

# Summer 2015 U.S. Immigration Alert!

A Newsletter from National Immigrant Solidarity Network  
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## Life and Death in the Border, Mass Detention: Another U.S. violation of Human Rights

**In This Issue:**  
ACLU: Border Patrol Violence Must Stop! (Pg 1) | Plaintiffs seek an end to unconstitutional Border Patrol detention practices (Pg 2) | Private contracts encourage federal immigrant detentions (Pg 3) | Supreme Court Smacks Down Another Racist Arizona Law (Pg 4) | Muslim woman alleges discrimination on US flight (Pg 5) | Tea party bills targeting immigrant tuition, sanctuary cities die (Pg 6) | China university rebukes US espionage allegations (Pg 6) | How US Private Prisons Profit from Immigrant Detention (Pg 8) Updates, Please Support NISN! Subscribe the Newsletter! (Pg 6)

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## ACLU: Border Patrol Violence Must Stop!

June 5, 2015

Two days before graduating from the State University of New York-Canton with a degree in law enforcement leadership, 21-year-old Jessica Cooke was stopped in her car by Border Patrol agents at a checkpoint on NY Route 37 along the St. Lawrence River's maritime border with Canada.

Ms. Cooke has driven through such checkpoints frequently, and she even completed the first phase of U.S. Customs and Border Protection physical training to apply for a CBP job. As she arrived at the checkpoint, there was no indication she'd crossed the border; indeed, she showed a driver's license to confirm her identity and stated where she was coming from, which is more information than she's required to provide.

The last thing Ms. Cooke could have expected happened: two Border Patrol agents physically assaulted her and shocked her with a stun gun after refusing to answer her repeated question, "Why am I being held?" They explained her detention by saying she looked "nervous." The Border Patrol agent who assaulted Ms. Cooke preceded his violence with a smug "Go for it" after she warned him she'd sue if he touched her. Contrary to policy, he wasn't wearing a visible nametag.

CBP has a terrible track record of use-of-force incidents. Until a new commissioner ordered policy changes last year, the agency strongly resisted releasing a damning external report on its uses of force. Since Anastasio Hernández Rojas was beaten and tased to death on video five years ago, at least 35 people have been killed by CBP agents with zero accountability. CBP's own former head of internal affairs says thousands hired during an unprecedented expansion in the post-9/11 era are "potentially unfit to carry a badge and gun." This recent history has left a dark cloud over CBP as a whole, including the many officers and agents who act with integrity.

Border Patrol claims authority to operate checkpoints within 100 miles of any land or water border. They are supposed to be limited to immigration-status inquiries but have unconstitutionally morphed into general crime control, resulting mostly in

minor drug arrests. The agents' excuse for detaining Ms. Cooke was to wait an hour for a dog to sniff her car, yet she wasn't arrested for contraband or any other reason. The ACLU has long worried that while the 100-mile zone is not literally "Constitution free," because constitutional protections still apply, "the Border Patrol frequently ignores those protections and runs roughshod over individuals' civil liberties."

Ms. Cooke's shocking treatment is sadly symptomatic of a pattern: Border Patrol violence is all over the Internet, victimizing those people who question being excessively harassed during their daily activities (and of course not every incident is caught on camera). Take a look at Border Patrol smashing a trucker's window, or hauling a man out of his car while his toddler's in the back seat, or Clarisa Christiansen's story of what Border Patrol agents did to her and her five- and seven-year-old kids on a remote Arizona road. The incident was so traumatic that it led her to homeschool her children because they became too scared to ride in the car. These incidents occurred 60, 35, and 40 miles from any border.

CBP Commissioner Kerlikowske has improved use-of-force reporting, which the inspector general found badly deficient. CBP claims that incidents are down by almost 30 percent this fiscal year. But the agency's use-of-force policy failed to incorporate a clear definition like the Justice Department's standard — any force beyond peaceful handcuffing that compels someone to comply, including pointing a firearm — so we don't know what those stats really mean.

CBP needs to accurately report how many incidents take place and what happens to personnel involved in incidents like Ms. Cooke's. Are they immediately placed on administrative leave? Are they eventually suspended or fired? How can the public trust that CBP agents they encounter understand constitutional rights, de-escalation techniques, and proper uses of force?

Ms. Cooke's senator, Kirsten Gillibrand, met with CBP about her incident and emerged with "serious concerns about lack of transparency and accountability." CBP must urgently implement the same best police practices the Obama administration recommends for state and local police reform: comprehensive data collection addressing uses of force and racial profiling, body-worn cameras with privacy protections, and a responsive complaint process.

In horrible pain after being manhandled and electroshocked, Ms. Cooke screamed several times at her government assailant: "What the fuck is wrong with you?"

It's up to CBP to answer that question for her and many others who've been wronged. Otherwise the border communities CBP serves will continue to question whether unjustified Border Patrol violence ever has consequences.

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## **6/10: Plaintiffs seek an end to unconstitutional Border Patrol detention practices**

**NILC, AIC, ACLU of Arizona, LCCR, Morrison & Foerster LLP**

TUCSON — Tucson Sector Border Patrol holds men, women, and children in freezing, overcrowded, and filthy cells for extended periods of time in violation of the U.S. Constitution, a group of legal organizations allege in a class-action lawsuit filed Monday. The class-action suit, which was filed on behalf of two people detained in the Tucson Border Patrol Station as well as a Tucson man detained multiple times in that facility, describes Border Patrol limiting or denying access to beds, soap, showers, adequate meals and water, medical care, and lawyers, in violation of constitutional standards and Border Patrol's own policies.

The National Immigration Law Center, the American Immigration Council, the ACLU of Arizona, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and Morrison & Foerster LLP filed the suit after interviewing the plaintiffs as well as more than 75 former detainees. Both current and former detainees consistently recount being subjected to days of mistreatment, abuse, and neglect.

"Our plaintiffs were detained for civil matters, but there is nothing civil about being deprived of water, provided inadequate or expired food, and being subjected to sleep deprivation," said Nora Preciado, staff attorney with the National Immigration Law Center. "We filed this lawsuit because the federal government has systemically failed to adhere to its own meager standards and constitutional requirements and thousands of people have suffered as a result."

Former and current detainees describe being packed into crowded cells with only concrete benches or the floor for a "bed." They are stripped of warm clothing and provided with only flimsy aluminum sheets that do not protect against the frigid temperatures. In most cases, the lights are left on 24 hours a day, making sleep difficult, if not impossible. Immigrants have no soap or water to wash after using the restroom and before meals, and do not have access to showers.

"Thousands of people are subjected to these inhumane and intolerable conditions every year," said Mary Kenney, senior staff

attorney with the American Immigration Council. “Our investigation revealed that these filthy, overcrowded and punitive conditions are the norm in all eight Border Patrol stations within the Tucson Sector.”

The government’s own standards state that people should be detained in holding cells like those in the Tucson Border Patrol facility for no more than 12 hours, but all of the plaintiffs were held for much longer. In fact, Border Patrol’s own records show that, during a six month period in 2013, U.S. Customs and Border Protection (CBP) detained over 58,000 people for 24 hours or longer in holding cells within the Tucson Sector; more than 24,000 of these individuals were held for 48 hours or longer.

“Border Patrol seems to think these brutal conditions, and the human suffering that results, will deter immigration, but the fact is that many of these people are fleeing persecution and violence, reuniting with family, or are themselves U.S. citizens,” said James Duff Lyall, an attorney with ACLU of Arizona. “These policies and practices serve no legitimate purpose, violate the U.S. Constitution, and offend basic American values.”

Children traveling with their mothers are subjected to similar abuse. Several declarants described their children crying through the night from hunger and cold. One declarant reported that she did not receive clean diapers for her two-year-old for the duration of her 28 hours in detention. The woman’s declaration reports that she was finally forced to remove her two-year-old daughter’s soiled diaper—with nowhere to dispose of it and no replacement available.

“All detainees should receive basic medical care in these facilities,” said Travis Silva, Equal Justice Works Fellow at the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area. “CBP routinely confiscates medication from detainees, even those carrying a valid prescription. This behavior endangers lives and inflicts unnecessary suffering.”

CBP fails to screen detainees for health conditions and does not provide adequate medical attention even in extreme cases. One woman who survived sexual assault during her journey reported heavy vaginal bleeding and failed to receive any medical attention at the facility. Agents confiscated another woman’s pain medication; she was eight months pregnant and her ankle was broken. Agents told her not to cry because she “was just going to be deported,” she said.

“It is important to break through the secrecy that surrounds these holding facilities,” said Colette Reiner Mayer, Palo Alto partner at Morrison & Foerster LLP. “No American would accept how the government treats people whose only crime is wanting a better life.”

Doe, et al. v. Johnson, et al. was filed in the U.S. District Court for the District of Arizona. Attorneys on the case include Preciado, Linton Joaquin, and Karen C. Tumlin of the National Immigration Law Center; Kenney, Emily Creighton, and Melissa Crow of the American Immigration Council; Mayer, Harold J. McElhinny, Louise C. Stoupe, Kevin M. Coles, Pieter S. de Ganon, and Elizabeth Balassone of Morrison & Foerster LLP; Silva of the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area; and Lyall, Victoria Lopez, and Dan Pochoda of ACLU of Arizona.

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**Study: Private contracts encourage federal immigrant detentions**

**Quotas create incentive for authorities to detain more immigrants than they would otherwise need to, report says**

**June 11, 2015**  
**Tom Kutsch @tomkutsch Al Jazeera**

A system of local quotas for privately run immigration detention facilities across the United States has created a strong incentive for federal immigration authorities to detain more immigrants than it would otherwise need to, while increasing profits for private companies, according to a study.

The report (PDF), released Thursday by the Center for Constitutional Rights and Detention Watch Network, says that the U.S. Immigration and Customs Enforcement (ICE) – the division of the Department of Homeland Security that manages immigration detention facilities – supports a system where its contracts with private companies establish “guaranteed minimums,” taxpayer-supported monetary obligations to pay for a set number of detention beds, regardless of whether they are used.

That, the report says, means ICE has an incentive to detain individuals, and gives private companies that run detention facilities a say in the number of immigrants the U.S. detains annually. “Local lockup quotas that serve to protect the bottom line of private companies thus incentivize the imprisonment of immigrants,” the report said.

“Immigrants have become market-based commodities,” said Carol Wu, a research associate with Detention Watch Network, in a call with reporters. Though ICE does not outsource all of its detention facilities to private companies, even those that it owns and operates itself include sub-contracting for “detention-related services” to private firms, the report said.

The study says that local quotas have been encouraged by a pre-existing national policy, in place through successive federal appropriations since 2009, which mandates that a minimum of 34,000 beds be available daily for individuals in detention facilities across the nation, regardless of ICE requirements.

"What's important about this study is that the impact of the detention bed mandate is now being felt at the local level," Rep. Ted Deutch, D-Fl., said on a call with reporters. "It only perpetuates a terrible, wasteful, inhumane policy."

ICE told Al Jazeera that the "guaranteed minimums" policy is merely a best practice for achieving the congressionally-mandated minimum of 34,000 daily beds.

"In order to meet that mandate and use our limited resources in the most efficient way, we have developed agreements with certain facilities to make available certain numbers of beds to ICE at all times," said ICE spokesperson Jennifer D. Elzea. "The availability of those beds in no way impacts ICE's enforcement priorities or actions."

Immigration detention quotas are unique among law enforcement and incarceration sectors.

Law-and-order advocates among Republicans and Democrats favor the policy. They say the government could do more to crack down on undocumented immigration.

Immigrant-rights groups say the detention requirement forces the government to needlessly lock up thousands of people who could be supervised in less-confining ways for much less money, subjecting them to sometimes-harsh treatment in prison-like facilities as they await immigration hearings.

According to the report, half of ICE detention facilities across the country rely on guaranteed minimums of detention beds, which exceeded 8,500 individuals based on 2013 data.

"For the federal government to contractually guarantee a certain number of immigrant detainees per day violates best practices in law enforcement and is an affront to our entire conception of justice in America," said Deutch in a press release.

Moreover, a system of "tiered pricing" means that if ICE is able to reach the minimum of beds covered in its private contracts, it is granted a discount on further individuals above the agreed upon minimum. "Tiered pricing creates direct financial incentives for ICE, not only to meet the guaranteed minimum, but also to fill guaranteed-minimum facilities to capacity in order to take advantage of discounts for additional immigrants," the report said.

An October 2014 report (PDF) by the U.S. Government Accountability Office faulted ICE for not meeting minimums, saying it must try "to ensure that field offices comply with guidance to place detainees, whenever possible, in facilities with guaranteed minimums and tiered pricing."

An ICE official acknowledged that saving money was a motivation for contracts that guarantee minimums, which also allow its contractors to more accurately determine the amount of medical and detention personnel required. ICE said this was both a sensible policy given its mandate and also in line with policies of other federal agencies who contract out for detention space.

The findings released Thursday related to minimum guarantees are based largely on a Freedom of Information Act (FOIA) request from November 2013 filed by the Center for Constitutions Rights and the Detention Watch Network. But they also draw on federal business solicitations and contract data from a FOIA previously filed by the National Immigrant Justice Center.

Currently, the U.S. spends close to \$3 billion a year on its detention operations, almost double the cost of 2006, while the number of those detained increased by almost 100,000 people between 2009 and 2012, the report says.

Regino Pompa Gutiérrez, who was detained for two years and released last Friday from Seattle's Northwest Detention Center, which has a guaranteed minimum of 800 persons and is operated privately, told reporters on a conference call Thursday that he was treated like an "animal" at the facility and only paid one dollar a day for labor.

## **Supreme Court Smacks Down Another Racist Arizona Law**

**June 2, 2015**

**Shannon Argueta**

Arizona was on the losing end of a battle to discriminate against Latinos once again on Monday. The U.S. Supreme Court refused to reconsider a federal court ruling that threw out their infamous, 2006 Proposition 100 law, that allowed law

enforcement in the state to deny undocumented immigrants bond when they were accused of committing serious crimes.

In October, the 9th U.S. Circuit Court of Appeals ruled that Prop 100 was unconstitutional. The court said that the law was a violation of the equal protection clause because it singled out one group of people and denied them due process. The former Maricopa County Attorney Andrew Thomas used the law, along with several other anti-immigrant laws, to detain undocumented immigrants and force them to plead guilty to felonies and agree to deportation proceedings.

It was the actions of Andrew Thomas, Senator Russell Pierce, and Sheriff Joe Arpaio, who made the state the country's most anti-immigrant state in the country. While in office, Thomas and Pierce, passed a plethora of xenophobic laws targeting Latinos in the state; many of the laws were thrown out by higher courts.

The current Maricopa County Attorney Bill Montgomery decided to appeal the 9th Circuit's ruling, even though he knew it would be a waste of money because Justice Clarence Thomas had already said it was unlikely that the higher court would hear the appeal. In order for the SCOTUS to take on an appeal four of the seven justices must agree; in this case only the right-wing arm of the court was willing to hear the case.

Montgomery released a statement conveying disappointment that he and his colleagues would not be allowed to violate the rights of undocumented immigrants:

"By declining to hear a challenge to the Ninth Circuit's ruling, the high court is effectively permitting a federal appeals court to veto a law enacted to address specific concerns in Arizona," he said in a formal statement. "First, there is a concern that defendants subject to deportation by the federal government due to their immigration status may be deported when released from state custody on bail and not be present for further proceedings. Second, is my own firsthand experience in finding that defendants released on bail for a serious offense are far less likely to show up for court."

Montgomery is complaining that the SCOTUS allowed the lower court to rule on the constitutionality of the law; he's acting as if the Ninth Circuit isn't supposed to do that. The entire purpose of the lower courts are to determine if something is constitutional or not, they are the first responders of sorts. As a lawyer you'd think Montgomery would know that, but it seems he understands the court system about as well as he understands the Constitution.

The second complaint he has, is that someone on bail may not show up for their court date "in his personal experience." In other words: "I don't trust those brown-skinned people who haven't been convicted, so I'm going to deny them their rights under that old document thingy that I'm supposed to uphold."

Arizona is such a cesspool of racist lawmakers. At what point do the people of Arizona look at the people they put into office and realize how much money they are wasting on unconstitutional laws? It's unbelievably ridiculous and more proof that the Republican Party is neither fiscally responsible or lovers of the Constitution.

## **6/1: Muslim woman alleges discrimination on US flight**

**Student Tahera Ahmad says a steward refused to give her an unopened can of cola because she could use it as a weapon.**

[Al Jazeera] A US airline has been accused of discrimination after a Muslim woman was allegedly told that she could not have an unopened can of cola because she could use it as a weapon.

Tahera Ahmad, who wears a headscarf, was travelling on a United Airlines flight from Chicago to the capital Washington DC on Saturday when she said a flight attendant refused to give her an unopened can while other passengers were given so.

When Ahmad asked the attendant for an explanation, she was told that she could not be given one for security reasons.

The woman, who works as a Muslim chaplain connected to Northwestern University, posted her account on social media, where it went viral and was reported on by media outlets globally.

"I can't help but cry on this plane because I thought people would defend me and say something," Ahmad wrote in a Facebook post.

Both the attendant involved and the plane's pilot later apologised for the incident, Ahmad wrote in a later post.

United Airlines released a statement on Saturday evening saying there had been a "misunderstanding regarding a can of diet soda", and said they had tried several times to accommodate Ahmad's requests.

"The inflight crew met with Ms Ahmad after the flight arrived in Washington to provide assistance and further discuss the matter," the statement said, adding that the airline had apologised for the incident.

The incident has sparked outrage on social media, with calls for boycotting the airline and tens of thousands of mentions using various hashtags on Twitter, according to analytics site Topsy. The story was also widely shared on Facebook.

Muslim civil liberties group CAIR told Al Jazeera it would be meeting lawyers to discuss whether there were grounds to take legal action against United.

## **Tea party bills targeting immigrant tuition, sanctuary cities die**

**May 27, 2015**

**Tom Benning - The Dallas Morning News**

AUSTIN — Bills offered by tea party Republicans to target illegal immigration appear to have died quietly, after stirring up some of the most emotional and intense debate of the 140-day legislative session.

Barring some last-ditch maneuvering, a proposal to repeal a law that allows some students who are in the country illegally to pay in-state college tuition is done. The same goes for an effort to crack down on "sanctuary city" policies.

Also going nowhere is a measure to create an interstate border security compact that would seek ways for Texas to enforce federal immigration laws.

None of the measures even got as much as a hearing in the House State Affairs Committee, led by Rep. Byron Cook, R-Corsicana. And in the Senate, only the border compact was debated; it passed, but died in the House at a key deadline late Tuesday.

Republicans are poised to succeed in providing a major border security boost — spending \$800 million on it over the next two years. But the Legislature's more conservative members couldn't get enough traction to force the issue on more contentious policy.

"We just don't have the time in 140 days to deal with the big-ticket issues and also pander to a small percentage of movement conservatives," Rep. Jason Villalba, a Dallas Republican who opposes such proposals, said last month.

The Senate gave final approval Tuesday to a border security bill that helps solidify the state police's presence at the Texas-Mexico border. If the House accepts the Senate's changes, it will head to GOP Gov. Greg Abbott, who has indicated he'll sign it.

Many Republicans view the other immigration measures as unnecessary and harmful to their efforts to win over Hispanic voters. Others, having heard from the GOP base, say the state needs to cut off "magnets" to illegal immigration as a key part of border security.

"It's just bad policy that rewards illegal immigration in perpetuity," Sen. Donna Campbell, R-New Braunfels, said last month, explaining why she wrote the bill to repeal the in-state tuition program.

It appears that divide will linger unresolved for at least two more years.

## **5/21: China university rebukes US espionage allegations**

**Xinhua News Agency (China)**

TIANJIN --A famous Chinese university refuted US spying accusations against its three professors on Thursday, saying their achievements abide by international scientific research rules and academic ethics.

Tianjin University said it is gravely concerned over the arrest of Zhang Hao, a professor at the School of Precision Instrument and Opto-electronics Engineering of the university, in the US over economic espionage charges.

Zhang was arrested on May 16 at the International Airport of Los Angeles as he entered the US, with invitation to attend an international microwave conference.

US prosecutors accused six Chinese nationals, including Zhang and two other teachers from Tianjin University, Pang Wei and Chen Jinping, of stealing wireless technology from the US, according to reports.

In a statement issued by its publicity department, the university expressed indignation over and firmly denied US media reports that implied that the university has gained illegally in the case.

Both Zhang and Pang got a doctor's degree in electronic engineering at the University of Southern California in 2006. After graduation, Zhang was employed by Skyworks while Pang worked in Avago Technologies. The two were employed by Tianjin University in 2009.

The three professors and their team have published 42 theses in international and domestic magazines, with nine patents accredited by the US and seven patents approved by China.

The 120-year-old university said it holds a zero-tolerance attitude toward irregularities in the academic field and enjoys good academic fame both at home and abroad.

The university "strongly condemns any groundless accusations and act to tarnish its fame and reserve the right to safeguard the university's fame with legal means", said the statement.

Tianjin University will closely follow the case and provide necessary humanitarian and legal assistance for Zhang and his family, it said.

The statement said the US act has seriously harmed the normal academic exchange between the two countries.

China's Foreign Ministry spokesman Hong Lei also expressed concern over the case on Wednesday.

Hong said China would make sure the legitimate rights of its citizens are guaranteed.

## **A Statement from Tianjin University**

**June 5, 2015**

On May 16, 2015, Professor Zhang Hao from the School of Precision Instrument and Optoelectronics Engineering of Tianjin University was arrested on his way to an international conference in the United States of America. Currently, Professor Zhang is being imprisoned at San Jose Prison for accounts of accusation involving economic espionage. Pang Wei and Chen Jinping, who are faculty members of Tianjin University, were charged together with Professor Zhang and three other people. In the accusation of Zhang Hao and five other Chinese nationals as well as in American media reports, Tianjin University was indicated or mentioned more than once as making improper profits. Tianjin University strongly denounces all groundless accusations that damage the university's longstanding reputation, and reserves the rights to apply legal means for protection.

Tianjin University is the first university in China with a history of 120 years and an academic reputation of prestige at home and abroad. The university's motto of "Seeking Truth from Facts" and guideline of "Precise in Learning and Strict in Teaching" have been formed and followed through in its history. The university places great emphasis on academic integrity, and encourages its faculty members and students to explore the unknown so as to advance knowledge to contribute to the society, improve the well-being of humans on the premise of complying with the laws and regulations, and academic standards.

The governance of Tianjin University adheres to international regularity, that talent training and recruitment is given the highest priority. Renowned scholars from home and abroad are welcome to join the university. Extensive and dynamic academic ties are also encouraged at the global level. In the first University Charter announced before the establishment of the university (which was formerly called Peiyang University), a statement can be found that "the first and foremost priorities for a top-university is in its recruitment of faculty members and students." Upon its commencement, Dr. Charles Daniel Tenney, a graduate from Dartmouth University and Oberlin College, was appointed as the first General Supervisor (or Executive President) of Tianjin University for 11 years. Until this day, this legacy has been passed down that talents are greatly valued, respected, fairly treated and highly regarded.

Zhang Hao, an outstanding young faculty member, has worked at Tianjin University since 2009. Arrested in the United States of America and faced with accounts of accusation, he can only protect his rights and prove his innocence by legal means.

However, it is very likely for him to lose the opportunity to access sufficient legal protection that he deserves as he is from a rural home with ordinary background. Tianjin University hereby states that the university will fully support Zhang Hao in his access to legal resources, and at the same time, appeals to scholars with conscience from all over the world and individuals who uphold justice and truth from all walks of life to support Zhang Hao.

We will continue to watch the development of this case closely, and take further actions to defend the honor of Tianjin University and the legitimate rights and interests of our staff members when necessary.

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## How US Private Prisons Profit from Immigrant Detention

May 12, 2015

Melanie Diaz and Timothy Keen - Research Associates at the Council on Hemispheric Affairs

In February 2015, a large-scale prison uprising broke out at the Willacy County Correctional Center in Raymondville, Texas. The detention center has experienced riots like this in the past over several other issues, such as inadequate health services, inhumane conditions, and sexual abuse.[i] However, the grievances that sparked this most recent uprising are representative of a larger and more elusive epidemic. The covert and insidious world of the prison industrial complex (PIC)[1] is witnessing the rise of for-profit prisons largely devoid of oversight and regulatory measures, allowing rampant human rights abuses to persist.[ii] Unfortunately, events that took place in Raymondville are far from isolated incidents under this new paradigm.[iii] Operating in the shadows of U.S. bureaucracy, private prison corporations (PPCs) have garnered an infamous reputation for profiting from the government-subsidized business of immigrant detention. Due to this, for-profit prison corporations lobby extensively and provide exorbitant political contributions so that Congress will appropriate more money into immigration enforcement, fueling the revenue of the PIC.

### How It Works

The increased detention rate of undocumented immigrants in the United States is primarily caused by a cyclical process occurring between three main actors: government agencies, private prison corporations (PPCs), and Congress. Each of these entities play their own role in adding to the existing problem, but together they create a cycle that is difficult to break. While Congress passes anti-immigration legislations, government agencies enforce these laws and contract with PPCs to facilitate an increasing number of federally convicted detainees. In return, PPCs, whose profits are dependent on the number of incarcerated individuals, rely on lobbying efforts to influence Congress into passing laws and appropriating spending to increase strict immigration policies.[iv] These efforts allow PPCs to reap better financial deals from contracts with government agencies, like the Department of Homeland Security (DHS), which enforce the anti-immigration laws passed by Congress.[v] These combined factors cause incarceration rates to skyrocket, thus making PPCs the ultimate winner in this deceptive cycle that hinders progressive immigration reforms and the promotion of immigrant rights.

### The Role of ICE

The government agency responsible for the enforcement of immigration laws is the Bureau of U.S. Immigration and Customs Enforcement (ICE), organized under the DHS. According to ICE's website, the agency's mission is to identify, apprehend, detain, and remove "criminal aliens and other removable individuals located in the United States." [vi] In 2005, however, the DHS launched its zero-tolerance Operation Streamline policy, making it a federal crime for undocumented immigrants to enter and re-enter the United States. This immigration policy, which criminalizes more immigrants than before, is one of the primary reasons for the rise in detention rates. Wayne Cornelius, Director of the Center for Comparative Immigration Studies (CCIS) and former President of the Latin American Studies Association, describes the anti-immigration laws throughout the early 1990s as "prevention through deterrence," and Operation Streamline is just a later policy of this same tactic.[vii]

ICE is attempting to deter immigrants from coming to the United States by criminalizing undocumented entry, and housing migrants in detention centers. The United States has even detained immigrants seeking refugee status, which is an act that is highly controversial in the public arena. The Artesia Detention Center, for example, housed 287 families from Guatemala, Honduras, and El Salvador in 2014.[viii] These families were completely made up of mothers and children (no men at all), totaling to 603 people.[ix] Not only is it an international abnormality for children immigrants to face detention, but it is also extremely difficult for these women and children to receive separate hearings to determine their refugee status. Finally, the result of ICE's attempts to increase the number of detained people is the predictable over-crowding of its own facilities. Therefore, ICE has begun to reach out to PPCs in search of a solution.

### How PPCs Benefit

PPCs are a growing industry that recognizes increasing border patrol as a method to secure immigrant detention rates and thus increase their profits. Between 1990 and 2010, the private prison industry in the United States increased by 1600 percent. Annually, PPCs earn about \$3 billion USD, with over half of the profit coming from facilities holding undocumented immigrants.[x] In the United States, there are currently 13 privately-operated "Criminal Alien Requirement" (CAR) prisons,

with the five in Texas housing almost 14,000 immigrant prisoners altogether in July 2014.[xi] The two biggest corporations running these private prisons are the Corrections Corporation of America (CCA), which operates 67 prisons in the United States, and the GEO Group, which operates 95 in the United States and abroad in countries such as the United Kingdom.[xii] These PPCs do not work alone, though. Government agencies often provide the companies with contracts in order to reduce their costs, and over the years, the amount of the public-private contracts have only increased. For example, in 2005, the GEO Group received \$33.6 million USD from ICE contracts and CCA received \$95 million USD.[xiii] However, by 2012, these ICE contracts had risen to \$216 million USD and \$208 million USD, respectively.[xiv]

While these contracts allow PPCs a great deal of financial advantage to run their facilities, cost cutting is a common profit-saving tactic, which oftentimes results in inadequate inmate living conditions. For example, despite annual revenues of \$1.4 billion USD in 2012, the GEO Group has been criticized for its cost-cutting practices that have created issues, such as insufficient wages and benefits for workers, poor oversight of prisoner maltreatment, and prisoner riots.[xv]

#### Less Accountability with PPCs

Contracting with PPCs for detention facilities, however, is an issue because they are not held accountable to the same regulations that the Bureau of Prisons (BOP), a government agency that manages federally-operated prisons, sets for public prison facilities[xvi] It has been reported that some PPCs hide behind “trade secrets” and their private status in order to avoid publicizing documents.[xvii] This loophole in the Freedom of Information Act (FOIA) of 1967, a federal law allowing for disclosure of governmental documents, allows PPCs to run regardless of human rights abuses that they fail to report to the public due to their fear of budget cuts. For instance, an Amnesty International (AI) report sheds light on the human suffering that is oftentimes found in PPCs, with abuses ranging from malnourishment to a lack of medical assistance for inmates.[xviii] AI also reports high levels of sexual harassment of transgender people who are oftentimes sentenced to long-term solitary confinement due to the lack of better safety precautions.[xix] Yet, despite these human rights violations, the private prison industry continues to operate largely unrestrained as a result of a lacking transparency and ability to circumvent regulatory measures.

However, there have been numerous attempts by Congress to introduce legislation that adds more transparency and accountability to the activities of PPCs. Yet despite the fact that a public-private partnership is still subject to the disclosure laws within FOIA, PPCs have suspiciously lacked in transparency. Legislation changes have repeatedly been put forth to Congress, without success, to cancel PPCs’ usage of FOIA’s loopholes.[xx] This consistent failure is possibly due to PPCs’ lobbying efforts, with CCA spending over \$7 million USD on transparency legislation prevention maneuvers since 2005.[xxi] Another issue with private prisons is that, oftentimes, these prisons are strategically located in rural and isolated areas in an effort to restrict detainees from proper access to due process. The American Civil Liberties Union (ACLU) reports that immigrant detainees often suffer from a lack of headway on their immigration cases due to the prisons’ geographical isolation in towns that are too small and underdeveloped to have sufficient lawyers present.[xxii] In addition to this, two recent Supreme Court rulings further restrict access to proper litigation in cases of prisoner maltreatment and abuse. The *Correctional Services Corp. vs. Malesko* (2001) ruled that private prison companies cannot be subject to and are not liable to violations of constitutional rights.[xxiii] More recently, *Minecci vs. Polard* (2012) ruled that individual private prison guards could no longer be held accountable for violating prisoners’ constitutional rights so long as the guards are following state laws.[xxiv] These Supreme Court rulings therefore justify and allow private corporations to act more autonomously, with less judicial oversight or accountability.

#### Money Talks

Proponents of PPCs contracting with the U.S. Government could certainly make the argument that they act within the contours of any typical business. That is, responding to external demand for a particular service; in this case, immigrant detention centers. This argument, however, is only legitimate when the PPCs are not actively involved in altering market demand to suit their monetary interests. Extensive revelations on the lucrative cycle of lobbying and campaign contributions suggest otherwise that private prison corporations, such as CCA, have dubious records of influencing immigration enforcement policy. [xxv]

While PPCs deny allegations of influencing policy through lobbying and campaign contributions, their own statements contradict this. For example, the industry has widely exploited the United States’ post 9-11 paranoia towards immigrants. James E. Hyman, Chairman of the large private prison corporation Cornell Companies, stated: “It is clear that since September 11 there’s a heightened focus on detention...The federal business is the best business for us, and September 11 is increasing that business.”[xxvi]

Exploitation of tragedy and social issues, however, is a norm in the PIC. In reference to their 2010 annual report, CCA stated that policy reform regarding immigration could affect the number of people arrested and detained, resulting in decreased demand for its detention facilities.[xxvii] In fact, CCA believes that progressive immigration reform would greatly limit their main source of profit: immigrant detainees. Thus, the industry has developed a strategy to maintain their lucrative business model through political channels.

According to the Justice Policy report titled “Gaming the System”, the strategy of these for-profit prison corporations to influence policy is based on three primary factors: lobbying, campaign contributions, and associations.[xxviii] This tactical trifecta has allowed PPCs to heavily influence U.S. policymaking in order to maintain a status quo, restrict regulatory measures, and enact tougher enforcement laws.

#### CCA as an Example

CCA representative, Steven Owen, has explicitly remarked that CCA does not lobby to influence immigration enforcement legislation.[xxix] Digging a little deeper into such statements, however, reflects an entirely different reality. According to CCA’s 2013 Annual Report on Political Activity and Lobbying, the for-profit prison corporation openly admits to appropriating funds for lobbying and political contributions to federal and state candidates even in states where inflated corporate contributions are not allowed. In addition, given the recent Supreme Court decision on Citizens United Vs. The Federal Election Commission, which eliminates caps on campaign contributions, CCA’s contributions to political campaigns are made easier by the Supreme Court ruling. In fact, CCA spent a grand total of \$769,000 USD on political contributions according to their 2013 Annual Report on political expenditure.[xxx] Their lobbying expenditures in the report, on the other hand, were exponentially higher, with costs on direct and indirect lobbying reaching a whopping \$4.4 million USD.[xxxi]

In its 2013 Annual Report, CCA explicitly stated that it focuses on government activities that primarily affect their private detention facilities. CCA also made the assumption that policies regarding the construction and operation of detention facilities are completely separate from immigration enforcement policies. Considering the fact that CCA contracts with ICE, whose chief goal is to enforce legislative measures regarding immigration, CCA’s argument that they do not actively lobby to influence immigration policy is proven fallacious.

In fact, CCA and other similar private prison corporations certainly have a cash incentive to lobby against easing immigration policy. In 2011, CCA received \$208 million USD in revenues from ICE contracts, compared to \$95 million USD in 2005, according to company filings with the Security and Exchange Commission.[xxxii] Furthermore, in 2011, the Justice Policy Institute found that 50 percent of CCA’s revenues derived from its state contracts.[xxxiii] So without government contracts, CCA would essentially have its profits cut in half. This means that the industry is incentivized to lobby for secured and increased contracts from the government.

#### Immigration Enforcement Legislation

In 2010, National Public Radio (NPR) undertook an in-depth investigation into the drafting of one of the most controversial immigrant enforcement laws in recent history: Arizona SB1070. Ratified by then Arizona Governor Jan Brewer in 2010, the law entitles law enforcement authorities to arbitrarily arrest people whom are suspected of being in the country illegally.[xxxiv] Critics of the bill believe that it has provoked pervasive racial profiling of Latin American communities based on the law’s provisions to suspect people based solely on how they look or sound. The ACLU reports that the legislation inspired other states to make copycat laws in Arizona, Georgia, Indiana, South Carolina, and Utah.[xxxv] The ACLU indicates that Arizona’s state legislators were not the only ones involved with drafting the bill. In fact, it was heavily influenced by external stakeholders, such as PPCs, who would profit from its passing since it would ramp up immigrant incarceration rates.[xxxvi] According to the NPR, several PPC representatives were directly involved with drafting the highly controversial bill.[xxxvii] To make the connection between prison corporations and state legislators elusive to the public, PPCs operated through one of the most conservative and powerful lobbying organizations: The American Legislative Executive Council, otherwise known as ALEC. A conglomeration of powerful corporate industries, ALEC has an infamous track-record for engaging in secretive dialogue between state legislators and corporate representatives to draft model legislation, and CCA is an active member of the organization.[xxxviii]

NPR’s report also revealed that Arizona’s state legislators secretly met with CCA representatives operating through ALEC at the Grant Hyatt Hotel in Washington, D.C.[xxxix] In the meeting, the group of stakeholders discussed, debated and voted on what would become a draft for Arizona’s SB1070, and four months later, the content of the law was almost verbatim.[xl] Coincidentally, 30 of the 36 co-sponsors of the bill received donations over the next six months, from both prison lobbyists and prison companies.[xli] Even more illuminating, Governor of Arizona, Jan Brewer’s top two advisers were former private prison lobbyists. With these revelations in mind, it is clear that PPCs are not only spending vast amounts of money on lobbying and campaign contributions, but are also highly associated and connected to state legislators who are drafting draconian immigration enforcement bills to further their corporate interests.

The private prison industry has not only been involved with writing legislation for Arizona SB1070. Other reports have shed light on its long history with ALEC consisting of a task force that established model legislation including mandatory minimum sentencing, three strikes laws that give repeat offenders 25 years to life, and “truth-in-sentencing” laws that require that prisoners serve most or all of their time without a chance for parole.[xlii]

#### Quotas & Congressional Appropriations

While PPCs do influence legislation directly, their efforts are also indirect as they concentrate on influencing congressional

appropriations. The more appropriations that they can persuade congress to funnel into the DHS, the more money becomes available to them in federal contracts. A prime example of this is the bed quota or occupancy quota.

The bed quota, which mandates that ICE must hold at least 34,000 individuals on a daily basis, is a contractual agreement between ICE and PPCs.[xliii] The quota secures and maintains revenue streams for PPCs by forcing ICE to meet a minimum standard based on an arbitrary quota, which has increased from 10,000 beds to 34,000 over the last 15 years.[xliv] It is particularly unprecedented in that no other law enforcement agencies have occupancy quotas.[xlv] A 2013 report by In the Public Interest, a resource center on privatization and responsible contracting, found that 65 percent of all private prison contracts with the Government include clauses on occupancy quotas.[xlvi] These clauses generally contain a rigid minimum 90 percent occupancy guarantee, with some prisons requiring as much as 100 percent.[xlvii] It is no surprise that PPCs profit from the bed quota and actively lobby for increased appropriations to fuel their lucrative industry. In their 2010 annual report, CCA stated that “filling these available beds would provide substantial growth in revenues, cash flow, and earnings per share.”[xlviii] Since the bed quota officially went into effect after 2010, the share of detention beds operated by PPCs expanded from 49 percent to 59 percent, while 69 percent of all lobbying expenditures by private prison companies have included direct lobbying of DHS appropriations and immigrant detention issues.[xlix] There have been attempts in Congress to eliminate the bed quota from federal contracts with prisons, but all have been shot down due to the immense political leverage of PPCs.

In an effort to ensure that profits from contract conditions are maintained or increased, PPCs have been strategically targeting members of Congress who are in committees that deal with immigration reform. For example, Florida Senator Marco Rubio is a member of the Senate Sub-Committee on Homeland Security and has received \$27,300 USD in contributions from the second largest prison corporation, the GEO Group.[i] Another example is Arizona Senator John McCain who received \$32,146 USD from CCA, and has since introduced legislation appropriating greater funds for immigration detentions through Operation Streamline (2005).[ii] Both McCain and Rubio are also members of the “Gang of Eight,” a bi-partisan group of eight senators who spearheaded the Comprehensive Immigration Reform (CIR) in 2013. PPCs have spent more than \$200,000 USD on political contributions and lobbying to “gang-of-eight” members.[lii] Consequently, greater appropriations to the DHS will result in the agency having to find a way to spend that money for that particular year. Increased congressional appropriations to ICE increased the potential for ICE to contract with private prisons. In effect, this pattern can cause greater detainment of undocumented immigrants. In fact, this year’s DHS appropriations act saw an increase of \$400 million USD compared to the fiscal year of 2014, and includes amendments that limit President Obama’s recent executive actions on immigration and requires the DHS to enforce current immigration laws.[liii] In 2014, lobbyists from CCA issued six reports lobbying for the passing of the Department of Homeland Security Appropriations Act of 2015, specifically in regards to funding for the Bureau of Prisons, the Immigration and Enforcement Agency, and the U.S. Marshalls.[liv] In addition, 2014 saw the GEO Group’s 28 reports of lobbying in the following sectors: homeland security and the Immigration and Law Enforcement.[lv] Despite this evidence, however, GEO Group Vice President of Corporate Relations, Pablo Paez, states that the “GEO Group has never directly or indirectly lobbied to influence immigration policy.”[lvi][lvii]

#### Costs to the American Taxpayer

By far, the most dominant justification for pursuing public-private partnerships with prison corporations is that it saves the state taxpayers’ money, and at face-value it may seem to be true.[lviii] ICE, which is funded by government taxes, outsources management of prison facilities to the private industry thus transferring costs over to private corporations and not the taxpayers. If only this was the true reality. Put simply, the more Congress succumbs to the private prison industry’s lobbying efforts to funnel more money into the DHS, the more prison populations have increased. And, alas, the taxpayer pays the ultimate costs as increased numbers of detainees eventually drive up taxpayer expenditures.

Today, reports indicate that the United States incarcerates up to 34,000 immigrants per day, costing taxpayers \$2 million USD annually.[lix] Every individual detainee costs around \$159 taxpayer dollars per day, according to a report by the National Immigration Forum, an immigrant advocacy organization.[lx] Furthermore, the aforementioned bed quota has additionally attributed to hikes in costs to the taxpayer in recent times.[lxi] For example, the third largest for-profit prison corporation, Management and Corp., threatened to sue the State because the contractual condition for the occupancy quota was not fulfilled, claiming the depreciation of inmates resulted in a \$10 million USD loss in profits.[lxii] After a series of negotiations, state officials and prison corporate representatives agreed that the State would pay a total of \$3 million USD in fines for empty bed fees.[lxiii] This is but one example of how governmental institutions submit to the interests of the powerful for-profit prison industry, costing Congress its legitimacy and taxpayers their hard-earned money.

#### Failing Policies and Alternatives

With harsher immigration policies and higher rates of immigrant detention, Washington has hoped to deter migrants from coming to the United States. According to the International Detention Coalition, “detention does not deter irregular migrants,” which explains the surge of 51,000 unaccompanied child migrants from Mexico and Central America that arrived to the United States between October 2013 and June 2014.[lxiv] In essence, “prevention through deterrence” has been proven not to work and instead has created other issues, such as unreported human rights abuses in PPCs, more deaths due to new and more dangerous routes into the United States, and increased likelihood of permanent residency for undocumented

people. According to a 2014 ACLU report, BOP still had not responded to FOIA requests about oversight within PPCs, causing alarm at the number of human abuse cases that may go unrecorded in these facilities.[lxv] In relation to the increased number of immigrant deaths, Wayne Cornelius, Director of CCIS, has reported that between 1995 and 2004, over 2,460 migrants died on their way to the United States as “the probability of dying versus being apprehended by the Border Patrol has doubled since 1998.”[lxvi] Lastly, in light of stricter anti-immigration policies, undocumented people are now more likely to permanently reside in the United States, since the increasing cost of crossing the border has made cyclical immigration patterns less likely due to immigrants’ fears of being unable to return to the United States after their first arrival. [lxvii] Obviously, current U.S. border policies have a negative impact on migration issues, and given this, Congress has a responsibility to start fixing the failing U.S. immigration policies.

To combat the uncontrolled power of PPCs, the Government must begin increasing means for PPCs’ transparency. The Puente Human Rights Movement also recommends that the Government open an independent office dedicated to monitoring the actions of PPCs and ensuring that they are held accountable for any human rights violations.[lxviii] Furthermore, since taxpayer dollars go into the government agency contracts given to PPCs, the ACLU advocates for Congress to amend the FOIA legislation to apply to PPCs so that the public will have access to the information on what they are funding and that transparency within this industry is heightened.

On a brighter note, alternatives to detention do exist. In a House Report by the 112th Congress, it was stated that enrollments in alternatives to detention (ATDs), such as parole or monitoring programs, are as low as \$7 USD a day, which is a great financial bargain when compared to the detention costs averaging \$159 USD per day.[lxix] It is obvious that costly endeavors to pass anti-immigration policies and deter immigrants with the horror of detention centers are not having the intended effect of limiting immigration. Instead, these tactics are creating more immigrant residency, more immigrant deaths, and more human rights abuses in PPCs, which are gaining enormous annual profits. As another and more progressive alternative to detention, Congress could also consider expanding on development programs in Latin America in order to provide people, including refugees, with alternatives to emigration. Although this will take a longer time to prove successful, it could have the long-lasting impact that Washington is currently aiming for, but without the cost of more immigrant lives.

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