

# AFSC Arizona Injunction Background

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Arizona is in the process of bidding out for contracts to construct and manage 5,000 new private prison beds. The American Friends Service Committee has filed a legal complaint requesting an injunction to prevent the State of Arizona from awarding new contracts.

Given the dismal track record of Arizona's private prisons, including systemic security failures, the dwindling number of new inmates, and the state's crippling budget crisis, AFSC feels it is imperative that these contracts be halted immediately. AFSC nationally is lobbying for better oversight and monitoring of for-profit prisons, which have proliferated particularly due to federal contracts for immigrant detention.

Arizona state statute requires the Department of Corrections to complete a biennial performance comparison review of private and public prisons to determine whether private prisons are safe, well-administered, and providing adequate services to prisoners. The statute was enacted in 1987, but such a review has never been completed. We are asking the court to prevent the Department of Corrections from awarding any new contracts until the required review is completed, and then only if the results indicate that private prisons are in compliance with the law.

The filing includes three counts, in which AFSC believes that the Arizona Department of Corrections is in violation of state law, leading to extra expense for the state, and detrimental conditions for the prisoners.

Count one: The Department of Corrections intends to award contracts in violation of [ARS 41-1609.01](#) (K). The statute requires the Department of Corrections to complete a biennial performance comparison review of private and public prisons to determine whether private prisons are safe, well-administered, and providing adequate services to prisoners, but such a review has never been completed. The language of the statute does not specifically state what the remedy is for violation of this provision. We are asking the court, if it determines that an injunction is not the remedy, to clarify what is.

We also reference a similar section (H) in the same statute, which states that no contracts shall be awarded unless the vendor can prove that they will provide a level of quality equal or better than that of the state. This appears to refer only to what the vendor *claims* it *will* provide in the proposal submitted in response to the RFP. We state that it appears that section K may exist to verify the veracity of the claims made to satisfy H.

Count two: The same statute also includes a section (M) which requires that the results of the comparison study outlined in section K be delivered to the Joint Legislative Budget Committee for its review. Since the study has never been done, the Department is also in violation of this requirement.

Count three: The Department of Corrections is in breach of its duty of care with regard to existing contracts. Here we cite relevant case law as well as documents that have come to light in the wake of

the Kingman escapes during the summer of 2010 that show there is a long history and persistent pattern of private prisons having security problems and being slow to fix them. Our arguments:

- I. **Lack of Oversight.** It is likely that the lack of oversight has persisted for some time and was only discovered and corrected in the wake of the escapes. Therefore, it is possible that additional problems exist currently with regard to other existing contracts.
- II. **Accountability.** The Department of Corrections is seriously constrained in its ability to hold private prison contractors responsible when problems arise.
- III. **History of Non-Compliance in Kingman.** MTC was clearly out of compliance with its contract for Kingman, leading to the escapes. Even after the escapes, many of the fixes requested by the Department of Corrections were not implemented, as late as December of 2010.
- IV. **Inadequate Staffing.** Two operators, Management and Training Corp. and GEO Group Inc., have been fined by the Department of Corrections for failing to fill staff vacancies within the required timeframe. This also constitutes a breach of contract.
- V. **History of Non-Compliance in Other Private Facilities.** All the private prisons in Arizona had serious security problems, documented in the August 22, 2010, Department of Corrections Security Assessment from Shelly Sonberg, Southern Region Operations Director.

#### **History of AFSC Involvement:**

AFSC's office in Arizona has worked on the issue of prison privatization since 1996, and is recognized as a statewide and national leader in this area. We began with a conference in 1997 on privatization and prison labor entitled, "Factories with Fences." Over the last 15 years, we have monitored and struggled against the expanded use of private prisons. We have cultivated state, regional, and national allies across a diverse spectrum, from families of prisoners to attorneys, city and county government actors, human service providers, and corrections officers. Our office is widely considered to be the "go-to" resource for advocates and media on this issue.

In 2003, we successfully stopped the construction of what would have been the largest private women's prison in the world, which was slated for the town of Marana, north of Tucson. Using a combined strategy of media activism, public mobilization, and participation in the public hearings process, we raised the issue of the corporation's inexperience in detaining women and their horrible track records of abuses. The Department finally pulled the proposal.

We have conducted similar "site fights" in small towns around Arizona, working to inform and provide resources and assistance to local residents fighting the prisons while leveraging our expertise to question the practice at the state level. Successful efforts include cancelled prisons in Benson, Sahuarita, and Huachuca City, Arizona. We have supported introduction of legislation to impose monitoring and reporting requirements on private prisons in Arizona.

In 2009, the Governor's budget included provisions for the construction of 5,000 new private prison beds, the privatization of medical care within the Department of Corrections, and privatization of existing state prison complexes. The last provision, for privatization of complexes, was later repealed by the legislature due in part to pressure from our constituents.

But the RFP process has moved ahead. It was briefly halted in 2010 after three prisoners escaped from a private prison in Kingman, Arizona, leading state and federal law enforcement on a two-week manhunt and allegedly murdering an Oklahoma couple who were vacationing in New Mexico. Our long-standing work on prison privatization positioned us well to comment on the escape, in addition to allowing us to focus the discourse on the negative effects of prison expansion and privatization. Caroline Isaacs was interviewed in a series of reports on the issue of privatization and the ties the Governor's office has to the largest private prison company in the world, several of which were cited on the Rachel Maddow Show on MSNBC. In response, the Arizona Department of Corrections cancelled an upcoming contract for 5,000 new private prison beds.

Additionally, the 2011 criminal justice budget offered by the legislature included a provision that would privatize existing state prison complexes, including those with maximum security units. By employing a strategy that used both national media outlets and social media venues to expose the disastrous impacts of privatization, AFSC aided greatly in the successful effort to repeal this provision. The Arizona office has a blog, "[Cell-Out Arizona](#)", which focuses on the issues of prison expansion, privatization, and sentencing reform.

In October of 2010, AFSC organized a public hearing on prison privatization involving elected officials from the county, city, and state as well as experts on the issue and testimonies from a wide array of people impacted by prison privatization. The event was hugely successful, with over 130 in attendance, and included testimony from current and former corrections staff, former prisoners, attorneys, and researchers including international prison privatization expert Stephen Nathan, who traveled all the way from London to present his testimony. The hearing was presided over by a panel of elected officials, including a former newspaper editor, a County Supervisor, the Assistant Tucson City Manager (and former Tucson Police Chief), a Tucson City Councilman, and two State Representatives.

Recently, AFSC mobilized people from around the state to participate in public hearings in 5 towns on proposed private prisons. AFSC representatives have given testimony and interviews at each of the hearings, and press coverage has been extensive. As a result, this week the town of Goodyear, AZ passed a resolution opposing the construction of any new prisons and one state legislator has publicly changed his position on the proposal.

To-date we have been relatively successful, but the political climate in Arizona is so hostile to change that legislative action is no longer an option.

### **Other Individuals Who Are Part of the Complaint:**

#### ***Joyce and Oralee Clayton, Sr.***

Their son, Oralee Clayton Jr., has been incarcerated since June 2009 on a five-year sentence for drug possession. He is being held at ASP-Kingman, the prison operated by MTC where the escapes in 2010.

The facility saw a series of fights, riots, and disturbances starting during the summer of 2010, just before the escapes, and continuing into the winter. Incidents include:

- A riot on May 5 that guards were unable to control.
- A May 31 race riot in which white inmates on the yard were reported to have shouted, “Kill the n---s!”
- A riot on June 2 in which eight inmates were injured and taken to the hospital. An Arizona Department of Corrections spokesman verified to the *Kingman Daily Miner* that the fight was between white and black inmates and lasted 45 minutes. Some of the inmates used padlocks wrapped in socks as weapons.
- On October 17 and 18 there were “large inmate demonstrations” at the two units within Kingman.
- On November 4, inmates threw rocks and ran the guards off the yard.

On November 21, 2010, Oralee Jr. submitted a request to the Department of Corrections to be moved out of the facility, citing the role of race in many of the disturbances. Mr. Clayton is African-American, and Black prisoners are a tiny minority in the facility. Oralee Jr. has reported that there are approximately 120-200 African-American prisoners and over 1,000 white prisoners in the unit. He reported to his parents that he fears for his life and feels he has to “sleep with one eye open.”

Corrections officials contacted by the Tucson Weekly claimed they had no knowledge of the transfer request, and to date no action has been taken.

According to the Department of Corrections August 2011 Inmate Ethnic Distribution by Unit report, there are 1,979 prisoners in Kingman’s Cerbat unit. Of those, 38.9% are Caucasian and 12.3% are African-American. In Kingman’s Hualapai Unit, out of the total population of 1,440 prisoners, 30.3% are Caucasian and 18.2% are African-American. It is unclear whether this has changed since the riots last year. [http://www.azcorrections.gov/adc/reports/Zoya\\_ethnic.aspx](http://www.azcorrections.gov/adc/reports/Zoya_ethnic.aspx)

Oralee Jr. also reports that the staffs in the facility, run by Management and Training Corporation (MTC), are “not properly trained in defusing problems and are not giving us proper safety and security.” Another communication stated that there was “only one MTC guard working dorms for 200 inmates.”

This issue is confirmed by the Director of the Arizona Department of Corrections (ADC), Charles Ryan in a “Cure Notice” sent to Management and Training Corporation on December 29, 2010. It states that a review of reported incidents at Kingman revealed that, “from 2005 forward, there were 13 instances of large groups of inmates refusing directives and/or chasing MTC staff off the yard...this is a pattern of unacceptable inmate behavior, in which large inmate groupings of hundreds of inmates react to dissatisfaction with MTC operations, endemic inmate idleness, or other triggers.” The document indicates that these issues were repeatedly raised by ADC, but were not adequately addressed by MTC.

The family is concerned that even with the heightened level of scrutiny of the Kingman facility after the escapes, problems persist that continue to endanger their son’s safety. Until the Department of Corrections completes its statutorily required assessment of the safety and quality of facilities currently under contract, there are no assurances that these facilities are providing competent, quality care. And the people of the state of Arizona, including its prisoners and their families, have no assurance that their incarcerated population will be held in safe, secure facilities. If the Department of Corrections awards a

new contract to MTC or any of the other private operators currently bidding, it is possible that Oralee Jr. could be transferred to that facility. If there is no oversight or accountability for these new contracts, there is nothing to protect him from further harm.