First Make a Profit

Healthcare and the True Price of For-Profit Immigration Detention

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Acknowledgements

Many thanks to Professor Hanson for his encouragement and helpful advice. With gratitude to Zach Cohen and Jessica Graham for their great edits. And thanks to my partner, Henock Dory, for proofreading this piece in late-stage pandemic fatigue.

About the Critical Corporate Theory Collection

The Critical Corporate Theory Collection is part of the *Systemic Justice Journal*, published by the Systemic Justice Project at Harvard Law School. The Collection is comprised of papers that analyze the role of corporate law in systemic injustices. The authors are Harvard Law students who were enrolled in Professor Jon Hanson's Corporations course in the spring of 2021.

The Collection addresses the premise that corporate law is a core underlying cause of most systemic injustices and social problems we face today. Each article explores how corporate law facilitates the creation and maintenance of institutions with tremendous wealth and power and provides those institutions a shared, single interest in capturing institutions, policies, lawmakers, and norms, which in turn further enhance that power and legitimates its unjust effects in producing systems of oppression and exploitation.

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ABSTRACT

"The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts."

- Core Civic, 2014 Annual Report to Shareholders

Immigration policy and immigration detention have been topics du jure over the past four years. For some, the presidency of Donald Trump brought the inhumane nature of immigration detention to the forefront. But while critics of the country's immigration scheme have looked to policymakers to change immigration laws, they have missed a powerful force driving and capitalizing on immigration policies behind the scenes: corporate power. Since the 1980s, the government has relied on private corporations to run immigration detention facilities. In the last two decades, this dependance has exploded, in large part because of the influence that these corporations have had—swaying officials and shaping policy behind the scenes through donations and lobbying expenditures. While these corporations pitch themselves as partners to the government, this partnership comes at a human toll. For people in Immigration and Customs Enforcement (ICE) detention, nowhere is this cost more apparent than in the grave lack of medical care afforded to those in detention facilities. Healthcare is a lens through which we can examine the true price of for-profit detention.

First Make a Profit

Healthcare and the True Price of For-Profit Immigration Detention

I. INTRODUCTION

The Human Toll

It was a mother's intuition. Sara, 32, and her son, Oscar, 8, had been at the South Texas Family Residential Center in Dilley, Texas, for months by the start of the summer of 2020.[i] They were each deep in the malaise of being held in immigration detention: Sara waited daily to hear news on their slow-moving asylum case; Oscar tried to adjust to a new childhood reality in a maze of trailers in South Texas. Detention was unimaginably hard, but they were surviving.

One night, though, Oscar couldn't sleep. His stomach hurt too much. Oscar was never sick. Concerned, Sara took him to the medical facilities. After waiting for hours, the detention nurses told them that nothing was wrong. Oscar just had bad gas—he needed to drink water. A few days later, however, his pain had not subsided. When Oscar woke up in the middle of the night with what felt like a fever, Sara brought him back to the medical facilities. She knew something was wrong. The medical staff offered to watch him for a few days, but again refused to give him medicine. Water remained the only treatment for a new diagnosis: constipation. Sara could not provide Oscar with anything else. Her maternal instinct was hindered by their location. Her intuition, of course, was right.

[i] Interview with the Author. April 20, 2021. Details have been changed to preserve anonymity.

A week after Sara first took Oscar to the medical facilities, he was rushed to the hospital in San Antonio over an hour away. It was appendicitis—he needed emergency surgery.

Sara and Oscar are two of many. Drawn to the "nation of immigrants" out of hope for a better life, they arrived to find an immigration system rife with neglect and abuse. For some, the presidency of Donald Trump brought the inhumane nature of immigration detention to the forefront. But while critics of the country's immigration scheme have looked to policymakers for change, they have missed a powerful force driving and capitalizing on immigration policies behind the scenes: corporate power.

Since 2008, the United States government has spent billions of dollars on contracts with GEO Group and CoreCivic, two of the largest for-profit detention companies.[1] In 2008, CoreCivic and GEO received $307 million dollars in revenue to run immigration detention facilities. That amount doubled within seven years.[2] In 2019, the United States government held over 500,000 people in immigration detention, 81% of whom—up from 60% in 2017—were held in privately-operated or owned facilities.[3] That same year, GEO and CoreCivic spent over $3 million combined on lobbying expenditures, roughly the same amount its affiliates donated to candidates in the 2020 elections.[4]

The increased dependence on corporations for detention is no accident—it is the result of a pro-corporate ideology that prioritizes privatization, supported by corporations and legitimized by economic and legal elites. Since the 1980s, for-profit detention facilities have been a mainstay of U.S. immigration policy, pushing government officials towards advantageous policies through lobbying efforts and campaign donations. They have presented government officials with a seemingly low-cost alternative—both administratively and financially—to running the nation's massive detention infrastructure.

This partnership, however, comes at a human cost. For people like Sara and Oscar, asylum-seekers in Immigration and Customs Enforcement (ICE) detention, nowhere is this cost more apparent than in the grave lack of medical care afforded to those in detention facilities. Healthcare is a lens through which we can examine the true price of for-profit detention.[ii]

[ii] In referencing immigration detention, this paper refers exclusively to ICE. Customs

II. THE DETENTION NARRATIVE

Under federal law, detention is only mandatory for certain noncitizens with criminal for terrorism-related charges. However, even before the COVID-19 pandemic swept the nation, there were roughly 50,000 people in immigration detention every day in the States, the vast majority of whom had no criminal history. This number, which has increased sevenfold since the mid-1990s, is the result of the stories we are told about immigrants, driven by the relentless pursuit of the corporations who profit off them.[5]

Immigration detention is often defended as a protective mechanism, keeping the American public safe from dangerous criminals eager to enter the country. This logic is quintessentially American: since this country's founding, media images and political rhetoric have portrayed immigrants either as threatening and dangerous or as disposable laborers.[6] Popular thinking places immigrants into a good-bad, legal-illegal binary—in large part because it helps legitimate the "procedural justice" of the legal scheme, making it seem as if people that follow rules are good, 'legal,' and can easily come to the United States if they do so properly.[7] Regardless of their background, individuals' stories are stripped of causal factors to fit into this framework, and those in detention are almost always consigned to the latter camp. Although immigration detention is civil detention, the act of being detained indicates wrongdoing. When exacerbated by "dangerous" immigrant rhetoric, detention can seem like just desserts.

In large part, the dominant narrative has persisted because it is a source of profit, both political and monetary. By exaggerating the danger posed by immigrants, politicians can claim to protect their constituents from harm through detention, manufacturing victories for themselves by expanding its reach. Take the announcement of the Trump administration's "zero tolerance" policy, which mandated detention for all immigrants crossing the southern border. As then-Attorney General Jeff Sessions stated, the policy "finally secure[d] [the] border" to "give the American people safety and peace of mind." "If you're going to come to this country," he added, "Don't come here illegally." [8]

Beyond wins in the court of public opinion, politicians peddling this

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and Border Patrol facilities are run by the government itself.

narrative benefit their financial backers too. For corporations like GEO and CoreCivic, every detained person comes with a dollar sign attached. As a CoreCivic spokesman told investors about Trump's zero tolerance policy, "[T]his is probably the most robust kind of sales environment we've seen in [] 10 years."[9] While for-profit detention corporations publicly stay quiet, rarely themselves articulating the stereotypical narrative, their campaign donations and lobbying expenses speak volumes in the background.[10] This behind-the-scenes action has been centuries in the making.

III. FERTILE GROUND

The Corporate History of Immigration Detention

The first federal detention law came in a wave of immigration policies in the late 19th century.[11] Immigration policy in the United States had just become federalized, prompted by xenophobic concerns about Chinese laborers taking jobs on the West Coast and commercial desire for cheap labor.[12] On the East Coast, detention was used to ensure "inspection" of migrants prior to admission at places like Ellis Island.[13] Across the country, government-run detention did not yet exist. As the government implemented more restrictive immigration policies that prevented immigrants from entering the country, a conflict between the government and shipping corporations—which had been carrying Asian émigrés across the Pacific—brewed.[14] There was no Ellis-island equivalent for detention. Instead, the corporations kept passengers on their boats in West Coast harbors, stalling their journey back to Asia for other ready passengers and costing much in the way of lost revenue.[15] In a first showing of how federal immigration policies were to be shaped by corporate interests, the government and these corporations quickly reached a mutually beneficial arrangement. In lieu of the government—and for a small dollar amount—the shipping companies would provide detention facilities for immigrants on land, leaving their boats to go free.[16]

As immigration boomed at the turn of the century, corporations began to pitch themselves to the government as valued partners in the detention and deportation of migrants.[17] Corresponding with his Senator in 1928, I.M. Adler, a steamship magnate in New Haven, wrote, "It occurred to me that the United States Government can save itself quite a sum of money and annoyance each year in the matter of [] aliens."[18] His cost-cutting proposal: hire his steamships to aid in their removal. These relationships set a strong precedent for what was to come.

IV. LIKE SELLING HAMBURGERS

The Modern Detention Industrial Complex

The immigration system was overhauled by the Immigration and Nationality Act (INA) of 1952, which created two new categories of noncitizens whom the government could detain: those arriving to the country were "exclud[able];" those already in the country were "deportable."[19] In 1965, Congress amended the INA to a form that still undergirds much of our modern system, leading the number of people in both categories to explode as the law created a new category of "illegal" immigrants from the Western Hemisphere.[20] Even as the number of detainable immigrants grew, there was no comparable increase in immigration detention. That came in the 1980s, when the marriage of conservative "tough on crime" politics and deregulation allowed a web of politics and corporate money to shape immigration policy, expanding the use of immigration detention and, in turn, of corporate influence.

Detention in the Reagan Era

In the fall of 1980, immigration had come to the forefront of American minds thanks to the Mariel boatlift, a massive influx of Cuban asylum-seekers to the coast of Florida.[21] In tandem with an increase in Haitian immigrants, this episode prompted a severe xenophobic backlash.[22] For the newly-elected President Reagan, images of Black and brown people arriving on the country's shores en masse was an easy way to fearmonger—and to gain political support.[23] He extolled detention as a solution, using the language of "dangerousness" to justify his proposal.[24]

But for Reagan, government-run immigration detention presented a problem. His administration had wholeheartedly embraced the Chicago School's economic and legal agenda, including its two core ideas: shareholder primacy and deregulation. The first proposed that by increasing shareholder profit, corporations could best contribute to the public good. [25] The second argued that industry could best succeed without government-imposed limitation. A main mantra was profit-good, regulation-bad.[26]

While Reagan sought to slash government oversight of the environment, labor, and banking, in the immigration space, his administration wanted to increase government operations. In addition to the Cuban and

Haitian immigrants who had come to the United States at the start of his presidency, his support of civil wars in Central America led to an influx of new Latinx and indigenous immigrants crossing the southern border.[27] This supposed inundation overwhelmed immigration officials. To cope, the executive branch asked Congress for funding. In 1982, then-Justice Department lawyer and later Trump attorney Rudolph Giuliani was sent to testify before Congress to ask for $35 million dollars to build new detention facilities.[28] For both Congress and the executive branch, the expansion of immigration detention was expedient in the tough-on-crime ethos of the era, but there was Congressional hesitancy to fund it.

Private corporations were standing by. Contracting with for-profit immigration detention corporations was an easy out: for a small fee, politicians could push popular policies without responsibility for the day-to-day work of detention. Further, the corporations promised to run the facilities at less cost.[29] The administration signed contracts with CoreCivic—then the Corrections Corporation of America—and GEO in 1983 and 1984, respectively, to run immigration facilities.[30]

In the budding immigration detention space, Reagan's mantra was flipped on its head. The regulation of immigration was good when outsourced: it enabled shareholder profit. For Reagan and his Congressional supporters, privatization was an end-run around his support of small government. They could eschew scrutiny by ensuring that it regulated immigration in such a way that would benefit its financial backers and did not appear to increase governmental infrastructure.

CoreCivic founder Thomas W. Beasley, a well-connected former Tennessee Republican Party leader, put the nature of these contracts bluntly: "[Their] first impulse is to say only the government can do it, because only the government's ever done it. But their second reaction is that the government can't do anything very well… [From there] you just sell it like you were selling cars or real estate or hamburgers."[31]

For-profit immigration detention was off to the races.

Detention Expansion Post-Reagan

In light of Reagan's expansion of the so-called War on Drugs and reinvigorated corporate influence, Congress quickly passed laws that allowed executive officials to detain and deport noncitizens. In 1988, Congress passed the Anti-Drug Abuse Act, which included mandatory detention of noncitizens convicted of "aggravated felon[ies]," a category which grew under three Clinton-era Laws: the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), the Antiterrorism and Effective Death Penalty Act, and Personal Responsibility and Work Opportunity Reconciliation Act.[32] These bills in large part shifted immigration detention to local authorities. They were supported by a GEO- and CoreCivic-backed think tank, the American Legislative Exchange Council (ALEC), which had broad enough influence in state legislatures to all but guarantee the localities would contract with for-profit corporations.[33] CoreCivic and GEO became massive recipients of government dollars, both for immigration detention and private prison facilities.[34]

Following September 11th, 2001, strict immigration policy gained momentum, leading to the creation of the Department of Homeland Security (DHS), and, in turn, ICE.[35] The national ethos left open the door to big pushes on immigration policy, and GEO and CoreCivic were there to help craft them. For these corporations, pushing pro-detention polices and backing pro-detention politicians benefitted their bottom line. From 2002 to 2003, CoreCivic's lobbying expenditures nearly doubled, jumping to over $1.5 million.[36]

The next year, Congress passed the Intelligence Reform and Terrorism Prevention Act, establishing a bed quota that set a floor for the number of people to be detained on a given night in detention and guaranteed contract minimums for for-profit facilities. The first was set at 8,000 people per night.[37] In 2005, CoreCivic's lobbying costs reached over $3.2 million. Unsurprisingly, between 2006 and 2014, the amount of money spent by private detention corporations on lobbying and the number of detention beds increased at almost the same astronomical rate.[38]

A change in political party made no difference. Immigration detention and deportation skyrocketed during the Obama administration, earning Obama the moniker "Deporter-in-Chief." As a result, so did spending on private detention [39] Although the Obama administration focused its deportation efforts mainly on those with criminal convictions, under its auspices Congress passed an increased bed quota of 34,000 per night in 2009.[40] In 2014, DHS signed a $1 billion deal with CoreCivic, in large part to build the facility where Sara and Oscar were held. The construction of the facility, for a group of individuals—mothers and their children—who until 2014 "had rarely been held in detention," demonstrated for-profit detention's sway.[41]

V. FOLLOW THE MONEY

In its 2014 annual report, CoreCivic wrote, "The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts."[42] Although the connections between these corporations and the government do not always appear readily at the surface, behind the smoke of lobbying expenses and campaign donations, it requires willful blindness to think they do not exist. As a 2017 United Nations report stated, these corporations have a clear "economic incentive" to encourage detention use because it increases their contractual profit.[43] They are keenly aware that changes to immigration policies impact their revenue, and they have warned shareholders as much.

GEO defends its political donations as nonpartisan, stating in 2017 that "[its] political activities focus entirely on promoting the use of public-private partnerships."[44] A close look at their lobbying expenses and the almost identical rise in government spending on detention suggests the falsity of that statement.[45]

As GEO and CoreCivic have gained money from federal contracts, they have had an outsized ability to increase their political spending, and, in turn, to manipulate immigration enforcement. In 2015, GEO and CoreCivic spent $1.6 million on federal lobbying efforts, hiring firms with deep D.C. connections, including two alumni of Sessions' Senate office.[46] Between 2010 and 2015, CoreCivic spent 75% of its lobbying dollars on the DHS appropriations subcommittee, which controls the bed mandate.[47] In the 2016 election cycle, GEO- and CoreCivic-affiliated groups spent $3.1 million and $1 million, respectively, on political contributions to the Trump campaign and congressional Republicans.[48] In return, by the end of Trump's presidency, the average number of people in ICE detention increased to an all-time high of 50,000 people per day, at an average cost to the government of $95-110 per day for each person detained.[49]

For these corporations, harsher immigration policies and enforcement leads to more income, but they do not release detailed information about their profits, so it is hard to tell where they cut costs to take home more profit.[50] Behind a complex paper trail, one thing is explicit: to ensure maximum profit, these corporations cut down their spending. Nowhere is that clearer than in the paltry healthcare provided to those in detention.

VI. HEALTH(UN)CARE

"If you have pain, you will not be treated"

In this context in which "profit maximization comes entirely from cost minimization" and gain for shareholders is the corporate goal, the drive for dollars means that experiences like that of Sara and Oscar are not uncommon.[51] The corporate influence on detention does more than increase the use of detention, it also shapes what the detention experience is like. Inadequate medical treatment is one drastic consequence of for-profit detention.[iii]

To be sure, limited medical care in immigration detention is the result of a two-pronged desire to cut costs: the government wants to reduce its spending on immigration and the corporations that benefit from government contracts seek to retain as much money as possible, spending the bare minimum on subcontracts and provided services.

There are four standards that regulate detention conditions for detained persons: the National Detention Standards of 2000 and the Performance-Based National Detention Standards of 2008, 2011, and 2019. These are incorporated into most governmental contracts, but none are truly enforceable.[52] Although they state that base-minimum healthcare will be provided, there is no articulation of how oversight will be achieved.[53] ICE will not sue for breach of contract and these corporations are nearly impossible defendants for private litigants. They are shielded from FOIA discovery to find useful information to prove harm, and potentially FOIA-able inspections by ICE are done with little to no scrutiny. Further, third-party beneficiary suits are notably hard for detained persons to bring. Only in California is that right protected by statute.[54] To add to the difficulty, DHS and ICE contracts are not always direct. Oftentimes, these contracts are made by the U.S. Marshals Service or local governments, which make government expenditures more difficult to track.[55]

Healthcare in detention centers is coordinated by ICE Health Service Corps and some federal money is directly spent on contracts with medical service providers.[56] More often, medical providers are subcontracted by corporations like GEO and Core Civic, or provided by

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[iii] For another example, see paper by Austin Nielsen-Raegan.

their subsidiaries. Whichever way care is provided, the corporatization of detention means that every day substandard medical care causes harm to immigrants detained by ICE.

At its most extreme, the lack of healthcare in these facilities can lead to death.[57] Before the COVID-19 pandemic hit, 27 people died in or immediately after ICE detention due to nonsuicidal causes during the Trump administration.[58] Death, however, is just one manifestation of this neglect. Medical facilities are slow to deliver healthcare, whether on or offsite, and are either insufficiently prepared or do not care to provide it when they can. As one Guatemalan woman in detention at a CoreCivic-operated facility in California wrote of the lacking medical care, “If you have pain, you will not be treated.”[59]

At Richwood Correctional Facility in Louisiana, it could take at least a week for a doctor to fix a broken bone.[60] At Core-Civic run Stewart Detention Center in Georgia, a man who had seriously injured his arm prior to his detention only saw a doctor twice in his six months at the facility. When he was finally taken to see a doctor offsite, he was told that he needed a specialist. The specialist never came.[61]

Beyond sheer delay, inadequate treatment—often presented as sufficient—is the general standard. For a sore throat, one might get packets of salt at La Palma Correctional Facility.[62] In 2010, the ACLU sued CoreCivic after it was found that the healthcare providers at an CoreCivic-operated facility wired a man’s jaw shut for 10 weeks while in detention. Instead of receiving adequate care, he “removed the wiring with nail clippers as a guard watched.”[63] At Dilley facility where Sara and Oscar were held, water, Pedialyte, and Vicks Vaporub were the only treatments for almost any ailment. The mother of Mariee, a two-year-old girl who died after leaving the Dilley facility testified before Congress on the inadequate treatment:

> [Mariee] got sick… [When] [w]e were able to get in and see a physician’s assistant… [the nurse] said she had a respiratory infection. She gave her Tylenol, honey for her cough and told me to follow up in six months. But the next day, Mariee was worse. … When I finally managed to have Mariee seen in the clinic again she’d lost 2 full pounds – almost 8 percent of her body weight – in just 10 days… [A] third physician’s assistant just gave me Tylenol and Pedialyte, and told me to come back in a week… [A week later she was seen by a doctor, who] told me to give her Pedialyte, ibuprofen, Zyrtec and Vicks VapoRub. I didn’t learn until after she died that you aren’t supposed to give Vicks VapoRub to kids under 2-years-old because it could cause respiratory problems.[64]

When her daughter was finally supposed to see a specialist, the family was processed out of the facility and sent to live with their sponsor in New Jersey. Mariee died shortly thereafter, the likely result of her mistreatment in detention.[65]

With substandard care as the norm, COVID-19 came into these immigration facilities as what one federal judged called a "fire."[66] At numerous CoreCivic- and GEO-run facilities, the cumulative case rate reached almost 100% of the population.[67] By checking the box with the lowest grade of care possible, these corporations have profited at the expense of human beings—whose health concerns they have ignored and whose lives they have treated as disposable.

VII. CONCLUSION

The Real Detention Crisis

In its 2019 annual report, CoreCivic described itself as a "flexible and dependable partner" to the government, just as Adler's shipping company did nearly 100 years prior.[68] GEO, CoreCivic, and other corporations have capitalized on detention, and, in turn, have shaped federal policy—under both Republican and Democratic administrations—in the government's own quest to trim its spending. Their massive campaign and lobbying expenditures have paid off: the government has facilitated the "commoditiz[ation] [of] human bodies for an industry in militant pursuit of profit."[69]

As the stories of Oscar, Sara, and others show, this partnership comes with drastic consequences. In the language of corporations, immigration detention is an area of policymaking where a battle of rights shapes up neatly: the rights of corporations and their shareholders to profit are pitted against the right of people, not just to migrate, or to be free from detention, but also to be guaranteed decent healthcare in accordance with international standards.[70]

After Oscar's surgery, Sara and Oscar were released from detention. Oscar is healthy and happy, navigating a new school in the COVID era. While their journey to asylum is not close to an end, Sara is happy to be out of detention—to have access to real care just a short drive away. There are many other immigrants in detention who experience the same neglect in the face of similar health crises without a happy ending. Their stories, often untold, are the result of the drive for profit.

As the Biden administration seeks to reform the exceptionally inhumane practices of the Trump administration, it should pay close attention to the blind spots of administrations past: corporate profit cannot and should not come at the expense of human needs. While an early administration executive order announced the end of private prison use in the federal criminal system, it did not extend to private immigration detention facilities—demonstrating both the reliance of the federal government on private corporations in this space and their outsized influence on policymaking itself.[iv][71] The Biden administration should get out of detention altogether by using its executive discretion or by pushing for congressional reform. Falling short of that, however, it should consider expanding its private prison order to the immigration space, and ensure humanitarian safeguards are in place to prevent general abuse and specific healthcare neglect.

With national political discourse of a border "crisis" gaining strength in spring of 2021, the Biden administration—and the American public—must have their guard up against the dominant narratives, perpetuated and manipulated by for-profit companies. As *The Atlantic*'s Adam Serwer poignantly wrote, "What is the border crisis? Is it the recent surge of migrants, or is it the treatment of those migrants in detention facilities?"[72] Corporations have made the answer clear.

[iv] Decreasing the use for-profit corporations in the criminal space has the potential to encourage corporates like GEO Group and CoreCivic—which operate both criminal and immigration facilities—to further increase their lobbying efforts on immigration detention. For more on for-profit prisons, see paper by Chloe Warnberg.

FURTHER READING

Adam B. Cox & Cristina M. Rodriguez, *The President and Immigration Law* (2020)

César Cuauhtémoc García Hernández, *Migrating to Prison: America's Obsession with Locking Up Immigrants* (2019)

Adam Goodman, *The Deportation Machine* (2020)

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