

**June 2018** – The secrecy and confusion around the treatment of children at the border has sparked outcry over the humanitarian situation and called attention to pressing need for greater transparency and accountability in immigration enforcement and detention practices. Opaque policy changes and gag orders have led to more whistleblowers speaking out against the “zero tolerance” policy of separating families at the border,<sup>1</sup> and the public is relying even more on journalists to sneak information out of detention centers in order to understand the practices our taxpayer dollars are funding inside secretive detention facilities.<sup>2</sup> In this context, lawmakers are relying on leaked information to evaluate policies that are guiding immigration practices at the border,<sup>3</sup> while debating sweeping legislation on immigration and border construction. Such confusion and secrecy makes it impossible for Congress to provide meaningful oversight for government actions carried out in the public’s name but without our full knowledge.

While much of the secrecy surrounding immigration enforcement today is rooted in programs implemented under the last administration, the growing obstruction and misinformation campaigns under this administration are part of a troubling trend that is increasingly harming children and communities across the country.<sup>4</sup> It is critical now for Congress to take the following measures to restore their ability to carry out effective oversight by demanding greater transparency through the appropriations process and other legislative vehicles:

- **Increasing Transparency at Detention Facilities:** In 2017, ICE incarcerated a daily average of over 38 thousand people,<sup>5</sup> and the President is requesting that detention facilities be expanded to hold 52 thousand individuals per day for fiscal year 2019.<sup>6</sup> The growing detentions at the border will only increase the number of contracts with private detention centers, which remain shrouded in secrecy and shielded from meaningful public oversight. By asserting their status as private entities, private prison companies exempt themselves from the Freedom of Information act (FOIA), blocking important records from public and Congressional view.<sup>7</sup> Congress can change this by passing legislation, such as the Private Prison Information Act of 2017 (S.1728), to strengthen accountability

---

<sup>1</sup> *Whistleblower: Family separation is 'recipe for disaster'*, NBC Nightly News, June 14, 2018: <https://nbcnews.to/2tfuEuX>.

<sup>2</sup> Ginger Thompson, *Listen to Children Who've Just Been Separated From Their Parents at the Border*, ProPublica, June 18, 2018: <https://bit.ly/2t7WdG9>.

<sup>3</sup> Dara Lind, *Exclusive: how asylum officers are being told to implement Sessions' new rules*, Vox News, June 19, 2018: <https://bit.ly/2lij1fV>.

<sup>4</sup> *OTG Releases New Report Highlighting Challenges to Transparency in Washington, a Growing Surveillance State, and Attacks on Press Freedoms*, Open the Government, March 9, 2018: <https://bit.ly/2K90umq>.

<sup>5</sup> National Immigrant Justice Center and Detention Watch Network, *ICE Lies: Public Deception, Private Profit*, <https://bit.ly/2JZAmq>.

<sup>6</sup> Fiscal Year 2019 Congressional Justification, U.S. Immigration and Customs Enforcement, <https://bit.ly/2JmbJUx>.

<sup>7</sup> Lisa Rosenberg, *Rosenberg: Secrecy around private prisons must end*, Houston Chronicle, June 2012, 2017: <https://bit.ly/2LYRtJW>.

and oversight by requiring for-profit prisons under contract with federal agencies to comply with the same FOIA requirements as their government-operated counterparts.<sup>8</sup>

- **Protecting oversight and accountability for immigration enforcement and border expansion:** Congress is preparing to vote on two immigration related bills this week that include provisions that would expand the authority of the Department of Homeland Security (DHS) while removing it from the purview of any meaningful oversight or accountability protections.<sup>9</sup> Specifically, both bills would allow the DHS Secretary to waive any legal requirement deemed an impediment to “the expeditious construction, installation, operation, and maintenance of the tactical infrastructure and technology...” under the sections relating to border construction. With this expanded authority, DHS could bypass statutes that protect against civil liberties violations, circumvent requirements to prevent the misuse of taxpayer dollars, and build on protected land without conducting proper environment impact assessments. This would be a significant expansion of a previous – already over-broad – authority that allowed DHS to waive any legal requirement it believed hindered speedy construction of barriers and roads. In the past, DHS has used even this much narrower authority to waive important open government and accountability laws.<sup>10</sup> Congress should not give DHS free rein to implement its expansive border security, immigration enforcement and surveillance programs without proper oversight.
- **Supporting demands for transparency requirements for FY 2019:** The President has requested over \$25.5 billion for Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP),<sup>11</sup> agencies that already receive as much funding as all other law enforcement agencies combined. Appropriators and all members of Congress should take steps to demand transparency before funding immigration enforcement, border militarization, detentions, and deportations carried out by ICE and CBP to ensure against wasteful agency practices, violations of domestic and international law, and other systematic abuses of authority carried out in secret. Some fundamental demands include: ordering DHS to create a quarterly report on all family separations occurring at the border; requiring the Office of Inspector General (OIG) to conduct a prompt investigation into all cases of family separation and treatment of asylum seekers; and, demanding CBP establish a streamlined process to minimize delay in releasing information to the media and public, post all policies and guidelines that may be of interest to the public on the agency's website, and expand data collection to more effectively strengthen accountability. Congress also must demand compliance with existing transparency obligations relating to the government's detention system.<sup>12</sup>

For more information, please contact Jesse Franzblau, Policy Analyst at Open the Government, at 202-332-6736 or [jfranzblau@openthegovernment.org](mailto:jfranzblau@openthegovernment.org).

---

<sup>8</sup> Coalition calls on Congress to enhance transparency and accountability for private prisons, Open the Government, August 3, 2017: <https://bit.ly/2tjluvi>.

<sup>9</sup> Securing America's Future Act (H.R. 4760): <https://bit.ly/2I31ZxL>; Border Security and Immigration Reform Act, June 14, 2018: <https://politi.co/2K3R19u>.

<sup>10</sup> Coalition Expresses Opposition to Bill that would Drastically Expand Authority of Department of Homeland Security, Open the Government, December 15, 2017: <https://bit.ly/2tk3ZvV>.

<sup>11</sup> FY 2019 Budget in Brief, Department of Homeland Security, <https://bit.ly/2tmtiNY>.

<sup>12</sup> Coalition calls on ICE to meet congressionally mandated transparency requirements, Open the Government, May 17, 2018: <https://bit.ly/2MBweiy>.