</sup> The GEO Group, Press Release, *The GEO Group Enters Into Six-Month Contract Extension with U.S. Marshalls Service for Western Region Detention Facility* (Sept. 21, 2021), available at <https://investors.geogroup.com/news-events-and-reports/investor-news/news-details/2021/The-GEO-Group-Enters-Into-Six-Month-Contract-Extension-With-U.S.-Marshalls-Service-for-Western-Region-Detention-Facility/default.aspx#investorNews>.

<sup>2</sup> Sam Morgen, *McFarland pursuing agreement with U.S. Marshals to keep private prison in San Diego open*, THE BAKERSFIELD CALIFORNIAN (Aug. 19, 2021), available at [https://www.bakersfield.com/news/mcfarland-pursuing-agreement-with-u-s-marshals-to-keep-private-prison-in-san-diego-open/article\\_516f9208-0142-11ec-9302-0b4933c400b6.html](https://www.bakersfield.com/news/mcfarland-pursuing-agreement-with-u-s-marshals-to-keep-private-prison-in-san-diego-open/article_516f9208-0142-11ec-9302-0b4933c400b6.html); see also Agenda, *McFarland City Council Special Meeting* (August 18, 2021), available at [https://www.mcfarlandcity.org/AgendaCenter/ViewFile/Agenda/\\_08182021-282](https://www.mcfarlandcity.org/AgendaCenter/ViewFile/Agenda/_08182021-282).

animating Executive Order 14006.

Whether the extension is the result of poor planning and bureaucratic inertia in implementing the Executive Order, or a capitulation to prison companies' concerted efforts to render the Executive Order meaningless, it is an unfortunate setback that exposes serious questions whether the Administration's commitment to reduce incarceration and phase out private prisons will be proven through concrete action. We insist that the White House use this six-month period as an opportunity to wind down GEO operations at WRDF, and not to acquiesce to this brazen effort to bypass the Executive Order, as occurred earlier this year after a similar "extension" in Ohio,<sup>3</sup> or to find new ways to line private prison pockets, as is reportedly underway in Kansas.<sup>4</sup>

Moreover, in light of the harms GEO has perpetrated on people detained at WRDF and the corporation's poor track record elsewhere, as illustrated by the examples below, the Administration should allow WRDF to be shut down when the current extension expires. Shuddering WRDF would represent a positive step, consistent with the Administration's stated policy to decrease incarceration levels. The White House's commitment to that policy is being tested. Now is the time to show resolve in moving it forward. We therefore ask that you intervene to prevent any further contract extension or pass-through contract for GEO to run WRDF.

## I. President Biden's Executive Order

Within days of being sworn into office, President Biden issued Executive Order 14006, which recognizes the "broad consensus that our current system of mass incarceration imposes significant costs and hardships on our society and communities," "does not make us safer," and impacts "a disproportionate number of people of color."<sup>5</sup> Pursuant to the Order, federal policy is "[t]o decrease incarceration levels" by reducing "profit-based incentives to incarcerate." With a goal of "phasing out the Federal Government's reliance on privately operated criminal detention facilities," the Order additionally states that "[t]he Attorney General shall not renew Department of Justice contracts with privately operated criminal detention facilities, as consistent with applicable law."

Although many advocates argued that President Biden's Executive Order did not go far enough by failing to include Department of Homeland Security ("DHS") detention,<sup>6</sup> it was an important step

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<sup>3</sup> *Core Civic Expects the Contract with the United States Marshals Service at the Northeast Ohio Correctional Center Will Not be Renewed*, Global News Wire (Feb. 25, 2021) available at <https://www.globenewswire.com/en/news-release/2021/02/25/2182979/0/en/CoreCivic-Expects-the-Contract-with-the-United-States-Marshals-Service-at-the-Northeast-Ohio-Correctional-Center-Will-Not-be-Renewed.html>; Brandon Koziol, *Deal lets federal inmates stay at Youngstown private prison*, NBC 21 WFMJ (May 27, 2021); available at <https://www.wfmj.com/story/43980258/deal-lets-federal-inmates-stay-at-youngstown-private-prison>.

<sup>4</sup> Carrie Johnson, *Biden Ended Contracts with Private Prisons. So One May Turn to House Immigrants*. NPR KPBS (Sept. 15, 2021), available at <https://www.npr.org/2021/09/13/1036576308/biden-ended-contracts-with-private-prisons-so-one-may-turn-to-house-immigrants>; Roxana Hegeman and Heather Hollingsworth, *White House urged to shutter privately run Kansas prison*, ASSOCIATED PRESS (Sept. 3, 2021), available at <https://apnews.com/article/prisons-kansas-202252fa64aa4979a7b0f9714f462756>

<sup>5</sup> Executive Order 14006, *Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities* (January 26, 2021), available at <https://www.federalregister.gov/documents/2021/01/29/2021-02070/reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention>.

<sup>6</sup> Madeleine Carlisle, *'Much More Work To Be Done.'* *Advocates Call for More Action Against Private Prisons After Biden's 'First Step' Executive Order*, TIME MAGAZINE (Jan. 29, 2021), available at <https://time.com/5934213/private-prisons-ban-joe-biden/>.

towards curbing an industry that values profit over human life and public safety. GEO's McFarland scheme presents a vital early opportunity for the White House to reinforce the commitments made in the Executive Order and to send a clear message that the private prison industry's sustained effort to frustrate federal policy through such tactics will no longer be tolerated.

## **II. GEO and the City of McFarland's Plan to Thwart the Executive Order and Biden Administration Policy to Reduce Incarceration and Phase Out Reliance on Private Prisons**

GEO Group is one of the largest private prison corporations in the United States, operating 114 facilities with nearly one hundred thousand beds.<sup>7</sup> One such facility is WRDF in downtown San Diego, which has 770 beds for the pre-trial incarceration of people in USMS custody.<sup>8</sup> GEO had been operating WRDF under a two-year option period of its contract with USMS, which was scheduled to end on September 30, 2021.<sup>9</sup> We understand that USMS pays GEO nearly \$55 million a year to incarcerate presumptively innocent people at WRDF.<sup>10</sup> Although USMS has the option to renew the GEO contract for additional optional periods until 2027, it may not do so pursuant to Executive Order 14006. Nevertheless, it was recently reported that USMS and GEO extended the contract for six months.<sup>11</sup>

As a for-profit prison company seeking to continue reaping profits from U.S. taxpayers for imprisoning people, GEO is engaged in an open effort to undermine the Executive Order by encouraging the City of McFarland to enter into a contract with USMS to operate WRDF, and then to subcontract with GEO to actually operate the facility. This shell game would leave GEO in place operating WRDF, while the City of McFarland siphons half a million dollars from the contracting process for merely operating as a middleman. The six-month extension has gifted GEO an opportunity to see its plan to fruition.

On August 4, 2021, GEO CEO Jose Gordo reportedly stated on an earnings conference call that the company was in "discussions with the Marshals Service as to how to realign that contract" to operate WRDF in light of the Executive Order.<sup>12</sup> On August 18, 2021, the City of McFarland voted to pursue this scheme, including approval of a draft letter to John Sheehan, Assistant Director of the Prisoner Operations Division of USMS, to express the City's interest in entering into an Intergovernmental Agreement to operate WRDF.<sup>13</sup> According to the City Manager, GEO originally reached out to

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<sup>7</sup> GEO, "Our Locations," available at <https://www.geogroup.com/Locations>. For more information on GEO, please see American Friends Service Committee, *Investigate: The GEO Group Inc*, available at <https://investigate.afsc.org/company/geo-group>.

<sup>8</sup> GEO, "Western Regional Detention Facility," available at <https://www.geogroup.com/FacilityDetail/FacilityID/37>

<sup>9</sup> <https://www.businesswire.com/news/home/20210909006094/en/>.

<sup>10</sup> See Contract Summary, PIID 15M40021FA3500005, available at [https://www.usaspending.gov/award/CONT\\_AWD\\_15M40021FA3500005\\_1544\\_15M40018DA3500001\\_1544](https://www.usaspending.gov/award/CONT_AWD_15M40021FA3500005_1544_15M40018DA3500001_1544); see also Contract ODT-6-C-0002 at p.1, item 15A, available at <https://www.justice.gov/archive/odt/western-region-detention-facility.pdf>.

<sup>11</sup> GEO Press Release, *supra* n. 1.

<sup>12</sup> *The GEO Group's (GEO) CEO Jose Gordo on Q2 2021 Results – Earnings Call Transcript*, SEEKING ALPHA (Aug. 4, 2021), available at <https://seekingalpha.com/article/4445091-geo-groups-geo-ceo-jose-gordo-on-q2-2021-results-earnings-call-transcript>.

<sup>13</sup> Morgen, *supra* n.2; see also Agenda, McFarland City Council Special Meeting (August 18, 2021), available at [https://www.mcfarlandcity.org/AgendaCenter/ViewFile/Agenda/\\_08182021-282](https://www.mcfarlandcity.org/AgendaCenter/ViewFile/Agenda/_08182021-282).

McFarland to propose the idea, and a GEO employee presented at the City Council meeting itself.<sup>14</sup> The City estimates it would receive \$500,000 as an “administrative service fee” for serving as the pass-through contracting entity.<sup>15</sup> Although the City of McFarland has not posted any updates on its negotiations since then, on September 9, 2021, GEO reportedly informed its investors that it is pursuing “various alternative contracting structures” to allow it to operate at WRDF notwithstanding the Executive Order.<sup>16</sup> Now, news of the extension only furthers the goals of GEO by providing the company more time to see its plan through.

This scheme is at least the third example of a private prison company openly attempting an end-run around the Executive Order through such pass-through contracts. In March 2021, CoreCivic’s contract with USMS to run the Northeast Ohio Correctional Center was set to expire, but CoreCivic and USMS extended it, in apparent violation of the Executive Order, for 90 days.<sup>17</sup> CoreCivic took advantage of the extra time it received through that extension. In May 2021, CoreCivic entered into a pass-through contract with Mahoning County in Ohio that allowed CoreCivic to continue incarcerating people in USMS custody at the facility, with Mahoning County reportedly siphoning about \$3 of the \$135/day price tag per incarcerated individual – potentially \$700,000 over three years – for its role as intermediary.<sup>18</sup> Meanwhile, as noted in a letter to your office and USMS from several ACLU and Federal Public Defender offices in the region, CoreCivic has sought to enter into a pass-through contract with Leavenworth County to continue to incarcerate people in USMS custody at the Leavenworth Detention Center when the existing contract expires in December 2021.<sup>19</sup>

The GEO-McFarland scheme is particularly egregious because, unlike the above examples, McFarland is a small, remote city with no connection whatsoever to San Diego, where WRDF is located. Yet, with a population of 12,500, it seeks to continue the daily incarceration of 770 presumptively innocent people in a community 250 miles away. McFarland has engaged in similar pass-through contracts with GEO to operate an Immigration and Customs Enforcement (“ICE”) detention facility in nearby Bakersfield.<sup>20</sup> It would set a dangerous precedent to allow prison corporations to recruit far-flung municipalities to help them defy White House criminal justice policy.

With the extended USMS-GEO contract for WRDF expiring in six months, the White House must act to defeat these blatant efforts to strip the Executive Order of any meaningful impact. Rather than

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *The GEO Group Provides Update on U.S. Marshals Service Contract for Western Region Detention Facility in San Diego*, BUSINESS WIRE (Sept. 9, 2021), available at <https://www.businesswire.com/news/home/20210909006094/en/>.

<sup>17</sup> *Core Civic Expects the Contract with the United States Marshals Service at the Northeast Ohio Correctional Center Will Not be Renewed*, Global News Wire (Feb. 25, 2021) available at <https://www.globenewswire.com/en/news-release/2021/02/25/2182979/0/en/CoreCivic-Expects-the-Contract-with-the-United-States-Marshals-Service-at-the-Northeast-Ohio-Correctional-Center-Will-Not-be-Renewed.html>.

<sup>18</sup> Justin Dennis, *Though Biden wants to stop using them, Marshals can keep using Youngstown’s private prison*, Mahoning Matters (May 27, 2021), available at <https://www.mahoningmatters.com/local-news/though-biden-wants-to-stop-using-private-prisons-mahoning-can-keep-using-neocc-3814922>; Koziol, *supra* n. 3.

<sup>19</sup> Letter from ACLU affiliates for Kansas, Iowa, Missouri, and Nebraska and Federal Public Defenders in Kansas, Iowa, Missouri, and Nebraska (Sept. 2, 2021), available at [https://www.aclukansas.org/sites/default/files/field\\_documents/letter\\_regarding\\_corecivic\\_leavenworth\\_redacted.pdf](https://www.aclukansas.org/sites/default/files/field_documents/letter_regarding_corecivic_leavenworth_redacted.pdf).

<sup>20</sup> Rebecca Plevin, *Cash-strapped Central Valley city weighs plan to convert prisons into immigration detention centers* (Desert Sun Feb. 17, 2020), <https://www.desertsun.com/story/news/politics/immigration/2020/02/17/mcfarland-weighs-plan-convert-prisons-into-immigration-detention-centers/4718689002/>.

permit GEO to use the next six-months to cement the fate of the Executive Order as a dead letter, the Administration should use this opportunity to wind down GEO's involvement at WRDF entirely. As described more fully below, with GEO's track record of harming people entrusted to its custody, including but not limited to WRDF, ending its operation of WRDF is necessary to protect the health and safety of the people detained there and to continue President Biden's goals of reducing incarceration levels and phasing out reliance on the private prison industry.

### **III. The White House Must Stand by the Executive Order and Prevent GEO from Continuing to Incarcerate People in USMS Custody at Western Region**

President Biden issued the Executive Order precisely because of the issues inherent in allowing for-profit prison corporations to operate private detention facilities, noting that the Office of Inspector General determined such corporations fail to provide "the same levels of safety and security for people in the Federal criminal justice system or for correctional staff."<sup>21</sup> In the case of GEO at WRDF and elsewhere, these harms are undoubtedly prevalent, as the company has relentlessly pursued profit and shown disregard for the wellbeing of people in its custody.

#### **A. Dangerous Conditions and Constitutional Violations at WRDF**

##### **1. Abuse and Denial of Medical Care**

We have received reports regarding GEO's frequent denial of medical care to people in USMS custody at WRDF.

- A 65-year-old individual recently held at WRDF, who had a heart arrhythmia, was diabetic, suffered from severe hearing and vision loss, and had survived a botched colon surgery that causes constant pain, was routinely denied medical care, even when his attorney would regularly email USMS and jail staff requesting such care. Although he had been hospitalized twice for a heart condition while in custody in a different facility, while in WRDF his requests for medical care regarding his heart and seeking access to insulin were consistently ignored. Although he reported that other people in custody steal his glucose meter strips, which he is unable to prevent due to his frailty, his requests were ignored. He frequently called his attorney begging for help to get taken to a hospital.<sup>22</sup>
- In a case from this year, GEO denied medication for two weeks to a recently admitted fifty-three-year-old woman with multiple sclerosis and anxiety. She had received weekly injections for her MS since approximately 2013, but during GEO's weeks-long denial of her MS and mental health medication, she reported suffering multiple seizures at WRDF. After a hearing on the issue in which she requested to be taken to a neurologist, Magistrate Judge Anthony Battaglia ordered "the US Marshals and GEO... to schedule a neurologist follow-up appointment at the earliest available date," and to provide "physical therapy as previously prescribed along with access to the necessary equipment for the physical therapy." Rather than provide the treatment promptly, she was transferred to Santa Ana, California, reportedly "in error," according to USMS.<sup>23</sup>

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<sup>21</sup> See Executive Order 14006.

<sup>22</sup> Sentencing Memorandum, ECF 37, *United States v. Sevilla Avila*, No. 21-CR-0578-W (S.D. Cal.) (July 26, 2021).

<sup>23</sup> Motion for Orders Requiring Medical Care, to Show Cause Why USMS Should Not Be Held in Contempt, and to

- We learned of a 2020 case in which an individual in his 60s detained pre-trial at WRDF had fluid buildup in his lower legs that caused pain so severe he was unable to walk. Despite weeks of requests for medical care, GEO reportedly failed to provide routine treatment to prevent infection such as compression socks or regular medical appointments. His leg ultimately became severely infected, requiring his hospitalization and causing six week delay in his trial. Although he was not in a wheelchair when he was admitted to WRDF, his detention at WRDF resulted in his being wheelchair-bound at the time of his trial.<sup>24</sup>
- Scott Miles Stout, a 56-year-old individual who was detained at WRDF from April to December 2018, filed a civil rights and disability discrimination lawsuit against GEO. Mr. Stout, who had suffered a broken leg prior to entering the facility, required a wheelchair and cane for mobility, but alleged that he was denied a wheelchair for six months despite his repeated requests. He also filed several grievances about accessibility to the showers, bathrooms, and community tables on the floor where GEO housed people with disabilities and serious medical conditions. Mr. Stout alleged that in response GEO guards singled him out as “the one” making the complaints and that “GEO personnel created a situation that required [him] to spend almost a week in solitary confinement” without access to his cane, wheelchair, or a shower.<sup>25</sup>

These are just a few examples of the poor medical care provided by GEO to people detained at WRDF. We understand these and many more medical issues have been brought to the attention of USMS and GEO through both informal communication and court filings, but that many such cases involve filings under seal to protect the medical privacy rights of those involved.

## 2. Dangerous Conditions of Detention During the COVID-19 Pandemic

Reports of the conditions at WRDF have been especially troubling during the COVID-19 pandemic. There is now widespread consensus that carceral settings like WRDF present potential hotspots for COVID-19 outbreaks, requiring precautions including the reduction of incarcerated populations to permit social distancing. According to a recent study in the Journal of the American Medical Association Network, “anticontagion policies, including jail decarceration to minimize carceral outbreaks and their spillover to surrounding communities, appear to be necessary for epidemic control, public health, and mitigation of racial health disparities.”<sup>26</sup> The study found that, as of September 1, 2020, carceral settings “represented 90 of the top 100 COVID-19 clusters in the US.”<sup>27</sup>

According to the Federal Defenders of San Diego, who represent clients detained at WRDF, many

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Compel Evaluation by a Neurologist, ECF 48, *United States v. Caudillo*, No. 21-CR-775 (S.D. Cal.) (June 15, 2021).

<sup>24</sup> This information was shared with the undersigned by an individual familiar with the matter. Out of respect for their privacy, we have not identified either person in this public document.

<sup>25</sup> Verified First Amended Complaint, *Stout v. GEO Group, Inc, et. al*, No. 37-2019-00000650-CU-CR-CTL (Feb. 27, 2019).

<sup>26</sup> Reinhart E, Chen DL, *Association of Jail Decarceration and Anticontagion Policies With COVID-19 Case Growth Rates in US Counties*. JAMA NETW OPEN. 2021;4(9):e2123405. doi:10.1001/jamanetworkopen.2021.23405 (Sept. 2, 2021), available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2783680> (“[L]arge-scale decarceration and changes to pretrial detention policies are likely to be important for improving US public health, biosecurity, and pandemic preparedness.”)

<sup>27</sup> *Id.*

people detained there had comorbidities that placed them at high risk of serious illness or death from COVID-19, yet people were still crammed into the facility so tightly that it was impossible to avoid physical contact with one another, much less maintain social distancing.<sup>28</sup> This included GEO forcing people to stand shoulder-to-shoulder for count. In addition, people detained at WRDF alleged in spring 2020 that:

- “water will shut off for days at a time, showers break,” “toilets will regularly clog,” and “[s]ewage is leaking from drains;”
- the facility was “frequently running out of soap;”
- guards did not regularly wear masks or require detained people to do so, despite outbreaks erupting in detention centers nationwide at that time, including one at the nearby CoreCivic-run Otay Mesa Detention Facility in San Diego County;
- due to a three-day water shut off, people detained inside were unable to wash their hands or shower, and “a trash can was filled with water for communal handwashing.”<sup>29</sup>

Delays in the provision of medical care continued to be routine. One person stated that a “detainee with a cough and a fever asked to see a doctor but was refused.” Others estimated that routine medical requests take 4-7 days to process, and grievances for improved conditions went wholly unanswered or prompted retaliation, with guards calling those filing grievances “snitches” and denying them meals. The grave conditions prompted a hunger strike in which an estimated 100 detained people participated. As one detained person stated, “I feel like I’m going to die here.”<sup>30</sup>

Given these conditions, it is unsurprising that the facility experienced a serious outbreak by fall, with at least 86 detained people and 10 staff members at WRDF testing positive in November 2020, in addition to another 54 GEO employees who had tested positive previously.<sup>31</sup>

### 3. WRDF’s Role in Past Constitutional Violations

To understand why reducing federal pre-trial incarceration will prevent future harm, it bears recalling the role that USMS facilities in San Diego, including WRDF, have played in past constitutional violations. These include the forcible separation of children from their parents during the Trump Administration. Many separations were caused by the implementation of the so-called “Zero Tolerance” policy targeting people seeking asylum at the Southern border, under which people who crossed the United States-Mexico border to request asylum would, as a blanket matter, be prosecuted for unlawful entry in violation of 8 U.S.C. § 1325, a misdemeanor, regardless of whether the case involved a parent traveling with a small child. In fact, the Department of Justice Office of Inspector General found that the government was fully aware that these prosecutions *would* result in forced

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<sup>28</sup> Declaration of Joshua Jones dated April 8, 2020, ECF No. 40-1, *U.S.A. v. Aguilera-Baragan*, No. 19-CR-3017-JLS (S.D. Cal.) (June 10, 2020).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Alex Riggins, *At least 96 inmates, staff at one San Diego federal jail have COVID-19*. SAN DIEGO UNION-TRIBUNE (Nov. 2, 2020), available at <https://www.sandiegouniontribune.com/news/courts/story/2020-11-02/nearly-100-inmates-staff-at-san-diego-federal-jail-have-covid-19-c>.

separations, yet they pressed forward anyway.<sup>32</sup>

Many separated parents charged in San Diego under Zero Tolerance were held in USMS custody, including at WRDF. Because GEO did not provide access to phones that could dial out to the government's 1-800 hotlines, supposedly provided to parents to learn what happened to their children, those parents would suffer for extended durations at WRDF with no information about their children's well-being. In one case among many, a man who had fled Guatemala with his 5-year-old daughter to seek asylum in the United States was arrested and charged with illegal entry. United States Border Patrol told him his daughter would remain at the Border Patrol station while he went to jail for 2 or 3 days, but he was reportedly detained at WRDF for several weeks while his daughter was sent to New York City without his knowledge. From WRDF, he was unable to get information about his daughter, and he eventually gave up his criminal defense and his claim for asylum in hopes of reuniting with her.

People have also been held at WRDF beyond their release dates after completing their sentences, in violation of their constitutional rights. In several cases involving people who accepted "time served" plea agreements, USMS allegedly failed to send release sheets to GEO, resulting in several extra days of custody each. In a particularly egregious 2018 case, an individual remained in GEO custody at WRDF for nearly two weeks beyond his release date. Because GEO gets paid by the day, GEO guards had no incentive to identify or rectify these lengthy periods of unlawful detention

These violations are likely a small sampling of abuses at WRDF in recent years, but they are not one-off exceptions. Based on GEO's track record elsewhere, described further below, it is clear that they are the predictably pervasive result of an overly punitive pre-trial detention system that relies heavily on private prison corporations.

## **B. Dangerous Conditions at other GEO Facilities in California**

GEO's business and detention operations elsewhere in California provide further cause for concern. As an initial matter, this is not the first time the company has attempted to enlist financially strained municipalities to participate in an end run around federal law. As the California State Auditor exposed, GEO has used McFarland (and the City of Adelanto) to circumvent procurement law in the context of immigration detention:

[I]f ICE contracted directly with the private operators, ICE would have to comply with federal procurement rules that generally require full and open competition unless a statutory exception to the competitive process applies. . . . City council documents show how the private operators worked with two of the cities to secure or amend the intergovernmental service agreements with ICE. . . . Under the terms of the detention subcontracts, each of the cities passed millions of dollars of federal payments through to the private operators . . . . [E]ach city agreed to pay the private operator the same per-diem rate that the city is paid under the terms of the ICE

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<sup>32</sup> Dustin Jones, *Justice Department Knew 2018 Border Policy Would Separate Children from Families*, National Public Radio (Jan. 14, 2021), available at <https://www.npr.org/2021/01/14/957011268/justice-department-knew-2018-border-policy-would-separate-families>; DOJ OIG Report 21-028, *Review of the Department of Justice's Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services* (Jan. 2021), available at [https://oig.justice.gov/sites/default/files/reports/21-028\\_0.pdf](https://oig.justice.gov/sites/default/files/reports/21-028_0.pdf).

contract—essentially passing through all of the payments to the private operators.<sup>33</sup>

The company’s aversion to federal procurement law is matched by a disregard for the wellbeing of people in its custody, as illustrated by the following brief examples:

- A 44-year-old man died in April 2015 while detained at GEO’s Adelanto Detention Facility. Despite suffering from evident symptoms of cancer for many months prior, the symptoms went unaddressed until the month he died. In February 2015, he pleaded for help in a grievance: “To who receives this. I am letting you know that I am very sick and they don’t want to care for me. The nurse only gave me ibuprofen and that only alleviates me for a few hours. Let me know if you can help me. I only need medical attention.” The doctor who eventually evaluated him said he had “the largest [abdominal mass] she had ever seen in her practice,” which was “notably visible through the abdominal wall.” A follow-up colonoscopy was not scheduled until close to a month later, and the man died soon thereafter.<sup>34</sup>
- In 2015, GEO staff at the Mesa Verde facility in Bakersfield shackled—via handcuffs, ankle cuffs, and waist chain—a pregnant woman in need of urgent medical care for a trip to the hospital in the midst of a downpour. While getting into the vehicle, the woman tripped on the shackles and fell hard on her stomach, unable to break her fall—evidently resulting in a miscarriage. She began bleeding heavily the next day, yet GEO staff *again* handcuffed her while transporting her to the hospital.<sup>35</sup>
- The DHS Office of Inspector General recently reported on the “poor condition” of GEO’s Adelanto facility, “including mold and peeling paint on walls, floors, and showers, and unusable toilets” in the bathrooms, which creates “health issues for detainees, including allergic reactions and persistent illnesses.” The report also found “egregious” violations of basic food safety practices, including exposed, unlabeled lunch meat in walk-in refrigerators, chicken that “smelled foul and appeared to be spoiled,” and expired food in the freezer.<sup>36</sup>

Furthermore, as with WRDF, GEO’s callous indifference to the health of people in its custody has been on horrifying display during the COVID-19 pandemic in its other California facilities. In August 2020, months into the pandemic and after prior scathing judicial rebukes, a federal court found that GEO (and ICE), “having responded to the health crisis in such a cavalier fashion (even in the face of litigation and a string of court orders), have lost the credibility to complain that the relief requested by the plaintiffs is too rigid or burdensome” and “the right to be trusted” with ensuring the basic safety measures necessary to protect against the spread of COVID-19 at GEO’s Mesa Verde facility.<sup>37</sup> In December 2020, the same court described the conduct of GEO officials in charge of Mesa Verde as “appalling,” citing the company’s continued failure to put in place a plan to minimize

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<sup>33</sup> California State Auditor, *Report 2018-117, City and County Contracts with U.S. Immigration and Customs Enforcement* (Feb. 2019), at 15-16, <https://www.auditor.ca.gov/pdfs/reports/2018-117.pdf>.

<sup>34</sup> Clara Long & Grace Meng, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention*, Human Rights Watch (May 8, 2017), available at <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

<sup>35</sup> ACLU SoCal, *Shackle A Pregnant Woman, Risk A Foreseeable Tragedy* (June 18, 2015), <https://www.aclusocal.org/en/news/shackle-pregnant-woman-risk-foreseeable-tragedy>.

<sup>36</sup> Office of Inspector General, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, at 4, 8, OIG-19-47 (June 3, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

<sup>37</sup> *Zepeda Rivas v. Jennings*, No. 20-cv-02731-VC, 2020 WL 4554646, at \*1 (N.D. Cal. Aug. 6, 2020).

the risk of, and contain, any COVID-19 outbreak.<sup>38</sup> Another federal court found that the conditions of confinement at GEO’s Adelanto facility in April 2020 were “inconsistent with contemporary standards of human decency”<sup>39</sup> Worse, the company has responded to individuals’ pleas for meaningful measures to address these legitimate health and safety concerns with retaliation in violation of the First Amendment.<sup>40</sup>

Hundreds of individuals in GEO’s custody at Adelanto and Mesa Verde have been infected with COVID-19 during the pandemic,<sup>41</sup> and untold hundreds more would have been infected absent emergency judicial intervention. Yet even as the pandemic rages on and even as GEO fails to commit publicly to vaccinate or consistently test staff, the company continues to unabashedly fight to lift the population restrictions at both facilities. On June 3, 2021, dissatisfied that ICE’s approach to repopulating the Adelanto was too gradual, GEO sought to intervene, openly arguing that its interest in enriching itself financially was not aligned with the federal government’s interest—and constitutional obligation—to provide safe conditions at the facility: “Since GEO is compensated for the use and operation of the Adelanto facility, capacity restrictions at Adelanto directly affect GEO’s economic interests,” GEO wrote.<sup>42</sup> The company—but not ICE—has also sought to modify the court-imposed population limits at Mesa Verde. In sum, GEO’s orientation toward profit has driven it to seek court orders allowing it to repopulate Adelanto and Mesa Verde even more quickly than ICE has seen fit to do.

The pattern is clear: Across its business decisions and operations in California, GEO prioritizes its relentless pursuit of profit far above any other concern.

### **C. Over-reliance on Pre-Trial Detention in the Southern District of California**

Not only should the White House prevent GEO from continuing to operate WRDF, but the facility should be shut down altogether in furtherance of the Biden Administration’s stated policy to move away from a system of mass incarceration. As the Supreme Court noted more than 40 years ago, “[p]retrial confinement may imperil the suspect’s job, interrupt his source of income, and impair his family relationships.” *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Recent history has demonstrated this to be indisputably true, with the impacts borne disproportionately by communities of color and other vulnerable people in our society.<sup>43</sup>

Although courts have found that incarceration based on a person’s inability to pay violates the Constitution,<sup>44</sup> many people who are offered bail – meaning they have been deemed suitable for

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<sup>38</sup> *Zepeda Rivas v. Jennings*, 504 F. Supp. 3d 1060, 1064 (N.D. Cal. 2020).

<sup>39</sup> *Roman v. Wolf*, No. EDCv-2000768-TJH, 2020 WL 1952656, at \*8 (C.D. Cal. Apr. 23, 2020).

<sup>40</sup> Complaint to DHS Office of Civil Rights and Civil Liberties submitted to Katherine Culliton-Gonzalez, et al., *First Amendment Retaliation Against Individuals in Immigration Detention in California*, dated Aug. 26, 2021, available at [https://www.aclunc.org/sites/default/files/OCRCL%20complaint.08.26.21%20\\_0.pdf](https://www.aclunc.org/sites/default/files/OCRCL%20complaint.08.26.21%20_0.pdf).

<sup>41</sup> U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, <https://www.ice.gov/coronavirus> (last visited Sept. 16, 2021).

<sup>42</sup> Andrea Castillo, *California banned private prisons, immigrant detention centers. Will the law survive court?* (LA Times June 15 2021), <https://www.latimes.com/california/story/2021-06-15/california-banned-private-prisons-immigrant-detention-centers-will-the-law-survive-court>.

<sup>43</sup> Leon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, THE VERA INSTITUTE (April 2019), available at <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>.

<sup>44</sup> *Bearden v. Georgia*, 461 U.S. 660 (1983); *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978); cf. *Hernandez v.*

release under certain conditions – remain incarcerated simply because they cannot afford their release.<sup>45</sup> Compounding the problems posed by financial limitations, Black and Latinx people are more likely to be detained without bail or forced to contend with significantly higher bail amounts than white people.<sup>46</sup> Because pre-trial detention necessarily puts jobs at risk and places financial hardship on families left at home, it also creates pressure to accept unfavorable plea bargains.<sup>47</sup> As a result, pre-trial incarceration has been shown to correspond to harsher and longer sentences.<sup>48</sup> Taken together, these factors serve to perpetuate the mass incarceration problem generally and the racial disparities in the system specifically.

The majority of federal defendants in the Southern District “are charged with non-violent crimes such as immigration status offenses.”<sup>49</sup> Yet, despite the growing consensus regarding the harm caused by pre-trial detention, it is our understanding that prosecutors in the Southern District of California refuse “to agree to pre-trial release for detained people,” even during the pandemic, and routinely ask for high cash or property bonds knowing that the defendants cannot meet them.<sup>50</sup> As a result, many people in the Southern District of California remain in custody pre-trial at facilities like WRDF simply because they are financially unable to meet the bond set. If true, this almost certainly results in more people being detained pre-trial than necessary.

Rather than pay exorbitant sums to private prison corporations to incarcerate people pre-trial, government resources would be better spent investing in community-based alternatives to detention, which have been proven to achieve the same goals as pre-trial detention without the harsh impacts of incarceration.<sup>51</sup> As the Supreme Court has noted, “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Consistent with this core Constitutional principle, investing in community-based alternatives to detention and exercising discretion to not seek impossibly high bail amounts will help ensure fewer people are unnecessarily incarcerated in the Southern District of California, which will facilitate the closure of WRDF. These are important and necessary steps if the Biden Administration hopes to achieve its goals of reducing mass incarceration.

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*Sessions*, 872 F.3d 976, 991-92 (9th Cir. 2017).

<sup>45</sup> Mathilde Laisne, Jon Wool, and Christian Henrichson, *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, THE VERA INSTITUTE OF JUSTICE, at 7 (Jan. 2017), available at <https://www.vera.org/downloads/publications/past-due-costs-consequences-charging-for-justice-new-orleans.pdf>.

<sup>46</sup> Digard and Swavola, *supra* n. 43.

<sup>47</sup> Will Dobbie, Jacob Goldin, and Crystal Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, *American Economic Review* 2018, 108(2): 201-240 at 202 & n.1 (Feb. 2018), available at <https://www.aeaweb.org/articles?id=10.1257/aer.20161503>.

<sup>48</sup> Christopher T. Lowenkamp, Marie VanNostrand, Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, THE LAURA AND JOHN ARNOLD FOUNDATION, at 10-11 (Nov. 2013), available at <https://nicic.gov/investigating-impact-pretrial-detention-sentencing-outcomes>.

<sup>49</sup> Letter from Kathryn N. Nester, Executive Director of Federal Defenders of San Diego, Inc. to Senator Kamala Harris (March 31, 2020), available at <https://www.voiceofsandiego.org/wp-content/uploads/2020/04/FSDSI-COVID-19-letter-to-Sen.-Harris.pdf>.

<sup>50</sup> *See id.*

<sup>51</sup> Jennifer Elek, Sara Sapia, and Susan Keilitz, *Use of Court Date Reminder Notices to Improve Court Appearance Rates*, PRETRIAL JUST. CTR. FOR CTS. (Sept. 2017), available at [https://www.ncsc.org/\\_data/assets/pdf\\_file/0015/1635/pjcc-brief-10-sept-2017-court-date-notification-systems.ashx.pdf](https://www.ncsc.org/_data/assets/pdf_file/0015/1635/pjcc-brief-10-sept-2017-court-date-notification-systems.ashx.pdf).

#### IV. Conclusion

GEO's involvement in perpetuating harm at WRDF could have been over on September 30, 2021. Taking the Administration at its word as expressed in the Executive Order, it should have been. Yet, despite months to prepare for the contract's termination, it was extended for six months at the last minute. The White House now has the opportunity to use those six months to ensure that President Biden's Executive Order regarding private detention facilities still has meaning. We therefore encourage the White House to intervene to ensure that (1) GEO's contract to operate WRDF is not renewed or extended any further, (2) the facility shuts down on schedule at the end of the current six-month extension, including by encouraging federal prosecutors to pursue alternatives to detention, and (3) moving forward, USMS includes in any Intergovernmental Agreement for detention services a provision that prohibits subcontracting to private prison corporations.

Respectfully,



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