



June 25, 2008

The Honorable Robert C. Scott
Chair, Subcommittee on Crime, Terrorism, and Homeland Security
House Judiciary Committee
Washington, D.C. 20515

The Honorable Louie Gohmert
Ranking Member, Subcommittee on Crime, Terrorism, and Homeland
Security
House Judiciary Committee
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**Re: The ACLU supports H.R. 1889, the Private Prison Information Act
of 2007**

Caroline Fredrickson
DIRECTOR

Dear Chairman Scott and Ranking Member Gohmert,

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On behalf of the American Civil Liberties Union, a non-partisan organization with hundreds of thousands of activists and members and 53 affiliates nationwide, we write to support H.R.1889, the Private Prison Information Act of 2007 and urge the members of the Subcommittee to support its passage. This much needed legislation would require private entities operating prisons that detain and incarcerate federal prisoners to release information about the operation of the prisons in accordance with the Freedom of Information Act (FOIA) as any federal agency operating a facility is required to do.

OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Allowing the public to have access to FOIA information about private prisons is critical to the ongoing role the public plays in monitoring conditions of confinement and protecting people in federal facilities. Private facilities are responsible for some of the most vulnerable prisoners and detainees from various federal agencies across the country. Presently, FOIA laws do not directly apply to private prisons and immigration detention centers. This statutory omission makes it extremely difficult for the public to acquire the information necessary to help ensure that the constitutional rights of those held in these facilities are respected and that their living conditions are humane.

Recently, media and non-governmental organizations exposed some of the horribly inadequate living conditions faced by prisoners and immigration detainees held in private prisons. For example, at a San Diego immigration detention facility managed by the Corrections Corporation of America, Inc. (CCA), hundreds of detainees were forced to live for months and years in dangerously overcrowded conditions, many of them sleeping on plastic slabs placed on the floor by the toilet. Records pertaining to the

detainee population, CCA's staffing levels, and any CCA policies regarding sanitation, security, or overcrowding at the facility were publicly unavailable because of current FOIA limitations. Unlike other federal prisons, these private prisons cannot be monitored by the American public for unacceptable conditions due to the FOIA omission.

We recommend only one minor change to the bill. As written, the bill applies to “nongovernmental entities contracting with the Federal Government to incarcerate or detain Federal prisoners in a privately owned prison or other correctional facility.” Section 2(d) defines the term “privately owned prison or other correctional facility” to include facilities that “incarcerate or detain prisoners pursuant to a contract with . . . Immigration and Customs Enforcement.” However, the more than 300,000 people detained by ICE each year are “detainees,” not “prisoners.”¹ Privately owned facilities housing federal immigration detainees pursuant to a contract with ICE might challenge the law’s applicability if the bill remains unchanged. Sections 2(a), (b), and (d) should be amended to include the words “and detainees” after the word “prisoners.”

Since its enactment over forty years ago, FOIA has created the transparency necessary to ensure that the public and the media can access basic government records. Open government is integral to holding the government accountable, and is vital especially when government denies a person his or her freedom by incarceration. Currently, the Federal Bureau of Prisons houses more than 27,000 prisoners in private facilities — not including the thousands of immigration detainees held in private federal prisons. With the increasing number of federal prisoners being held in private prisons, it is important that these facilities be held to the same standards and have the same responsibilities as the federal government to promptly process requests for information and release information concerning prisoners and detainees under the FOIA laws.

We are pleased to support H.R. 1889 and urge you and other members of the House Judiciary Committee, Crime, Terrorism and Homeland Security Subcommittee to support this important legislation. If you have any questions about the ACLU’s position on H.R. 1889, please feel free to contact Michael Macleod-Ball at mmacleod@dcaclu.org or (202) 675-2309.

Sincerely,



Caroline Fredrickson
Director



Michael W. Macleod-Ball
Chief Legislative/Policy Counsel

cc: House Judiciary Committee
Crime, Terrorism and Homeland Security Subcommittee Members

¹ See 28 U.S.C. 1915(h) (defining the term “prisoner” to refer to “any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole probation, pretrial release, or diversionary program”). *Accord* 18 U.S.C. 3626(g); 28 U.S.C. 1915A(c); 42 U.S.C. 1997e(h).