

The American Civil Liberties Union (ACLU) welcomes this opportunity to submit testimony to the House Committee on the Judiciary Subcommittee on Crime, Terrorism, Homeland Security and Investigations for its hearing on *Oversight of the Federal Bureau of Prisons*, and urges the Subcommittee to take action to bring the Bureau of Prisons into conformity with accepted legal, public-safety, and human-rights standards.

The ACLU is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal levels through public education, advocacy, and successful litigation.

The Federal Bureau of Prisons (BOP) is the largest prison system in the country, comprising 119 prisons and jails and managing the detention of about 219,000 people.¹ While most federal prisoners are housed in BOP-operated jails and prisons, BOP also contracts with private prisons, as well as state and local prisons and jails, to house some of its prisoners and detainees.² Many of

human-rights and public-safety guidelines for the treatment of prisoners and detainees. In particular, BOP should improve its policies on the use of solitary confinement; on contracts with private, for-profit prisons; on compliance with the Prison Rape Elimination Act (PREA) and with requirements for treating transgender and transitioning individuals; on the abusive practice of using Special Administrative Measures and Communication Management Units; and on the proposed relocation of approximately 1,000 women from a Connecticut federal prison to a new facility in Aliceville, Alabama.

I. Solitary Confinement is Excessive and Should Be Monitored

a. _____

Solitary confinement is an extreme form of punishment that should be reserved only as a measure of last resort. Prisoners housed in solitary confinement are typically held in a small cell no bigger than a parking space for 22 to 24 hours a day, with little to no human interaction aside from prison guards and the occasional healthcare provider or attorney. Many in the legal and medical fields criticize solitary confinement as both unconstitutional and inhumane. It is widely accepted that the practice exacerbates mental illness and reduces a person's ability to successfully re-enter into society when his or her sentence is complete.³ An estimated 80,000 people are currently held in solitary confinement in prisons across the country. Many are nonviolent offenders, caught up in punitive disciplinary systems that sometimes send prisoners

confinement over 15 days amounts to torture.⁵ Yet many American prisoners can end up spending months or years in solitary confinement.

Over the last two decades, corrections systems across the country have increasingly relied on solitary confinement, even building entire supermax super-maximum-security facilities, where prisoners are held in conditions of extreme isolation, sometimes for years on end. In addition to posing humanitarian concerns, this massive increase in the use of solitary confinement has led many to question whether it is an effective use of public resources. Supermax prisons, for example, typically cost two or three times more to build and operate than traditional maximum-security prisons.⁶

BOP currently holds about seven percent of its population more than 12,000

prisoners even though
effects.

Private high incarceration rates more people in prison means, for these facilities, more business. In the past decade, BOP has become increasingly reliant on private prisons, and maintains 13 contracts, totaling a reported \$5.1 billion, with for-profit prison companies.²⁷ This increase in privatization demands that the companies who run private prisons subject themselves to the same degree of public accountability as would a federal agency running the same prison. However, contract companies that run these facilities dedicate significant resources to lobbying against subjecting their BOP contract facilities to the same transparency requirements as BOP facilities.²⁸

According to the Sentencing Project, 33,830 BOP prisoners were held in private facilities in 2010 (a 67% increase from the number of prisoners in 2002); by the end of 2011, while overall numbers of state prisoners in private prisons decreased, the federal number continued to climb, to 38,546 (18% of the total BOP population).²⁹ And the number of people in private facilities continues to grow; for fiscal year 2014, BOP requested funding to add 1,000 more beds in private facilities.³⁰ Of the private facilities holding BOP prisoners, 13 are private prisons operating under Criminal Alien Requirement (CAR) contracts with BOP. These CAR prisons are specifically dedicated to housing non-citizens in BOP custody. These people are at low custody levels, and many are serving sentences solely for unlawfully reentering the United States after having been previously deported.³¹

For-profit prisons even those under BOP contract, housing BOP prisoners are not subject to the same disclosure requirements under the Freedom of Information Act (FOIA) as are BOP prisons. This is due to an Executive branch interpretation of the statute, which established that most disclosure requirements that apply to federally-run prisons do not apply to private prisons.³² As a result, it is extremely difficult for the public to obtain the information necessary to help ensure that the constitutional rights of those held in private facilities are respected, and that their living conditions are humane.

Over the past several years, there have been reports of poor treatment with devastating consequences in CAR facilities. In one such instance, in 2009, at the GEO Group-operated Reeves County Detention Center in Pecos, West Texas, immigrant prisoners organized an uprising after a man with epilepsy died from a seizure while in solitary confinement. An ACLU lawsuit alleges that medical staff failed to provide the man anti-convulsant medication 90 times. His gums began to bleed and he suffered frequent seizures, but he was placed in segregation rather than treated. The lawsuit alleges that there was not even a nurse available on weekends.³³ And in 2012, immigrant prisoners at the Corrections Corporation of America (CCA)-operated Adams County Correctional Facility in Natchez, Mississippi, staged an uprising to demand better conditions of confinement. CCA staff then failed to quell the uprising, which resulted in 20 people being injured, one correctional officer being killed, and \$1.3 million in property damage.³⁴ Stories like these underscore the need for greater oversight and accountability of the conditions and policies at private, for-

and the need for BOP to cancel contracts when the private prison companies fail to meet appropriate standards.

III. BOP Should Share Results of Audits of the Implementation of the Prison Rape Elimination Act

The Prison Rape Elimination Act (PREA) passed unanimously through both houses of Congress and was signed into law in 2003. The Act charged the Department of Justice (DOJ) with gathering data on the incidence of prison rape,³⁵ and created a commission to study the problem and recommend national standards to DOJ.³⁶ After nine years of study and commentary by experts, the DOJ promulgated a comprehensive set of national standards implementing the Act in May 2012.³⁷ The Federal government was immediately bound to implement the PREA regulations in federal prison facilities.³⁸

The PREA regulations include detailed requirements for the prevention, detection, and

reassessed at least twice each year to review any threats to safety experienced by t

relationships is crucial, and can be even more difficult for women prisoners than for men. One lawyer noted, in response to the proposed relocation that [w]omen get fewer visits in jail, they become alienated from families and children, husbands and boyfriends move on⁶⁸

The general public has a significant interest in women while serving a sentence. Maintaining important relationships helps former prisoners successfully reenter their communities after they are released. Upon release from prison, people who maintain strong family contact were shown to be more successful at finding and keeping jobs, and less likely to recidivate.⁶⁹ Disrupting the ability to visit a parent in prison, as the contemplated move would do in countless cases, can also victimize the children of incarcerated people.

media and by a group of 11 senators in a high-profile public letter to BOP Director Charles Samuels.⁷⁰ As a result, plans to open Aliceville and relocate many women from Danbury have recently been suspended.⁷¹

⁷² If the move occurs and the prison opens as originally planned, BOP will be the cause of hundreds of families being torn apart irreparably. We urge the Committee to put BOP on the record on this issue and urge members to oppose the relocation of women prisoners from Danbury to Aliceville.

¹ About the Bureau of Prisons, FEDERAL BUREAU OF PRISONS, <http://www.bop.gov/about/index.jsp>.

² *Id.*

³ *See, e.g.,*

³⁸ 42 U.S.C. 15601 §8(b) (2003). *See also* Memorandum from the President of the United States Implementing the Prison Rape Elimination Act (May 17, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/05/17/presidential-memorandum->

[http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202615866626&Federal Prison Officials Will Answer Questions Before Moving Women &slreturn=20130716182512](http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202615866626&Federal_Prison_Officials_Will_Answer_Questions_Before_Moving_Women_&slreturn=20130716182512).

⁶⁸ *Id.*

⁶⁹ *See* Resnik, *supra* note 65 Being moved far from home limits the opportunities of women being moved out of