

The High Cost of Cheap Detentions

By EDWIN S. RUBENSTEIN

Criminal aliens — non-citizens convicted of crimes — are an increasing burden on U.S. prison systems. In 1980, federal, state, and local facilities held fewer than 9,000 criminal aliens. At the end of 2004 approximately 267,000 aliens were incarcerated in the U.S.

The most recent available data — for fiscal year 2010 (federal prisons) and 2009 (state prisons and local jails) — show a whopping 351,000 incarcerated aliens.¹ Another 33,000+ illegal aliens are in ICE detention facilities awaiting the outcome of their deportation hearings.²

Immigrants have overwhelmed the ability of governments to provide adequate detention space and services. Private companies have filled the gap, grabbing huge profits and lobbying for tougher immigration laws that will ensure even bigger paydays in the future.

Meanwhile, policies that could potentially reduce the number of detained or incarcerated aliens — expedited deportations and secure borders, for example — are ignored, if not actually discouraged, by private prison companies and their lobbyists.

Corporate involvement dates from 1983, when the Immigration and Naturalization Service (INS) signed a contract with Corrections Corporation of America (CCA) to build detention facilities. Since then dozens of other companies have vied for federal contracts to manage or construct immigrant detention facilities, or to train corrections personnel.

Private prison corporations sell about \$5 billion worth of goods and services to governments each year. About \$2 billion goes to Immigration and Customs En-

forcement (ICE), which hires private companies to manage most of its detention facilities. Since 2009 ICE has also contracted private companies to build or expand at least 10 detention facilities.³

Three corporations manage most of ICE's detention capacity: CCA is the largest. The company operates a total of 14 facilities with a total of 14,556 beds. In 2009 CCA oversaw an average daily population (ADP) of 6,199 detained immigrants.⁴

GEO Group, Inc. is the second largest contractor, with seven facilities totaling 7,183 beds and an ADP of 4,948.

The third largest player is the Management and Training Corporation (MTC), with a combined total of 4,172 beds and an ADP of 2,244.

Investors in these companies, which are traded on the New York Stock Exchange, have a financial interest in keeping private prison cells filled. Industry experts say a profitable private prison must have a 90 percent to 95 percent capacity rate. In a 1990's report, Prudential Securities was bullish on CCA but noted, "It takes time to bring inmate population levels up to where they cover costs. Low occupancy is a drag on profits...company earnings would be strong if CCA succeeded in ramping up population levels in its new facilities at an acceptable rate"⁵

In 2010 CCA and GEO reported revenues of \$1.69 billion and \$1.17 billion, respectively.⁶

It is impossible to determine how much of this comes from ICE contracts because neither the corporations nor ICE is required to make the data publicly available. Private contractors are exempt from the requirement to comply with Freedom of Information Act requests, and are protected in litigation by complex contractor immunity doctrines. The lack of transparency and accountability has enabled financial mismanagement and human rights violations to co-exist at many detention facilities.

It is clear, however, that prison privatization is still touted as a less expensive, more efficient alternative to government-run detention facilities. In theory, the profit motive should keep costs low and performance high, so

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as to maximize the likelihood that lucrative contracts will be renewed. Actual results have fallen far short of these expectations.

Getting What You Pay For

Companies that run private prisons are responsible to their shareholders, not to the public. Their goal is to maximize profits, not to enforce the public purpose for which they have been contracted. This leads private corrections companies to cut corners in ways that jeopardize, or even work against, the goals set for them.

Private correctional officers are paid \$28,790 in comparison with a median salary of \$38,380 for their government counterparts.⁷ Low wages lead to high staff turnover rates, which in turn lead to poorer overall quality in facility management. In 2000, the private prison turnover rate was 53 percent while the public prison turnover rate was 16 percent.⁸ In Texas, a state report found that private prison guards had a 90 percent annual turnover rate compared to 24 percent in public facilities.⁹

CCA and GEO have a long track record of prisoner abuse and mismanagement at their immigrant detention facilities. Recent examples include:

- Immigrant prisoners at GEO Group's Reeves County Detention Center led two major uprisings in 2009 and 2010 after multiple deaths at the facility that were reportedly caused by a lack of proper medical care. The ACLU later sued on behalf of the family of Jesus Manuel Galindo, an epileptic who died after being placed in solitary confinement as punishment for complaining about his medical conditions.¹⁰
- Medical care at CCA-run facilities is so poor that detainees with treatable conditions have been allowed to die while in custody. Calls for medical help are routinely ignored or answered hours later by unqualified individuals, according to a 2009 ICE investigation. At an immigration facility in Arizona, the lone nurse on the night shift was responsible for distributing medication to 300 chronically ill detainees in a population of 1,500. ICE attributes several deaths to inadequate medical staffing by CCA, at a time when the company was reaping record profits from a larger detainee population.¹¹
- CCA is alleged in 2010 to have allowed its Idaho Correctional Center to become so violent that it was dubbed a "Gladiator School."

After the Associated Press released a video of a violent prisoner beating as guards watched, the FBI opened an investigation into the facility. The ACLU of Idaho has sued the company over conditions at the facility.¹²

- In 2010, a CCA supervisor at the company's T. Don Hutto immigration detention center was arrested and convicted after several women accused him of sexually groping them while he drove them to the airport. According to ICE protocol, the male officer should not have been alone with the women during transportation. In May 2007, a different CCA guard was fired from Hutto after reports of sexual assault of a woman detained at the facility. The T. Don Hutto facility is considered one of ICE's exemplary detention centers.¹³

- In 2008, widespread allegations appeared in the media alleging that guards at GEO Group's South Texas Detention Center were sexually assaulting detainees at the facility.¹⁴

- Male detainees at LCS Corrections' South Louisiana Correctional Center reported that contract staff retaliated against them by placing those who raised human rights complaints in solitary confinement and threatening criminal prosecution.

The private prison industry is very explicit about the connection between profit margins and immigration policy. In its 2007 Securities and Exchange Commission filing, CCA acknowledged: "We are dependent on government appropriations.... The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts or through the decriminalization of certain activities that are currently proscribed by our criminal laws."¹⁵

In the current economic climate, the profitability of the immigration detention business is widely expected to grow. James Hyman, president of Cornell Companies (a company purchased in 2010 by GEO Group), told a prospective investor curious about a possible downturn in enforcement and detention: "We do not believe we will see a decline in the need for detention beds particularly in an economy with rising unemployment among American workers."¹⁶

Abusive practices could kill the Golden Goose for private prison companies. More importantly, it could reverse the increased acceptance of deportation as a means of ridding the country of illegal aliens.

Lobbying for More Prisoners

Expand or die. This truism applies to any industry where many firms compete for market share. The private prison business is not any industry, however. Demand for its services is not driven by growth in personal income or market prices. Public policies are the largest determinant of a private prison company’s revenues and profits.

From its inception CCA has paid off politicians who enabled its growth:

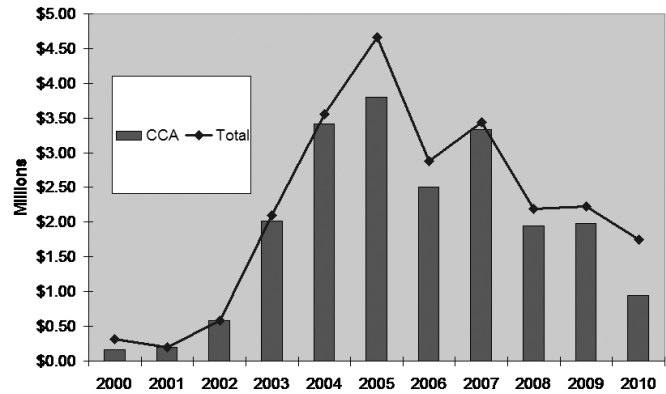
The first prison the company managed was the Silverdale Workhouse in Hamilton County, Tennessee. After commissioner Bob Long voted to accept CCA’s bid for the project, the company awarded Long’s pest control firm a lucrative contract. When Long decided the time was right to quit public life, CCA hired him to lobby on its behalf. CCA has been a major financial supporter of Lamar Alexander, the former Tennessee governor and failed presidential candidate. In one of a number of sweetheart deals, Lamar’s wife, Honey Alexander, made more than \$130,000 on a \$5,000 investment in CCA. Tennessee Governor Ned McWherter is another CCA stockholder and is quoted in the company’s 1995 annual report as saying that “the federal government would be well served to privatize all of their corrections.”¹⁷

But the private prison industry takes no chances. It spends millions lobbying politicians and government agencies that are responsible for immigration policy. Federal records indicate private prison corporations with ICE contracts spent a total of \$23.9 million on lobbying over the 2000-2010 period.¹⁸ Most of these companies lobbied both the House and the Senate along with the Department of Homeland Security, the agency that oversees ICE. The larger corporations (CCA and GEO) lobbied a variety of entities related to immigration policy, including the Justice Department, the Bureau of Prisons, and the Office of Management and Budget. Both CCA and GEO reported lobbying ICE directly.

The largest private prison corporation, CCA, spent by far the most: \$20.9 million lobbying the federal government between from 2000 to 2010. Most of this was between 2003 and 2007, when CCA spent between \$2.02 and \$3.80 million each year. These were years of high illegal immigration and “comprehensive immigration reform” (AKA amnesty) efforts by President George W. Bush.

Lobbying expenditures for both CCA and GEO peaked in 2005 — a year which saw several anti-immigration bills introduced in Congress, leading up to the largest immigration raid in U.S. history. The second highest lobbying expenditure was in 2004, shortly after mass immigrant mobilizations across the country.

Private Prison Industry Lobbying Expenditures, 2000-2010



When questioned about lobbying, CCA says it does not lobby lawmakers to increase jail time or push for longer sentences under any circumstances, noting that it “educates officials on the benefits of public-private partnership but does not lobby on crime and sentencing policies.”¹⁹

Educating public officials on the benefits of prison privatization? That sounds squeaky clean — a boon to taxpayers. But when you drill down into details — like who is lobbying whom and the personal financial gain people on both sides have in the outcome — a very different picture emerges.

Case in point: Arizona’s path to the Support Our Law Enforcement Act (SB1070), arguably the toughest immigration law in the country. Signed into law by Governor Jan Brewer in April 2010, SB1070 requires state and local law enforcement officials to ascertain the immigration status of people they come into “lawful contact” with, whom they have reasonable suspicion to believe are in the U.S. illegally.

Critics claim the law will lead to racial profiling of Hispanics. Supporters say Arizona is only doing what the federal government refuses to do: enforce U.S. immigration law. Both sides agree that enforcing SB1070 will produce a sizable increase in the inmate population of state and local jails in the state.

Stories from several media outlets exposed the role played by the private prison industry in drafting and promoting SB1070. The web of personal and financial relationships between powerful state officials (including Governor Brewer and state Senator Russell Pearce,

SB1070's primary sponsor) and the private prison industry troubled many.

These excerpts are from one such expose:²⁰

In early December 2009—a full month and a half before SB 1070 was introduced to the Arizona Senate and nearly two months before its counterpart was first read in the House—Pearce formally submitted a version of his proposed legislation to the American Legislative Exchange Council (ALEC), an organization to which he and 35 other Arizona legislators are members.

[ALEC's] current corporate roster includes Corrections Corporation of America (CCA, the nation's largest private jailer), GEO Group (the nation's second largest private jailer), Sodexo Marriott (the nation's leading food services provider to private correctional institutions), the Koch Foundation, Exxon Mobil, Blue Cross and Blue Shield, Pfizer, Boeing, Bank of America, Wal-Mart, Inc. and News Corporation, to name a few.

Despite the fact that federal tax law explicitly forbids 501(c)(3) organizations such as ALEC from taking part in the formation of legislation, ALEC is comprised of nine task forces, each responsible for developing “model legislation” that ALEC member lawmakers then carry back to their home states and introduce as their own. Pearce is an executive member of ALEC's Public Safety and Elections Task Force. Private sector executive members of this task force include CCA,

The private corrections/immigrant detention industry has had ample opportunity—and obvious intent—in recent years to influence the drafting of and smooth the way toward passage of this and similar legislation.

A little over a week after Pearce introduced the Support Our Law Enforcement Act on the floor of the state Senate as SB 1070, CCA enlisted Highground Consulting, one of the most influential lobbying firms in Phoenix, to represent its interests in the state.

Highground's influence extends into Governor Brewer's office. The firm's owner and principal is Charles “Chuck” Coughlin, Brewer's top advisor and campaign manager.

In addition to Coughlin, CCA has further ties to the office of the Governor. State lobby reports reveal that Gov. Brewer's current spokesman, Senseman, had been lobbying Arizona lawmakers as CCA's chief lobbyist in the state as an employee of Policy Development Group, Inc., yet another influential Phoenix consulting firm, from 2005 to late 2008. Senseman was appointed as Brewer's spokesman in January 2009—fresh off the job with CCA. Senseman's wife, Kathryn, remains employed by Policy Development Group, which still lobbies the state on behalf of CCA.

So, in 2005 and 2006, while Arizona lawmakers—many of them ALEC members—were drafting provisions of what would eventually become [HB 2577, an earlier version of SB1077 vetoed by then Governor Janet Napolitano], Governor Brewer's current director of communications, was lobbying on behalf of the largest private prison company and operator of immigrant detention facilities in the nation.

Additionally, Brewer's Chief Policy Advisor, Richard Bark — a man mentioned by Senseman, Pearce, and Kobach as being directly involved in the drafting of the Support Our Law Enforcement Act — remains listed with the Office of the Secretary of State as an active lobbyist for the Arizona Chamber of Commerce and Industry (ACCI). CCA is a “board level” member of ACCI and is the top employer in Pinal County, located just south of Maricopa County, where CCA operates five detention facilities for both state prisoners and immigrant detainees.

These interconnections between corporate and government officials raise questions: To what extent do private companies influence state immigration and enforcement policies? Are government officials looking out for the public interest — or, are they working for personal financial gain?

Have Arizona's “patriotic” politicians wrapped themselves in the flag all the way to the bank?

A Better Way

Arizona is not alone. All states and localities are looking for ways to reduce the cost of bringing criminal aliens to justice. In a perfect world these costs would be

nipped at the border. The federal government’s failure to secure the border has forced states and localities to cut corners. Prison privatization, with the physical and financial abuses outlined above, is the predictable result.

There is a better way to cut the cost of jailing immigrants. The State Criminal Alien Assistance Program (SCAAP), a federal program administered through the Bureau of Justice (BOJ), subsidizes state and local crime agencies. Law enforcement receives SCAAP funds to jail illegal aliens who have been convicted of one felony or two misdemeanors. After the inmates have been jailed for four or more consecutive days, they are “ICE-eligible” and federal funds kick in to assist law enforcement with costs exceeding the budget for correctional officers’ salaries.²¹

The BOJ gives law enforcement a lot of leeway in spending SCAAP funds, including salaries and overtime for corrections officers, consultants, workforce recruitment, training and retention, jail construction, and training and education for offenders.



Unfortunately, SCAAP is woefully underfunded. States that received SCAAP money in 2009 reported spending \$1.16 billion to incarcerate non-citizens convicted of crimes. SCAAP sent them a mere \$199 million, enough to cover roughly 17 percent of these costs. Put differently, while total incarceration costs averaged \$12,608 per criminal alien inmate in 2009, the SCAAP reimbursement averaged just \$2,167 per criminal alien inmate.²²

A fully funded SCAAP would obviate the need for prison privatization. Staffing and salaries might be slightly higher, but the safety and health of immigrant detainees would no longer be the issue it is today. Unlike private companies, government prison departments would be completely transparent about what is going on. Humane detentions would assuage liberal guilt regarding deportation as an immigration policy.

At the end of the day, restoring government control of immigrant detention operations may actually save taxpayers money. Private prison operators are paid on a per prisoner per day basis. They have an incentive to maximize both the number of inmates and the amount of time they spend in jail. A rapidly expanding prison population is great for profits. It is devastating for taxpayers — many of whom have already suffered economic losses from immigration.

Increased federal support for state and local jails is an immigration policy everyone should lobby for. ■

Endnotes

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