

August 4, 2016

Rep. Barbara Rachelso,
Vermont Legislature
115 State St., Drawer 33
Montpelier, VT 05633-5301

Dear Rep. Rachelso;

First, I apologize for the quality of this letter. I'm a Vermont prisoner being housed under contract with a private prison in Michigan, and the resources here are stupid.

Today, I saw on the law library computer that you introduced a bill in January to prohibit contracts with for-profit correctional facilities. That topic is right up my alley, so I had to write to you.

During a brief period of inmates here having access to word processing, I was able to put together a report of the illegality of Vermont's use of private prisons in Kentucky and Michigan. I've enclosed a copy of the report for your careful review.

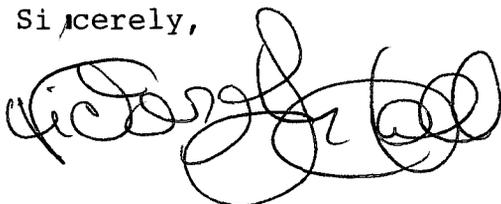
The language you used in your bill is spot-on: incarceration is a strictly governmental function, and it is not only immoral but arguably illegal for Vermont to hire out its incarcerative authority to a bunch of unqualified civilians who are in it only for profit, rather than for society's benefit.

Please read my report. Contact me if you feel like talking about it. This isn't some flash-in-the-pa, fly-by-night fantasy; the prisoners here in Michigan are literally free men, being outside of Vermont's jurisdiction without being in the custody of any other governmental authority.

I've been trying to get word of this spread around, with damn few results. If you would be so caring as to share my report with others, I would be deeply grateful.

Thank you for your compassionate wisdom in this area, and for your valuable time.

Sincerely,



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P.S. This has not been "settled" by the courts already. The courts that condone out-of-state private prisons are wrong, and the law proves it.
So can I.

July 4, 2016 (Revised)

THE EMPEROR IS NAKED— IS THE PUBLIC BLIND TO UNCONSTITUTIONAL IMPRISONMENT?

Private prisons are a sham, even illegal:
all state prisoners who are in private prisons in other states are actually free,
and in certain states, prisoners can legally escape from private prisons.
So, why is it still a multi-billion-dollar business?

By Victor G. Hall

The author has first-hand knowledge of the private prison industry. He was arrested in Vermont in 2006 after his ex-wife accused him of molesting their daughter. There was nothing to prosecute him except conflicting stories, the child recanted her allegations and told witnesses that her mother forced her to lie about him, and he passed polygraph tests that proved him innocent; but he was denied a defense and trial and in 2008 was sentenced to 10-to-50 years in prison. He was swiftly shipped off to a Kentucky private prison owned by Corrections Corporation of America. Then in 2015, all of Vermont's prisoners in Kentucky and Arizona were moved to a Michigan private prison owned by GEO Group, Inc. Convinced that commercial incarceration—especially in a state other than the one that sentenced the prisoners—is invalid, he often solicited input from legal and political experts, and filed a case in federal court, with no results. But in 2016, newly improved law research tools at the Michigan prison let him validate his position.

Vermont's Department of Corrections (VTDOC) has been sending its inmates to prisons in other states for nearly twenty years, more recently by making illegal deals with civilian corporations in order to superficially improve its prison budget.

More than 250 men convicted in Vermont are currently locked up at North Lake Correctional Facility (NLCF), a private prison that is owned and operated in Michigan by GEO Group, Inc. (GEO), a Florida-based real estate company. But despite the growth of private prison use in the last three decades, a swarm of flies in the legal ointment makes those men free—meaning free to leave NLCF without permission or restriction.

“What makes us Americans? Just one thing. The rulebook. We call it the Constitution.”

—Tom Hanks as Jim Donovan in *Bridge of Spies*

People forget that governmental power comes from them, not from the government itself.

A democratic government—whether at the local, state, or federal level—cannot act with autonomy. Citizens own the government. It has to answer to them.

People created government as a tool for self-control in a society. All power wielded by the government comes from the people; it is merely on loan, never leaving the people.

As stated in the Declaration of Independence, the government can control people only with their permission: “Governments are instituted among Men, deriving their just powers from the consent of the governed.”¹

The innate authority of the people is detailed in the U.S. Constitution: “WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Wel-

fare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.”²

The constitution of the State of Vermont—material to this report—agrees that government functions for the good of people in general, not to benefit only certain persons (like shareholders of private prison companies): “[G]overnment is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community...”³

In the constitution of the State of Michigan, also relevant here, the same ideal is laid out: “All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.”⁴

That principle has also been expressed by the U.S. Supreme Court in its rulings that “[t]he Constitution of the United States was made by, and for the protection of, the people of the United States,”⁵ and “[i]n our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.”⁶

In the United States, governmental power unquestionably belongs to the citizens. It can't be hired out to a commercial third party that isn't subject to public election or review, and that functions not for the public good but for the financial gain of its hidden shareholders.⁷

² U.S.C.A. Const. Preamble.

³ Vermont Constitution, Chapter I, Article 7: Government for the People.

⁴ M.C.L.A. Const. Art. 1, § 1: Political Power.

⁵ *League v. De Young*, 52 U.S. (11 How.) 185, 13 L.Ed. 657 (1850).

⁶ *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).

⁷ Friedmann, A. *Who Owns Private Prison Stock?* Prison Legal News, August 2015, 46, 47. (“GEO Group's shareholder list cannot be distributed without violating Florida law.... [A]n investor would have to own about 5.85 million shares [of CCA stock] (currently valued at over \$200 million) before they could

¹ Jefferson, T. (1776). *The Declaration of Independence*, at ¶ 2.

“[I]n the absence of express legislative authority, [a governmental subdivision] cannot surrender or contract away its governmental functions and powers.”⁸

A state government doesn't have authority in other states—or *extraterritorial jurisdiction*.

Extraterritorial describes something “beyond the geographic limits of a particular jurisdiction,” and *jurisdiction* is “a government’s general power to exercise authority over all persons and things within its territory.”⁹

When VTDOC sends its prisoners outside Vermont’s territory but not to another state’s custody, its jurisdiction over them evaporates.

The U.S. Supreme Court stated, “[There are] two well established principles of public law respecting the jurisdiction of an independent state.... One of these principles is that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory.... The other principle of public law referred to follows from the one mentioned: that is, that no state can exercise direct jurisdiction and authority over persons or property without its territory.... The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists as an elementary principle that **the laws of one State have no operation outside of its territory....**”¹⁰ [Emphasis added.]

No state can exercise authority over persons outside of its territory.

—U.S. Supreme Court

Over time, the rigid rule of jurisdictional restriction over nonresidents has evolved into a more flexible one to allow judicial proceedings between persons in different states. Still, “restrictions on personal jurisdiction of state courts...are a consequence of territorial limitations on the power of the respective States.”¹¹

“‘[E]nforcement jurisdiction’ [is] the power ‘to induce or compel compliance or to punish noncompliance’ with the law. [It] remains closely tied to territory in that a state is generally considered to have a monopoly of force within its borders. [A]ny extraterritorial exercise of force inside another state infringes that state’s jurisdictional monopoly of force within its borders....”¹² That means the State of Vermont can’t have sovereignty over people in Michigan without depriving the State of Michigan of its own sovereignty over people in Michigan.

“[T]he law of enforcement jurisdiction has remained fairly static[,] has resisted domestic judicial review and has stuck fastidiously to a rule of strict territoriality.”¹³

The prisoners at NLCF are nearly a thousand miles past the line where Vermont’s authority over them stops. As they have not been charged, tried, and convicted of crimes in Michigan, it has no reason or authority to incarcerate them itself. And a civilian company can’t possess the governmental authority to control their freedom. So, they are in a jurisdictional *no-man’s-land*, with nothing keeping them locked up except their cooperation.

obtain a copy of the company’s shareholder list.... Thus, the individual shareholders who own stock in both CCA and GEO remain shrouded in secrecy....”

⁸ Doyle, J.E., 1999 Wis. Op. Atty. Gen. 2 (Wis.A.G.), 1999 WL 33102128 (citing *State el rel. Hammernill Paper Co. v. La Plante*, 58 Wis. 2d 32, 205 N.W.2d 784 (1973); also *Wausau Jt. Venture v. Redevelopment Authority*, 118 Wis. 2d 50, 58, 347 N.W.2d 604 (Ct. App. 1984)).

⁹ “Extraterritorial,” “jurisdiction.” Black’s Law Dictionary 666, 927 (9th ed. 2009).

¹⁰ *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565, 1877 WL 18188

(1877).

¹¹ *Id.*

¹² Colangelo, A.J. (2014). *What is Extraterritorial Jurisdiction*, 99 Cornell L. Rev. 1303; citing Douzinas, C. (2007). *The Metaphysics of Jurisdiction*, Jurisprudence of Jurisdiction 21, 22; Restatement (Third) of the Foreign Relations Law of the United States § 401(c); Jackson, J.H. (2003). *Sovereignty-Modern: A New Approach to an Outdated Concept*, 97 Am. J. Int’l. L. 782, 782, 786.

¹³ *Id.*

Moreover, from rulings by courts in various states and the U.S. Supreme Court: “As a general rule the jurisdiction of a state does not extend beyond its boundaries.”¹⁴ “It is a generally recognized principle that a statute of one state has no extraterritorial effect beyond its borders.”¹⁵ “[W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we and remain faithful to the principles of interstate federalism embodied in the Constitution... [T]he Framers...intended that the States retain many essential attributes of sovereignty...[which] in turn, implied a limitation on the sovereignty of all of its sister States...”¹⁶

A government’s authority must be expressed in its statutes.

A commonly-held characteristic of democratic government is that its citizens can do anything except what is expressly restricted by law, but the government can do nothing except what is expressly permitted by law.

They are in a jurisdictional *no-man’s-land*, with nothing keeping them locked up except their cooperation.

From Vermont case law based on decisions by the U.S. Supreme Court: “A corporation has no other powers than those conferred upon it by the sovereignty which creates it. The enumeration of certain powers implies the exclusion of all others not fairly incidental to those enumerated.”¹⁷

The Vermont Supreme Court, the U.S. Supreme Court, and other legal authorities dictate that “the jurisdiction of administrative bodies is limited. We have repeatedly affirmed that ‘[p]ublic administrative bodies have only such adjudicatory jurisdiction as is conferred on them by statute, with nothing presumed in favor of their jurisdiction.’”¹⁸ “The Legislature has made it clear that administrative departments may exercise only those powers expressly conferred [by law], and that authority cannot arise through implication.”¹⁹ “In the absence of an express grant of...jurisdiction, we will not invent it.”²⁰ “Public officers may exercise only that power which is conferred upon them by law. The powers and duties of public office are measured by the terms and necessary implication of the grant of constitutional or statutory authority; in this regard, it

has sometimes been stated that public officers have only those powers expressly granted or necessarily implied by statute, and that any act of an officer, to be valid, must find express authority in the law....”²¹

Vermont’s laws are silent about the use of private prisons—nowhere in all 33 volumes of statutes did the legislature even make a reference to them—thus failing to expressly allow VTDOC to use one, either inside or outside the state. The fact that the legislature *didn’t* expressly confer such authority to VTDOC leads to only one possible inference: the legislature excluded it intentionally.

¹⁴ Gerhard v. Terminal Railroad Ass’n of St. Louis, 299 S.W.2d 866, 871 (Mo. Banc 1957).

¹⁵ State v. Rimmer, 877 N.W.2d 652, 2016 WL 1165751 (Iowa 2016) (citing Powell v. Khodari-Intergreen Co., 334 N.W.2d 127, 131 (Iowa 1983); United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318, 57 S.Ct. 216, 220, 81 L.Ed. 255, 261 (1936); Gulf Collateral, Inc. v. Morgan, 415 F.Supp. 319, 321 (S.D.Ga. 1976); Singer v. Magnavox Co., 380 A.2d 969, 981 (Del. 1977); State of California v. Copus, 158 Tex. 196, 199, 309 S.W.2d 227, 229 (1958), cert. denied, 356 U.S. 967, 78 S.Ct. 1006, 2 L.Ed.2d 1074; National Bank of Topeka v. Mitchell, 154 Kan. 276, 281, 118 P.2d 519, 522 (1941); Southern Pacific Railroad Co. v. Gonzales, 48 Ariz. 260, 273, 61 P.2d 377, 382 (1936)).

¹⁶ World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

¹⁷ Vermont Acc. Ins. Co. v. Burns, 114 Vt. 143, 40 A.2d 707 (1944)

(citing State v. Clement Nat. Bank, 84 Vt. 167, 78 A. 944 (1911), aff’d, 231 U.S. 120, 34 S.Ct. 31, 58 L.Ed. 147 (1913); Central Transp. Co. v. Pullman’s Palace Car Co., 139 U.S. 24, 11 S.Ct. 478, 35 L.Ed. 55 (1891)).

¹⁸ In re Hinsdale Farm, 177 Vt. 115, 858 A.2d 249, 2004 VT 72 (2004).

¹⁹ Subud of Woodstock, Inc. v. Town of Barnard, 169 Vt. 582, 732 A.2d 749 (1999) (citing Vermont law 3 V.S.A. § 203).

²⁰ State v. Brooks, 162 Vt. 26, 29, 643 A.2d 226, 228 (1993).

²¹ 63C Am. Jur. 2d Public Officers and Employees § 225 Limitations on Authority (2016).

In a 1999 legal opinion by Wisconsin Attorney General James E. Doyle: “[I]f the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power.” [22] ” 23

One Vermont statute seems to say that VTDOC can use any prison anywhere, whether public or private. “The commissioner [of corrections] shall have the authority to designate the place of confinement where the sentence [of a person convicted of an offense] shall be served.” 24 But Vermont’s legislature can’t grant its officials another state’s power, so its commissioner has no unilateral authority to incarcerate people in other states.

The VTDOC commissioner may designate only those places of confinement that are within the commissioner’s jurisdiction—which ends at the Vermont border.

Incarceration is a function exclusively of government.

The government’s duties must not be performed by private corporations. Imagine McDonald’s drive-thru cashiers conducting sobriety checks, Domino’s Pizza delivery drivers pulling people over for speeding, Walmart greeters deciding which families get food stamps, or Microsoft answering 911 calls. The public wouldn’t stand for that, but it’s just as wrong for a company like GEO to deprive people of their freedom, as they are currently doing.

“The power to incarcerate someone—to hold a person against his or her own will—is a defining characteristic of the state. The government holds a monopoly over the legitimate use of physical force and the power to incar-

22 “See State ex rel. Harris v. Larson, 64 Wis. 2d 521, 527, 219 N.W.2d 335 (1974).”

23 Doyle.

24 Vermont law 28 V.S.A. § 701(b).

cerate. Only the government has the legitimate power to restrict a citizen’s liberty; individuals are prohibited by law from incarcerating another person under the ‘false imprisonment’ statutes.” 25

Why not privatize the entire criminal justice system, putting companies in charge of policing our neighborhoods and judging who goes to jail? (Instead of public defenders, how about allowing corporate sponsors for criminal defenses, with product placements, banners, and team jerseys in the courtroom? Defendants could compete for high-value backers; one funded by Pepsi might have a better shot at an acquittal than one backed by RC Cola.)

Is the bigger worry that commercial versions of police and judges would do a *worse* job than the government versions? Or a *better* one?

Detention is a power reserved to the government. Private companies may not operate an incarceration facility of any sort.

—James E. Doyle,
Wisconsin Attorney General (Ret.)

Atty. Gen. Doyle on the question of private prisons: “[T]he management of incarceration facilities is a core state function. [26] The U.S. Supreme Court has stated: ‘It is difficult to imagine

an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.’ [27] ” 28

He explained that a governmental subdivision “may not contract for the performance of public duties which the law requires its public officers or employees to perform. . . .” 29 “Incarceration is one of the state’s sovereign powers. [30] Sovereign powers belong exclu-

25 Culp, R., Ph.D. *The Failed Promise of Prison Privatization*. Prison Legal News, October 2011, 1.

26 “Torcasio v. Murray, 57 F.3d 1340 (4th Cir. 1995).”

27 “Preiser v. Rodriguez, 411 U.S. 475, 491-92 (1973).”

28 Doyle.

29 *Id.*

30 “See 60 Am. Jur. 2d Penal and Correctional Institutions § 8 (1987).”

sively to the state, and may be delegated only by express state action. [31] ” 32

Atty. Gen. Doyle firmly expressed in his published opinion that “[D]etention is a power reserved to the government, and it is an exclusive prerogative of the state.... Private companies may not operate an incarceration facility of any sort [because] incarceration is a sovereign power of the state.... Thus, incarceration of prisoners may only be performed by the state or under its express authority.” 33

Because the State of Vermont has not been sanctioned by its statutes to abridge its power by contract to anyone else, its public duties—including incarceration—must be carried out only by the state’s officers and employees.

Attorney General’s opinions are determinative.

The official opinion of an attorney general has legal weight like a court ruling or legislative statute.

“[Opinions of the Attorney General] are carefully considered, clearly stated, and based upon a correct understanding of the law.” 34

“As an elected constitutional official, the attorney general has a duty to inform the public of the matters occurring in his or her office. The attorney general also has a duty to defend a law that was enacted through the people’s initiative powers.” 35

“Attorney general opinions are usually sought by state officials concerning their official duties, since the attorney general is the

31 “See 81A C.J.S. States § 16 (1977) (“[T]he [sovereign] power of a state may be abridged only by its own action, which must be sanctioned by its statutes.”)

32 Doyle.

33 Id.

34 *Smith v. Norton Hospitals, Inc.*, --- S.W.3d ---, 2016 WL 834337 (2016).

35 7 Am. Jur. 2d Attorney General § 11 (2016).

legal advisor of all the state officers, departments, commissions, and agencies. The government officials are expected to abide by the opinion until a court decrees otherwise or the legislature changes the law.” 36

A business deal can’t turn a private company into a government body, and in the contract between VTDOC and GEO, no one tried to.

Even if it were possible for a state government to transfer its incarcerative authority to a private company to give it control over people—who are in another state, no less, where the original state government is itself without jurisdiction—the contract between VTDOC and GEO shows that the government refused to transfer its authority to the company.

The contract reads, “The Party [referring to GEO, as ‘the Contractor’] will act in an independent capacity and not as officers or employees of the State.” 37 That language by VTDOC made it clear: *you don’t work for us—you’re on your own.*

The contract says to GEO:
you don’t work for us—
you’re on your own.
*But GEO can’t lock up
people on its own.*

The contract between VTDOC and GEO requires GEO to act independently—without VTDOC’s authority—when it locks people up. But GEO, a commercial enterprise comprised of self-elected civilians, has no “independent capacity” to do so.

Susan L. Garrison, of the Texas Attorney General Opinion Committee, has instructed that “a corporation has no independent authority to incarcerate prisoners.” 38

Governments routinely contract with private companies, but only “for the purchase of goods and services” 39 that companies can ac-

36 *York v. Commonwealth*, Ky. App., 815 S.W.2d 415 (1991).

37 State of Vermont Contract for Services #29062, page 29 of 45, “Standard State Provisions,” item 6.

38 Garrison, S.L., *Tex. Atty. Gen. Op.* LO-96-151 (Tex.A.G.), 1996 WL 742165.

39 “Government contract.” Black’s Law Dictionary 369 (9th ed. 2009).

tually offer for sale. GEO may sell to VTDOC the use of its prison beds, clothing, dining and medical services, and educational and recreational programs—but not its caging of citizens, a service that it has no power to perform.

Therefore, all the men whom GEO is keeping captive in Michigan for reverse-ransom paid by VTDOC are victims of kidnapping, defined by federal law: *Whoever unlawfully seizes, confines, or carries away and holds for reward when the person is willfully transported in interstate commerce shall be punished by imprisonment.*⁴⁰ The facts point to no other conclusion.

Just as it is criminal to murder or rape someone solely due to their status as a prisoner, it is criminal to kidnap them.

VTDOC doesn't have an ICC with Michigan—which is the only way its prisoners could legally be imprisoned in Michigan.

An Interstate Corrections Compact (ICC) is the only mechanism sanctioned in statute by which VTDOC can hand off its prisoners to a prison in a different state.⁴¹ (And the law requires all parties to be *states*.) Vermont, the “sending state,” having original custody of the prisoner, gives a “receiving state” temporary custody of the prisoner. The sender doesn't retain control over the prisoner while in the receiving state. The receiver imposes its own control over the prisoner until the date when the prisoner—and control over him—is returned to the sender.

An ICC is like when parents send children to a sleepover. The sending parents retain a claim to their children and an interest in their treatment, and they know they will get the children back when the party's over. But they

don't dictate how the receiving parents run their home, even though it affects the children. Meanwhile, the receiving parents have a certain limited authority over the children.

But imagine if parents send their children to a sleepover hosted by a video game company. Would it have any parental authority over the children; to discipline, bathe, or medicate them? Not at all. Yet it's no different when VTDOC (parents) put its prisoners (children) in the care of GEO (non-parental entity).

Vermont law grants VTDOC continuing jurisdiction over inmates transferred in an ICC: “Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state....”⁴² But Vermont can't do that; by definition, the only “jurisdiction” it can legally

have is over persons who are *within its territory*.

In an ICC, VTDOC retains a claim to the return of its prisoners, but little else. “Each party state may make one or more contracts with any one or more of the other

Sovereignty remains with the people, by whom and for whom all government exists and acts.

—U.S. Supreme Court

party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for: 1) Its duration... (2) Payments to be made... (3) Participation in programs... (4) **Delivery and retaking of inmates** ... [etc.]”⁴³ [Emphasis added.] In the receiving state, inmates are treated like, and subject to the same laws as, anyone else in that state. Vermont law agrees, contradicting itself: “All inmates who may be confined in an institution pursuant to the provisions of this compact... shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution.”⁴⁴

⁴⁰ Federal law 18 U.S.C. § 1201; a fusion of its relevant parts.

⁴¹ Vermont law 28 V.S.A. § 1601-1621.

⁴² *Id.* at § 1604(c).

⁴³ *Id.* at § 1603(a).

⁴⁴ *Id.*

But VTDOC didn't send its prisoners to Michigan under an ICC. If so, they would have been transferred to the Michigan DOC's custody and kept in a state prison. Even though the prisoners are within Michigan's borders, that state has no legal basis for their incarceration.

The courts have ruled that a private company—GEO, for instance—can't be a party to an ICC because the law decrees that an ICC is between two “party states,” and that a private company is not a state, so therefore has no authority to act as a state.

In fact, Vermont law regarding ICCs defines the term “state” as a *state* of the United States of America; “sending state” means a *state* party to the compact in which a conviction or court commitment occurred; and “receiving state” means a *state* party to the compact to which an inmate is sent for confinement.⁴⁵

The Vermont Supreme Court has ruled, “We note as a preliminary matter, and the State concedes, that the Compact by its terms does not apply to contracts with privately operated prisons. The Compact, codified at 28 V.S.A. §§ 1601-1621, GOVERNS CONTRACTS BETWEEN STATES...” [Emphasis in the original.]⁴⁶

In that court case, the State argued that the court “should apply the policies set forth in the Compact because it would be unreasonable to run the correctional system in any other way.”⁴⁷ By doing so, the State admitted that there can't be an ICC for transferring inmates to out-of-state *private* prisons, but it wanted everyone to act as though one existed in order to make its use of private prisons seem legiti-

When society breaks the law to enforce the law, justice is the victim.

The lack of revenue at NLCF is visible: high-level staff who'd quit or were fired months ago aren't being replaced, educational and rehabilitative programs for prisoners have been eliminated, the commissary tells the prisoners that its prices are high and its selection is small because there are too few inmates at NLCF to justify larger bulk orders from its suppliers, and many low-level staff are worried about losing their jobs due to persistent talk that the VTDOC contract may yet collapse.

mate. The court disagreed, because such policy arguments “cannot prevail if there is conflict with the statutes.”⁴⁸ (Meaning that the State asked the court to let it break the law.)

Vermont law suggests that an out-of-state private prison under contract with VTDOC can be considered a proper “correctional facility” because it is “supported by” VTDOC⁴⁹, but that's bad law. It's inapplicable in general due to the general legal principle that one state has no authority in another state. What's more, NLCF is housing so few Vermont prisoners that it isn't actually “supported by” VTDOC.

The warden at NLCF said that because it's a 1,700-bed facility holding only 250 inmates, there isn't enough revenue coming from VTDOC to cover even its basic operating costs. And rumors that other states are sending prisoners to fill the empty beds are false.

GEO is losing money by housing Vermont's inmates at NLCF, which means NLCF isn't *supported by* VTDOC but is *decreased by* it. Because NLCF is not “of or supported by” VTDOC, it isn't a “correctional facility” by Vermont's legal definition—which has no bearing in Michigan anyway.

⁴⁵ *Id.* at § 1602(a); (b); (c).

⁴⁶ *Nichols v. Hofmann*, 188 Vt. 1, 998 A.2d 1040, 2010 VT 36 (2010) (citing *Slater v. McKinna*, 997 P.2d 1196, 1198-99 (Colo.2000) (holding that Compact does not apply to privately operated prisons)).

⁴⁷ *Id.*

⁴⁸ “*In re Allied Power & Light Co.*, 132 Vt. 354, 361, 321 A.2d 7, 11 (1974).”

⁴⁹ 28 V.S.A. § 3(3) (“‘Correctional facility’...means any building...of or supported by the Department and used for the confinement of persons committed to the custody of the Commissioner....”)

A bill passed by Michigan's legislature to allow GEO to operate NLCF in the state is extraterritorial and ambiguous, thus without legal effect.

NLCF is the only private prison in Michigan. Last year, the state's legislature passed a new law to permit NLCF to house prisoners from other states.⁵⁰ However, it isn't clear whether the word "state" in the legislation refers to the state of Michigan or a different state. Such ambiguity deprives the law of enforceability.

In the introductory section of the bill, every appearance of the word "state" specifically refers to the State of Michigan and its departments, boards, commissions, and officers. The legislature says that the purpose of the Act is "to prescribe the powers and duties of certain state agencies"⁵¹; state law explains that "'state agency' means a department, board, commission, office, agency, authority, or other unit of state government"⁵²; and where the law reads "state government," it means the *Michigan* state government. Without the state legislature assigning a different meaning to the word "state" in its statutes, it can mean only the State of *Michigan*.

After the bill's introductory section, the word "state" is used eight more times in the body of the bill. But only at the eighth usage, near the end, does it appear in the phrase "another state," and then only in the context of an inmate being returned to his state of origin.

Thus, the meaning of "state" throughout the bill is too vague to infer with certainty that legislative intent was that a state other than Michigan is permitted to house its prisoners in

a private prison in Michigan.

According to the Michigan Supreme Court, "A provision of the law is ambiguous...when it is equally susceptible to more than a single meaning."⁵³ On this topic, the Hawaii Supreme Court has ruled that, "[w]hen there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists."⁵⁴

In section 6 of the bill, the legislature gives personnel employed at a private facility—who are merely civilians—"full authority...in the same manner and to the same extent as would be authorized if those personnel were employed in a correctional facility operated by the department." However, the State of Michigan, like any other government body, cannot contract away its governmental authority to a private company; in addition, it can't

give a private company another state's authority over persons and things within Michigan's own jurisdiction.

"All the [prison's] a stage."

That a building has all the trappings of a prison doesn't instill in its occupants the legitimacy to function as one. For its part, NLCF is nothing beyond a movie set; a theater stage decorated with scene dressings and props to make it appear like a prison.

Any civilian could buy a building that resembles a castle, but it wouldn't make him a king or let him tax royal subjects. He could buy a building with all the features of a hospital, but it wouldn't make him a doctor or let him cut open sick people. So, even though GEO owns buildings that look like typical prisons, that alone doesn't permit GEO to put people in concrete boxes and steal their lives.

Americans are pissed.
Most agree that the
government is broken.

—Jason Ankeny, Writer, *Entrepreneur*

⁵⁰ House Bill No. 4467, State of Michigan, 98th Legislature, Regular Session of 2015; to amend 1953 P.A. 232, amending § 201 (MCL 791.2201), as amended by 2012 P.A. 599.

⁵¹ M.C.L.A. Ch. 791 Refs & Annos, P.A. 1982, No. 415, eff. March 30, 1983; amended by P.A. 2003, No. 121, eff. Oct. 1, 2003.

⁵² M.C.L.A. 2.161 Definitions.

⁵³ *Mayor of City of Lansing v. Michigan Public Service Com'n*, 470 Mich. 166, 680 N.W.2d 840 (2004).

⁵⁴ *Jaylo v. Jaylo*, 125 Haw. 369, 262 P.3d 245 (2011).

The prison staff at NLCF aren't actually police officers or any kind of government officials. Their uniforms and badges are merely costumes for them to act out roles in a make-believe "play." They attain no authority by wearing them, no matter the color of their shirts or the stripes or badges on them.

Their job titles have no weight, either: a sergeant, lieutenant, captain, chief, or warden at GEO has no more right than any civilian worker at any private company to confiscate the liberties of other citizens. GEO could call its employees fleet admirals, but they might as well call them fry cooks because they'd still have no power over anyone else.

When VTDOC employees visit NLCF to monitor operations or dispense policy, they're faking, too. In Michigan they are merely tourists, a thousand miles beyond the limit of their jurisdiction, with no official authority over anyone at NLCF. (In the "theater" metaphor, they are simply guest-starring in cameo roles.) VTDOC's contract with GEO does NOT turn NLCF, a private property in Michigan, into a Vermont territory as though it's some sort of embassy.

With GEO staff being civilians without any government authority, kidnapping isn't the only crime they're committing at NLCF. Every time they seize from a prisoner an item that is prohibited or "contraband" at NLCF but which is otherwise legal anywhere else in Michigan, they are guilty of theft. When they open a prisoner's mail without authority, it's mail tampering—a federal offense. Putting a prisoner in "the hole" is not a security measure but torture. And a strip search, for any reason, constitutes a sexual assault (because *any civilian* who makes someone else join them in a room and strip naked so they can look at their genitals is a sex offender).

It's all pretty brazen, considering that courts have ruled that employees of private prisons have no qualified immunity from lawsuits like state prison employees do—as again, there is no government authority behind the operation of private prisons.

"The [United States] Supreme Court⁵⁵ ...determined that prison guards who were employed by a private prison management firm were not entitled to qualified immunity...."⁵⁶ "[The Supreme] Court concluded that its 'examination of history and purpose...reveal[ed] nothing special enough about the job or about its organizational structure that would warrant providing...private prison guards with governmental immunity.'⁵⁷ ⁵⁸

Prison privatization
undermines the institution
of criminal justice.

—Mary Sigler, Professor,
Arizona State University College of Law

GEO can't have the same immunity from litigation as VTDOC when acting on its *behest*, because neither GEO's actions nor the persons affected by them are in Vermont's territory.

The non-executive staff at NLCF aren't evil (probably) but good people, torn between doing an unpleasant job and showing compassion and respect for prisoners; unaware that they're involved in organized crime and collecting wages from mass kidnapping and human trafficking.

When a prison is just a hollow shell, the point of going to prison is hollow, too.

Many American commentators have argued that incarceration is, or ought to be, nondelegable to private entities. The government must govern properly and self-sufficiently in order for its citizens to respect its governance.

⁵⁵ "in *Richardson v. McKnight*, 521 U.S. 399, 117 S.Ct. 2100, 138 L.Ed.2d 540 (1997)"

⁵⁶ *Cook v. Martin*, 148 Fed. Appx. 327 (6th Cir. 2005).

⁵⁷ "[*Richardson*] at 412, 117 S.Ct. 2100."

⁵⁸ *Cook*.

After all, if the government's functions can be carried out by private entities that are competitively cheaper and more modern, then it makes no sense for the public to allow slower, bloated, more expensive and less effective public agencies to continue operating.

"Punishment under law is a profound exercise of the state power the meaning and justification of which depend on the social and political institutions that authorize it.... [C]ritics decry the delegation of governmental functions to private actors and the threat it poses to democratic accountability and the rule of law.... The delegation of punishment through prison privatization [weakens] the meaning of punishment...and undermines the institution of criminal justice."⁵⁹

"In a democracy grounded on the rule of law and public accountability, the enforcement of penal legislation...should be the undiluted responsibility of the state."⁶⁰

"To remain legitimately and morally significant, the authority to govern behind bars, to deprive citizens of their liberty, to coerce (and even kill) them, must remain in the hands of government authorities. Regardless of which penological theory is in vogue, the message that those who abuse liberty shall live without it is the brick and mortar of every correctional facility—a message that ought to be conveyed by the offended community of law-abiding citizens through its public agents to the incarcerated individual."⁶¹

The enforcement of penal legislation should be the undiluted responsibility of the state.

—Leon Radzinowicz, Founder
Institute of Criminology
at the University of Cambridge

A criminal is one who does something that the rules of society forbid. When one is punished in a way that cheats society of sending the message that its rules must be followed, the criminal is taught nothing, while society suffers a loss of resources, safety, and contributing members. A criminal can't be taught to follow the rules by a society that breaks them.

Courts that say out-of-state private prisons are legal are wrong.

Various courts have tried to legitimize the use of out-of-state private prisons. However, their rulings in those trial cases were fatally flawed.

Olim v. Wakinekona⁶² was a Hawaii case that reached the U.S. Supreme Court, where an inmate challenged his transfer from one

prison to another. The court denied his claim.

The court's decision was appropriate: that prisoner was moved from a state prison to a state prison in a different state *via an ICC*. That's key, because the ICC—where the prisoner's custody shifted from one governmental

body to another—made the transfer legal.

That prisoner had no grounds to object to being transferred to whichever *jurisdictionally-appropriate* facility his sentencing state chose to hold him. So, because Olim doesn't apply to private prison claims, courts shouldn't cite it as if it does.

Another case is Pischke v. Litscher⁶³, from which courts like to regurgitate the phrase, "A prisoner has a legally-protected interest in the conduct of his keeper, but not in the keeper's identity" (suggesting that a prisoner has no right to care *who* cages him).

⁵⁹ Sigler, M. (2010). *Private Prisons, Public Functions, and the Meaning of Punishment*. Florida St. Univ. L. Rev., 38, 1-29.

⁶⁰ Radzinowicz, L. Letter to the London Times [September 22, 1988], quoted in Shaw, S. (1992). *The Short History of Prison Privatization*. Prison Service Journal 87: 30-32.

⁶¹ Dilulio, J.J. (1987). *Governing Prisons: A Comparative Study of Correctional Management*. New York: Free Press, quoted in Harding, R. (2001). *Crime and Justice*, 274.

⁶² Olim v. Wakinekona, 461 U.S. 238, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983).

⁶³ Pischke v. Litscher, 178 F.3d 497, 500 (7th Cir. 1999).

The reality of that slogan that judges keep misapplying—either by accident, because they don't know what they're doing, or on purpose, because they know that what they're doing is wrong but they don't care—is that a prisoner does indeed have a constitutional interest in his keeper's identity *if that identity signifies that his keeper doesn't have the legal authority to deprive him of his liberty.*

In every case where a prisoner fought against being moved from a state prison to a private prison outside the custodial state's jurisdiction, the court's basing its decision on *Olim* or *Pischke* was a misapplication of law.

The same thing happened to the author of this report in the summer of 2015 when he sought a federal court's ruling on the issues: his case was dismissed before he could fully develop his arguments, based on that half-witted bumper-stickerism from *Pischke*.

Olim, *Pischke*, and their larvae fail to defeat or even apply to out-of-state private prison cases.

Not to mention that those courts were wrong to deny the prisoners' claims of improper jurisdiction. The courts simply couldn't clear the impassable hurdle that a state government can't impose its laws on people in other states without a legal transfer of its custody of those people to the other state's government (as in the case of a prisoner moved under an ICC).

In some *Olim*-related cases, the courts stated that they failed to find any provision in the Constitution that is violated by states putting prisoners in out-of-state private prisons, but those judges didn't widen their perspectives sufficiently enough to see that the rule of law regarding jurisdiction fills in what gaps they perceived to be in historic declarations.

Private prisons have been breaking the law unchallenged for the past 30 years, but public

comfort with such practices over time doesn't make them legal by default. Many horrible crimes against humankind (black slavery, women as property, child labor, etc.) were perpetrated—and maintained for centuries—by wealthy, powerful figures in society. Those acts didn't become moral due to their staying power. They merely gained acceptance via politicians who wouldn't stand for the public good, private interests that threw money at them, and an indifferent public.

Who among us has the courage to point out the emperor nakedness?

The trend of out-of-state private prisons is a prime example of the emperor having no clothes: profiteers selling the government something phony while they are pulling the government's strings and taking its power up-

We are living in a country
that celebrates and
cheers for disruption.

—Amy C. Cospers, Editor, *Entrepreneur*

on themselves. Though people recognize it, each is reluctant to be the one whose individual voice is heard challenging as wrong something that society at large promotes as normal. It's a natural reac-

tion to shy away from revolt, no matter how much we disagree with the majority. But it's more important to do what's right, even if it's unpopular.

Why does an un-American idea like trading government power to corporations persist? Has patriotism lost its meaning? "Americans are pissed.... 72 percent say their elected officials can't be trusted, per a Washington Post/ABC News poll, and two-thirds believe the nation's political system is dysfunctional.... Most Americans agree that government is broken."⁶⁴ We don't have to put up with it, though; after all, we are "living in a country that celebrates and cheers for disruption."⁶⁵

⁶⁴ Ankeny, J. *Politics Pays. But Does Civics?* Entrepreneur, February 2016, at 25-26.

⁶⁵ Cospers, A.C. *Editor's Note.* Entrepreneur, June 2016, at 10.

2016 presidential candidate Bernie Sanders, whose campaign platform was built on “political revolution,” filed a bill in Congress that would have abolished all for-profit prisons within the first three years of his presidency. “We have got to end the private-for-profit prison racket in America.... [O]ur prisoners are no longer people—they have simply become ways to make profits.”⁶⁶

Hillary Clinton is on the same page. “We should end private prisons....”⁶⁷ She insists that “[p]rotecting public safety...should never be outsourced or left to unaccountable corporations.”⁶⁸

District attorney T.J. Donovan is the top prosecutor in Chittenden County, the biggest county in Vermont; and he is running for Attorney General, the top prosecutor in the *entire* state. He was quoted in an interview, saying that “it’s time to bring the prisoners home.... [I]t is immoral to send Vermonters out of state to for-profit prisons,”⁶⁹ where a private firm makes money off of what he and other critics think should be the state’s responsibility.

“[I]f elected he would seek to cancel the contracts [because bringing the prisoners back to Vermont is] ‘the moral test of our generation in this state.’”⁷⁰

Last month, the district attorney penned his own political perspective for publication, saying that “shipping Vermonters convicted of a crime out-of-state is cheap and easy—but it

abandons the obligation we owe our communities...”⁷¹ He said that private prisons offer “low to no accountability, [and that they] serve the financial interests of their shareholders, not the interests of Vermont...”⁷²

Donovan wrote, “Prisons are a basic governmental obligation.... Without the governmental and community oversight that exists in Vermont’s prison system, we have less ability to ensure [that] incarcerated persons...have access to meaningful programs that will fulfill our goal of successful rehabilitation and reintegration.”⁷³

He concluded, “[I]t is clear that private prisons are a bad investment for Vermont financially, morally and practically. We can and should do better. In failing to rehabilitate incarcerated persons, we fail to protect the future safety of our communities.... [O]ne of the

It is immoral to send Vermonters out of state to for-profit prisons.

—T.J. Donovan, Vermont District Attorney

most important steps in [reducing recidivism] is to eliminate the use of private prisons for Vermont’s incarcerated population.”⁷⁴

If the district attorney for the biggest county in Vermont, whose job it is to *put* people in prison, and who’s vying to become the top prosecutor in the state, knows that out-of-state private prisons are wrong and that Vermont must not use them, *why does the practice continue?*

The main excuse for using private prisons is that they save money—but at what cost? (And they actually don’t.)

The biggest talking point in favor of private prisons is the cost savings, but study after study turns up the result that those savings are largely mythical.

⁶⁶ Gilna, D. *Presidential Candidate Bernie Sanders Files “Justice Is Not for Sale Act”*. Prison Legal News, November 2015, at 20-21.

⁶⁷ Gusovsky, D. *A billion-dollar-plus industry Clinton may sentence to death*. CNBC.com, March 4, 2016.

⁶⁸ Clinton, H. October, 30, 2015. Via Twitter, from a speech at Clark Atlanta University.

⁶⁹ Johnson, M. *AG Candidate Donovan Believes in ‘A Second Chance’*. vtdigger.org, October 15, 2015.

⁷⁰ *Id.*

⁷¹ Donovan, T.J. *Vermont needs to end private prison warehousing*. News & Citizen, April 14, 2016, at 6.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

Senator Sanders stated that “the cost savings promised by private prison companies rarely materialize, and if they occur at all result from inadequate medical care and staffing as well as poor staff training.”⁷⁵

Profit motives corrupt the integrity of all justice efforts.⁷⁶ “[T]he profit motive is thought to create perverse incentives to extend inmate sentences and promote criminal justice policies that yield more and longer prison sentences regardless of whether they are in the public interest.”⁷⁷ Indeed, “we should...be wary that private-corrections corporations may initiate advertising campaigns to make the public feel more fearful of crime than it already is, in order to fill the prisons and jails.”⁷⁸

“Although private firms and public entities alike rely on individual workers earning paychecks to carry out their activities, [private] firms and their employees operate within the domain of competitive profit-seeking. In this environment, ‘most private organizations may not develop the institutional norms of professionalism and public service that characterize...public bureaucracies.’”⁷⁹

“[B]ecause public employees are generally insulated from strict market discipline, their loyalty is to the government and its purposes; private employees’ incentives are likely to be

Mass incarceration provides a gigantic windfall for the private prison industry.

—American Civil Liberties Union

more directly linked to their firm’s bottom line. Moreover, just ‘the appearance of private motives in a public domain can undermine respect for government and even generate doubt about whether the government is sincerely pursuing public purposes.’”⁸⁰

“[B]y transforming the institutions of punishment into commodities—fungible objects of economic exchange—privatization alters the character of punishment, reducing the punitive enterprise to a question of price point and logistics.”⁸¹

Despite the suggested financial benefits of private prisons, “studies and reports have indicated that private prisons do not save money, cannot be demonstrated to save money in meaningful amounts, or may even cost more than governmentally operated prisons.”⁸²

“The imprisonment of human beings at record levels is both a moral failure and an economic one—especially at a time when more and more Americans are struggling to make ends meet and when state governments

confront enormous fiscal crises... [M]ass incarceration provides a gigantic windfall for one special interest group—the private prison industry—even as current incarceration levels harm the country as a whole... As the public good suffers from mass incarceration, private prison companies obtain more and more government dollars, and private prison executives at the leading companies rake in enormous compensation packages, in some cases totaling millions of dollars.”⁸³

⁷⁵ Gilna.

⁷⁶ See: Shaer, M. *A Reasonable Doubt: The False Promise of DNA Testing*. The Atlantic, June 2016, 47-55. (“[DNA] analysts are incentivized to produce inculpatory forensic evidence: A recent study in the journal *Criminal Justice Ethics* notes that in North Carolina, state and local law-enforcement agencies operating crime labs are compensated \$600 for DNA analysis that results in a conviction.” at 52.)

⁷⁷ Sigler, at 3.

⁷⁸ Id., at 12 (citing Robbins, I.P. 1987. *Privatization of Corrections*, 40 Vand. L. Rev. 813, 827-28).

⁷⁹ Id., at 8 (citing Freeman, J. 2000. *The Private Role in Public Governance*. 75 N.Y.U. L. Rev. 543, 574).

⁸⁰ Id., at 9 (citing Dolovich, S. 2005. *State Punishment and Private Prisons*, 55 Duke L. J. 437, 518-19; and Minow, M. 2003. *Public and Private Partnerships: Accounting for the New Religion*, 116 Harv. L. Rev. 1229, 1234).

⁸¹ Id. at 27.

⁸² A.C.L.U. *Banking on Bondage: Private Prisons and Mass Incarceration*. November 2011, at 19.

⁸³ Id., at 5, 56.

The lofty scholars and legal experts quoted here from law journals and other bona fide sources are together in saying something very simple to understand: (1) The only excuse for using for-profit prisons is that they cost less than public prisons; but (2) it's a lie.

That "costs less" excuse raises many questions even for ordinary people.

Why did VTDOC move its prisoners last summer from the CCA-owned private prison in Kentucky to the GEO-owned one in Michigan? The reason given to the Vermont taxpayer by VTDOC officials is that it would save \$2,055 per inmate per year.⁸⁴ But in the overall math, that's not true.

The last CCA contract was for a two-year term with the option to extend it up to two more years. The same is true of the new GEO contract: two-plus-two. Each contract starts with a per-inmate-per-year cost that increases a little every year of the contract.

When VTDOC said that a lot of money will be saved by moving its inmates to GEO, they compared the last (most-expensive) year with CCA to the first (least-expensive) year with GEO. Obviously, the lowest initial price of one will seem like a huge savings over the highest final price of the other. (In fact, the cost for the first year of VTDOC's last CCA contract was actually *lower* than that of its first year with GEO.)

Over the duration of both four-year contracts, switching to GEO from CCA will ultimately save VTDOC only \$456 per inmate per year, not \$2,055 as they claimed.

Widening the mathematical gap, with GEO, VTDOC is paying for more of the inmates' costs—like medical care and inmate

⁸⁴ Reutter, D. *Michigan: Private Prison More Costly the State-Run Prison, Attracts Out-of-State Contracts*. Prison Legal News, January 2016, at 22.

jobs at the prison—than it did with CCA. That not only cancels any claimed savings⁸⁵, it also means that *VTDOC is subsidizing the GEO contract*, paying for more portions of GEO's costs in order to lower their bid and make the contract seem like an improvement.

Then again, with Vermont going private instead of public for its prison needs, the savings overall are more than 50%. The state reports that it costs somewhere in the range of \$60,000 per year to keep a male inmate at a state prison. At NLCF, that figure plummets to under \$23,000 per inmate per year. That's all the argument anyone needs in favor of for-profit prisons...until we ask: why are private prisons so much cheaper?

If a private prison can do the same job as a public prison, but for half the money, what is

We have got to end the private-for-profit prison racket in America.

—Bernie Sanders, U.S. Senator and 2016 presidential candidate

the public prison doing wrong that makes it cost twice as much as a private one? Compare VTDOC's own prisons to NLCF: down what drain is that extra \$37,000 per inmate per year disappearing?

But if public prisons aren't just flushing money down the tubes—if they're actually doing a good job—then what do private prisons leave out that lets them charge so much less?

Common sense says that whichever side is doing things right, such a huge discrepancy in their operating costs means that the other side must be doing things very, very wrong.

Vermonters pay the full taxes necessary for the state to do its job itself. So, when VTDOC saves half its costs by hiring out for its job, where does the extra money go?

⁸⁵ For a prisoner earning two dollars per day (the average wage for a prison job at the GEO facility in Michigan), VTDOC pays \$520 per year above the basic contract fee. That alone cancels the \$456 actual yearly "savings." Add a pill prescription, blood test, or surgery...and forget it.

If it really costs VTDOC \$60,000 per year to keep a prisoner behind bars in-state, and it has a budgetary allowance for that amount, then when it sends prisoners to an out-of-state private prison for only \$23,000 per year, why aren't the taxpayers getting a rebate or refund?

It doesn't work like that, you say? Look at it from the other direction. When VTDOC moves prisoners back in-state from out-of-state facilities, which instantly more than doubles their incarceration expenses, do they have to make an emergency request for the extra money needed to house them? No—the state has already budgeted for the money it needs to keep its prisoners in-state. It doesn't have to ask taxpayers for that additional \$37,000 per-inmate-per-year. It's already there.

When VTDOC ships its inmates to a private prison out-of-state, half of its prison budget is going unused. Where does that money go, since it isn't being returned to the taxpayers? This year, with around 250 inmates at NLCF, the Vermont public will pay nearly \$8.5 million in *extra taxes* as though VTDOC had kept them in its own prisons the entire time.

This GEO prison somehow operates at less than half of what a Vermont-run prison costs, so how is the company still able to show massive profits? (In 2015, GEO posted revenues totaling \$1.84 billion.⁸⁶)

The \$60,000 yearly cost of keeping an inmate in a VTDOC prison boasts no money left over to give to "shareholders" (i.e., the taxpayers). But the same incarceration of a prisoner at NLCF costs only \$26,000, and after covering its actual costs GEO still has money remaining from that \$26,000 to count as *profit*.

⁸⁶ GEO Group, Inc. *2015 Annual Report*. GEO has facilities worldwide, but over \$1.2 billion in revenue in 2015 came from incarcerating people in the U.S. alone. (CCA closed 2015 with \$1.79 billion total revenues, per Globe Newswire, February 10, 2016.)

it. Is GEO's true cost to operate NLCF closer to one-third of a VTDOC prison? Maybe one-fourth? How is that possible?

If private prisons are able to charge half the price because they are meeting only half the prison needs that the state prisons do, does it matter? That depends—is prison supposed to be for *rehabilitation* or for *punishment*?

If we expect rehabilitation, do we really want that process to be incomplete just to save a few bucks? Do we want our justice system to take prisoners out of the oven half-cooked and serve them to society burnt on the outside but still raw in the middle?

If it's punishment that we demand instead, do we want the message that society conveys to its wrongdoers to be one of corner-cutting, cheating, and indifference, rather than the im-

Protecting public safety
should never be left to
unaccountable corporations.

—Hillary Clinton, U.S. Senator,
and 2016 presidential candidate

portance of fairness and justice? If punishment is unfair, the one being punished will learn only the lesson that unfair behavior is the norm of society.

Either VTDOC is spending more than twice as much money on incarceration as it should, or GEO is doing less than one-half as good a job as it should be doing.

For all the promises of money being saved by privatizing incarceration, not only are the savings not actually there, but skimping on such a crucial social function can't possibly produce desirable results.

"The evidence that private prisons provide savings compared to publicly operated facilities is highly questionable.... The private prison industry helped to create the mass incarceration crisis and feeds off this social ill. Private prisons cannot be part of the solution—economic or ethical—to the problem of mass incarceration."⁸⁷

⁸⁷ A.C.L.U., at 8.

Private prisons are so devoid of authority that in Michigan and other states, it's legal for inmates to leave them without permission.

In Montana in January 2006, two prisoners—William Leonard Brown and Brian Joseph Holliday—fled from a transport van operated by TransCor, a subsidiary of CCA.⁸⁸

The two men were taken back into custody and charged with escape, but the court had to clear the men of the escape charges because Montana state law “defined escape as knowingly or purposely eluding official detention, [and] official detention is in turn defined as ‘placement of a person in the legal custody of a municipality, a county, or the state....’ [The court] acquitted them after holding that no evidence had been presented that they were in the custody of a peace officer, [because] the TransCor employees were not peace officers.”^{89, 90, 91}

Those men couldn't be punished for fleeing because their captors worked for a private company instead of a government agency. The same principle applies to the prisoners at NLCF.

According to Michigan state law, “[a] person imprisoned in a prison of this state who breaks prison and escapes...without being discharged by due process of law...is guilty of a felony....”⁹² The same law also defines that “‘prison’ means a facility that houses prisoners committed to the jurisdiction of the department of corrections....”⁹³

The private prison industry helped to create the mass incarceration crisis.
—American Civil Liberties Union

The Michigan legislature used the term “department of corrections” to mean the *Michigan* department of corrections. (Since the Michigan legislature can't make laws for other states, no other meaning is possible.) As such, Michigan law says that NLCF is not a prison because it is not housing prisoners committed to the Michigan department of corrections. According to state law, NLCF is not a prison, so to “escape” from there isn't illegal. By definition, anything thing that isn't illegal is legal.⁹⁴ It's true. *Escaping from NLCF is legal.*

All of the prisoners at NLCF could jump the fence and walk away, and it would be completely legal under Michigan law; the only state's laws that apply. No one could lawfully stop, pursue, recapture, or prosecute them for it, because they wouldn't be doing anything wrong. If anyone tried, *they* would be break-

ing the law, because stopping someone from doing something legal, without having the right to stop them, is illegal.

The civilians working at NLCF really should just open the front door to as-

sist the prisoners with exercising their rights under the law. Whether the prisoners left NLCF *over* a closed gate or *through* an open one—their leaving on their own could not be an “escape,” so nobody could legally interfere or punish them for it: not VTDOC, which gave up its claim to their custody by forcing them outside its boundaries; not the Michigan DOC, which in the absence of an ICC has no legal claim to their custody; not the civilians employed at NLCF by GEO, which as a commercial entity can't wield the governmental power required to deprive them of their personal liberties; and not even the state or local police or area residents, who would have no legitimate cause to stop them from engaging in a perfectly legal act.

⁸⁸ *Escape From TransCor Van Not a Crime in Montana*. Prison Legal News, December 15, 2007.

⁸⁹ *Id.*

⁹⁰ See: *Montana v. Brown*, 1st Judicial District Court of Montana, Case CDC-2004-259; *Montana v. Holliday*, 1st Judicial District Court of Montana, Case CDC-2004-257.

⁹¹ Although their escaping was legal, their recapture by the state was a righteous act because they were still within its sovereignty, and therefore never left its custodial jurisdiction.

⁹² M.C.L.A. 750.193: Breaking prison, escaping...; “prison” defined..., at (1).

⁹³ *Id.*, at (2).

⁹⁴ See: *Any Dictionary*.

Escape may be legal in other states besides Montana and Michigan. All inmates in out-of-state private prisons should check their state laws. It may be legal for them to walk away from the prison or during a transport. However, there can be no “escape” when the men who leave are already *free*.

This isn’t a call for a “riot” or any other kind of prisoner uprising. Quite the opposite. It’s a call for obeying the law. If before he leaves NLCF, any prisoner were to strike any other person (an inmate or staff), or steal or damage anyone else’s property (belonging to an inmate, staff, or GEO), or commit any manner of crime there, he would make himself a criminal to the State of Michigan. Then Michigan *would* have a claim to his custody, and his freedom would be erased.

For a prisoner at NLCF to claim his liberty right now, he must immediately devote himself to total self-rehabilitation. And for it to last, he must never commit a future crime, in any state, or he’ll again wind up in the custody of a state government, which could then extradite him back to Vermont and his unfinished prison term.

Imagine hundreds of prisoners instantly transforming into permanently law-abiding citizens—yet never returning to Vermont—and in the process, Vermont saving \$15 million in taxes annually. ⁹⁵ *You’re welcome.*

Rules are rules.

Could hundreds of prisoners just walk out of prison, free to go where they want and do what they want for the rest of their lives, and the same thing be done by thousands of prisoners in other private prisons around the country, because out-of-state commercial prisons are without authority to incarcerate them?

According to the laws and courts: yes.

This report shows that the rules of the game are already written. *The laws are the laws.* Nothing needs to be added; nothing is up for debate. The U.S. Supreme Court ruled, “It is emphatically the province and duty of the judicial department to say what the law is.” ⁹⁶

“[I]n declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank. . . . [T]he particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.” ⁹⁷

Inmates in out-of-state private prisons should check their state laws: escape may be legal.

When society breaks the law to enforce the law, justice is the victim.

A state has no power to keep its prisoners in another state without an ICC with the other state’s

government. No valid law permits a state to hire civilians to imprison people on its behalf, especially in another state. And a private company has no power to keep prisoners at all. Those 250 men at NLCF aren’t prisoners of Vermont or any other official authority.

There is nothing that they need to file in court for permission to leave. No kidnap victim has to ask a judge if it’s okay to stop being kidnapped. The highest courts have *already* granted the prisoners their freedom with the rulings shown in this report, so it would be inane to ask the courts to repeat themselves.

It’s a bad time to own stock in private prisons.

⁹⁵ Based on the average cost of incarceration in Vermont’s prisons.

⁹⁶ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed.60 1803).

⁹⁷ *Id.*

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION ----- Form AA-14 (8/22/11)

Note: All sections are required. Incomplete forms will be returned to department.

I. CONTRACT INFORMATION:

Agency/Department: AHS/ Department of Corrections Contract #: 29062 Amendment #:
 Vendor Name: The Geo Group, Inc. VISION Vendor No: 343676
 Vendor Address: One Park Place, 621 NW 53rd Street, Suite 700; Boca Raton, FL 33487
 Starting Date: 6/28/15 Ending Date: 6/27/17 Amendment Date:
 Summary of agreement or amendment: Supplemental Housing of Vermont inmates out of state.

II. FINANCIAL INFORMATION

Maximum Payable: \$30,451,950 Prior Maximum: \$ Prior Contract # (If Renewal):
 Current Amendment: \$ Cumulative amendments: \$ % Cumulative Change: %
 Business Unit(s) ; 03523; - (notes:) VISION Account(s) ; 507600

III. PERFORMANCE INFORMATION

Does this Agreement include Performance Measures tied to Outcomes and/or financial reward/penalties? Yes No
 Estimated Funding Split: G-Fund 100% S-Fund % F-Fund % GC-Fund % Other %

III. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract or procurement grant and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:
 Standard bid or RFP Simplified Bid Sole Sourced Qualification Based Selection Statutory

IV. TYPE OF AGREEMENT & PERFORMANCE INFORMATION

Check all that apply: Service Personal Service Architect/Engineer Construction Marketing
 Information Technology Other, describe:

V. SUITABILITY FOR CONTRACT FOR SERVICE

Yes No n/a If this is a Personal Service contract, does this agreement meet all 3 parts of the "ABC" definition of independent contractor? (See Bulletin 3.5) If NO, then contractor must be paid through Payroll

VI. CONTRACTING PLAN APPLICABLE:

Are one or more contract or terms & conditions provisions waived under a pre-approved Contracting Plan? Yes No

VII. CONFLICT OF INTEREST

By signing below, I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.
 Yes No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

VIII. PRIOR APPROVALS REQUIRED OR REQUESTED

Yes No Agreement must be approved by the Attorney General under 3 VSA §311(a)(10) (personal service)
 Yes No I request the Attorney General review this agreement as to form
 No, already performed by in-house AAG or counsel: _____ (initial)
 Yes No Agreement must be approved by the Comm. of DII; for IT hardware, software or services and Telecommunications over \$100,000
 Yes No Agreement must be approved by the CMO; for Marketing services over \$15,000
 Yes No Agreement must be approved by Comm. Human Resources (privatization and retiree contracts)
 Yes No Agreement must be approved by the Secretary of Administration

IX. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information:
 Date: 5/12/15 Agency/ Department Head: *[Signature]* Date: 5/12/15 Agency Secretary or Other Department Head (if required): *[Signature]*
 Date: 5-15-15 Approval by Attorney General: *[Signature]* Date: Approved by Commissioner of Human Resources: *[Signature]*
 Date: CIO: Date: CMO: Date: Secretary of Administration: *[Signature]*

Approved as to contract by *[Signature]*
 agreed to by *[Signature]* and *[Signature]*
 Date: 5/15/15

ATTACHMENT C
STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS

1. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.