

Columbia University
Graduate School of Arts and Sciences
Human Rights Studies Master of Arts Program

How For-Profit Detention Perpetuates Human Rights Violations Against Migrants in the
United States

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Submitted in partial fulfillment of the requirements for the degree of Master of Arts

May 2022

Abstract

Privatized immigration detention in the United States allows for-profit corporations to take on State responsibilities without being subjected to the same standards of transparency and accountability. Advocates have long expressed concerns over how this authority is regulated and who is responsible for human rights violations that occur for people held in for-profit detentions. This thesis aims to examine how privatization has affected the human rights of detained migrants held there. The literature review will provide background information on immigration detention in the United States, explore circumstances that led to widespread acceptance of privatized detention, and examine common critiques of the practice. The paper will then look at overlap between international human rights and U.S. for-profit immigration detention in terms of engagement with international human rights mechanisms, State-mandated standards for care of migrants in detention, and corporate engagement with human rights from for-profit prison companies. Next, it will evaluate conditions of detention under various custodial entities, including State and local governments as well as for-profit corporations, by scrutinizing their shared economic drivers and the division of responsibility versus accountability. Finally, it will summarize the effects of U.S. for-profit immigration in the context of transparency and accountability and examine outcomes in social and political spheres before drawing conclusions.

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Introduction

Over the 11 months Jaromy Floriano Navarro spent in Irwin County Detention Center (ICDC)—the last six of which overlapped with the deadly COVID-19 pandemic, the 28-year-old experienced mistreatment, harassment, and abuse from those charged with her care as well as retaliation when she attempted to report violations of her rights.¹ Guards subjected her to five days in isolation after she reported that a fellow detained migrant had been sexually harassing and abusing her, and later she suffered medical abuse at the hands of a doctor who had a history of performing invasive gynecological procedures on detained migrants without their informed consent.² Floriano Navarro herself narrowly escaped an unwanted hysterectomy on the day of her scheduled surgery because she tested positive for COVID-19.³ Following the publication of a whistleblower complaint detailing medical abuse, inadequate protections against the coronavirus, and other human rights violations detained migrants held at ICDC experienced, guards questioned Floriano Navarro about her participation in the complaint.⁴ She admitted to telling her lawyer about the abuse she had experienced and was deported to Mexico less than 24 hours later, leaving behind two young daughters who are both U.S. citizens.⁵

Floriano Navarro's experience at the ICDC, a county-leased detention facility owned and managed by the for-profit company LaSalle Corrections, does not appear to be unique; the whistleblower complaint and a subsequent class action lawsuit filed two months later indicate that numerous rights violations occurred for detainees held at the facility.⁶ The case gained national attention, partially due to efforts by Dawn Wooten, a nurse named in the

¹ Oldaker v. Giles, No. 7:20-cv-00224-WLS-MSH (United States District Court for the Middle District of Georgia December 21, 2020), 63-7.

² Oldaker v. Giles, 63-7.

³ Oldaker v. Giles, 65-6.

⁴ Oldaker v. Giles, 66-7.

⁵ Oldaker v. Giles, 66-7.

⁶ Jeremy Redmon and Lautaro Grinspan, "Closing an ICE Jail in South Georgia Would Cheer Activists but Harm a Rural Community's Economy," *The Atlanta Journal-Constitution*, September 23, 2021, sec. News; Oldaker v. Giles, 24-98.

whistleblower complaint who corroborated detained migrants' claims of medical abuse, and the federal government let ICDC's contract expire in 2021.⁷ Without Wooten's willingness to speak out about what happened within this private, for-profit detention center, it seems unlikely that the concerns of detained migrants like Floriano Navarro would have drawn so much public attention or resulted in such a response from the federal government.

Although international human rights mechanisms generally charge States with the responsibility of ensuring human rights fulfillment for detained persons within their borders, in recent decades, privatization has allowed local governments and for-profit prison corporations to take on roles that enable them to either fulfill or deny human rights with similar authority to State governments, though they are not held to the same standards of public transparency as the federal government.⁸ As of September 2021, 79 percent of people held in U.S. immigration detention were housed in facilities either owned or operated by for-profit prison corporations on behalf of federal or local government entities.⁹ The allocation of responsibility in these facilities has caused concern among rights advocates, particularly with regard to the regulation of authority and accountability for rights violations. This thesis will explore how privatization of the U.S. immigration detention system has affected the human rights of migrants held there, with a particular focus on the role of transparency and accountability as well as social and political outcomes.

⁷ Project South et al., "OIG Complaint Re: Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center," September 14, 2020, <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>; Molly O'Toole, "ICE to Close Georgia Detention Center Where Immigrant Women Alleged Medical Abuse," *Los Angeles Times*, May 20, 2021, sec. Politics, <https://www.latimes.com/politics/story/2021-05-20/ice-irwin-detention-center-georgia-immigrant-women-alleged-abuse>.

⁸ Throughout this paper, "State" will be used when referring to the federal government, and "local" will refer to state, county, or municipal governments, which may obtain contracts to detain migrants on behalf of the federal government.

⁹ Eunice Cho, "More of the Same: Private Prison Corporations and Immigration Detention Under the Biden Administration" (American Civil Liberties Union, October 5, 2021), <https://www.aclu.org/news/immigrants-rights/more-of-the-same-private-prison-corporations-and-immigration-detention-under-the-biden-administration/>.

Throughout this paper, the term “for-profit” will be used to describe the corporations that hold contracts to detain migrants, rather than the more commonly used descriptor of “private.” The intent behind this phrasing is to bring greater transparency to these organizations’ top priority of profiting from migrant detention. As I will discuss later, treatment of detained migrants appears almost identical in public and for-profit facilities, but the level of transparency and main purpose of each custodial entity differs. By highlighting the intent of for-profit companies with each mention, I attempt to keep that distinction in the forefront of the reader’s mind as I explore how these entities have affected migrants’ human rights in the United States.

Although this paper’s central focus is harm stemming from for-profit migrant detention as opposed to evaluating the practice of migrant detention as a whole, it is not intended to dismiss arguments against this practice in public spaces. Scholar Jennifer Chacón warns fellow researchers to keep criticisms in perspective:

By not questioning immigration detention—a historically embedded and politically popular practice—but by instead questioning the private provision of immigration detention, anti-detention advocates sometimes [shift] the terms of the discussion from an inquiry into the rights of noncitizens into one concerned primarily with profiteering conduct of a few isolated private companies.¹⁰

Hadar Aviram similarly argues that criticisms of the prison industrial complex focused specifically on for-profit incarceration are “missing the mark” and fail to take into context the realities of a fragmented market and fragmented state.¹¹ As I have conducted my research, it is apparent that the United States allows human rights abuses to repeatedly take place in U.S. immigration detention and thus illustrates its failure to see migrants as human beings and, therefore, deserving of human rights. However, I argue that the practice of for-profit migrant

¹⁰ Jennifer M. Chacón, “Privatized Immigration Enforcement,” *Harvard Civil Rights-Civil Liberties Law Review* 52, no. 1 (2017): 1–46, <https://heinonline.org/HOL/P?h=hein.journals/hcrcl52&i=5>, 44.

¹¹ Hadar Aviram, “Are Private Prisons to Blame for Mass Incarceration and Its Evils: Prison Conditions, Neoliberalism, and Public Choice Prison Privatization: Impacts on Urban Communities,” *Fordham Urban Law Journal* 42, no. 2 (2015 2014): 411–50, <https://heinonline.org/HOL/P?h=hein.journals/frdurb42&i=423>, 447-9.

detention is particularly egregious and dehumanizing because of its intent. Rather than detaining migrants in the name of public safety, which theoretically puts human needs first (albeit not the human needs of migrants), detained migrants within for-profit detention are treated foremost as commodities that can render a profit for shareholders. With that in mind, this paper will proceed as follows.

Outline

The rest of the introduction will explain the research question as well as the methodology used to gather information. Then, a literature review in **Section I** will begin by exploring the background of increased immigration detention in the United States by examining the history of immigration legislation and public attitudes toward immigrants. It then looks at how a combination of neoliberal ideologies and existing problems in the prison system helped garner widespread acceptance of privatization. It concludes with common critiques of privatization, including concerns related to a lack of transparency and accountability, for-profit financial incentives to encourage greater migrant detention, and the vulnerable state of migrants.

Section II examines how international Human Rights intersect with U.S. for-profit immigrant detention, beginning with a concentration on how various actors within the system of immigration detention engage with human rights. Particularly, it looks into U.S. ratifications of United Nations (UN) instruments, U.S. attitudes toward human rights law, and UN efforts to target non-state actors. It then looks at State-mandated standards that govern conditions for migrants held in detention, highlighting the purported purpose of immigration detention, official standards, contracts with one of the State's main detention agencies, and inspections. Lastly it explores corporate efforts to engage with human rights through policies and impressions from immigration advocates of these efforts.

Section III will look at circumstances of detention under various custodial entities, including State and local governments and for-profit corporations. It will examine how shared economic drivers impact cost-cutting and quality services as well as municipal economic reliance on detention centers. Next, it will compare responsibility and accountability for the different entities in terms of how they prioritize stakeholders, publicize records, and contribute to rights violations and a punitive feel within immigration detention. It will continue with citing avenues for redress for rights violations.

Section IV will begin by reviewing the effects of U.S. for-profit immigration detention on issues of transparency and accountability. It will then explore social and political outcomes in the context of disruptions to communities, dehumanization of detained migrants, and advocacy approaches with an overarching goal of abolishing immigration detention. It will end by reiterating arguments presented in this thesis and drawing conclusions about how the research can be used to influence policy going forward.

Research Question and Significance

For decades, human rights advocates who view immigrant detention as a moral issue have objected to harsh U.S. immigration legislation, particularly practices stemming from a 1996 overhaul of the Immigration and Nationality Act (INA). Additionally, privatization of the U.S. prison system has been the subject of debates between politicians, scholars, and rights advocates since the practice took root in the early 1980s.¹² For-profit corporations involved in immigrant detention are not required to follow the same standards for public transparency as government entities, but how that distinction affects the human rights of

¹² Ira P. Robbins, "Privatizations of Corrections: Defining the Issues," *Judicature* 69, no. 6 (1986): 325–32, <https://heinonline.org/HOL/P?h=hein.journals/judica69&i=327>, 326-7; Lauren-Brooke Eisen, *Inside Private Prisons: An American Dilemma in the Age of Mass Incarceration* (New York: Columbia University Press, 2018), <https://ezproxy.cul.columbia.edu/login?url=https%3a%2f%2fsearch.ebscohost.com%2flogin.aspx%3fdirect%3dtrue%26db%3de025xna%26AN%3d1628840%26site%3dehost-live%26scope%3dsite>, 137-68.

detained migrants held in facilities run by for-profit companies compared to government-run facilities is complex. This study aims to explore how the use of for-profit detention has affected the human rights of migrants detained in the United States.

Several sub-questions were used to help guide the research process, including what types of interactions for-profit prison corporations have with the human rights framework, how transparency and accountability compare in for-profit versus public detention, and what influences for-profit prison corporations' behavior. Effects of the pandemic were also considered. Additionally, human rights violations at Georgia's ICDC, mentioned earlier in the introduction, were used to contextualize conditions within for-profit detention.¹³ Most existing research on transparency—how information about what happens inside facilities is communicated to the public—does not explore it within the specific context of for-profit migrant detention in the United States. This study is meant to enhance academic understanding by providing a more in-depth analysis of this subject.

Methodology

This study used a combined approach of qualitative and quantitative data collection to explore the effects of U.S. for-profit detention centers on the human rights of migrants held there.¹⁴ Most data used for this thesis provided information on conditions between 2018–2021, about two years before and two years after the COVID-19 pandemic began. As of

¹³ Redmon and Grinspan, "Closing an ICE Jail in South Georgia Would Cheer Activists but Harm a Rural Community's Economy."

¹⁴ Although detention facilities in the United States are typically referred to as "immigrant detention," the people held there are both immigrants and migrants. This paper tends to use the term "migrants" in an effort to more broadly include all populations being detained. "Detained migrants" will refer to all noncitizens detained by the U.S. government under the suspicion of violating U.S. immigration law by being present in the nation's territory without the required documentation or those legally in the United States who are awaiting deportation proceedings following a criminal act. This definition of "migrant" borrows from the concepts used to describe them in the following paper: OHCHR, "Background Paper for Expert Meeting on Protecting the Human Rights of Migrants in the Context of Return" (United Nations, March 6, 2018), <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/Return/BackgroundPaper.pdf>, 1.

2019, more than 55,000 migrants were being detained across the United States.¹⁵ That year, Immigration and Customs Enforcement (ICE) had contracts or agreements with 233 detention centers, and 185 of them were used to hold detainees.¹⁶ In 2021, 79 percent of detained migrants were reportedly held in facilities owned or operated by for-profit prison corporations.¹⁷

This study was informed through collection and analysis of documents from the U.S. government, for-profit detention corporations, news media outlets, nongovernmental organizations (NGOs), and other human rights advocates, as well as by a series of semi-structured interviews with attorneys, advocates, and academic researchers, conducted through an online teleconferencing platform and over the telephone. Each interview subject provided insight into personal experiences with for-profit and public detention, transparency mechanisms, and human rights violations. To minimize the risk of harm to former detainees whose human rights have been violated in detention, previously published statements relevant to the topic were used in lieu of new interviews. Interview subjects were identified through internet research and snowball sampling.

Several challenges arose during data collection, particularly with accessing sources expertly familiar with internal policies and processes for federal and for-profit detention providers. Despite attempts to set up interviews with government officials from ICE, members of the agency passed off the request to a community relations officer, who ultimately denied an interview and instead provided links to the main webpages for ICE and the Department of Homeland Security (DHS), suggesting that policy information there may

¹⁵ Transactional Research Access Clearinghouse, “Immigration and Customs Enforcement Detention Database,” Database, TRAC Immigration, 2020, <https://trac.syr.edu/phptools/immigration/detention/>.

¹⁶ GAO, “Immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts” (U.S. Government Accountability Office, January 13, 2021), <https://www.gao.gov/products/gao-21-149>, 2.

¹⁷ Cho, “More of the Same.”

be useful. Similar requests for interviews, most of which remained unanswered, were sent to several for-profit prison corporations and individuals familiar with company practices.

The only response from a corporation came from a member of CoreCivic's legal team, who offered to look into the possibility of an interview in accordance with the corporation's research projects policy, which would require approval from three tiers of internal leadership and a commitment from the researcher to adhere to constant oversight by the corporation as well as prior review of findings pertaining to the company before publication.¹⁸ Due to time constraints and the risk this posed to the integrity of the original study, this offer was declined. Therefore, information about for-profit prison corporations was gleaned from publicly available documents, previously publicized statements, and interviews with immigrant advocates not affiliated with the corporations but who have interacted with them on some level.

¹⁸CoreCivic was formed in 1983 and is the largest for-profit prison corporation in the United States; AFSC, "CoreCivic Inc.," Database, Investigate, 2018, <https://investigate.afsc.org/company/corecivic>.

Section I: Literature Review and Theoretical Framework

As mentioned in the introduction, scholars warn against investigations that focus on for-profit detention without contextualizing overarching problems with the practice of immigration detention itself.¹⁹ They additionally advise against overgeneralized evaluations that do not clearly define which aspects of immigration detention stem from for-profit versus public entities and caution against unsupported assumptions that for-profit detention centers treat detainees worse than public ones.²⁰ Awareness of these bigger-picture issues can help put into perspective various arguments related to U.S. immigration detention and the more narrow disputes pertaining to privatization.

Within that context, this section will explore existing literature on this topic as follows. It will begin by examining a history of racist immigration legislation and xenophobic public attitudes that led to immigration detention in the United States. Cultural acceptance of neoliberal ideologies and an array of problems within the U.S. prison system in the 1980s then led to privatization in that sphere. However, concerns brought up by rights advocates at the time regarding the lack of transparency and accountability in private spaces and the effect for-profit companies' financial interests have on rights violations against migrants in detention continue today.

Background for Immigration Detention in the United States

History of Immigration Legislation

¹⁹ Jennifer M. Chacón, "Privatized Immigration Enforcement," *Harvard Civil Rights-Civil Liberties Law Review* 52, no. 1 (2017): 1–46, <https://heinonline.org/HOL/P?h=hein.journals/hcrl52&i=5>, 44; Hadar Aviram, "Are Private Prisons to Blame for Mass Incarceration and Its Evils: Prison Conditions, Neoliberalism, and Public Choice Prison Privatization: Impacts on Urban Communities," *Fordham Urban Law Journal* 42, no. 2 (2015 2014): 411–50, <https://heinonline.org/HOL/P?h=hein.journals/frdurb42&i=423>, 447-9.

²⁰ Chacón, "Privatized Immigration Enforcement," 43-4.

The United States has a long history with racist immigration laws and policies that violate the rights of migrants, including asylum seekers.²¹ This section broadly outlines this legislation, particularly highlighting changes since the 1990s that have majorly affected immigration detention.

Policy Prior to 1990 INA

U.S. immigration laws began to exclude immigrants considered “undesirable” in the late 19th and early 20th centuries, particularly targeting migrants of Chinese and other Asian descent.²²[MN1] During World War II, the United States interned Japanese immigrants and their descendants, most of whom were U.S. citizens.²³ Legislation in 1921 began imposing caps on the number of immigrants permitted into the country.²⁴ Policies favored immigrants of European descent, carving out space for them in quotas even when there were not enough European immigrants to fill those slots.²⁵ After the 1951 Refugee Convention and the 1967 Protocol established international laws on refugees, the United States began to welcome refugees from around the world.²⁶ The 1986 Immigration Reform and Control Act allowed most immigrants already residing in the United States without authorization to apply for legal status and granted visas for temporary seasonal agricultural workers, but it also increased border enforcement and created harsher punishments for employers who “knowingly” hired immigrants without authorized work permits.²⁷

1990 INA

²¹ Walter A. Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy” (Immigration Policy Center of the American Immigration Council, 2012), 1-7.

²² Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 3-5.

²³ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 5.

²⁴ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 5.

²⁵ Neeraj Kaushal, *Blaming Immigrants: Nationalism and the Economics of Global Movement* (New York: Columbia University Press, 2019), 87; Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 4-5.

²⁶ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 5.

²⁷ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 6.

In 1990, the Immigration and Nationality Act (INA) raised the annual cap on immigrants permitted into the United States, a significant portion of which was held for family-sponsored immigrants, employment-based immigrants, and “diversity” immigrants, which legislators again hoped would increase European inflows.²⁸ The law “revised the political and ideological grounds for exclusion and deportation” and set up the process for temporary protected status for migrants whose country suffered from natural disasters or armed conflicts.²⁹ However, six years later, new legislation created extremely difficult obstacles for immigrants trying to make a life in the United States.³⁰

1996 IIRIRA and Beyond

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) altered the INA in many ways. It expanded the definition of aggravated felonies for immigration purposes and applied it retroactively, altering standards for admission to and removal from the United States, even for non-violent offenses that occurred long before the legislation.³¹ It implemented Section 287(g) of the INA, which allows state and local law enforcement officers to enforce federal immigration laws.³² The IIRIRA also created a process for expedited removal of migrants without a formal hearing in immigration court, established three- and 10-year bans for immigrants found in the United States without permission (depending on how long they had been present), and significantly increased border enforcement.³³

²⁸ Andowah A. Newton, “Injecting Diversity into U.S. Immigration Policy: The Diversity Visa Program and the Missing Discourse on Its Impact on African Immigration to the United States Notes,” *Cornell International Law Journal* 38, no. 3 (2005): 1049–82, <https://heinonline.org/HOL/P?h=hein.journals/cintl38&i=1057,1056>; Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 6-7.

²⁹ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 6.

³⁰ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 6-7.

³¹ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 6.

³² American Immigration Council, “The 287(g) Program: An Overview,” Overview (American Immigration Council, July 2021),

https://www.americanimmigrationcouncil.org/sites/default/files/research/the_287g_program_an_overview.pdf, 1-8.

³³ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 6; Cornell Law School, “Illegal Immigration Reform and Immigration Responsibility Act,” in *Legal Information Institute* (Cornell Law

New policy implemented expedited removal procedures, which begin with a “credible fear” interview, where an immigration officer determines whether migrants have a credible fear of returning to their country of origin and, therefore, a valid case for asylum.³⁴ These interviews often occur while migrants are being held in detention, and if the immigration officer decides the migrant does not have a valid case for asylum, the officer can issue a deportation order before the migrant ever sees an immigration judge.³⁵ Preparing for the interview can be challenging, and there are limits to the appeal process, which will be discussed in Section III. The practice of expedited removal leaves many people at risk for deportation without a fair opportunity to plead their case.³⁶

Other 1996 legislation that impacted immigrants includes the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Antiterrorism and Effective Death Penalty Act (AEDPA).³⁷ Under the PRWORA, immigrants not authorized by the government to be in the United States were prohibited from accessing public benefit and welfare programs, and immigrants who received a green card were disqualified from accessing public benefit programs for five years and to Medicare and Social Security benefits for 10.³⁸ The AEDPA accelerated procedures for removal of suspected foreign terrorists and permitted detention and deportation of non-citizens based on “secret evidence” that neither

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https://www.law.cornell.edu/wex/illegal_immigration_reform_and_immigration_responsibility_act; Eleanor Acer and Olga Byrne, “How the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Has Undermined US Refugee Protection Obligations and Wasted Government Resources,” *Journal on Migration and Human Security* 5, no. 2 (June 1, 2017): 356–78, <https://doi.org/10.1177/233150241700500207>, 356-7.

³⁴ Bo Cooper, “Procedures for Expedited Removal and Asylum Screening under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Immigration Law Symposium,” *Connecticut Law Review* 29, no. 4 (1997 1996): 1501–24, <https://heinonline.org/HOL/P?h=hein.journals/conlr29&i=1511>, 1502-5.

³⁵ Cooper, “Procedures for Expedited Removal and Asylum Screening under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Immigration Law Symposium,” 1502-5.

³⁶ Cooper, “Procedures for Expedited Removal and Asylum Screening under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Immigration Law Symposium,” 1502-5.

³⁷ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 6.

³⁸ Ewing, “Opportunity and Exclusion: A Brief History of US Immigration Policy,” 6.

the person being removed nor their attorneys were allowed to see.³⁹ Additionally, it established more strict procedures for granting asylum.⁴⁰

After the 9/11 terrorist attacks in 2001, the United States continued to invoke policies in the name of national security that targeted immigrants based on their race, nationality, and religion.⁴¹ For example the USA Patriot Act loosened restrictions for government surveillance and gave greater authority to the U.S. Attorney General to detain and deport migrants suspected of having terrorist ties.⁴² Since the drastic changes to immigration laws in 1996, the United States has increased detention of immigrants and noncitizens, leading to greater involvement from the for-profit actors that house them.⁴³ Prior to the change, in 1994, the average daily population in immigration detention was fewer than 6,800.⁴⁴ Ten years later it had grown to just over 22,800, and by 2019, it had grown close to 50,200.⁴⁵

Public Attitudes Toward Immigrants

Economic Boosters

Though the American public cannot accurately be described as wholeheartedly welcoming to immigrants prior to or while the original 1990 INA was in effect, the legislation is evidence of a political willingness to heed lobby interest groups who desired immigration expansion.⁴⁶ These groups included agricultural employers, businesses and

³⁹ Ewing, "Opportunity and Exclusion: A Brief History of US Immigration Policy," 6-7.

⁴⁰ Ewing, "Opportunity and Exclusion: A Brief History of US Immigration Policy," 7.

⁴¹ Ewing, "Opportunity and Exclusion: A Brief History of US Immigration Policy," 7.

⁴² Michael T. McCarthy, "USA Patriot Act Recent Developments," *Harvard Journal on Legislation* 39, no. 2 (2002): 435-54, <https://heinonline.org/HOL/P?h=hein.journals/hjl39&i=441>, 437-53.

⁴³ Karina Moreno Saldivar and Byron Price, "Private Prisons and the Emerging Immigrant Market in the US: Implications for Security Governance," *The Central European Journal of International and Security Studies (CEJISS)* 9 (March 9, 2015), 29.

⁴⁴ Alison Siskin, "Immigration-Related Detention: Current Legislative Issues" (Congressional Research Service, April 28, 2004), https://digital.library.unt.edu/ark:/67531/metacrs5951/m1/1/high_res_d/RL32369_2004Apr28.pdf, 12.

⁴⁵ Siskin, "Immigration-Related Detention: Current Legislative Issues," 12; U.S. Immigration and Customs Enforcement, "Fiscal Year 2019 Enforcement and Removal Operations Report," 2019, <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf>, 5.

⁴⁶ Peter H. Schuck, "The Disconnect between Public Attitudes and Policy Outcomes in Immigration," in *Debating Immigration*, ed. Carol M. Swain (Cambridge: Cambridge University Press, 2007), 17-31, <https://doi.org/10.1017/CBO9780511804830.003>, 5.

university-related groups who depended on immigrant labor, ethnic groups, and advocates who sought to “ease the standards for asylum seekers, ideological dissidents, and victims of human rights abuses.”⁴⁷ Over the years, economists have come to a consensus that the presence of immigrants is a net benefit to host countries’ economic output, even if they disagree about other aspects of immigration, but this reality has not quelled public fears or altered public opinion, partially because people who oppose widespread immigration are highly concerned about its effects on the country’s culture, identity, and social dynamics, rather than just the economy.⁴⁸

Shift Toward ‘Crimmigration’

The World Trade Center Bombing in 1993 and Oklahoma City Bombing in 1995, the latter of which was carried out by a domestic terrorist, contributed to renewed debates over U.S. immigration legislation.⁴⁹ Migrant interests were framed as being in competition with national interests in the United States.⁵⁰ Business models encouraged corporate expansion into new fields, and for-profit prison companies already housing criminal inmates added immigrant detention to their repertoire.⁵¹ The culmination of these factors created wider acceptance of “crimmigration,” meaning the merged system of criminal justice and immigration enforcement.⁵²

⁴⁷ Winifred D. Scott, “Investigating the Need for Transparent Disclosures of Political Campaign Contributions and Lobbying Expenditures by U.S. Private Prison Corporations,” *Accounting and the Public Interest* 15, no. 1 (January 1, 2016): 27–52, <https://doi.org/10.2308/apin-51401>, 5-6.

⁴⁸ Kaushal, *Blaming Immigrants*, 21-3, 28-9, 136-7

⁴⁹ Michael Scaperlanda, “Are We That Far Gone?: Due Process and Secret Deportation Proceedings,” *Stanford Law and Policy Review* 7, no. 2 (Summer 1996): 23-33, <https://www.proquest.com/docview/1292302917?pq-origsite=summon&>, 23; Douglas Kellner, *Guys and Guns Amok: Domestic Terrorism and School Shootings from the Oklahoma City Bombing to the Virginia Tech Massacre* (New York: Routledge, 2015), <https://doi.org/10.4324/9781315634258>, 100-2.

⁵⁰ Scaperlanda, “Are We That Far Gone?: Due Process and Secret Deportation Proceedings,” 23-6.

⁵¹ Aviram, “Are Private Prisons to Blame for Mass Incarceration and Its Evils,” 424.

⁵² Aviram, “Are Private Prisons to Blame for Mass Incarceration and Its Evils,” 424; Scaperlanda, “Are We That Far Gone?: Due Process and Secret Deportation Proceedings,” 23-6; David Alan Sklansky, “Crime, Immigration, and Ad Hoc Instrumentalism,” *New Criminal Law Review: An International and Interdisciplinary Journal* 15, no. 2 (2012): 157–223, <https://doi.org/10.1525/nclr.2012.15.2.157>, 189-96, 201.

Though evidence does not show a growing problem of crime committed by noncitizens, “escalating *concerns*” about immigrants who purportedly commit crimes contribute to how they are viewed by native residents.⁵³ Obscured boundaries between criminal law versus immigration law make it easier for the public to make assumptions about migrants.⁵⁴ This blurred boundary can be seen in part as “a manifestation not of overcriminalization, exactly, but rather of an escalating cultural obsession with crime and security” and a view of migrants through that lens.⁵⁵

Privatizing U.S. Immigration Detention

Neoliberalism

American politics began to more broadly favor neoliberalism—an economic approach largely understood to advocate for free-market capitalism with an impartial state, reduced government regulation, and reduced government spending—in the late 1980s and early 1990s.⁵⁶ Aviram argues that “[t]he assumption underlying neoliberal ideology is that if the government and the legal system refrain from intervening in free market activities, the balance created by supply and demand leads to a healthy equilibrium that happens on its own.”⁵⁷ Neoliberalism tends to call for a reduction in state expenditures on social services and shifts policy from interdependence toward individual achievement and responsibility, but such a shift also brings greater oppression for members of people in the lower economic class, who are more likely to be criminalized.⁵⁸ Examples of this ideology are prevalent in much of the 1996 immigration legislation.

⁵³ Sklansky, “Crime, Immigration, and Ad Hoc Instrumentalism,” 193.

⁵⁴ Sklansky, “Crime, Immigration, and Ad Hoc Instrumentalism,” 194-6.

⁵⁵ Sklansky, “Crime, Immigration, and Ad Hoc Instrumentalism,” 194-6.

⁵⁶ Aviram, “Are Private Prisons to Blame for Mass Incarceration and Its Evils,” 422-3.

⁵⁷ Aviram, “Are Private Prisons to Blame for Mass Incarceration and Its Evils,” 423.

⁵⁸ Aviram, “Are Private Prisons to Blame for Mass Incarceration and Its Evils,” 422-3.

“Neoliberalization” of the U.S. government “puts a political premium on the financialization of public administration, government services, and other government functions in turn lending political heft to two principal distinctions: between the public and private sectors, and, correspondingly, between law and markets as regulatory tools,” argue Alfred Aman and Carol Greenhouse.⁵⁹ They contend that “key factors usually credited with causing the *demand* for private prisons arguably include the *effects* of a neoliberalization of public administration already well underway by the early 1980s.”⁶⁰ Aviram similarly argues that for-profit prison companies themselves were created in response to neoliberal profit incentives and do no more damage than public prison entities that respond to the same economic drivers.⁶¹

Neoliberalism “overwrites” older notions of the public and traditional social bonds through its preference for markets over rights as a basis for social reform and its withdrawal of the state from the service sector, Greenhouse argues.⁶² This inversion “reshapes the relationship between society and the state without eliminating what came before.”⁶³ A report from the Haas Institute at University of California Berkeley cites neoliberalism as a driving force behind violent conflict, structural exclusion, elitist economy, and unsustainable development, which in turn lead to forced migration—the very issue for-profit prison corporations are monetizing.⁶⁴

A Supposed Solution

⁵⁹ Alfred C. Aman, Jr., and Carol J. Greenhouse, “Prison Privatization and Inmate Labor in the Global Economy: Reframing the Debate over Private Prisons Prison Privatization: Impacts on Urban Communities,” *Fordham Urban Law Journal* 42, no. 2 (2015 2014): 355–410, <https://heinonline.org/HOL/P?h=hein.journals/frdurb42&i=367>, 366-7.

⁶⁰ Italics were included in the original text; Aman and Greenhouse, “Prison Privatization and Inmate Labor in the Global Economy,” 358.

⁶¹ Aviram, “Are Private Prisons to Blame for Mass Incarceration and Its Evils,” 411, 416-7.

⁶² Carol J. Greenhouse, *Ethnographies of Neoliberalism* (University of Pennsylvania Press, 2012), 3.

⁶³ Greenhouse, *Ethnographies of Neoliberalism*, 3.

⁶⁴ Elsadig Elsheikh and Hossein Ayazi, “Moving Targets: An Analysis of Global Forced Migration” (Haas Institute, September 2017), https://haasinstitute.berkeley.edu/sites/default/files/haasinstitute_moving_targets_globalmigrationreport_publish_web.pdf, 10.

In the mid-1980s, the U.S. prison system was buckling under pressure from an inmate population that had nearly doubled over the previous decade, contributing to poor management and high costs to taxpayers.⁶⁵ The idea of privatization—specifically government contracting with for-profit companies to assume full operation of day-to-day management at prison institutions—was presented by some corrections professionals and major financial brokers as a solution to those problems.⁶⁶ In addition to providing needed additional space, for-profit prison corporations would purportedly save taxpayers money because companies could both build facilities “faster and cheaper” and operate them with greater economic efficiency than the government could.⁶⁷ Through the years, supporters of privatization have continued to tout cost savings for the federal government, but research investigating purported cost savings is largely inconclusive.⁶⁸

Critiques of Privatization

Concerns over government accountability and the constitutional legality of privatizing corrections have existed since it began, with critics arguing the shift in operational management should neither excuse the federal government of its responsibility to ensure safe operations in establishments caring for people in government custody nor give private employees the same rights of public servants, especially in terms of use of force.⁶⁹ They also contended that involvement of for-profit corporations in the business of housing inmates and other detainees would be counterproductive to resolving the issue of overcrowding because companies would have a financial incentive to continue building prisons and jails and might

⁶⁵ Ira P. Robbins, “Privatizations of Corrections: Defining the Issues,” *Judicature* 69, no. 6 (1986 1985): 325–32, <https://heinonline.org/HOL/P?h=hein.journals/judica69&i=327>, 325-6.

⁶⁶ Robbins, “Privatizations of Corrections: Defining the Issues,” 326.

⁶⁷ Robbins, “Privatizations of Corrections: Defining the Issues,” 326.

⁶⁸ Lauren-Brooke Eisen, *Inside Private Prisons: An American Dilemma in the Age of Mass Incarceration* (New York: Columbia University Press, 2018),

<https://ezproxy.cul.columbia.edu/login?url=https%3a%2f%2fsearch.ebscohost.com%2flogin.aspx%3fdirect%3dtrue%26db%3de025xna%26AN%3d1628840%26site%3dehost-live%26scope%3dsite>, 172-7.

⁶⁹ Robbins, “Privatizations of Corrections: Defining the Issues,” 326-7.

implement cost-cutting measures that could negatively affect conditions of confinement.⁷⁰

Legal expert Ira Robbins argued at the time that despite a need for changes to the U.S. prison system, its urgency “should not interfere with the caution that must accompany a decision to delegate to private companies one of government’s most basic responsibilities—controlling the lives and living conditions of those whose freedom has been taken in the name of the government and the people.”⁷¹ Despite these debates, privatization has expanded.⁷²

Interference with Transparency and Accountability

Defining Transparency

Transparency has traditionally been “regarded as a means for improving agencies’ accountability,” but to achieve true, effective transparency and accountability, scholars argue that information released to the public must be complete, accurate, relevant, and easy to understand.⁷³ While government secrecy is “neither categorically unjustified nor intrinsically antithetical to accountability,” the notion of “unchecked secrecy” can be counterproductive and deeply antithetical to accountability.⁷⁴ Evolving definitions of transparency reveal three metaphors, one scholar argues: “transparency as a public value embraced by society to counter corruption, transparency synonymous with open decision-making by governments and nonprofits, and transparency as a complex tool of good governance in programs, policies, organizations, and nations.”⁷⁵

⁷⁰ Robbins, “Privatizations of Corrections: Defining the Issues,” 326.

⁷¹ Robbins, “Privatizations of Corrections: Defining the Issues,” 331.

⁷² Lauren-Brooke Eisen, “Privatized Corrections,” *Criminology & Public Policy* 18, no. 2 (2019): 419–46, <https://doi.org/10.1111/1745-9133.12447>; Robbins, “Privatizations of Corrections: Defining the Issues,” 326-7; Eisen, *Inside Private Prisons*, 137-68.

⁷³ Shkabatur, “Transparency with(out) Accountability: Open Government in the United States,” 80-2; Archon Fung, Mary Graham, and David Weil, *Full Disclosure: The Perils and Promise of Transparency* (New York: Cambridge University Press, 2007), <https://ezproxy.cul.columbia.edu/login?url=https%3a%2f%2fsearch.ebscohost.com%2flogin.aspx%3fdirect%3dtrue%26AuthType%3dip%26db%3de025xna%26AN%3d189344%26site%3dehost-live%26scope%3dsite>, 6-7.

⁷⁴ Heidi Kitrosser, *Reclaiming Accountability: Transparency, Executive Power, and the U.S. Constitution* (Chicago: The University of Chicago Press, 2015), 1-2.

⁷⁵ Carolyn Ball, “What Is Transparency?,” *Public Integrity* 11, no. 4 (Fall 2009): 293–307, <https://doi.org/10.2753/PIN1099-9922110400>, 293.

Legal Requirements and Gaps

For decades, legal scholars have called for legislative changes that take into account complex relationships between the private and public sector, sometimes even referred to as “private government.”⁷⁶ Just as privatization of the U.S. prison system has obscured the boundaries between the responsibilities of private and public actors, it has also obfuscated transparency for incidents that may violate the human rights of inmates held at for-profit prisons and detained migrants held at for-profit immigrant detention facilities.⁷⁷ Scholars argue that current legislation, particularly the Freedom of Information Act (FOIA), is too rigid to fulfill the public’s right to access when the information in question originates from a non-government source.⁷⁸ Scholars have identified areas of concern within the realm of for-profit detention, particularly related to details of contracts, public records, financial disclosures, and legal recourse.⁷⁹ It is in the interest of companies to make transparency a priority, so as to quell ethical concerns from stakeholders.⁸⁰

⁷⁶ Matthew D. Bunker and Charles N. Davis, “Privatized Government Functions and Freedom of Information: Public Accountability in an Age of Private Governance,” *Journalism and Mass Communication Quarterly* 75, no. 3 (Autumn 1998): 464–77,

<https://www.proquest.com/docview/216925134/abstract/EB5C7DF300034AF1PQ/1>, 464-7; Alfred C. Aman, Jr., and Landyn Wm. Rookard, “Private Government and the Transparency Deficit,” *Administrative Law Review* 71, no. 3 (2019): 437–90, <https://heinonline.org/HOL/P?h=hein.journals/admin71&i=461>, 437-44

⁷⁷ Ira P. Robbins, “Privatizations of Corrections: Defining the Issues,” *Judicature* 69, no. 6 (1986 1985): 325–32, <https://heinonline.org/HOL/P?h=hein.journals/judica69&i=327>, 331; Andrea Headley and Jean-Claude Garcia-Zamor, “The Privatization of Prisons and Its Impact on Transparency and Accountability in Relation to Maladministration,” *International Journal of Humanities Social Sciences and Education* 1 (January 1, 2014): 23–4; Aamer Madhani, “Biden Orders Justice Dept. to End Use of Private Prisons,” *AP NEWS*, January 26, 2021, sec. Joe Biden, <https://apnews.com/article/joe-biden-race-and-ethnicity-prisons-coronavirus-pandemic-c8c246f00695f37ef2afb1dd3a5f115e>; “US Should End Use of Private ‘for Profit’ Detention Centres, Urge Human Rights Experts,” *UN News* (blog), February 4, 2021, <https://news.un.org/en/story/2021/02/1083862>; “The Biden Administration Is Expanding Private Immigration Detention,” *National Immigrant Justice Center* (blog), accessed November 6, 2021, <https://immigrantjustice.org/press-releases/biden-administration-expanding-private-immigration-detention>.

⁷⁸ Aman and Rookard, “Private Government and the Transparency Deficit,” 446-8.

⁷⁹ David N. Khey, “Privatization of Prison,” in *The Encyclopedia of Crime & Punishment* (American Cancer Society, 2015), 1–8, <https://doi.org/10.1002/9781118519639.wbecpx175>, 3; Headley and Garcia-Zamor, “The Privatization of Prisons and Its Impact on Transparency and Accountability in Relation to Maladministration,” 28-9; Scott, “Investigating the Need for Transparent Disclosures of Political Campaign Contributions and Lobbying Expenditures by U.S. Private Prison Corporations,” 27.

⁸⁰ Denise Linda Parris et al., “Exploring Transparency: A New Framework for Responsible Business Management,” *Management Decision* 54, no. 1 (2016): 222–47, <http://dx.doi.org/10.1108/MD-07-2015-0279>, 223.

MECHANISMS ALREADY IN PLACE

Though for-profit prison companies are expected to meet national standards for detention, contracts that outline expectations are kept intentionally vague to account for discretionary decisions in day-to-day management.⁸¹ A retired Bureau of Prisons contracting official told one scholar that vagueness is also a way to keep costs down; for more specificity in contracts, the government would have to pay for-profit companies more.⁸² U.S. contracts with for-profit prison corporations are generally looser than those in other countries.⁸³ Scholars call for a balance in contracts between “allowing the private corporation to have freedom to be inventive while still maintaining certain standards.”⁸⁴

In addition to State-issued standards, government officials are assigned to specific facilities for oversight, annual inspections occur, and facilities are subject to government audits.⁸⁵ Extensive records from for-profit prison corporations are made available to designated government representatives but are largely unavailable to the public and people formerly held at these facilities.⁸⁶ Lobbying efforts and political contribution disclosures are not included in annual reports and are instead shared in a “disaggregated way in various non-[Securities and Exchange Commission] filings,” which one scholar argues can be challenging for even trained researchers to access.⁸⁷

OPPORTUNITIES FOR ADDITIONAL OVERSIGHT

⁸¹ Khey, “Privatization of Prison,” 3; Headley and Garcia-Zamor, “The Privatization of Prisons and Its Impact on Transparency and Accountability in Relation to Maladministration,” 28-9; Eisen, *Inside Private Prisons*, 139-40; U.S. Immigration and Customs Enforcement, “ICE Detention Standards,” Government, *U.S. Department of Homeland Security* (blog), November 9, 2021, <https://www.ice.gov/factsheets/facilities-pbnds>.

⁸² Eisen, *Inside Private Prisons*, 140.

⁸³ Khey, “Privatization of Prison,” 3.

⁸⁴ Khey, “Privatization of Prison,” 3.

⁸⁵ Eisen, *Inside Private Prisons*, 141.

⁸⁶ Headley and Garcia-Zamor, “The Privatization of Prisons and Its Impact on Transparency and Accountability in Relation to Maladministration,” 27-8; Eisen, “Privatized Corrections,” 434.

⁸⁷ Scott, “Investigating the Need for Transparent Disclosures of Political Campaign Contributions and Lobbying Expenditures by U.S. Private Prison Corporations,” 27.

Suggestions for increasing transparency and accountability among for-profit prison companies range from developing private law contracts into mechanisms for public oversight to mandating financial disclosures.⁸⁸ Mandatory disclosures would hypothetically “improve corporate governance, increase accountability, decrease information asymmetry that exists between the private prison corporations and stakeholders, and allow external stakeholders to make informed judgments about whether those in the business of incarceration are fulfilling their public interest role,” argues Winifred Scott.⁸⁹ Despite repeated efforts to pass a Private Prison Information Act, which would subject for-profit companies that house inmates and migrant detainees to the same standards of open records as public correctional facilities, no such law has been passed by Congress, and members of the private sector continue to operate largely unchecked.⁹⁰ People whose rights are violated in immigration detention are generally unable to hold for-profit prison companies accountable.⁹¹

WHISTLEBLOWING

The lack of applicability of open access laws to for-profit companies increases the risk for rights violations within for-profit facilities and sometimes renders it necessary for staff or detained migrants themselves to work with non-governmental organizations to raise the alarm for egregious problems within these facilities through whistleblowing.⁹²

⁸⁸ Aman and Rookard, “Private Government and the Transparency Deficit,” 437-8.

⁸⁹ Scott, “Investigating the Need for Transparent Disclosures of Political Campaign Contributions and Lobbying Expenditures by U.S. Private Prison Corporations,” 27.

⁹⁰ Headley and Garcia-Zamor, “The Privatization of Prisons and Its Impact on Transparency and Accountability in Relation to Maladministration,” 30; Danielle C. Jefferis, “Constitutionally Unaccountable: Privatized Immigration Detention,” *Indiana Law Journal* 95, no. 1 (2020): 145–82, <https://heinonline.org/HOL/P?h=hein.journals/indana95&i=153>, 145.

⁹¹ Jefferis, “Constitutionally Unaccountable: Privatized Immigration Detention,” 145.

⁹² Headley and Garcia-Zamor, “The Privatization of Prisons and Its Impact on Transparency and Accountability in Relation to Maladministration,” 30; Elizabeth C. Ghandakly and Rachel Fabi, “Sterilization in US Immigration and Customs Enforcement’s (ICE’s) Detention: Ethical Failures and Systemic Injustice,” *American Journal of Public Health* 111, no. 5 (May 1, 2021): 832–34, <https://doi.org/10.2105/AJPH.2021.306186>, 832–34; Ioannis Kampourakis, “Whistleblowers as Regulatory Intermediaries: Instrumental and Reflexive Considerations in Decentralizing Regulation,” *Regulation & Governance* 15, no. 3 (2021): 745–59, <https://doi.org/10.1111/rego.12361>, 745–59.

Whistleblowing in the private sphere does not occur without personal risk.⁹³ Staff employed by private corporations are not ensured the same protections guaranteed federal workers, and for-profit prison companies frequently (if not always) require staff to sign strict nondisclosure agreements, which increase the risk for backlash and further inhibit transparency.⁹⁴

Vulnerable migrant detainees also face significant barriers when attempting to draw public attention to their situation and put themselves at risk for retaliation.⁹⁵

Financial Incentives

Competing Interests

For-profit prison corporations typically earn money through a per diem amount for each inmate in their custody in a given day, and on top of that may be paid a royalty for low recidivism rates.⁹⁶ The per diem rate incentivizes housing more inmates, while the royalty is meant to incentivize keeping people from coming back to jail.⁹⁷ But in cases of migrant detention, the likelihood of recidivism is much lower in the first place due to deportations, which means that, under this logic, for-profit prisons have a higher financial incentive to keep as many people detained as they can for as long as possible.

Public entities in the United States must balance pressures to serve the public interest, defined by one scholar as “outcomes best serving the long-run survival and well-being of a social collective construed as a ‘public,’” with a competing economic pressure to create or

⁹³Andre Pope, *Whistleblowers: Selected Issues and Protections*, Business Issues, Competition and Entrepreneurship (New York: Nova Science Publishers, Inc, 2015), <https://ezproxy.cul.columbia.edu/login?url=https%3a%2f%2fsearch.ebscohost.com%2flogin.aspx%3fdirect%3dtrue%26db%3de025xna%26AN%3d986655%26site%3dehost-live%26scope%3dsite>, 34-7.

⁹⁴Pope, *Whistleblowers: Selected Issues and Protections*, 34-7; Mary Grace Antony, “How Moral Disengagement Facilitates the Detention of Refugee Children and Families,” *Journal of Ethnic and Migration Studies* 45, no. 5 (April 4, 2019): 770–86, <https://doi.org/10.1080/1369183X.2017.1419860>, 784.

⁹⁵Conlon and Hiemstra, “Examining the Everyday Micro-Economies of Migrant Detention in the United States,” 341; Katherine Rollins, “If You Can’t Beat ’Em, Reform ’Em: Expanding Oversight of Privately-Operated Immigrant Detention Centers,” *Mitchell Hamline Law Review* 46, no. 4 (n.d.): 36, <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1220&context=mhrlr>, 944, 950-2.

⁹⁶ Khey, “Privatization of Prison,” 4.

⁹⁷ Khey, “Privatization of Prison,” 4.

maintain wealth.⁹⁸ For-profit prison corporations, which answer to both the federal government as a contractor and to shareholders as investors, face similar competing obligations with a different distribution of pressure to act in self-interest to yield revenue for shareholders.⁹⁹ Human rights groups argue this competing interest incentivizes withholding information that could threaten revenue for these companies from the public.¹⁰⁰ Though most critiques of privatized immigration enforcement focus on conditions of detention, scholars debate whether privatized detention itself subverts democratic values and processes otherwise respected in the United States.¹⁰¹

Political Influence

While policies increasing or decreasing for-profit companies' hold on U.S. immigration are subject to preferences of varying political administrations, for-profit corporations' financial power affords them significant political pull.¹⁰² In 2011, lobbying efforts from for-profit companies led to the passing of Arizona's "infamous" Senate Bill 1070, which required noncitizens to carry documents at all times and law enforcement to stop migrants when there was "reasonable suspicion" that they might be undocumented, leading to racial profiling.¹⁰³ Thirty of the 36 legislative co-sponsors for the bill received political contributions from the for-profit prison industry, and the bill was drafted in the presence of for-profit prison representatives.¹⁰⁴ In the years following, the two largest for-profit prison

⁹⁸ Barry Bozeman, *Public Values and Public Interest: Counterbalancing Economic Individualism* (Georgetown University Press, 2007), 1-5, 12, 17.

⁹⁹ Headley and Garcia-Zamor, "The Privatization of Prisons and Its Impact on Transparency and Accountability in Relation to Maladministration," 29-30.

¹⁰⁰ ACLU, "Privatized Immigration Detention," American Civil Liberties Union, accessed November 6, 2021, <https://www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention/privatized-immigration-detention>.

¹⁰¹ Chacón, "Privatized Immigration Enforcement," 3.

¹⁰² Chacón, "Privatized Immigration Enforcement," 45; Moreno Saldivar and Price, "Private Prisons and the Emerging Immigrant Market in the US," 30.

¹⁰³ Moreno Saldivar and Price, "Private Prisons and the Emerging Immigrant Market in the US," 29-30; Kristina M. Campbell, "The Road to S.B. 1070: How Arizona Became Ground Zero for the Immigrants' Rights Movement and the Continuing Struggle for Latino Civil Rights in America Arizona S.B. 1070," *Harvard Latino Law Review* 14, no. 1 (2011): 1-22, <https://heinonline.org/HOL/P?h=hein.journals/hllr14&i=5>, 1.

¹⁰⁴ Moreno Saldivar and Price, "Private Prisons and the Emerging Immigrant Market in the US," 29.

corporations (Corrections Corporation of America, now rebranded as CoreCivic, and The GEO Group) spent more than 90 percent of their lobbying budgets to promote proposed copycat bills in 36 other states.¹⁰⁵ The companies made campaign contributions to public officials in both major U.S. parties, demonstrating the corporations' interest in political influence, regardless of affiliation, though their corporate values typically align more with conservative politics.¹⁰⁶

Migrant Vulnerability

Already at a disadvantage when it comes to language comprehension, understanding their rights, and navigating the judicial process in an unfamiliar country, migrants held in for-profit detention face an added barrier to the fulfillment of their human rights while in federal custody because they are another step away from the public eye.

Limited Options

On top of the money for-profit prison corporations make from a fixed per diem rate, researchers have found that detention centers increase profits by treating migrant detainees as both captive consumers and laborers.¹⁰⁷ An examination by Dierdre Conlon and Nancy Hiemstra of the “micro-economies” within migrant detention centers revealed that commissary systems, communication-related charges, detainee labor, and detainee excursions outside detention contributed to this supplementary revenue.¹⁰⁸ The researchers argue that the legality of these practices, particularly when it comes to migrant detainees working for low

¹⁰⁵ Moreno Saldivar and Price, “Private Prisons and the Emerging Immigrant Market in the US,” 30, 47.

¹⁰⁶ Moreno Saldivar and Price, “Private Prisons and the Emerging Immigrant Market in the US,” 30, 47-8.

¹⁰⁷ D. Conlon and N. Hiemstra, “Examining the Everyday Micro-Economies of Migrant Detention in the United States,” *Geographica Helvetica* 69, no. 5 (December 22, 2014): 335–44, <https://doi.org/10.5194/gh-69-335-2014>, 335-44.

¹⁰⁸ Conlon and Hiemstra, “Examining the Everyday Micro-Economies of Migrant Detention in the United States,” 335.

wages, is questionable.¹⁰⁹ Although some health care services are available to detainees, medical needs are not always met, sometimes resulting in preventable deaths.¹¹⁰

‘Non-Punitive’ Detention

Detained migrants, particularly those seeking asylum in the United States, represent a unique demographic comprised of adults, children, and families held in “prison-like environments,” despite the immigrant detention system’s legal classification as civil, not criminal, and therefore non-punitive.¹¹¹ Critics argue that migrant detention has been designed to be unpleasant and is conceptualized as punishment, even if it is not legally defined as such.¹¹² Detainees of all ages are processed in Immigration and Customs Enforcement facilities nicknamed “hieleras,” or “iceboxes,” due to their cold, unpleasant temperatures.¹¹³ Often, detained adult migrants are treated like criminals, living in facilities designed to hold criminal inmates or placed in actual criminal jails that have agreed with ICE to house them, governed by standards rooted in the penal system.¹¹⁴ Danielle Jefferis argues that the experience in immigration detention is “inherently carceral; there is no meaningful difference between criminal incarceration and civil immigration confinement.”¹¹⁵

Legal Rights

¹⁰⁹ Eisen, “Privatized Corrections,” 437.

¹¹⁰ Altaf Saadi et al., “Understanding US Immigration Detention,” *Health and Human Rights* 22, no. 1 (June 2020): 187–97, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7348446/>, 187, 190.

¹¹¹ Antony, “How Moral Disengagement Facilitates the Detention of Refugee Children and Families,” 778; Saadi et al., “Understanding US Immigration Detention,” 187.

¹¹² César Cuauhtémoc García Hernández, “Immigration Detention as Punishment,” *UCLA Law Review* 61, no. 5 (September 2014): 1346–1414,

<https://ezproxy.cul.columbia.edu/login?url=https%3a%2f%2fsearch.ebscohost.com%2flogin.aspx%3fdirect%3dtrue%26db%3da9h%26AN%3d103535989%26site%3dehost-live%26scope%3dsite>, 1346; Antony, “How Moral Disengagement Facilitates the Detention of Refugee Children and Families,” 778; Chacón, “Privatized Immigration Enforcement,” 3.

¹¹³ Antony, “How Moral Disengagement Facilitates the Detention of Refugee Children and Families,” 777.

¹¹⁴ Moreno Saldivar and Price, “Private Prisons and the Emerging Immigrant Market in the US,” 49; García Hernández, “Immigration Detention as Punishment,” 1350, 1384.

¹¹⁵ Jefferis, “Constitutionally Unaccountable,” 145.

The legal rights afforded to detained migrants facing charges in immigration court are different than legal rights given to U.S. citizens in criminal court.¹¹⁶ Though they are permitted to obtain a lawyer to assist them, immigration court does not provide defendants with access to one in cases where they are unable to procure an attorney on their own, due to financial or other reasons.¹¹⁷ Immigration court is also housed within the Department of Justice (DOJ) under the Executive Branch of the U.S. government, rather than the Judicial Branch, and can therefore easily change from one administration to the next.¹¹⁸ The U.S. Attorney General has power over immigration judge appointments and can overrule decisions that are not in line with the administration's values.¹¹⁹ Additionally, detained migrants are subject to expedited removal, as discussed previously.

Public Concern

Though aware to some extent of conditions of detention, the general public often chooses to disengage with and ignore injustices happening there. Suppression of details about conditions of immigrant detention and depicting detained migrants in terms of a quota capacity, rather than humanized individuals, have led to “moral disengagement” from the general public.¹²⁰ This means that members of the public “disengage internal moral self-

¹¹⁶ Kristen M. Jarvis Johnson, “Fearing the United States: Rethinking Mandatory Detention of Asylum Seekers,” *Administrative Law Review* 59, no. 3 (2007): 589–620, <http://www.jstor.org/stable/40711997>, 608; Bo Cooper, “Procedures for Expedited Removal and Asylum Screening under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Immigration Law Symposium,” *Connecticut Law Review* 29, no. 4 (1997): 1501–24, <https://heinonline.org/HOL/P?h=hein.journals/conlr29&i=1511>, 1501–24.

¹¹⁷ Ingrid V. Eagly and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” *University of Pennsylvania Law Review* 164, no. 1 (2015): 1–91, <http://www.jstor.org/stable/24752845>, 1-2.

¹¹⁸ Laura S. Trice, “Adjudication by Fiat: The Need for Procedural Safeguards in Attorney General Review of Board of Immigration Appeals Decisions Note,” *New York University Law Review* 85, no. 5 (2010): 1766, 1769-70.

¹¹⁹ Julie Menke, “Abuse of Power: Immigration Courts and the Attorney General’s Referral Power Atrocity Prevention: The Role of International Law and Justice: Notes,” *Case Western Reserve Journal of International Law* 52 (2020): 599; Trice, “Adjudication by Fiat: The Need for Procedural Safeguards in Attorney General Review of Board of Immigration Appeals Decisions Note,” 1766, 1769-70.

¹²⁰ Antony, “How Moral Disengagement Facilitates the Detention of Refugee Children and Families,” 771, 775-82.

sanctions that recognize and regulate injurious and reprehensible behaviours,” such as detaining migrant children and families.¹²¹ This issue will be explored further in Section IV.

¹²¹ Antony, “How Moral Disengagement Facilitates the Detention of Refugee Children and Families,” 771, 775-82.

Section II: International Human Rights and U.S. For-Profit Immigrant Detention

The relationship of international human rights instruments to U.S. immigration legislation and policies in for-profit detention illustrates a disconnect between purported commitments to human rights and implementation of those rights within detention facilities. This section will give specific examples of international human rights instruments that should theoretically govern treatment of detained persons in the United States. It will explore language used in corporate documents related to the human rights of detained migrants and then analyze the application of those principles in practice from the perspective of rights advocates.

Engagement with International Human Rights Mechanisms

U.S. Ratification of UN Human Rights Instruments

Draconian U.S. immigration policies conflict with several international human rights laws governing treatment of detained persons. Those standards are outlined in UN frameworks like the Body of Principles for the Protection of Detained or Imprisoned Persons (Body of Principles), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which provide protections for detained persons in terms of their right to life, freedom from “torture or cruel, inhuman or degrading treatment,” freedom from deportation to a country where they are in danger of being tortured, appropriate work or labor conditions, freedom from arbitrary arrest and detention, the right to fair court proceedings, etc.¹²²

¹²² IOM, “International Migration Law Unit Information Note on International Standards on Immigration Detention and Non-Custodial Measures” (Geneva: International Organization for Migration, November 2011), <https://www.ohchr.org/Documents/Issues/Detention/DraftBasicPrinciples/IOM3.pdf>, 2,9-10, 14; United Nations, “International Covenant on Civil and Political Rights” (1966), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; United Nations, “Convention against Torture

The UN General Assembly adopted the Body of Principles without a vote in 1988 as a nonbinding instrument that nonetheless establishes guidelines for customary law, outlining the humane treatment of people held in State custody.¹²³ Despite having a reputation for not ratifying many of the human rights treaties widely considered fundamental by the international community, the United States ratified the ICCPR in 1992 and the CAT in 1994, during the era of the original INA when U.S. immigration laws appeared to be at their most hospitable.¹²⁴ A decade later, the nation opposed an Optional Protocol to the CAT, which would have enabled the international community to inspect its prisons and detention facilities.¹²⁵

U.S. Attitudes Toward Human Rights Law

Though “massive” human rights violations occur in U.S. immigration detention, almost all litigation on behalf of detained migrants who have been victims in these cases happens within national courts, citing violations of civil rights outlined by domestic laws rather than of human rights outlined in international instruments.¹²⁶ Even in cases where the United States has ratified a treaty that would be applicable, domestic laws are culturally viewed as more binding and “legitimate.”¹²⁷ The United States frequently includes reservations in treaty ratifications, which state that domestic laws trump international treaties, effectively rendering ratification of human rights mechanisms legally useless.¹²⁸

and Other Cruel, Inhuman or Degrading Treatment or Punishment” (1984), <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

¹²³ Tullio Treves, “The UN Body of Principles for the Protection of Detained or Imprisoned Persons,” *The American Journal of International Law* 84, no. 2 (1990): 578–86, <https://doi.org/10.2307/2203477>.

¹²⁴ Mark Gibney et al., eds., *The Routledge Handbook on Extraterritorial Human Rights Obligations* (Taylor & Francis, 2022), <https://doi.org/10.4324/9781003090014>, 261; Emily Russell, “A Reputation of Non-Ratification: United States’ Ratification of the ICCPR,” *Cornell International Affairs Review* 12, no. 1 (November 1, 2018), <https://doi.org/10.37513/ciar.v12i1.508>, 4-5, 7, 19-20.

¹²⁵ “United States Ratification of International Human Rights Treaties,” *Human Rights Watch* (blog), July 24, 2009, <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>.

¹²⁶ Elora Mukherjee, Thesis Interview, Zoom Call and Telephone, January 11, 2022; Amelia Wilson, Thesis Interview, Zoom Call, January 18, 2022.

¹²⁷ Wilson, Thesis Interview.

¹²⁸ Kenneth Roth, “The Charade of US Ratification of International Human Rights Treaties Symposium: AEI Conference Trends in Global Governance: Do They Threaten American Sovereignty,” *Chicago Journal of International Law* 1, no. 2 (2000): 347–54, <https://heinonline.org/HOL/P?h=hein.journals/cjil1&i=355>, 347.

UN Efforts to Target Non-State Actors

The UN has sought to engage with non-state actors both indirectly and directly. Indirect efforts include encouraging States to involve them in “whole-of-society” approaches to human rights issues, meaning that governments should engage with all stakeholders, including appropriate businesses, when making decisions.¹²⁹ Direct efforts include creating nonbinding mechanisms, like the UN Global Compact (UNGC) or the Guiding Principles of Business and Human Rights (GPs), which transnational corporations may endorse to demonstrate their commitment to the principles therein.¹³⁰ The GPs are meant to provide means for implementation of State protection of human rights, corporate respect for them, and access to remedy for victims of rights abuses.¹³¹ The author of the GPs attempted to construct standards as “pushing the envelope, but not out of reach” in an attempt to garner broad support from the business community, but critics argue that measures are worded too weakly to significantly affect human rights fulfillment, rendering commitments from companies as more of a boost to corporate image than a consequential pledge to human rights fulfillment.¹³² The international community has no way to effectively enforce standards in nonbinding instruments, and of the major U.S. for-profit prison companies in the United

¹²⁹ United Nations, “Global Compact for Safe, Orderly, and Regular Migration” (United Nations, July 13, 2018), https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf, 5.

¹³⁰ “The Ten Principles,” UN Global Compact, accessed April 29, 2022, <https://www.unglobalcompact.org/what-is-gc/mission/principles>; UN Subcommission on the Promotion and Protection of, “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (United Nations, August 26, 2003), <https://digitallibrary.un.org/record/501576>; “Guiding Principles on Business and Human Rights” (United Nations, 2011), https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

¹³¹ John Gerard Ruggie, *Just Business: Multinational Corporations and Human Rights* (Norton Global Ethics Series) (W. W. Norton & Company, 2013), 81.

¹³² Ruggie, *Just Business*, 107; Pierre Thielborger and Tobias Ackermann, “A Treaty on Enforcing Human Rights against Business: Closing the Loophole or Getting Stuck in a Loop,” *Indiana Journal of Global Legal Studies* 24, no. 1 (2017): 43–80, <https://heinonline.org/HOL/P?h=hein.journals/ijgls24&i=81>, 73; Robert C. Blitt, “Beyond Ruggie’s Guiding Principles on Business and Human Rights: Charting an Embrasive Approach to Corporate Human Rights Compliance,” *Texas International Law Journal* 48, no. 1 (2013 2012): 33–62, <https://heinonline.org/HOL/P?h=hein.journals/tijl48&i=57>, 48-9, 50-6.

States, none have signed onto the UNGC and only CoreCivic has attempted to implement principles from the GPs into corporate human rights documents.¹³³

State-Mandated Standards of Care

Purpose of Immigration Detention

ICE has a mission to “protect America from the cross-border crime and illegal immigration that threaten national security and public safety.”¹³⁴ As a means to fulfill that mission, the agency detains people who have either overstayed their visas, crossed into U.S. territory without permission (or in the case of asylum seekers, on suspicion of not having permission), or committed a crime while legally residing in the United States and therefore awaiting deportation. To manage this vast detained population, the State contracts with for-profit prison corporations and creates agreements with local jails.

NDS and FRS

Minimum standards of care in for-profit immigration detention are governed by the National Detention Standards (NDS) in facilities that hold adult migrants, and until the practice of long-term family detention was halted in 2022, centers that held both adults and children were required to follow Family Residential Standards (FRS).¹³⁵ ICE’s family residential centers were described in FRS as “family-friendly environment[s]” where parents and guardians remained with their children while meeting legal obligations in ICE custody.¹³⁶

¹³³ Thielborger and Ackermann, “A Treaty on Enforcing Human Rights against Business,” 73; United Nations, “Our Participants,” Database, UN Global Compact, 2022, <https://www.unglobalcompact.org/what-is-gc/participants/>; CoreCivic, “Human Rights Risk Assessment Summary,” 2019, https://www.corecivic.com/hubfs/_files/2019%20ESG%20Report-Human%20Rights%20Section.pdf.

¹³⁴ “ICE,” Government, U.S. Immigration and Customs Enforcement, 2022, <https://www.ice.gov/>; U.S. Immigration and Customs Enforcement, “Family Residential Standards,” 2020, <https://www.ice.gov/doclib/frs/2020/2020family-residential-standards.pdf>, 1; Andrea Castillo, “Biden Administration Halts Immigrant Family Detention for Now,” *Los Angeles Times*, December 17, 2021, sec. Politics, <https://www.latimes.com/politics/story/2021-12-17/adults-only-biden-administration-repurposes-immigrant-family-detention-centers>.

¹³⁵ U.S. Immigration and Customs Enforcement, “National Detention Standards for Non-Dedicated Facilities,” 2019, <https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf>, i.

¹³⁶ U.S. Immigration and Customs Enforcement, “Family Residential Standards,” 1.

Children and accompanying parents and guardians were to have “unfettered access” to one another at all times, “absent exigent circumstances,” and disciplinary actions were not to “interfere with family unity (e.g., forced separation of parents/guardians and their children is prohibited) other than for the minimum amount of time necessary to protect resident or staff safety.”¹³⁷ Both sets of standards are hundreds of pages long and are divided by topic, such as safety, security, care, justice, etc.¹³⁸

The NDS were most recently updated in 2019, and the FRS were updated in 2020 for the first time since 2007.¹³⁹ The NDS’ most recent revisions were meant to “streamline” policies and demonstrate ICE’s confidence in “the ability of its state and local partners to lawfully, safely, and humanely manage detainees in a correctional setting. ... Descriptions of ICE’s responsibilities and commitments to its detainees have been removed throughout.”¹⁴⁰ A few new standards were also added, related to detainee searches, prevention and intervention of sexual abuse and assault, and disability identification, assessment, and accommodation.¹⁴¹ ICE states on its website that the set of detention standards used at various centers depends on the “negotiated contract or agreement,” indicating that not all facilities are required to follow the most up-to-date standards.¹⁴²

References to Human Rights

These standards say they “ensure that detainees are treated humanely,” and use the word “humane” to describe the manner with which detainees should be transported from place to place, but there is no explicit mention of “human rights” or “humanity” within the

¹³⁷ U.S. Immigration and Customs Enforcement, “Family Residential Standards,” 2-3, 7.

¹³⁸ U.S. Immigration and Customs Enforcement, “National Detention Standards,” iv.

¹³⁹ U.S. Immigration and Customs Enforcement, “National Detention Standards,” I; U.S. Immigration and Customs Enforcement, “Family Residential Standards,” 1-2, 6.

¹⁴⁰ U.S. Immigration and Customs Enforcement, “National Detention Standards,” i-ii.

¹⁴¹ U.S. Immigration and Customs Enforcement, “National Detention Standards,” i.

¹⁴² “Facility Inspections,” Government, U.S. Immigration and Customs Enforcement, 2021, <https://www.ice.gov/detain/facility-inspections>.

documents.¹⁴³ Mentions of rights throughout the NDS appear to refer mostly to legal rights, such as the right to contact and receive visits from consular representatives, freedom from retaliation, the right to remain silent, due process, the right to attend disciplinary hearings, the right to present arguments and evidence on a one's own behalf, language services to ensure meaningful participation in disciplinary hearings, and the right to appeal.¹⁴⁴ Rights are mentioned frequently throughout the FRS in association with legal and due process rights, disability rights, rights to freedom from sexual abuse or assault, the right to protection from abuse, freedom from discrimination, the right to pursue a grievance, correspond with others, the right to hear rights in a language they understand, and others.¹⁴⁵ Detained migrants are to be provided with a handbook on rules of conduct, which should include a list of their rights.¹⁴⁶

ICE Contracts

Another mechanism for setting standards in for-profit detention is the contract between the State and corporations. As mentioned in the literature review, contracts generally include vague language that allows for some flexibility, but a 2021 report issued by the Government Accountability Office (GAO) called for improved planning, documentation, and oversight of detention facility contracts.¹⁴⁷ The report noted that ICE has “increasingly guaranteed minimum payments to detention facility contractors—paying for beds regardless of use.”¹⁴⁸ Additionally, ICE had flouted its own process requiring the agency to document the need for new space when obtaining new contracts.¹⁴⁹ Two-thirds of field officers

¹⁴³ U.S. Immigration and Customs Enforcement, “National Detention Standards,” i, 9,11,14; U.S. Immigration and Customs Enforcement, “Family Residential Standards,” 4, 23.

¹⁴⁴ U.S. Immigration and Customs Enforcement, “National Detention Standards,” 73, 91-5, 171, 191-3.

¹⁴⁵ U.S. Immigration and Customs Enforcement, “Family Residential Standards,” 2, 4-5, 125, 166-8.

¹⁴⁶ U.S. Immigration and Customs Enforcement, “Family Residential Standards,” 83; U.S. Immigration and Customs Enforcement, “National Detention Standards,” 180-1.

¹⁴⁷ GAO, “Immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts” (U.S. Government Accountability Office, January 13, 2021), <https://www.gao.gov/products/gao-21-149>, 1-63.

¹⁴⁸ GAO, “Immigration Detention,” 2.

¹⁴⁹ GAO, “Immigration Detention,” 2.

interviewed by the GAO said that “office management hindered their ability to independently and effectively oversee detention contracts.”¹⁵⁰ The GAO recommended rectifying these issues, implementing oversight procedures, and regularly reviewing information to ensure deficiencies are addressed.¹⁵¹

Annual Inspections

A third mechanism for oversight are annual inspections in facilities that hold an average of more than 10 detainees daily, conducted by an “independent third-party contractor.”¹⁵² The Nakamoto Group, Inc. has conducted these inspections on behalf of ICE for decades.¹⁵³ In 2021, it conducted 115 inspections, of which five facilities received a recommended rating of not meeting standards.¹⁵⁴ Of those facilities, three were operated by county governments, one was operated by ICE, and one was operated by CoreCivic, a for-profit corporation.¹⁵⁵ These types of inspections rarely, if ever, render data damning enough to close down a detention center, an immigration advocates see them as a rubber stamp.¹⁵⁶ Even when conditions in detention measure up to requirements as stipulated in national standards, advocates argue that they still fall short on fulfilling human rights.¹⁵⁷

Corporate Human Rights Engagement

Corporate engagement with human rights has become more normalized and, in many cases, expected as government privatization and technological advancements expand access

¹⁵⁰ GAO, “Immigration Detention,” 2.

¹⁵¹ GAO, “Immigration Detention,” 48.

¹⁵² “Facility Inspections,” U.S. Immigration and Customs Enforcement, “ICE Detention Standards,” Government, U.S. Department of Homeland Security, November 9, 2021, <https://www.ice.gov/factsheets/facilities-pbnds>.

¹⁵³ “Facility Inspections.”

¹⁵⁴ Krome Service Processing Center, Pulaski County Detention Center, Clay County Justice Center, Torrance County Detention Facility, and Okmulgee County Jail-More Detention Center were recommended as not meeting standards in 2021; “Facility Inspections.”

¹⁵⁵ “Facility Inspections.”

¹⁵⁶ Nancy Hiemstra, Thesis Interview, Zoom Call, February 9, 2022; Mallorie Meacham, Thesis Interview, Zoom Call, January 29, 2022.

¹⁵⁷ Meacham, Thesis Interview.

to markets at home and abroad.¹⁵⁸ Despite opportunities to sign onto UN measures mentioned above, for-profit prison corporations have largely chosen independent means of demonstrating their engagement with human rights, including language about their commitments on their corporate websites.¹⁵⁹ The two largest for-profit prison corporations in the United States, CoreCivic and The GEO Group, Inc., have each developed official human rights policies, and many others include statements pertaining to “social responsibility” on websites.¹⁶⁰

Human Rights Policies

The GEO Group

The GEO Group attempts to demonstrate a commitment to human rights through its three-page Global Human Rights Policy. It states that the UN, the Universal Declaration on Human Rights (UDHR), and a document from the International Labor Organization informed the principles therein.¹⁶¹ The 1948 UDHR is regarded as one of the most fundamental documents in the international human rights framework, spelling out basic rights for all humans.¹⁶² The policy includes a two-paragraph section titled “Respect for our Inmates and

¹⁵⁸ Georges Enderle, *Corporate Responsibility for Wealth Creation and Human Rights*, 1 Edition (New York: Cambridge University Press, 2020), 1-2; Matthew D. Bunker and Charles N. Davis, “Privatized Government Functions and Freedom of Information: Public Accountability in an Age of Private Governance,” *Journalism and Mass Communication Quarterly* 75, no. 3 (Autumn 1998): 464–77, <https://www.proquest.com/docview/216925134/abstract/EB5C7DF300034AF1PQ/1>, 464; David Weissbrodt and Muria Kruger, “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,” *The American Journal of International Law* 97, no. 4 (2003): 901-22, <https://doi.org/10.2307/3133689>, 901-3.

¹⁵⁹ CoreCivic, “Human Rights,” Corporate, CoreCivic, 2022, <https://www.corecivic.com/about/human-rights>; GEO, “Commitment to Respect Human Rights,” Corporate, The GEO Group, Inc., 2022, <https://www.geogroup.com/geos-commitment-to-respect-human-rights>; LaSalle, “Human Rights,” Corporate, LaSalle Corrections, 2022, <https://lasallemcorrections.com/human-rights/>; MTC, “We Take You Inside to Show You MTC’s Difference in Detention,” Corporate, Management & Training Corporation, 2021, <https://www.mtctrains.com/detention/we-take-you-inside-our-three-ice-facilities-to-show-you-mtcs-difference-in-detention/>; ICA, “Homepage,” Immigration Centers of America – Farmville, 2022, <https://ica-farmville.com/>.
¹⁶⁰ CoreCivic, “Human Rights;” GEO, “Commitment to Respect Human Rights;” LaSalle, “Human Rights;” MTC, “We Take You Inside to Show You MTC’s Difference in Detention;” ICA, “Homepage.”

¹⁶¹ GEO, “Global Human Rights Policy” (The GEO Group, Inc., 2013),

<https://www.geogroup.com/Portals/0/SR/Human%20Rights/GEO%20Human%20Rights%20Policy.pdf>, 1.

¹⁶² United Nations, “Universal Declaration of Human Rights” (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

Detainees,” where the corporation states that it is “serious” about responsibilities to those in custody and therefore strives to “uphold the health, welfare, and basic rights of those held in its centers.”¹⁶³

The corporation includes human rights training materials on its website, including a 40-slide presentation and a short video from a now-former administrator.¹⁶⁴ In the video, former Senior Vice President and President of Secure Residential Services J. David Donahue states that “in 2013, at the request of a number of important stakeholders, The GEO Group’s Board of Directors adopted a comprehensive policy governing the company’s commitment to human rights.”¹⁶⁵ Donahue goes on to discuss general implementation efforts.¹⁶⁶ In 2019, the policy was adapted into a new human rights statement, which is regarded as one of the “cornerstone commitments that govern us as GEO employees.”

CoreCivic

CoreCivic also professes a commitment to human rights through its slightly longer seven-page Human Rights Policy, most recently updated in December 2021 from a previous version from 2013.¹⁶⁷ Within, CoreCivic states that its “commitment to human rights extends to all our stakeholders, including ... individuals entrusted to our care ... Delivering on our commitment is necessary to the establishment of stakeholder trust and to the generation of long-term shareholder value.” It continues by stating that “[I]mitations already placed upon those in our care as a result of their status as detained or justice-involved persons underscores our responsibility to prioritize respect for human dignity and to advance and uphold the human rights commitments in this policy.” It lists U.S. constitutional law and international

¹⁶³ GEO, “Global Human Rights Policy,” 2.

¹⁶⁴ GEO, “GEO Group’s Commitment To Human Rights,” <https://www.geogroup.com/Portals/0/SR/Human%20Rights/GEO%20Human%20Rights%20Training.pdf>; *GEO Video Training for Global Human Rights Policy* (The GEO Group, Inc., 2013).

¹⁶⁵ *GEO Video Training for Global Human Rights Policy*.

¹⁶⁶ *GEO Video Training for Global Human Rights Policy*.

¹⁶⁷ CoreCivic, “CoreCivic Human Rights Policy” (CoreCivic, 2021), https://www.corecivic.com/hubfs/_files/CoreCivic%20Human%20Rights%20policy%20statement.pdf, 1.

human rights instruments, including the UDHR, Standard Minimum Rules for the Treatment of Prisoners, Basic Principles for the Treatment of Prisoners, and the UN GPs as part of the basis for CoreCivic’s human rights commitments.¹⁶⁸ The policy also details how human rights commitments are put into practice, and includes a chart highlighting and prioritizing “salient” human rights of “inmates/residents” and employees, or the rights “at risk of the most severe negative impacts on people through the organization’s activities and business relationships.”¹⁶⁹ CoreCivic also conducts training on its human rights policy and produces an annual Environmental, Social and Governance Report, which includes a section on its human rights work.¹⁷⁰

Corporate Human Rights in Practice

Rights advocates do not see the principles published in corporate human rights policies adequately reflected in day-to-day conditions of detention and remain unconvinced of the sincerity in professed commitments to human rights.¹⁷¹ Amelia Wilson, an immigration attorney, stated in an interview that the concept of such policies for-profit prison corporations is outrageous, dissembling, and dishonest.¹⁷² Immigration researcher Nancy Hiemstra expressed a similar level of skepticism in an interview, calling the language in policies “window dressing,” and said statements are “really hypocritical in terms of what people are actually experiencing.”¹⁷³ Shareholders have joined advocates in expressing concerns with the way for-profit migrant detentions, including GEO and CoreCivic facilities, are run.¹⁷⁴

¹⁶⁸ CoreCivic, “CoreCivic Human Rights Policy,” 3.

¹⁶⁹ CoreCivic, “CoreCivic Human Rights Policy,” 3-4, 7.

¹⁷⁰ CoreCivic, “Human Rights Risk Assessment Summary.”

¹⁷¹ Wilson, Thesis Interview; Nancy Hiemstra, Thesis Interview, Zoom Call, February 9, 2022; Mallorie Meacham, Thesis Interview, Zoom Call, January 29, 2022.

¹⁷² Wilson, Thesis Interview.

¹⁷³ Hiemstra, Thesis Interview.

¹⁷⁴ Julie Wokaty, “Investors Say GEO Group Is Ill-Prepared to Guard against Human Rights Risks,” *Interfaith Center on Corporate Responsibility* (blog), November 18, 2019, <https://www.iccr.org/investors-say-geo-group-ill-prepared-guard-against-human-rights-risks>.

Section III: Circumstances of Detention Under Various Custodial Entities

This section explores the differences, similarities and overlap between how various custodial entities that hold detained migrants in the United States function—including the federal government itself, local governments operating in cooperation with the State via intergovernmental service agreements and memorandums of understanding, and for-profit corporations under contract either directly with ICE or with local governments holding detainees for ICE. Although members of the private sector provide many services that make it possible to maintain a large population of inmates and detained migrants, including but not limited to medical assistance, food services, custodial services, and education and training programs, for-profit prison corporations bear the brunt of criticism in public debates because they receive federal funding to fulfill public law functions, and critiques throughout this paper focus on them.¹⁷⁵ They differ from public entities because their primary purpose is revenue, but the outcomes in terms of human rights violations for migrants is essentially the same in all U.S. immigration detention centers.

Shared Economic Drivers

As mentioned in the literature review, economic drivers in a capitalist, neoliberal market are part of the reason privatization in the U.S. prison system has expanded. The federal government sees contracting with for-profit prison corporations as a way to save money (though it is unclear whether this is reality), while for-profit prison corporations view it as an opportunity to make money. The opportunity to generate revenue has also enticed local governments to essentially behave as for-profit entities by forming agreements with the

¹⁷⁵ Chacón, “Privatized Immigration Enforcement,” 2-11.

federal government to house detained migrants for a per diem rate in local jails, though they still remain answerable to the public, rather than shareholders.¹⁷⁶

Cost-Cutting at the Expense of Services

Advocates interviewed for this paper had different experiences and varied opinions about how much cost-cutting measures affect low-quality care for detained migrants in for-profit detention, though they agreed conditions are generally grim in all U.S. immigration detentions.¹⁷⁷ Wilson, who as an attorney has held positions with non-profits as well as a brief stint working for the DOJ, said that in her experience, almost every type of service provided for detained migrants—be they legal materials, mental health services, or special accommodations for people with disabilities or religious needs—are of “the lowest quality in a privately run detention center.”¹⁷⁸ But like for-profit detention centers, local governments seem to also have a “sincere desire to cut costs [and] save money,” Hiemstra argued.¹⁷⁹ By keeping budget costs low, local governments similarly maximize revenue from their contracts with the federal government.¹⁸⁰ Competition between economic pressures and the government’s responsibility to address social issues fuels debates surrounding privatization and the role economic pressure plays in social policy.¹⁸¹

Economic Reliance on Detention Centers

¹⁷⁶ Emily Ryo and Ian Peacock, “Jailing Immigrant Detainees: A National Study of County Participation in Immigration Detention, 1983–2013,” *Law & Society Review* 54, no. 1 (2020): 66–101, <https://doi.org/10.1111/lasr.12459>, 66-7, 71.

¹⁷⁷ Nancy Hiemstra, Thesis Interview, Zoom Call, February 9, 2022; Mallorie Meacham, Thesis Interview, Zoom Call, January 29, 2022; Elora Mukherjee, Thesis Interview, Zoom Call and Telephone, January 11, 2022; Katy Murdza, Thesis Interview, Zoom Call, January 25, 2022; Amelia Wilson, Thesis Interview, Zoom Call, January 18, 2022.

¹⁷⁸ Wilson, Thesis Interview.

¹⁷⁹ Hiemstra, Thesis Interview.

¹⁸⁰ Hiemstra, Thesis Interview.

¹⁸¹ Alexander Horn, *Government Ideology, Economic Pressure and Risk Privatization: How Economic Worldviews Shape Social Policy Choices in Times of Crisis*, Changing Welfare States (Amsterdam: Amsterdam University Press, 2017), 245-6.

Many rural municipalities across the United States have come to rely on immigration detention centers for their economy.¹⁸² Hillary Li, an attorney who serves as policy counsel at Detention Watch Network (DWN), argues that this is in part because ICE targets rural municipalities looking to reinvigorate their economies and not because these types of economies are ultimately effective in supporting or helping a community.¹⁸³ DWN cites studies illustrating that reliance on prison and detention systems does not foster long-term growth for local economies.¹⁸⁴ Still, in situations where detention centers are shut down, like ICDC, some members of the community express dismay at the loss of jobs and revenue.¹⁸⁵

Responsibility vs. Accountability

Although both private and public actors are responsible for rights fulfillment, mechanisms for accountability are more concrete for State actors—though their effectiveness has proven limited.¹⁸⁶ Each custodial entity has relatively equal power over day-to-day operations in its own facilities and, therefore, authority over the lives of detained migrants living there. But because the federal government is the entity that signs onto rules and regulations—both international and domestic—that set standards for detention, it is generally viewed as the ultimate authority on human rights fulfillment within U.S. territory. It is the only institution in the United States that can compel disclosure information from private and

¹⁸² Hillary Li, Thesis Interview, Zoom Call, February 8, 2022; Meacham, Thesis Interview; Wilson, Thesis Interview.

¹⁸³ Li, Thesis Interview.

¹⁸⁴ Li, Thesis Interview; Bob Libal, “Communities Not Cages: A Just Transition from Immigration Detention Economies” (Detention Watch Network, 2021), https://www.detentionwatchnetwork.org/sites/default/files/reports/Communities%20Not%20Cages-A%20Just%20Transition%20from%20Immigration%20Detention%20Economies_DWN%202021.pdf, 14-8.

¹⁸⁵ Jeremy Redmon and Lautaro Grinspan, “Closing an ICE Jail in South Georgia Would Cheer Activists but Harm a Rural Community’s Economy,” *The Atlanta Journal-Constitution*, September 23, 2021, sec. News.

¹⁸⁶ Jennifer Shkabatur, “Transparency with(out) Accountability: Open Government in the United States,” *Yale Law & Policy Review* 31, no. 1 (2013 2012): 79–140, <https://heinonline.org/HOL/P?h=hein.journals/yalpr31&i=91>, 80-2.

public entities for the public good.¹⁸⁷ However, irrespective of whether State actors meet their obligations to fulfill human rights, for-profit companies involved in migrant detention have a responsibility to uphold human rights simply because they are in a business that deals with human beings.

Priority Stakeholders

Despite shared economic drivers, governments at all levels answer to constituents, rather than to shareholders as for-profit companies do.¹⁸⁸ This can make it easier for advocates to pressure public entities into make changes that are more in line with human rights standards, though activist investors also demand changes from for-profit corporations at times.¹⁸⁹ The GEO Group’s human rights policy training video, for example, stated that the policy was initially created at the request of “important stakeholders.”¹⁹⁰ But, as discussed previously, adopting a written human rights policy does not equate to implementation into everyday company culture. This distinction of who for-profit detention corporations see as top-priority stakeholders supports the argument that the intent behind for-profit detention is different than public detention and uniquely dangerous, even if the outcomes for detained migrants are the same.

Public Records

Legislation at the federal and local levels generally guarantees some level of public transparency within government entities, but for-profit corporations are not subject to the

¹⁸⁷ Archon Fung, Mary Graham, and David Weil, *Full Disclosure: The Perils and Promise of Transparency* (New York: Cambridge University Press, 2007), <https://ezproxy.cul.columbia.edu/login?url=https%3a%2f%2fsearch.ebscohost.com%2flogin.aspx%3fdirect%3dtrue%26AuthType%3ddip%26db%3de025xna%26AN%3d189344%26site%3dehost-live%26scope%3dsite>, 6-7.

¹⁸⁸ Hiemstra, Thesis Interview.

¹⁸⁹ Hiemstra, Thesis Interview; Morgan Simon, “Shareholders Take A Stand Against Private Prisons,” *Forbes*, March 11, 2019, <https://www.forbes.com/sites/morgansimon/2019/03/11/shareholders-take-a-stand-against-private-prisons/>.

¹⁹⁰ *GEO Video Training for Global Human Rights Policy* (The GEO Group, Inc., 2013).

same standards.¹⁹¹ While researching U.S. migrant detention and deportation over the last decade, Hiemstra has typically found counties and local governments to be more forthcoming in responses to public information records requests than the federal government, which is subject to the federal Freedom of Information Act (FOIA).¹⁹² Federal law mandates that responses to FOIA requests happen within 20 business days of receipt, but it allows for exceptions to this rule under “unusual circumstances.”¹⁹³ However, delays are common, and Hiemstra noted during her interview that she was still waiting for a response to a FOIA request submitted more than two years prior.¹⁹⁴ Obtaining records from facilities owned and operated by for-profit corporations is even more difficult because much of their immigrant detention data is considered private and therefore inaccessible to the public, though they do accept FOIA requests for some information.¹⁹⁵ Attempts have been made to create legislation that would expand transparency mandates to include for-profit prisons, but so far none has gained widespread support.¹⁹⁶ The discrepancy can be problematic.¹⁹⁷

Rights Violations in Detention

Simply being detained “dramatically” increases the likelihood of rights violations, regardless of whether facilities have a public or for-profit operator, according to immigration advocates.¹⁹⁸ Immigration attorney Elora Mukherjee testified before Congress about “unbelievably degrading and inhumane conditions” that children in a Customs and Border

¹⁹¹ Kimberly R. Hamilton, “Immigrant Detention Centers in the United States and International Human Rights Law,” *Berkeley La Raza Law Journal* 21 (2011): 93–132, <https://heinonline.org/HOL/P?h=hein.journals/berklarlj21&i=95>, 93-5.

¹⁹² Hiemstra, Thesis Interview.

¹⁹³ U.S. Department of Justice, “Responding to Requests,” Government, September 9, 2014, <https://www.justice.gov/archives/open/responding-requests>.

¹⁹⁴ Hiemstra, Thesis Interview.

¹⁹⁵ Joe Watson, “Advocates Want Private Prisons Subject to Open Records Laws,” *Prison Legal News*, August 2, 2016, <https://www.prisonlegalnews.org/news/2016/aug/2/advocates-want-private-prisons-subject-open-records-laws/>.

¹⁹⁶ Benjamin L. Cardin, “Private Prison Information Act of 2019,” S.2773 § (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/2773/text>.

¹⁹⁷ Hamilton, “Immigrant Detention Centers in the United States and International Human Rights Law,” 93-5.

¹⁹⁸ Mukherjee, Thesis Interview.

Patrol facility in Clint, Texas experienced without access to enough food and water, clean clothing, or showers, but she has also seen rights violations in for-profit facilities.¹⁹⁹ As illustrated in the introduction, human rights violations are also common in for-profit facilities. In interviews, advocates recalled a variety of rights violations they had witnessed in U.S. immigration detention: denial of the right to privacy, freedom of movement, proper food and nourishment, access to clean and drinkable water as well as hygienic and sanitary products (like soap), adequate medical care, and due process rights.²⁰⁰

Medical Care

One of the most apparent rights violations in U.S. immigrant detention is inadequate or inappropriate medical care.²⁰¹ Advocates gave examples of these types of violations at two for-profit facilities: South Texas Family Residential Center (STFRC), which held mothers and children until 2022, and ICDC, mentioned in the introduction.²⁰² Detention is often cold and cramped, and facilities like STFRC keep lights on during the night, which interferes with sleep.²⁰³ Migrants held in these conditions frequently suffer from respiratory illnesses, though their concerns are often met with dismissive responses from staff.²⁰⁴ Additionally, medical abuse, like that reported at ICDC, causes distrust and anxiety among detained migrants.²⁰⁵ In these cases, detained migrants are powerless to seek a second opinion.²⁰⁶ The pandemic exacerbated existing problems with healthcare in detention, which will be discussed later in this section.

Legal Rights

¹⁹⁹ Mukherjee, Thesis Interview.

²⁰⁰ Hiemstra, Thesis Interview; Li, Thesis Interview; Meacham, Thesis Interview; Mukherjee, Thesis Interview; Murdza, Thesis Interview; Wilson, Thesis Interview.

²⁰¹ Meacham, Thesis Interview; Mukherjee, Thesis Interview; Murdza, Thesis Interview

²⁰² Meacham, Thesis Interview; Mukherjee, Thesis Interview; Murdza, Thesis Interview

²⁰³ Meacham, Thesis Interview; Murdza, Thesis Interview.

²⁰⁴ Meacham, Thesis Interview; Murdza, Thesis Interview.

²⁰⁵ Yanira Yesenia Oldaker et al., “United States District Court for the Middle District of Georgia,” December 21, 2020, 1–160.

²⁰⁶ Meacham, Thesis Interview; Murdza, Thesis Interview.

Another frequently violated right in U.S. immigration detention is the right to due process, or simply put, the right to a fair hearing.²⁰⁷ Migrants face many barriers in their plight to obtain a fair hearing, including difficulty accessing counsel.²⁰⁸ Frequently, migrants are placed in rural detention facilities with few lawyers in the vicinity, and detained migrants often lack resources to pay for an attorney.²⁰⁹ Attorneys and legal experts often volunteer at detention centers to help prepare migrants for credible fear interviews, mentioned in Section I, and immigration court.²¹⁰ This job can include explaining difficult or taboo topics, like sexual assault, and preparing asylum-seeking migrants to share personal, traumatic stories to convince deciding authorities of the validity of their fear.²¹¹

Migrants should also be given a reasonable opportunity to gather evidence to prove their case, including finding and gathering information from witnesses, properly serving documents to the court, and translating documents to English—all of which are daunting tasks without assistance.²¹² Even with an attorney, the timeframe is often too short to meet the burden of proof.²¹³ Migrants also ought to have the right to appeal decisions in their case, Wilson argues, but if a judge looks at an asylum officer's report finding a certain migrant ineligible for asylum and agrees with it, any prospect for the migrant to appeal or appear in court has effectively vanished.²¹⁴

Effects of the COVID-19 Pandemic

The COVID-19 pandemic, which rapidly spread the deadly coronavirus disease throughout the United States beginning in March 2020, amplified and exacerbated existing

²⁰⁷ Wilson, Thesis Interview.

²⁰⁸ Wilson, Thesis Interview.

²⁰⁹ Meacham, Thesis Interview; Wilson, Thesis Interview.

²¹⁰ Meacham, Thesis Interview; Murdza, Thesis Interview.

²¹¹ Meacham, Thesis Interview.

²¹² Wilson, Thesis Interview.

²¹³ Wilson, Thesis Interview.

²¹⁴ Wilson, Thesis Interview.

problems within U.S. immigration detention facilities.²¹⁵ This section will explore those issues through

THREATS TO HEALTH

Especially early on, detained migrants were not provided with appropriate personal protective equipment, such as masks or gloves, or sufficient soap and sanitizer.²¹⁶ In some cases, detention center staff also failed to wear face coverings correctly or at all.²¹⁷ Due to the confined nature of detention, detained migrants were unable to socially distance.²¹⁸

One of Mukherjee's clients, Nicolas Morales, was being held at Elizabeth Detention Center, a CoreCivic facility in New Jersey, when the pandemic began.²¹⁹ Morales described his experience in an Op-Ed for the LA Times, stating that "[m]y fellow detainees and I worried we were being left to die."²²⁰ Morales and others went on a hunger strike to protest their treatment and were punished by being placed in solitary confinement – which somewhat relieved him because it was the only opportunity to socially distance.²²¹ Morales drew public attention to the dire situation in detention by speaking to members of the media, but it did not result in changes within the facility.²²² Eventually, a federal judge granted Morales' release after determining that COVID-19 posed a "particularly serious health risk" to him, but he continued to worry about the safety of others who were left behind.²²³

Migrants detained at ICDC experienced the same issues as Morales.²²⁴ The whistleblower complaint that helped lead to ICDC's eventual shut down reported that the

²¹⁵ Murdza, Thesis Interview.

²¹⁶ Li, Thesis Interview; Mukherjee, Thesis Interview; Murdza, Thesis Interview.

²¹⁷ Murdza, Thesis Interview.

²¹⁸ Mukherjee, Thesis Interview; Nicolas Morales, "We Were Left to Die from COVID-19 in Immigration Detention. Here's How I Got out," *Los Angeles Times*, May 8, 2020, sec. Opinion, <https://www.latimes.com/opinion/story/2020-05-08/immigration-detention-coronavirus-release>.

²¹⁹ Morales, "We Were Left to Die from COVID-19 in Immigration Detention. Here's How I Got out."

²²⁰ Morales, "We Were Left to Die from COVID-19 in Immigration Detention. Here's How I Got out."

²²¹ Morales, "We Were Left to Die from COVID-19 in Immigration Detention. Here's How I Got out."

²²² Morales, "We Were Left to Die from COVID-19 in Immigration Detention. Here's How I Got out."

²²³ Morales, "We Were Left to Die from COVID-19 in Immigration Detention. Here's How I Got out."

²²⁴ Seth Freed Wessler, "The Facility," *Field of Vision*, accessed January 10, 2022, <https://fieldofvision.org/the-facility>.

facility refused to test detained migrants who had recently been exposed to COVID-19 and showed symptoms of the disease, shredded medical requests, and fabricated medical records.²²⁵ In a documentary that was in the process of being recorded as the pandemic began, detained migrants worried about their health and attempted to fashion face masks out of everyday objects, like socks or plastic cups that they secured with a cord from headphones.²²⁶

One of the detainees featured in the video, Nilson Barahona, was transferred from ICDC to Stewart Detention Center, a facility owned and operated by CoreCivic, following his participation in a hunger strike and subsequent punishment in solitary confinement.²²⁷ While there, a fellow detainee died from COVID-19.²²⁸ In the months following, three other Stewart detainees would die after testing positive—the greatest number of COVID-19-related deaths in any single detention facility.²²⁹ The death toll in U.S. immigration detention jumped from eight deaths in FY2019 to 21 deaths in FY2020, and for at least six of the deaths in FY2020, COVID-19 was a factor.²³⁰

As noted above, isolation was used in response to hunger strikes protesting treatment of detained migrants in the case of Morales, Barahona, and others, but it was also utilized as a means of quarantining detained migrants who had contracted COVID-19.²³¹ Prior to joining DWN, Li worked with a team of litigators advocating for the release of detainees in Georgia, due to dangers posed by the pandemic and detained migrants’ “inability to choose to protect

²²⁵ Project South et al., “OIG Complaint Re: Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center,” September 14, 2020, <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>, 2.

²²⁶ Wessler, “The Facility.”

²²⁷ Wessler, “The Facility.”

²²⁸ Wessler, “The Facility;” U.S. Immigration and Customs Enforcement, “ICE Guidance on COVID-19,” Government, U.S. Immigration and Customs Enforcement, 2022, <https://www.ice.gov/coronavirus>.

²²⁹ U.S. Immigration and Customs Enforcement, “ICE Guidance on COVID-19.”

²³⁰ U.S. Immigration and Customs Enforcement, “ICE Guidance on COVID-19;” U.S. Immigration and Customs Enforcement, “Detainee Death Reporting,” Government, U.S. Immigration and Customs Enforcement, 2022, <https://www.ice.gov/detain/detainee-death-reporting>.

²³¹ Li, Thesis Interview.

themselves.”²³² One of Li’s clients who had become ill was placed in solitary confinement, but as his illness progressed, the situation became extremely unsafe and inhumane.²³³ Her client became so sick that he couldn’t clean up after himself, and he was left alone for hours, “banging on the door to try to get help” and “calling for emergent care” until someone came back to check on him.²³⁴ Li argued that these disturbing situations brought to light by the pandemic illustrate how unsuited the State is to care for people in its custody.²³⁵

ACCESS TO VISITORS

The pandemic also cut off visitation from people outside of detention facilities, including family members and attorneys, in the name of public health.²³⁶ Many attorneys began communicating with clients exclusively via videoconferencing and telephone due to health risks posed by in-person visits.²³⁷ Though the pandemic spurred some technological advancements, such as electronic court filings for immigration court documents, some advocates say that technology in detention facilities has not caught up with pandemic-era needs.²³⁸ Technological capabilities like video teleconferencing vary depending on the facility, but issues like time limits for phone calls, low quality connections, or a lack of privacy on the client’s end for a conversation that should be confidential continue to hamper access.²³⁹

Punitive Feel

Legally, immigrant detention should not be punitive, but as mentioned in Section I, conditions of detention often feel the same whether a person is being held as a detained

²³² Li, Thesis Interview.

²³³ Li, Thesis Interview.

²³⁴ Li, Thesis Interview.

²³⁵ Li, Thesis Interview; Murdza, Thesis Interview.

²³⁶ Hiemstra, Thesis Interview; Mukherjee, Thesis Interview.

²³⁷ Mukherjee, Thesis Interview.

²³⁸ Wilson, Thesis Interview.

²³⁹ Wilson, Thesis Interview.

migrant or a criminal inmate.²⁴⁰ Some detention facilities were originally designed for punitive incarceration, and in them, detained migrants are subjected to intensive surveillance and isolation.²⁴¹ Overstaying a visa is a civil violation, and entering the United States without legal documentation is a misdemeanor upon first offense—comparable in many states to traffic violations.²⁴² Jailtime for traffic violations is extremely uncommon, but migrants who commit a similar level of offense are detained.²⁴³ Since 2016, the majority of migrants held in U.S. immigration detention have had no criminal record, and of those with criminal convictions, only about 10 percent have committed offenses deemed “serious” by ICE.²⁴⁴

Staff Culture and Conditions

Lower-level employees at detention facilities have extensive power over the day-to-day lives of detained migrants, and these institutions have historically perpetuated a culture that views migrants in custody as dangerous and therefore deserving of violence and disrespect.²⁴⁵ Concerns about the treatment of detained migrants are met with an attitude of dismissal by management, even when they are voiced by staff members.²⁴⁶ For example, Wooten was reprimanded and demoted after voicing concerns related to medical care.²⁴⁷ Though legally required to allow detained people to meet with attorneys, legal professionals saw guards at STFRC manipulate the lives of detainees in ways that made it more difficult for them to make it to appointments to prepare their legal defense.²⁴⁸ Some attorneys also

²⁴⁰ Danielle C. Jefferis, “Constitutionally Unaccountable: Privatized Immigration Detention,” *Indiana Law Journal* 95, no. 1 (2020): 145–82, <https://heinonline.org/HOL/P?h=hein.journals/indana95&i=153>, 145.

²⁴¹ Mukherjee, Thesis Interview.

²⁴² Meacham, Thesis Interview; “Prosecuting People for Coming to the United States,” American Immigration Council, May 1, 2018, <https://www.americanimmigrationcouncil.org/research/immigration-prosecutions>.

²⁴³ Meacham, Thesis Interview.

²⁴⁴ TRAC Immigration, “Decline in ICE Detainees with Criminal Records Could Shape Agency’s Response to COVID-19 Pandemic,” Database, Transactional Research Access Clearinghouse, 2020, <https://trac.syr.edu/immigration/reports/601/>.

²⁴⁵ Meacham, Thesis Interview; Mark Dow, *American Gulag: Inside U.S. Immigration Prisons*, electronic resource (Berkeley: University of California Press, 2004), <http://www.columbia.edu/cgi-bin/cul/resolve?clio14023398>, 48-67.

²⁴⁶ Project South et al., “OIG Complaint,” September 14, 2020, 25-6.

²⁴⁷ Project South et al., “OIG Complaint,” September 14, 2020, 26.

²⁴⁸ Meacham, Thesis Interview.

reported that they had a more difficult time accessing clients in for-profit prisons than in local jails.²⁴⁹

Though some guards at STFRC appeared empathetic of detained migrants' situations, most Mallorie Meacham dealt with when she volunteered there as a law student in 2017 were callous in their treatment of detainees.²⁵⁰ They appeared to have “control issues” and were quick to yell at people who had been detained—including young children.²⁵¹ Grown men in uniforms would stand at the door of a nursery with cartoons playing in Spanish, yelling at children for leaving the room.²⁵² Such treatment of children who “present no strong security threat” is “entirely unnecessary,” Meacham said.²⁵³

While the draw to the sense of authority that comes with positions at detention centers may be a factor for some, others apply because detention centers offer the best source of employment in many rural areas across the United States.²⁵⁴ But despite providing a reliable, fairly lucrative source of work, conditions for guards are not always ideal.²⁵⁵ Former detention center workers recall long shifts filled with mundane tasks and have said that atmosphere influenced their behavior of mistreating migrants in their care.²⁵⁶ Additionally, for-profit prison corporations almost always require workers to sign strict nondisclosure agreements, further impeding transparency about what happens inside.²⁵⁷

Mukherjee and her colleagues have tried to convince certain guards to become whistleblowers for abuse that happens in immigration detention, but she said those guards declined due to repercussions that would come as a result of breaking their nondisclosure

²⁴⁹ Wilson, Thesis Interview; Meacham, Thesis Interview.

²⁵⁰ Meacham, Thesis Interview.

²⁵¹ Meacham, Thesis Interview.

²⁵² Meacham, Thesis Interview.

²⁵³ Meacham, Thesis Interview.

²⁵⁴ Meacham, Thesis Interview; Dow, *American Gulag*, 57-8.

²⁵⁵ Dow, *American Gulag*, 64-7.

²⁵⁶ Dow, *American Gulag*, 58-9.

²⁵⁷ Mukherjee, Thesis Interview.

agreements.²⁵⁸ In the case of the ICDC whistleblower complaint, Wooten was not under the same type of nondisclosure agreement obligations as most for-profit prison employees because she was employed by a third party medical provider rather than directly by LaSalle.²⁵⁹ This enabled her to file the complaint with less fear of legal repercussions.²⁶⁰

Despite witnessing a general lack of respect from guards toward detained migrants, Meacham did not wish to villainize them.²⁶¹ People working at detention centers represent “the lowest rung of the problem,” she said, arguing that people making decisions at the corporate level deserve the brunt of responsibility for conditions in for-profit detention.²⁶² The State is also to blame, according to Li, because it continues to detain people en masse and expand detention, providing opportunities for for-profit companies to make money from the practice. “Really the buck stops with the federal government,” Li said.²⁶³

Avenues for Redress

When rights violations occur in detention, there are a few avenues by which detained migrants can pursue redress, including directly complaining to detention personnel through verbal or written means, submitting complaints to the Office of the Inspector General (OIG) and the Office of Civil Rights and Civil Liberties (CRCL), or filing lawsuits through the court system. However, the likelihood of obtaining relief remains slim, particularly when attempting to address immediate or pressing issues.²⁶⁴

Direct Complaints

²⁵⁸ Mukherjee, Thesis Interview.

²⁵⁹ Mukherjee, Thesis Interview; Elizabeth C. Ghandakly and Rachel Fabi, “Sterilization in US Immigration and Customs Enforcement’s (ICE’s) Detention: Ethical Failures and Systemic Injustice,” *American Journal of Public Health* 111, no. 5 (May 1, 2021): 832–34, https://doi.org/10.2105/AJPH.2021.306186_832-34; Ioannis Kampourakis, “Whistleblowers as Regulatory Intermediaries: Instrumental and Reflexive Considerations in Decentralizing Regulation,” *Regulation & Governance* 15, no. 3 (2021): 745–59, <https://doi.org/10.1111/rego.12361>, 745–59; Ghandakly and Fabi, “Sterilization in US Immigration and Customs Enforcement’s (ICE’s) Detention,” 832.

²⁶⁰ Mukherjee, Thesis Interview.

²⁶¹ Meacham, Thesis Interview.

²⁶² Meacham, Thesis Interview.

²⁶³ Li, Thesis Interview.

²⁶⁴ Li, Thesis Interview; Murdza, Thesis Interview.

One of the biggest problems with direct reporting is responsibility shifting between authority figures either at different levels or representing different entities—for-profit companies managing detention centers, local governments, or State agencies.²⁶⁵ This results in confusion and makes it difficult for victims of violations to identify the appropriate person to receive complaints.²⁶⁶ Additionally, many detainees feel intimidated by how they have been treated in detention and opt not to voice complaints out of concerns for retaliation.²⁶⁷ Detained migrants who have expressed concerns about treatment were sometimes met with unsympathetic responses from the people charged with their custody, implying that they deserved to be mistreated.²⁶⁸ Advocates reported that direct complaints resulted in delayed responses, unhelpful responses, or no responses at all, even to serious complaints like reports of detainees being gassed, beaten, harassed or abused.²⁶⁹

OIG and CRCL Complaints

Though even slower than direct complaints, a formal complaint to the OIG and CRCL can sometimes result in a thorough investigation and positive changes for future detained migrants.²⁷⁰ Historically, these oversight agencies have orchestrated impactful investigations into civil rights violations, including family separation during the Trump administration. The process for an investigation usually lasts several months, which will not typically render redress for the people being held in immigrant detention when complaints are filed.²⁷¹ Additionally, filing this type of complaint without resources to navigate the system—such as legal counsel or language capacity—would be challenging for detainees to do on their own.²⁷²

²⁶⁵ Li, Thesis Interview; Murdza, Thesis Interview.

²⁶⁶ Li, Thesis Interview; Murdza, Thesis Interview.

²⁶⁷ Murdza, Thesis Interview.

²⁶⁸ Meacham, Thesis Interview.

²⁶⁹ Li, Thesis Interview; Murdza, Thesis Interview; Wilson, Thesis Interview.

²⁷⁰ Li, Thesis Interview; Murdza, Thesis Interview.

²⁷¹ Li, Thesis Interview; Murdza, Thesis Interview.

²⁷² Li, Thesis Interview.

Litigation

Many advocates cite litigation as the most effective way to change behaviors, particularly from for-profit entities, because legal fees chip away at profit and lawsuits bring conditions of detention to the forefront for shareholders.²⁷³ Though for-profit entities expect and are prepared to combat lawsuits over improper care, financial concerns over putting too much money into lawsuits are what ultimately “forces” them to observe human rights and improve conditions.²⁷⁴ Wilson argued that in most instances, for-profit prison corporations are “impervious to shame,” so the threat of losing money through litigation is the only means of recourse they will respond to.²⁷⁵

²⁷³ Hiemstra, Thesis Interview; Mukherjee, Thesis Interview; Wilson, Thesis Interview.

²⁷⁴ Hiemstra, Thesis Interview; Wilson, Thesis Interview.

²⁷⁵ Wilson, Thesis Interview.

Section IV: Effects of U.S. For-Profit Immigration Detention

Transparency and Accountability

Despite being comparable to public detention in terms of conditions, the lack of transparency in detention centers run by for-profit corporations contribute to a uniquely dangerous environment because human rights violations can occur without the knowledge of the general public, and if no one else knows about violations, no one can stop them or hold perpetrators accountable. Private status provides an extra layer of secrecy for documents generated in for-profit detention and makes it more complicated and cumbersome for researchers to gather information about for-profit facilities. The lack of transparency also makes for channels for redress of grievances and makes it harder to hold for-profit actors accountable for misconduct and rights violations. Though there appears to be an undefined threshold of egregious rights violations that the American people will allow before intervening on behalf of migrants, the lack of transparency in for-profit detention centers would make it difficult to confirm and respond to violations exceeding that threshold.

Social and Political Outcomes

Though most of the social and political effects of U.S. immigration detention stem from both for-profit and public entities, for-profit corporations distinctively approach detention with a mentality that prioritizes profit, first and foremost, and use their private status to their advantage. Local governments act similarly when they make agreements with the State to house detained migrants in jails, but their public status affords a level of transparency that makes more of their records available to the public than for-profit detention centers and compels an allegiance to the public—at least theoretically—that for-profit

corporations do not have.²⁷⁶ As discussed in Section II, the mission of State agencies that detain migrants is also intended to benefit the public in terms of safety, though many immigration advocates dispute the claim that mass migrant detention has a positive effect on public safety.²⁷⁷ Li described for-profit detention as a “symptom” of deeper problems with mass incarceration, U.S. immigration detention, and the capitalist system under which American society operates.²⁷⁸ Though for-profit prison corporations should be held accountable for their role in human rights violations that occur on their watch, the system incentivizes making a profit from detaining migrants.²⁷⁹ This section will focus on some of the social and political consequences stemming, at least in part, from U.S. for-profit immigration detention.

Disruption to Communities

One outcome noted by advocates was the disruption and damage done to communities by for-profit detention, despite efforts to come across as a community builder.²⁸⁰ The image purported by LaSalle’s slogan, which reads “Family. Caring. Community,” is “denigrated every second by what they do,” Wilson said.²⁸¹ Other for-profit prison corporations have similarly hypocritical slogans; CoreCivic’s is “Better the Public Good.”²⁸² Despite these catchphrases, the effects of detention has on migrants and the communities to which they belong can be disastrous. Morales was detained after living in the United States for almost 20 years, establishing himself in the community as the owner of a mechanic shop, and providing

²⁷⁶ Rick Pluta, “Supreme Court Says Jail Detainee Records Subject to FOIA,” *WKAR Public Media*, February 7, 2022, sec. WKAR News, <https://www.wkar.org/wkar-news/2022-02-07/supreme-court-says-jail-detainee-records-subject-to-foia>.

²⁷⁷ Bob Libal, “Communities Not Cages: A Just Transition from Immigration Detention Economies” (Detention Watch Network, 2021), https://www.detentionwatchnetwork.org/sites/default/files/reports/Communities%20Not%20Cages-A%20Just%20Transition%20from%20Immigration%20Detention%20Economies_DWN%202021.pdf, 4-7.

²⁷⁸ Hillary Li, Thesis Interview, Zoom Call, February 8, 2022.

²⁷⁹ Li, Thesis Interview.

²⁸⁰ Amelia Wilson, Thesis Interview, Zoom Call, January 18, 2022.

²⁸¹ Wilson, Thesis Interview.

²⁸² CoreCivic, “CoreCivic: Better the Public Good,” 2022, <https://www.corecivic.com>.

for his family.²⁸³ He was detained after dropping his young son off at school, was unable to say goodbye to his family, and could not obtain release from detention before losing his shop.²⁸⁴ Barahona, who was detained after a decade of living in the United States, said that his time in detention interfered with the strong bond that he previously had with his son.²⁸⁵

Dehumanization and Othering from the Public

Detained migrants' a priori status as humans ought to warrant that fulfillment of their human rights be a top priority for custodians who hold them in detention, but instead they have been subjected to rights violations and dehumanization. Upon being taken into detention, migrants are stripped of their individuality, advocates say.²⁸⁶ Their clothes and jewelry are taken away, and they are denied humane treatment.²⁸⁷ Migrants without government authorization to enter the United States, often referred to as "undocumented" or "irregular" migrants and who account for a large percentage of people held in immigration detention, represent a "shadow population" often targeted for exploitation and unique indignities that other populations do not experience because of the limits their legal status places on them, Meacham said.²⁸⁸ Detaining these people shows a "gross" lack of awareness of the unearned privilege U.S. citizens are born with.²⁸⁹

As discussed in Section I, public debates on immigration often overlook the humanity and individuality of migrants themselves. As Peter Schuck stated:

Americans like immigrants more than they like immigration, favor past immigration more than recent immigration, prefer legal immigrants to illegal ones, prefer refugees to other immigrants, support immigrants' access to educational and health benefits but not to welfare or Social Security, and feel that immigrants' distinctive cultures have contributed positively to American life and that diversity continues to strengthen

²⁸³ Nicolas Morales, "We Were Left to Die from COVID-19 in Immigration Detention. Here's How I Got out," *Los Angeles Times*, May 8, 2020, sec. Opinion, <https://www.latimes.com/opinion/story/2020-05-08/immigration-detention-coronavirus-release>.

²⁸⁴ Morales, "We Were Left to Die from COVID-19 in Immigration Detention. Here's How I Got out."

²⁸⁵ Seth Freed Wessler, "The Facility," *Field of Vision*, accessed January 10, 2022, <https://fieldofvision.org/the-facility>.

²⁸⁶ Mallorie Meacham, Thesis Interview, Zoom Call, January 29, 2022.

²⁸⁷ Meacham, Thesis Interview.

²⁸⁸ Meacham, Thesis Interview.

²⁸⁹ Meacham, Thesis Interview.

American society today. At the same time, they overwhelmingly resist any conception of multiculturalism that discourages immigrants from learning and using the English language.²⁹⁰

Experience has shown advocates that the public generally has a high tolerance for migrant rights abuses and a short attention span when it comes to immigration issues.²⁹¹ Despite frequent news and media reports on abuses in detention, public outrage comes and goes.²⁹² Advocates, however, strive to keep efforts constant.

Advocacy Working Toward Abolishing Immigration Detention

Migrant detention has resulted in strong campaigns against the practice from advocates and activists, some of whom are former detainees, now helping to lead their community.²⁹³ After his release, Barahona became an activist campaigning for immigrant rights, and after her deportation, Floriano Navarro continued to discuss her experience in detention and the retaliation she received from speaking out.²⁹⁴ There is no exact formula to successful campaigning, said Katy Murdza, who works as the advocacy manager for the Immigration Justice Campaign, a shared project of the American Immigration Council and the American Immigration Lawyers Association.²⁹⁵ Advocates have used a variety of strategies to promote immigrant rights, but one prevalent issue that surfaced in almost every interview was abolition of immigration detention as a whole. To make headway on this goal, advocates aim to target “pressure points” that they hope can improve conditions for detained migrants.²⁹⁶

²⁹⁰ Peter H. Schuck, “The Disconnect between Public Attitudes and Policy Outcomes in Immigration,” in *Debating Immigration*, ed. Carol M. Swain (Cambridge: Cambridge University Press, 2007), 17–31, <https://doi.org/10.1017/CBO9780511804830.003>, 19.

²⁹¹ Elora Mukherjee, Thesis Interview, Zoom Call and Telephone, January 11, 2022; Katy Murdza, Thesis Interview, Zoom Call, January 25, 2022.

²⁹² Mukherjee, Thesis Interview; Murdza, Thesis Interview.

²⁹³ Wessler, “The Facility.”

²⁹⁴ Wessler, “The Facility;” Joel Rose, “Dozens Of Women Allege Unwanted Surgeries And Medical Abuse In ICE Custody,” *NPR*, December 22, 2020, sec. National, <https://www.npr.org/2020/12/22/949257207/dozens-of-women-allege-unwanted-surgeries-and-medical-abuse-in-ice-custody>.

²⁹⁵ Murdza, Thesis Interview.

²⁹⁶ Mukherjee, Thesis Interview.

Targeting of Specific Facilities and Types of Detention

Some organizing efforts focus on shutting down specific facilities or particular types of migrant detention, such as family detention or for-profit detention.²⁹⁷ Many of these efforts are led by grassroots organizers who bring greater attention to problems at those facilities, help educate local leaders, and build power in their communities.²⁹⁸ Consequentially, their efforts provide some relief to people affected by migrant detention.²⁹⁹ Larger organizations like DWN are invested in these fights at local levels, Li said, even as they focus efforts on strategies targeting higher levels of government, which they hope will bring more comprehensive changes.³⁰⁰

Advocates targeting for-profit detention may not necessarily view the rights abuses there as more egregious than publicly run detention, but for-profit facilities account for a large share of immigrant detention in the United States, and legislators in recent years have appeared more receptive to the idea of ending privately run detention than overhauling the entire immigration detention system.³⁰¹ Because of this, some rights advocates are willing to focus on shutting down for-profit detention first, while maintaining the overarching goal of abolishing immigrant detention altogether.³⁰²

CHALLENGES

Success with this type of advocacy is frequently coupled with challenges. Though litigation can be used as a tool in the fight for immigration rights, it can also be utilized by supporters of migrant detention. For example, after the California Legislature passed a 2020

²⁹⁷ Li, Thesis Interview; Mukherjee, Thesis Interview; Murdza, Thesis Interview.

²⁹⁸ Li, Thesis Interview; Murdza, Thesis Interview.

²⁹⁹ Li, Thesis Interview.

³⁰⁰ Li, Thesis Interview; Mukherjee, Thesis Interview.

³⁰¹ Murdza, Thesis Interview.

³⁰² Murdza, Thesis Interview; Li, Thesis Interview.

law that moved to phase out for-profit detention within the state, a lawsuit filed by GEO halted implementation.³⁰³

Additionally, when targeted detention centers are shut down, migrants who were previously held there are not necessarily released.³⁰⁴ Often they are moved to a different location, which can present challenges for family visitation and legal representation.³⁰⁵ In other cases facilities nearby are expanded to accommodate for a redistribution of the detention population.³⁰⁶

Following the closure of ICDC, many of the detainees held there were transferred to two nearby facilities: Stewart, operated by CoreCivic, and Folkston ICE Processing Centre, operated by GEO.³⁰⁷ A few months later GEO and Charlton County, where Folkston is located, reached an agreement to expand the facility, which will include thousands more beds for detained migrants, though ICE has not yet shared whether it necessarily plans to send more detainees there.³⁰⁸ The beds will be added in two buildings, one of which has previously been used as a federal prison.³⁰⁹ Advocates are critical of this type of expansion and point to it as evidence that shutting down individual facilities is overall ineffective in the fight for immigrant rights in the United States.³¹⁰ Mukherjee argued that “tinkering around the edges” by targeting subsections of immigrant detention is “not enough.”³¹¹

Ending Economic Reliance on Detention Centers

³⁰³ “Detention Facilities: Private, for-Profit Administration Services,” AB-32 § (2019), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB32; Janelle Salanga, “California Tries Again to Close down Privately Operated Prisons and Immigrant Detention Facilities,” *CapRadio*, November 17, 2021, <https://www.capradio.org/171686>; Li, Thesis Interview.

³⁰⁴ Li, Thesis Interview.

³⁰⁵ Li, Thesis Interview; Murdza, Thesis Interview.

³⁰⁶ Li, Thesis Interview; Murdza, Thesis Interview.

³⁰⁷ Jeremy Redmon and Lautaro Grinspan, “Exclusive: Ga. Immigration Facility to Become One of Nation’s Largest,” *The Atlanta Journal-Constitution*, February 4, 2022, sec. Georgia News.

³⁰⁸ Redmon and Grinspan, “Exclusive.”

³⁰⁹ Redmon and Grinspan, “Exclusive.”

³¹⁰ Li, Thesis Interview; Mukherjee, Thesis Interview.

³¹¹ Mukherjee, Thesis Interview.

As mentioned in Section III, many rural communities with detention centers in them view the facilities as essential for their economies.³¹² When ICDC closed, a local newspaper mourned the loss of the county's largest employer.³¹³ While advocates understand concerns over employment and changes to the community, they try to open community members to possibilities of what could exist in place of jails or detention centers, such as a community center or other spaces that add value to the municipality, and encourage State leaders to invest in these spaces instead of detention.³¹⁴

Attempts to Influence Politics

Advocacy groups like DWN also lobby to defund ICE and Customs and Border Patrol through federal appropriations processes and pressure local governments to end relationships with for-profit prison corporations.³¹⁵ If successful, these efforts would minimize the financial incentive to continue operating for-profit prison corporations.³¹⁶ But other advocates say the most effective way to create lasting change is by electing officials who care about immigration issues.³¹⁷

To accomplish this, advocates must get the public's attention and highlight inhumane detention practices in a way that, as Hiemstra put it, "offends the sensibilities of voters."³¹⁸ Converting public outrage for the mistreatment of detained migrants into meaningful change is challenging, in part because policies often align more with the political parties of legislators than public opinion.³¹⁹ Despite a divided public opinion on the issue of for-profit immigration detention, researchers say that policy decisions have continued to favor

³¹² Li, Thesis Interview; Meacham, Thesis Interview; Wilson, Thesis Interview.

³¹³ Jeremy Redmon and Lautaro Grinspan, "Closing an ICE Jail in South Georgia Would Cheer Activists but Harm a Rural Community's Economy," *The Atlanta Journal-Constitution*, September 23, 2021, sec. News.

³¹⁴ Li, Thesis Interview; Libal, "Communities Not Cages," 8.

³¹⁵ Li, Thesis Interview.

³¹⁶ Li, Thesis Interview.

³¹⁷ Mukherjee, Thesis Interview.

³¹⁸ Mukherjee, Thesis Interview.

³¹⁹ Murdza, Thesis Interview; Peter H. Schuck, "The Disconnect between Public Attitudes and Policy Outcomes in Immigration," in *Debating Immigration*, ed. Carol M. Swain (Cambridge: Cambridge University Press, 2007), 17–31, <https://doi.org/10.1017/CBO9780511804830.003>, 19.

increased privatization.³²⁰ In the past a strong, united, bipartisan public reaction has put a stop to the cruelest policies and influenced elections, as was the case after the Trump administration’s family separation policy that came to light in 2018, but in order to pierce the public consciousness to such a degree, conditions must be “exceptionally abhorrent and cruel,” Mukherjee said.³²¹

RECENT IMMIGRATION POLICIES FAVOR PRIVATIZATION

Though national politics can profoundly affect immigration detention in the United States, politicians from both major U.S. parties have contributed to expansion of for-profit immigrant detention in recent years. The Obama administration built family detention centers to hold migrant children and adults and increased migrant detention and deportation, earning the 44th President the nickname “Deporter in Chief.”³²² The Trump administration broadened standards for immigrant detention prioritization and implemented the aforementioned family separation policies that removed migrant children from their parents or guardians.³²³

Although the Biden administration recently halted family detention for migrants, it left immigration detention out of an executive order to effectively end federal contracts with for-profit criminal detention centers.³²⁴ As contracts for criminal detention facilities expire, it is

³²⁰ Peter K. Enns and Mark D. Ramirez, “Privatizing Punishment: Testing Theories of Public Support for Private Prison and Immigration Detention Facilities,” *Criminology* 56, no. 3 (2018): 546–73, <https://doi.org/10.1111/1745-9125.12178>, 563-7.

³²¹ Mukherjee, Thesis Interview; Nancy Hiemstra, Thesis Interview, Zoom Call, February 9, 2022.

³²² Amanda Sakuma, “‘Deporter in Chief’: Obama Leaves behind Tainted Legacy on Immigration,” *NBC News*, January 15, 2017, <https://www.nbcnews.com/storyline/president-obama-the-legacy/obama-leaves-behind-mixed-legacy-immigration-n703656>.

³²³ Claudio J. Perez, “How U.S. Policy Has Failed Immigrant Children: Family Separation in the Obama and Trump Eras,” *Family Law Quarterly* 54, no. 1–2 (March 22, 2020): 37–37, <http://go.gale.com/ps/i.do?p=AONE&sw=w&issn=0014729X&v=2.1&it=r&id=GALE%7CA655942249&sid=googleScholar&linkaccess=abs>, 1.

³²⁴ Andrea Castillo, “Biden Administration Halts Immigrant Family Detention for Now,” *Los Angeles Times*, December 17, 2021, sec. Politics, <https://www.latimes.com/politics/story/2021-12-17/adults-only-biden-administration-repurposes-immigrant-family-detention-centers>; Joseph Biden, “Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities” (The White House, January 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>.

likely that corporations concerned with loss of profit will try to simply pivot the use of those facilities to immigrant detention.

Conclusion

The United States' current method of immigrant detention is not only unethical with regard to human rights violations, but it is unsustainable. It relies on a perpetual cycle of treating migrants as commodities to fill detention beds rather than human beings in need of help, safety, and opportunities denied them in their country of origin.³²⁵ It is a system based on racist and xenophobic traditions that do not serve the best interest of the public.

Throughout this paper, I explored how the theoretical implications of for-profit immigration detention pose a unique threat to the human rights of migrants in the United States, particularly stemming from the prioritization of profits for shareholders over fulfillment of the human rights of people in their custody. The lack of legal requirements for transparency in for-profit detention centers allows them to avoid accountability for human rights violations that occur on their watch, thus amplifying the risk they pose to detained migrants. Numerous social and political implications stem from U.S. for-profit immigration detention, including disruptions to families and communities, dehumanization of migrant populations, and advocacy campaigns targeting various subsections of the immigration detention system. Immigration advocates also attempt to challenge social and political attitudes that shape policies around the practice.

Privatization has enabled States to share some of their responsibilities to care for detained migrants with for-profit corporations. Although these agreements do not appear to have had a wholly negative effect on the treatment of detained migrants—because conditions

³²⁵ Meacham, Thesis Interview; Kimberly R. Hamilton, "Immigrant Detention Centers in the United States and International Human Rights Law," *Berkeley La Raza Law Journal* 21 (2011): 93–132, <https://heinonline.org/HOL/P?h=hein.journals/berklarlj21&i=95>, 131.

are so poor in both State-run and for-profit detention, I argue that for-profit detention is a dangerous practice that puts the human rights of migrants at risk in unique ways. The practice of U.S. immigration detention more generally endangers migrant rights by placing them in situations where they are subjected to abuse and wrongful assumptions of their guilt. Just as the State decided to begin detaining migrants and then privatizing the practice almost 40 years ago, the State can, and should, end these practices that wrongfully put humans at risk for rights violations. This way, it might finally prove that it recognizes migrants as human.

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