



The Profitability of Inhumanity

How Corporate Power Gives Rise
to Forced Labor in Privatized
Immigration Detention

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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 legitimate its unjust effects in producing systems of oppression and exploitation.

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ABSTRACT

In recent decades, private prison corporations have come to dominate the world of immigration detention in the United States, just as detention rates have skyrocketed to unprecedented levels. Both to make good on their promise to cut government costs and to maximize profits for their shareholders, private prisons are incentivized to cut every corner they can, no matter the harm to the people in their care. To get around paying real wages for their labor needs, privatized detention centers put the detainees themselves to work for as little as one dollar per 8-hour work day. Paying this nominal wage, the prisons argue, shows that the labor is voluntary and thus not in violation of the Thirteenth Amendment. In reality, however, many detainees have no meaningful alternative to compliance. This coerced labor should be seen for what it is: trafficking. Unfortunately, the exploitative practice continues to be downplayed and legitimated by dehumanizing cultural narratives of nativism, carceralism and capitalism, all of which are rooted in historical white supremacy. Aided by these forces of otherization, corporate law and power perpetuate labor exploitation in ICE detention, all while using its proceeds to capture their supposed overseers in government to ensure that their business can go forth unhindered. To stop this kind of injustice would require a radical transformation of the American corporate paradigm.

The Profitability of Inhumanity

How Corporate Power Gives Rise to Forced Labor in Privatized Immigration Detention

*“The truth is that if they had to pay for all of
the labor that they use in order to make a
profit, they would not be in this business.”*

—Attorney R. Andrew Freeⁱ

INTRODUCTION

Imagine that you have lived in the United States for decades, since you were a small child, but you are not a U.S. citizen, and so one day, although you have committed no crime, armed ICE officers lawfully abduct you from your home or your workplace and cage you.ⁱⁱ The federal

ⁱ For the purpose of this paper, on March 25, 2021, the author interviewed attorney R. Andrew Free, who has been at the forefront of lawyering efforts to expose and abolish forced labor in ICE detention. Excerpts from the interview will be quoted throughout this paper, both in pull quotes like this one and within the main text. For clarity, all quotes from the interview are italicized and uncited.

ⁱⁱ Although this example describes someone (“you”) with no criminal record, and who came to the United States as a child with no say in the matter, the exploitation discussed in this paper also is perpetrated against individuals who do have criminal records and those who consciously decided to migrate to this country as adults, and it is no less wrong when it happens to them. The features of this sample narrative have been chosen only to emphasize that ICE abduction and caging are constant looming threats *even* for those immigrants society tends to see as more “sympathetic,” or as “good immigrants,” contrary to common misconceptions propagated by right-wing (and

government—the same one you have paid taxes for years, to which you pledged allegiance in your childhood classrooms, for which you may even have enlisted as a soldier and gone to war—initiates deportation proceedings against you and now will incarcerate you for the duration of your case. You will spend years in what is nominally “civil detention” but in reality bares little difference from criminal incarceration. In detention, the guards order you to clean and maintain your living space for no compensation, then put you to work operating the rest of the prison at the ICE-approved wage of one dollar per day. Knowing that the federal minimum wage is over fifty times that rate, at first you try to refuse, but then they “coincidentally” move you to solitary confinement, and besides, you desperately need money to pay for basic essentials like toothpaste while you are incarcerated, so you soon realize that refusal is not a genuine option. Meanwhile, thanks to your labor, prison corporations are profiting hundreds of millions of taxpayer dollars every year, as their executives and shareholders gleefully watch the stock prices rise.

In the past quarter-century, the number of human beings in ICE detention on an average day has soared from around 7,500 to over 50,000.¹ Because violations of immigration law are *civil* infractions, not crimes, immigration detention in theory is very different from criminal incarceration and not at all punitive,² but in practice the former has replicated the latter to the point where they are near identical.³ Perhaps the most significant distinction is that the immigration detention landscape is far more dominated by the private prison industry, which in 2020 held captive four out of every five people detained in ICE custody.⁴ Although abuse and exploitation pervade all carceral settings, the corporate motives of privatized facilities are conducive to especially heinous conditions.⁵ In the pursuit of profits, prison companies like GEO Group and CoreCivic systematically exploit the people they cage for free or near-free labor, boosting their stock prices through legalized labor trafficking. American corporate law would have it no other way.

even left-wing) propaganda that the immigrants targeted by ICE are “criminals” and that they in some way “chose” to violate U.S. immigration laws. See Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L. J. 207 (2012).

THE RISE OF PRIVATIZED ICE DETENTION

“The modern era is one in which we saw—and still see—corporate interests obligate certain levels of payment by the U.S. taxpayer to lock people up.”

The modern-day prison corporation was invented in 1983, “essentially the moment that T. Don Hutto and Tom Beasley strung barbed wire around a motel” in Houston, Texas, to incarcerate immigrants for the U.S. government amid rising hemispheric migration from Latin American and Caribbean nations.⁶ That Houston operation marked the origin of Corrections Corporation of America (CCA), now known as CoreCivic.⁷ One year later came the founding of Wackenhut Corrections Corporation, now known as GEO Group, Inc., the world’s largest prison company.⁸

In the Reagan Era, with the national emphasis on privatization and deregulation, private prisons gained political traction as a purportedly more cost-effective and economy-boosting alternative to traditional government-run facilities.⁹ They have since become especially dominant in immigration detention. While as recently as 2009 the majority of all immigration detention beds were in government-run facilities, by 2020, private prisons were imprisoning 81% of all ICE detainees.¹⁰

Privatization has skyrocketed alongside rates of immigration detention as a whole, as the average number of people being detained by ICE on any given day has climbed from around 7,500 in 1995 to well over 50,000 today.¹¹ The explosion in immigration detention rates was largely the product of a series of racist and xenophobic policy decisions by the federal government over the course of the 1980s and ‘90s, from the Anti-Drug Abuse Act of 1988 and the 1994 crime bill¹² to 1996’s Antiterrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). These policy decisions sent the detained immigrant population soaring, and private prisons’ stock prices along with it.¹³

More recently, high detention levels have been further institutionalized by the advent of “bed quotas.”¹⁴ In 2004, the Intelligence Reform and Terrorism Prevention Act began mandating drastic annual increases in the total number of immigration detention beds, until the DHS Appropriations Act of 2010 instituted a flat quota of no less than 33,400 beds.¹⁵ The quota was added to the legislation by Senator Robert Byrd

(D-WV), a former Exalted Cyclops of the Ku Klux Klan.¹⁶

“The financial incentives that drive the usage of bed space really aren’t based on policy considerations but rather based on lobbying and a corporate service to a larger economic goal that is in keeping with the political goals of exclusion, and criminalization, and otherization for political gain.”

Unsurprisingly, the historical expansion and privatization of the immigrant-caging machine have correlated with enormous financial gains for the prison corporations involved.¹⁷ From 2000 to 2020, the combined revenue of just GEO Group and CoreCivic has risen from well under half a billion dollars to around \$4.5 billion.¹⁸ Between a quarter and a third of that revenue comes from ICE detention contracts.¹⁹ As of 2016, the companies’ profit margin was around 9%, meaning that prison corporations are pocketing hundreds of millions of taxpayer dollars every year.²⁰ Behind these profit figures lies one little trick at the heart of private prisons’ business model: slave labor.

A DOLLAR A DAY

“The biggest cost that you have if you operate a detention center, whether you’re the federal government or a private company, is labor. If you can, you shift that cost onto the people who are locked up.”

To achieve profitability, the private prison industry had an obstacle to overcome: the incarceration business requires much labor, and nonexploitative labor costs money. In fact, labor is the single largest cost for private prisons, accounting for around 60-70% of their operating budgets.²¹ If the companies had to pay even minimum wage for all the work required to run their facilities, then the services they offered the government would be very expensive, jeopardizing the narrative that private prisons save the government money, their sole rationale for existence. By obtaining labor through less consensual means, the corporations could kill two birds with one stone, increasing their profits while sustaining the lie of their *raison d’être*.

In the criminal context, there was an easy fix to labor costs: the Thirteenth Amendment allows involuntary servitude “as a punishment for crime.”²² Often credited with abolishing slavery, in truth the Amendment just redefined the category of humans whom it was legal to enslave.²³ The de facto continuation of slavery via the carceral state first manifested as convict leasing, then evolved into chain gangs, and still persists today.²⁴ *“That is the reality of the legalized enslavement of 2.1 million people in this country that we are not ready to face yet.”*

But in immigration detention, getting away with forced labor is not as straightforward. *“The very consequence of it being civil is that you can’t shift those costs mandatorily onto the people locked up, and so that’s why we’re in the problem that we’re in now.”* As a form of *civil* detention, being held captive by ICE in theory has nothing to do with punishment, so it is not exempt from the Thirteenth Amendment’s ban on involuntary servitude.²⁵ Any labor performed by immigration detainees legally must, therefore, be voluntary.²⁶ To get around this impediment to profits, prison companies simply call voluntary what is not.

Fortunately for prison corporations, courts have held that people in immigration detention are not protected by labor laws like the Fair Labor Standards Act²⁷ because they are not technically “employees.”²⁸ This leaves detained individuals with little to no recourse for exploitation, giving private prisons free rein to pay detainees as little as one dollar per day for their work and say it is therefore voluntary.

Much of the labor exploitation perpetrated in ICE detention facilities takes place under the auspices of the Orwellianly named Voluntary Work Program (VWP).²⁹ The VWP’s origins can be traced back to 1950, when the U.S. Congress enacted a law appropriating funds to the Immigration and Nationality Service (INS)³⁰ for

payment of allowances (at such rate as may be specified from time to time in the appropriation Act involved) to aliens, while held in custody under the immigration laws, for work performed.³¹

Congress enacted subsequent legislation setting the payment rate at “not in excess of \$1 per day,” renewed that rate for the last time in 1978, and has never adjusted it in the decades since.³² Although the longstanding lack of congressional renewal draws into question the legal authority for paying detainees one dollar per day, that pay rate is very much still in effect at detention centers throughout the country. Indeed, ICE’s current official standards and detainee handbook explicitly state

that detainees can be paid as little as one dollar for each full day of work.³³

LEGITIMATING NARRATIVES

“It’s much easier to have an ‘us’ if you have a ‘them.’ And it’s much easier to not have to look at the failings of ‘us’ if you can point to the failings of ‘them.’”

Government-backed atrocities always rely on certain legitimating narratives to maintain a threshold level of societal complacency.³⁴ Myths of ethnic inferiority have been instrumental in legitimating countless horrific injustices, from American chattel slavery and the Holocaust to more recent evils like the War on Drugs and the scourge of Trumpism.³⁵ *“When you talk about the role of private prisons in creating the demand or the conditions of labor exploitation in ICE detention centers, you can’t divorce that from this history.”* The routine labor exploitation of ICE detainees is legitimized within modern society by at least three racialized and interconnected schemas of dehumanization: nativism, carceralism, and capitalism.

Nativism

“It’s to make it bad, so that nobody will come back, and so people will give up their claims and people get deported. That’s why it’s there.”

It’s hard to imagine that private prisons could have gotten away with the labor trafficking of people in ICE detention for this long if America didn’t hate immigrants so much. Despite empty proclamations of welcoming “your tired, your poor, your huddled masses” to our shores, xenophobia has always been a fundamental part of U.S. culture and policy. This stems in part from the psychology of group identity, with many Americans perceiving immigrants as an outgroup that poses material as well as symbolic threats to the ingroup’s status, based on the zero-sum premise that one group’s gain necessitates the other group’s loss.³⁶ Anti-immigrant animus has been stoked and exploited by various political figures throughout U.S. history, the most obvious modern example being Trump, who began his first presidential campaign by famously saying of Mexico, “They’re sending people that have lots of problems, and they’re bringing those problems with us.

They're bringing drugs. They're bringing crime. They're rapists.”³⁷ It only makes sense that these attitudes, so ingrained in many Americans’ minds, would carry over into our treatment of noncitizens in ICE detention. Nativism is an essential reason that immigrants facing removal proceedings have become so conflated with “criminals,” such that it is somehow acceptable for the federal government to imprison them, often for years on end, and subject them to conditions at least as bad as those of most criminal incarceration.

Carceralism

“Our system is based on punishment and violence.”

Of course, the very fact that viewing immigrants “like criminals” helps to legitimate their exploitation in detention points to another issue, namely, that mainstream U.S. society thinks it is okay to cage and abuse people if they have committed “crimes,” i.e., acts that predominantly wealthy, white, straight, cis, male, U.S.-citizen legislators throughout history have decided should be punished.³⁸ With the largest incarcerated population of any country in the world,³⁹ the United States is obsessed with locking people up as opposed to addressing the root causes of society’s problems. Due to the historical conflation of immigration and crime in both the law and Americans’ minds, all of the stigma and animus directed at “criminals” indirectly marginalize immigrants as well, facilitating their systematic exploitation.

Like xenophobia, America’s deep-seated carceralism is inseparable from its history of white supremacy and the enslavement of Black people. As discussed above, after the de jure abolition of slavery, de facto slavery was shifted into the carceral context by way of the Thirteenth Amendment. Today, policing and prisons continue to serve primarily as tools for the surveillance, terrorism, incapacitation and exploitation of Black and Brown bodies. Immigration enforcement is no different.

Capitalism

“ ‘Who should be enslaved? Who should be owned by another human being?’ Once you just frame it that way, generally you get the answer ‘Nobody.’ ”

Capitalism as we know it was born in a world where human beings were

disposable property, and their torture-induced free labor was America's greatest economic asset. That is the same capitalism that continues to rule our lives today, even if the chattel slavery upon which it and our country were built is no longer legal.

Antebellum slavery admittedly makes most modern-day injustices pale in comparison. Many Americans are rightfully hesitant to liken less overt, less gruesome instances of labor exploitation to the pre-1865 institution. While recognizing and mourning the unique horrors of that institution is important, its fearful specter has distorted U.S. society's conceptualization of consent and coercion. In the absence of whips and chains, few forms of labor exploitation are named for what they are.

Almost any semblance of choice is enough to convince many observers that a labor arrangement is voluntary. In reality, however, for countless people in vulnerable situations, the appearance of choice is entirely illusory. This principle arguably applies to all low-wage labor by people in poverty, but it is all the more irrefutable when the "employees" are incarcerated people with few (if any) resources and the "employer" is the very entity incarcerating them. In ICE detention centers, commissaries charge the prisoners exorbitant rates for basic essentials like toothpaste and toilet paper, and staff are known to retaliate against those who resist work, using torture tactics like solitary confinement to coerce obedience.⁴⁰ This should be seen for what it is: labor trafficking. Consider the following exchange between a GEO Group lawyer and a 10th Circuit judge at oral argument for the *Menocal* case in 2017, as the lawyer attempts to defend the detainees' labor as voluntary.

GEO's lawyer: "They make a decision each time whether they're going to consent to work or not."

Judge: "Or [not] eat, or be put in isolation, right? I mean, slaves had a choice, right?"

GEO lawyer: "Your Honor, there's no slavery happening here."⁴¹

Forced labor in ICE detention is enabled in part by the narrative that all work is voluntary unless there is literal absence of choice. Capitalism, an economic framework that has always required the exploitation of an oppressed underclass (in increasingly subtle forms throughout history), fosters that narrative because its legitimacy depends on it.

*“The private prison business model, essentially,
is an enslaver’s model.”*

All of these cultural forces of dehumanization—nativism, carceralism and capitalism—have in common a certain attributional frame: the tendency to dispositionalize the victims of exploitation, construing them as responsible for their own suffering. Immigrants could have “chosen” to enter the country “the right way”; “criminals” could have “chosen” not to commit their crimes; desperate laborers could have “chosen” not to work. These legitimating narratives ignore the situational forces that put people in such positions in the first place. Meanwhile, of course, the carceral corporations that run the facilities are situationalized as innocent, unconscious entities incapable of bad intention; they’re just corporations, after all.

THE CORPORATE PARADIGM

*“Corporations are these avatars of financial
interests that are able to shapeshift, they are
not able to be imprisoned, they are not able to
be killed, they will survive and outlive all of us,
they can if they want to.”*

The central pillar of American corporate law is *shareholder primacy*: corporations must pursue financial profits for shareholders above all, no matter the ramifications for anyone outside that narrow, privileged constituency. In the words of economist Milton Friedman, “there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game.”⁴² On that basis, the corporate incentives to exploit detainees for labor are simple: the more these facilities can rely on forced labor, the lower their operating costs, and therefore the higher their profits. If corporate prison managers decided to extract slightly less labor from the people they cage, or to pay them a few cents more, that would effectively take money out of shareholders’ pockets, and the managers could face legal liability for violating their fiduciary duty. Besides, baby wants a yacht.

The whole point of private prisons is to treat incarceration like a business. Tom Beasley said that he founded CoreCivic on the principle that you could sell prisons “just like you were selling cars, or real estate, or hamburgers.”⁴³ A for-profit orientation toward the caging of human

beings has always ensured deplorable conditions for the people that private prisons incarcerate.⁴⁴ Theorists like Friedman or Adam Smith would insist that “market forces” naturally keep corporations in check without the need for regulation. Prison corporations themselves are major proponents of the “market forces” legitimating script, as can be seen in statements like this one from CoreCivic: “Market forces play a major role in correctional companies providing the best services and management of prison facilities. Should a contractor not perform, they put themselves in a position to lose business.”⁴⁵ Thus far, however, the market seems quite fine with prison corporations’ daily human rights violations. A 2016 study found no indication of prison corporations’ stock prices falling in response to negative media reports about the companies.⁴⁶

To ensure that the state of affairs remains in their favor, prison corporations have deeply captured the politicians and government agencies ostensibly charged with regulating their industry. “*The current regulatory capture is near 100%.*” Before founding CoreCivic, Beasley and Hutto themselves had been chairman of the Republican Party of Tennessee and director of the Arkansas Department of Corrections, respectively.⁴⁷ They have since brought onboard at least two former directors of the federal Bureau of Prisons, J. Michael Quinlan in 1993 and Harley G. Lappin in 2001.⁴⁸ Prison corporations are intimately familiar with the government offices responsible for their regulation, not to mention their income.

While prison companies claim not to take positions on policy issues, their money tells a different story.⁴⁹ Between 2008 and 2014, GEO Group and CoreCivic spent a combined \$16,055,000 on federal lobbying, much of it targeted at the DHS Appropriations Subcommittee, which controls the immigration detention bed quota.⁵⁰ In line with their profit motives, private prisons spend money to push for policies that will increase criminalization, incarceration, and immigration restrictions. In 2010, when Arizona enacted SB 1070, a fascistic anti-immigrant law, 30 of the bill’s 36 co-sponsors, as well as the governor, had all received campaign contributions from the private prison industry.⁵¹

Prison corporations contributed millions of dollars to Trump’s campaign and associated super PACs to get him into office.⁵² In 2017, after the Department of Justice under Jeff Sessions announced that the federal government would continue to contract with private prisons, reversing a 2016 phase-out plan initiated by the Obama administration, CoreCivic’s and GEO Group’s stock prices more than doubled.⁵³ Later that year, GEO Group elected to hold its annual leadership conference

at a Trump golf resort in Miami, funneling more money into the Trump family's pockets.⁵⁴ Buying such political leverage has enabled prison corporations to ensure they will be around for many years to come.

Over the years, as societal condemnation of private prisons has grown, prison corporations have been paying attention and preparing for the future, diversifying their investments across a wide range of businesses, including halfway houses, alternatives to detention, and real estate.⁵⁵ Even if private prisons are one day stripped of their ICE contracts, the prison-industrial complex is agile and may already have a new trick up its sleeve: companies like GEO Group and CoreCivic, as well as Wall Street at large, are already starting to invest heavily in a new detention model wherein Native tribes, rather than private prisons or county jails, contract with the federal government to incarcerate noncitizens for ICE.⁵⁶ Andrew Free believes this arrangement will be the future of immigration detention in the United States, and the irony is hard to miss. *"We would be using indigenous people, on stolen land, to imprison Black and Brown people, for Wall Street's profit, in order to exclude those people, for Wall Street's profit, that were being [driven to flee their home countries in the first place by] the sort of things that we exported throughout this hemisphere."*

CONCLUSION

"And so if you're contending with an adversary of those capabilities, and you're just a human, or a group of humans who are marginalized in the first place, and that's why those humans are in those facilities and not running them and exploiting the people inside . . . how do you vanquish a basically immortal foe?"

The incorporation of for-profit corporations into the U.S. immigrant-caging machine has been the perfect recipe for an epidemic of government-sponsored labor trafficking. Every day, for the sake of corporate profit, thousands of people in ICE detention centers perform the labor necessary to keep the facilities running, all for the nominal wage of a dollar per day. Given the consequences of refusal, any appearance of choice is illusory. Much like the rest of the racist American carceral state and the chattel slavery from which it evolved, this exploitation is fueled by societal narratives that dehumanize the people being harmed, making their suffering more palatable to the

collective conscience, at least past a threshold point that allows the injustice to go on unabated. These legitimating narratives and U.S. corporate law work hand in hand to make forced labor in ICE detention inevitable—for the time being. Corporations may seem immortal, but nothing lasts forever.

FURTHER READING

CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *MIGRATING TO PRISON: AMERICA'S OBSESSION WITH LOCKING UP IMMIGRANTS* (2019), <https://thenewpress.com/books/migrating-prison>.

Jacqueline Stevens, *One Dollar Per Day: The Slaving Wages of Immigration Jail, from 1943 to Present*, 29 GEO. IMMIGR. L. J. 391 (2015) (actual publication May 2016), <https://ssrn.com/abstract=2434006>.

Anita Sinha, *Slavery by Another Name: 'Voluntary' Immigrant Detainee Labor and the Thirteenth Amendment*, XI(1) STAN. J. C.R. & C.L. (2015), <https://ssrn.com/abstract=2571569>.

Jonathon Booth, *Ending Forced Labor in ICE Detention Centers: A New Approach*, 34 GEO. IMMIGR. L. J. 573 (2020), <https://ssrn.com/abstract=3543801>.

#DetentionKills (@ImmCivilRights), TWITTER, <https://twitter.com/immcivilrights>.

ENDNOTES

¹ See ACLU, JUSTICE-FREE ZONES: U.S. IMMIGRATION DETENTION UNDER THE TRUMP ADMINISTRATION 14 (2020), https://www.aclu.org/sites/default/files/field_document/justice-free_zones_immigrant_detention_report_aclu_hrw_nijc_0.pdf.

² See Jacqueline Stevens, *One Dollar Per Day: The Slaving Wages of Immigration Jail, from 1943 to Present*, 29 GEO. IMMIGR. L. J. 391, 398-400 (2015) (actual publication May 2016), <https://ssrn.com/abstract=2434006>.

³ See Anita Sinha, *Slavery by Another Name: 'Voluntary' Immigrant Detainee Labor and the Thirteenth Amendment*, XI:1 STAN. J. C.R. & C.L. 1, 20 (2015), <https://ssrn.com/abstract=2571569> (“[I]mmigration detention facilities are governed by “standards,” which are adopted from the criminal justice system.”); cf. *id.* at 21 (“Immigration detention facilities . . . operate like jails and prisons, only worse.”).

⁴ See ACLU, *supra* note 1, at 17 (“As of January 2020, 81 percent of people detained in ICE custody were held in facilities owned or managed by private prison corporations.”).

⁵ See THE SENTENCING PROJECT, CAPITALIZING ON MASS INCARCERATION: U.S. GROWTH IN PRIVATE PRISONS 10-11 (2018), <https://www.sentencingproject.org/wp-content/uploads/2018/07/Capitalizing-on-Mass-Incarceration.pdf>.

⁶ See *id.*; WORTH RISES, THE PRISON INDUSTRY: HOW IT STARTED. HOW IT WORKS. HOW IT HARMS., at 9 (Dec. 2020), <https://worthrises.org/s/The-Prison-Industry-How-It-Started-How-It-Works-and-How-It-Harms-December-2020.pdf>.

⁷ See WORTH RISES, *supra* note 6, at 9.

⁸ See Jonathon Booth, *Ending Forced Labor in ICE Detention Centers: A New Approach*, 34 GEO. IMMIGR. L. J. 573, 579 (2020), <https://ssrn.com/abstract=3543801>.

⁹ See WORTH RISES, *supra* note 6, at 16 (“Private prisons are a uniquely U.S. export, which emerged in the 1980s as the perfect encapsulation of the decade’s embrace of greed and Reagan-era privatization.”). In addition to constructing and operating prisons and detention centers, for-profit corporations have also seeped into virtually all other facets of the incarceration industry, providing both public and private facilities with food service, security, transportation, healthcare, etc. See articles of Shania Bunbury, Chloe Warnberg & Sam Perri in this Collection.

¹⁰ See ACLU, *supra* note 1, at 17.

¹¹ See *id.* at 14. Because some noncitizens are held only for brief periods of time, the total annual numbers of individuals detained by ICE are far greater than these daily

figures; in FY 2019, for instance, ICE detained a total of 510,854 people. *See Immigration Detention 101*, DETENTION WATCH NETWORK, <https://www.detentionwatchnetwork.org/issues/detention-101>. Moreover, none of these figures include the thousands of people detained in Customs and Border Protection (CBP) facilities; including them would raise the daily count of immigration detainees to around 80,000. *See* ACLU, *supra*, at 14.

¹² Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796.

¹³ *See* LAUREN BROOKE EISEN, *INSIDE PRIVATE PRISONS: AN AMERICAN DILEMMA IN THE AGE OF MASS INCARCERATION* 148-49 (2018).

¹⁴ *See* GRASSROOTS LEADERSHIP, *PAYOFF: HOW CONGRESS ENSURES PRIVATE PRISON PROFIT WITH AN IMMIGRANT DETENTION QUOTA* 3 (2015), https://grassrootsleadership.org/sites/default/files/reports/quota_report_final_digital.pdf.

¹⁵ *See id.* at 5.

¹⁶ *See id.*

¹⁷ *See* ACLU, *supra* note 1, at 17.

¹⁸ *See id.* at 18; WORTH RISES, *supra* note 6, at 12.

¹⁹ *See* ACLU REPORT, *supra* note 1, at 17.

²⁰ *See* EISEN, *supra* note 13, at 31 (“[GEO Group and CoreCivic] earned a combined \$4.3 billion, with \$382 million in profits in 2016 alone.”).

²¹ THE SENTENCING PROJECT, *supra* note 5, at 10.

²² U.S. CONST. amend. XIII, § 1.

²³ *See* Sinha, *supra* note 3, at 36-38; *see generally* MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010); *13TH* (Ava DuVernay dir., Netflix 2016).

²⁴ *See* Sinha, *supra* note 3, at 23-24.

²⁵ *See* Stevens, *supra* note 2, at 400.

²⁶ *Cf.* ICE, *Voluntary Work Program*, in *PERFORMANCE-BASED NATIONAL DETENTION STANDARDS* § 5.8, at 405, 407 (2011) (revised 2016), <https://www.ice.gov/doclib/detention-standards/2011/5-8.pdf>.

²⁷ Fair Labor Standards Act of 1938, Pub. L. 75-718, ch. 676, 52 Stat. 1060.

²⁸ See *Menocal v. GEO Group*, 113 F. Supp. 3d 1125, 1129 (D. Colo. 2015) (holding that immigration detainees “are not ‘employees’ under the Fair Labor Standards Act” or the Colorado Minimum Wage Order “because immigration detainees, like prisoners, do not use their wages to provide for themselves”); *Alvarado Guevara v. INS*, 902 F.2d 394, 397 (5th Cir. 1990) (“Because they are detainees removed from American industry, Plaintiffs are not within the group that Congress sought to protect in enacting the FLSA.”).

²⁹ See ICE, *supra* note 26.

³⁰ In 2003, the INS was disbanded and reorganized by the post-9/11 Homeland Security Act into the Department of Homeland Security, which contains three sub-agencies: Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS). See USCIS HISTORY OFFICE AND LIBRARY, OVERVIEW OF INS HISTORY 11 (2012), <https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf>; see also Homeland Security Act of 2002, Pub. L. 107-296, title IV, § 471(a), 116 Stat. 2205 (codified at 6 U.S.C. § 291).

³¹ Act of July 28, 1950, Pub. L. No. 626, ch. 503, § 6(d), 64 Stat. 380 (codified at 8 U.S.C. § 1555).

³² Act of Oct. 10, 1978, Pub. L. No. 95-431, 92 Stat. 1021, 1027; see Press Release, U.S. Commission on Civil Rights, USCCR Concerned with Alleged Abusive Labor Practices at Immigration Detention Centers 1-2 (Dec. 21, 2017), <https://www.usccr.gov/press/2017/12-21-PR.pdf>.

³³ See ICE, *supra* note 26, at 407; ICE ENFORCEMENT & REMOVAL OPERATIONS, NATIONAL DETAINEE HANDBOOK: CUSTODY MANAGEMENT 12 (2016), <https://www.ice.gov/sites/default/files/documents/Document/2017/detainee-handbook.PDF>.

³⁴ See Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCHOL. 375, 378 (2006) (“A legitimating ideology is a set of justifications or ‘legitimizing myths’ that lead a political or social system and its authorities and institutions to be viewed as normatively or morally appropriate by the people within the system.”); see generally *id.*

³⁵ See Nour S. Kteily & Emile Bruneau, *Darker Demons of Our Nature: The Need to (Re)Focus Attention on Blatant Forms of Dehumanization*, 26(6) CURRENT DIRECTIONS IN PSYCHOL. SCI. 487, 487 (2017).

³⁶ See Victoria M. Esses et al., *The Immigration Dilemma: The Role of Perceived Group Competition, Ethnic Prejudice, and National Identity*, 57 J. SOC. ISSUES 389, 390 (2001).

³⁷ Donald Trump, Speech in New York City Announcing Presidential Candidacy (Jun. 16, 2015).

³⁸ See Alec Karakatsanis, *Why “Crime” Isn’t the Question and Police Aren’t the Answer*, CURRENT AFFAIRS (Aug. 10, 2020), <https://www.currentaffairs.org/2020/08/why-crime-isnt-the-question-and-police-arent-the-answer>.

³⁹ See *United States Profile*, Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/US.html> (last visited May 11, 2021).

⁴⁰ See Spencer Woodman, *Private Prison Continues to Send ICE Detainees to Solitary Confinement for Refusing Voluntary Labor*, THE INTERCEPT (Jan. 11, 2018), <https://theintercept.com/2018/01/11/ice-detention-solitary-confinement/>.

⁴¹ Oral Argument at 7:14, *Menocal v. GEO Group*, 882 F.3d 905 (10th Cir. 2018) (No. 17-1125), <https://deportationresearchclinic.org/17-1125.mp3>, discussed in JACQUELINE STEVENS, Blog Post, *Historic Court Orders Allow State of Washington and Chao Chen to Sue GEO for Minimum Wage Violations*, in STATES WITHOUT NATIONS (Dec. 8, 2017), <http://stateswithoutnations.blogspot.com/2017/12/historic-court-orders-find-geos-1day.html>.

⁴² MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 133 (Univ. of Chi. Press 2002) (1962).

⁴³ See Kymberlie Quong Charles, *Auspicious Beginnings: “Just Like Selling Hamburgers,” CCA Opens First Detention Center in Houston, TX*, GRASSROOTS LEADERSHIP (Jul. 22, 2013), <https://grassrootsleadership.org/blog/2013/07/dirty-30-1-auspicious-beginnings-just-selling-hamburgers-cca-opens-first-detention>.

⁴⁴ See Jesse Franzblau, *Phase Out Of Private Prisons Must Extend To Immigration Detention System*, NIJC (Jan. 28, 2021), <https://immigrantjustice.org/staff/blog/phase-out-private-prisons-must-extend-immigration-detention-system> (“For-profit prisons have little incentive to focus on anything other than ensuring profitability for their shareholders, and are lightning rods for human rights atrocities.”).

⁴⁵ See Britney Anne Majure, *Corrections Corporation of America: Irresponsibility and Investor Behavior*, at v (Sep. 2016) (M.A. thesis, University of New Hampshire, <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1842&context=thesis>).

⁴⁶ See *id.* at 67.

⁴⁷ See EISEN, *supra* note 13, at 57.

⁴⁸ See *id.* at 189-90.

⁴⁹ See GRASSROOTS LEADERSHIP, *supra* note 14, at 11.

⁵⁰ See *id.* at 10.

⁵¹ See *id.*

⁵² See THE SENTENCING PROJECT, *supra* note 5, at 12.

⁵³ See *id.*

⁵⁴ See Amy Brittain & Drew Harwell, *Private-prison giant, resurgent in Trump era, gathers at president's resort*, WASH. POST (Oct. 25, 2017), https://www.washingtonpost.com/politics/with-business-booming-under-trump-private-prison-giant-gathers-at-presidents-resort/2017/10/25/b281d32c-adee-11e7-a908-a3470754bbb9_story.html.

⁵⁵ See Jamiles Lartey, *Think Private Prison Companies Are Going Away Under Biden? They Have Other Plans*, THE MARSHALL PROJECT (Nov. 17, 2020), <https://www.themarshallproject.org/2020/11/17/think-private-prison-companies-are-going-away-under-biden-they-have-other-plans>.

⁵⁶ See Telephone interview with Andrew Free (Mar. 25, 2021); see also René Kladzyk, *The strange business of Alaska Native corporations and ICE immigrant detention*, EL PASO MATTERS (Jan. 26, 2021), <https://elpasomatters.org/2021/01/26/the-strange-business-of-alaska-native-corporations-and-ice-immigrant-detention/>.