# The Criminalization of Immigrants & the Immigration-Industrial Complex

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*Abstract: Over the last few decades, and particularly after 9/11, we have witnessed the increasing criminalization of immigrants in the United States. Changing policies have subjected immigrants to intensified apprehension and detention programs. This essay provides an overview of the context and policies that have produced the rising criminalization of immigrants. We draw on the institutional theory of migration to understand the business of detention centers and the construction of the immigration-industrial complex. We link government contracts and private corporations in the formation of the immigration-industrial complex, highlighting the increasing profits that private corporations are making through the detention of immigrants. We conclude with a discussion of how the privatization of detention centers is part of a larger trend in which basic functions of societal institutions are being farmed out to private corporations with little consideration for basic human rights.*

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Though the path of the immigrant in the United States has never been easy, the costs of being an undocumented immigrant are higher today than ever before. Not only is the always-risky journey into the United States much more treacherous now than it was in the past, but blending in once here is becoming increasingly difficult. The attitude of U.S. natives toward undocumented immigrants (particularly if they are from Latin American countries) is increasingly hostile and inhospitable. Even gainful employment offers little insulation from the rabid xenophobia that has engulfed some segments of the U.S. population in the post-9/11 era. Immigration and Customs Enforcement (ICE) officials have raided and rounded up people who, but for their lack of documentation, would be viewed no differently from the millions of hard-working Americans trying to make a living for themselves and their families. They are seized from their workplaces, shackled, and hauled off to detention centers – jails and prisons – where they


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are thrown into a shadow world with few protected human and legal rights. Despite numerous media accounts describing the deplorable conditions of the detention centers and the inhumane treatment of the detainees, the bureaucrats in charge seem indifferent, as does the larger public to whom they must answer. Few seem even to be asking questions.

The criminalization of undocumented immigrants has been heightened by the establishment and endorsement of punitive actions – both individual-based and government-sponsored – against undocumented groups and those who assist them. Furthermore, prisons are being rapidly erected to detain more inclusive segments of the undocumented immigrant population. Several detention centers have recently been constructed and designated to house immigrant families; and perhaps still operating under the framing of youths as "super predators," an image that dominated criminal justice thinking during the 1980s and 1990s, undocumented juvenile immigrants are not exempt from this immigration-industrial complex.[1]

The contracts that link government, which supplies immigrant detainees to prison facilities, with the private industry responsible for building, maintaining, and administering such prisons signal the emergence of a new type of prison-industrial complex. This essay identifies this trend as part of a larger privatization movement in the United States and around the world. Broadly, this movement is characterized by the dominance of market liberalization and the transition from a market economy to a market society; the fracturing of U.S. society; the death of the liberal class; "winner take all" politics that have redistributed resources upward; and the reestablishment of Jim Crow-like policies in the criminal justice system that ensnare poor and vulnerable populations, including immigrants, in their web.[2]

How has a nation once perceived as a beacon of democracy and justice evolved to grossly abuse these very principles? This essay seeks to answer that question by first describing the rising detention rate of immigrants and illustrating the context in which this growth has occurred. Toward this end, we provide an overview of the policies and the environment that have helped criminalize immigrants. Next, we draw on the institutional theory of migration to understand the ascension of the business of detention centers. We draw links between government contracts and private corporations in the formation of the immigration-industrial complex, while highlighting the increasing profits that private corporations are making through the detention of immigrants. And we conclude with a discussion about how the privatization of detention centers is part of a larger trend in which basic functions of societal institutions are being farmed out to private corporations with little consideration for basic human rights.

As many scholars have detailed, the recent demonization of immigrants is nothing new.[3] Anxiety over the immigrant "other" – the alien – is an enduring characteristic of the American experience. So, too, are efforts to exclude those deemed "undesirable" (historically, poor people and people of color) from immigrating to the United States. For example, beginning in 1790, immigration laws restricted naturalization to those designated as white, while those deemed "likely to become a public charge" (LPCs) were barred from entry. Dual mechanisms accomplished these mandates. Restrictions based on race and other characterizing features targeted specific groups (for example, anarchists, prostitutes, contract laborers, illiterates, and LPCs) and banned them from entry into the United States. At the

same time, deportation policies sought to eliminate undesirables already in residence. While the racial restrictions were ostensibly eliminated in 1952, the 150 preceding years of de jure racial exclusion were not inconsequential in shaping the racial and socioeconomic landscape of the United States. Tellingly, the LPC clause, indicative of the United States' discomfort with poor people, has remained a policy fixture. Indeed, the perceived threat of LPCs was the rationale for the roundup and deportation (known as repatriation) of thousands of Mexicans – citizens and non-citizens alike – during the 1930s.

The plenary power doctrine, established by the U.S. Supreme Court during the era of Chinese exclusion in the nineteenth century, undergirds all immigration law. In establishing this doctrine, the Supreme Court assumed that immigrants posed a threat of foreign invasion, and thus linked immigration control with the state's authority to wage war.[4] The Supreme Court conferred on Congress the plenary power to regulate all matters of immigration, stating that "aliens enter and remain in the United States only with 'license, permission, and sufferance of Congress.'"[5]

Congress sought to deal with the undocumented Chinese through deportation. In 1892, Congress passed the Geary Act, which authorized the expulsion of Chinese immigrants in the country unlawfully. Although it was challenged, the U.S. Supreme Court upheld the legislation (and the plenary power of the legislative branch), finding that "the right to exclude or expel aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, is an inherent and inalienable right of every sovereign nation."[6] Presciently, in his dissent in *Fong Yue Ting v. United States* (1893), Supreme Court Justice David Josiah Brewer noted that while this particular case targeted the "obnoxious Chinese," "if the power exists, who shall say it will not be exercised tomorrow against other classes and other people?"[7]

Justice Brewer's concerns were warranted. The Johnson-Reed Act of 1924 (also known as the Immigration Act of 1924) significantly curtailed immigration from Southern and Eastern Europe and banned outright immigration from countries with nonwhite populations, arguing that these classes of people were racially ineligible for citizenship. While the Immigration Act of 1924 did not subject immigrants from the Western Hemisphere (including Mexicans and Canadians) to quotas, administrative provisions were developed to address their migration. The act created foreign consular offices to issue visas for entry into the United States and reconstituted the Border Patrol, which was charged with securing what had historically been an open border.[8] Ironically, immigrants need not have actually broken a law to have found themselves on the wrong side of it. It is estimated that upwards of 1.4 million people who had entered the United States legally before 1921 were abruptly classified as lawbreakers through this policy change.[9]

With the Border Patrol reinvigorated, securing the southern border between the United States and Mexico took primacy over policing the northern border with Canada. This was partly due to the fact that the most popular route into the United States for illegal European and Asian immigrants who could not pass the literacy requirements, had passport difficulties, or were excluded due to quota restrictions was through Mexico. With means established for Europeans to circumvent quota restrictions, and the resultant decline in illegal European entry through Mexico, attention increasingly turned to the flow of Mexicans. In 1921,

new immigration policy reversed the Mexican exemption from literacy tests and head taxes.[10] In addition to prescreening to acquire a visa (and the attendant fee), Mexicans, like all potential immigrants, had to pass a literacy test and prove they were not likely to become a public charge upon reaching the United States. Once at the border, legal immigrants faced a head tax, degrading medical inspections, delousing fogs, forced bathing, and interrogations.

These onerous and offensive policies compelled many immigrants to bypass these border checkpoints and cross into the United States without proper inspection.[11] By 1929, unauthorized entry into the United States was itself declared illegal. With the incidence of border-crossing without inspection on the rise, the process of ridding the nation of these "criminals" ensued. The number of immigrants expelled from the United States rose from 2,762 in 1920 to 38,796 by the end of the decade. "Alien without proper visa" became the single largest explanation for deportation.[12]

The relationship between U.S. agriculture and Mexican labor is a source of longstanding tension in the United States. Immigration policies and procedures have schizophrenically vacillated between accommodating labor needs and quelling nativist fears of being overtaken by Mexico. Immigration policies and procedures directed at Mexicans grew especially punitive during the Depression era of the 1930s, culminating in the wholesale removal of Mexicans from the United States, irrespective of citizenship status. Indeed, as historian Mae N. Ngai has written, "the repatriation of Mexicans was a racial expulsion program exceeded in scale only by the Native American Indian removal of the nineteenth century."[13] Then, as now, few protested the legality of these removals.

The outbreak of World War II created domestic labor shortages. The Bracero Program – a bilateral guest worker program between the United States and Mexico that temporarily allowed contract Mexican labor to work in U.S. agriculture – was instituted to address these shortages. It was expected that a guest worker program would stem undocumented Mexican immigration. Lasting from 1942 until 1964, the Bracero Program provided more than 4.5 million individual contracts for temporary employment.[14] However, with the same onerous conditions for legal entry into the United States, the Bracero Program, rather than stem undocumented immigration, encouraged it instead. Many braceros, once in the United States, simply did not return to Mexico when their contract expired.[15]

Responding to the concerns generated by the unanticipated rise in undocumented immigration from Mexico, the Eisenhower administration approved "Operation Wetback," which increased apprehensions of undocumented Mexican immigrants. Concomitantly, yielding to pressure from farmers and ranchers critical of the procedural requirements for securing braceros, Border Patrol officials sometimes engaged in a perverse bait and switch: apprehending undocumented border crossers and releasing them in Mexico, only to then escort them back into the United States as legal braceros. In some instances, officials paroled former undocumented immigrants directly to U.S. employers.[16]

But encouraging, even abetting, Mexican labor migration amidst growing anti-Mexican sentiment proved untenable for border authorities. The pressures of an increasing Mexican presence in the United States, the embarrassment from the exposure of the deplorable working conditions of braceros in the national television broadcast documentary *Harvest of Shame*, and labor union opposition coa-

lesced to formally end the Bracero Program in 1964 after twenty-two years of operation.[17] The institutionalization of the Bracero Program was not without repercussions, however. Not only had the program failed to stem undocumented immigration from Mexico, but with visas scarce, the Bracero Program had actually encouraged it by offering relatively easy entry for Mexican laborers. (U.S. employers bore the onus of documentation.)

In the end, the Bracero Program cemented the relationship between U.S. employers and the relatively cheap labor supply provided by Mexican workers. Thus, while the program officially ended in 1964, the decades that followed demonstrated a growing U.S. presence of former braceros and other undocumented migrants, creating a migratory social network to support and encourage future migrants from Mexico. The legal status of Mexican workers was the only significant shift that resulted from the formal end of the program. Impunity for their hiring, coupled with a pliable, vulnerable cheap supply of labor, engendered continued support from U.S. employers for Mexican workers. The formal Bracero Program was simply replaced by an informal and unsanctioned labor program.[18]

The criminalization of immigrants, ushered in by the 1882 Chinese Exclusion Act, continued – indeed, escalated – throughout the twentieth century. At the dawn of the twenty-first century, the United States was once again characterized by anti-immigrant, or more specifically, anti-Latino, sentiment. And once again, the consequence has been an increase in punitive policies intended to "stop the invasion" occurring at the southern border. As political scientist Peter Andreas has described it:

> On both sides of the U.S.-Mexico borderline, escalation has translated into tougher laws, rising budgets and agency growth, the deployment of more sophisticated equipment and surveillance technologies, and a growing fusion between law enforcement and national security institutions and missions.[19]

And as a result, border policing has risen to unprecedented heights.

This intensified policing is the product of the policies and procedures of the past, as well as a new set of protocols that have increasingly criminalized people of color, both citizen and immigrant, albeit to differing degrees. The development of special commerce zones between the United States and Mexico during the 1960s, President Nixon's declaration of a war on drugs in the 1970s, the perverse consequences of the 1986 Immigration Reform and Control Act (IRCA), the passage of the North American Free Trade Agreement (NAFTA), the terrorist bombings of the World Trade Center and Oklahoma City in the 1990s, and especially the terrorist events of September 11, 2001, have combined to expose the U.S.-Mexico border region to unprecedented scrutiny. As a result, a mass of federal and state initiatives have taken criminalization of immigrants to stratospheric levels.

The Immigration and Nationality Act of 1965 (INA) eliminated the much maligned national-origins quota system; while the new policies prioritized family reunification, the overall intention was to maintain immigration at roughly the same levels as during the forty years the quota system was in place.[20] Additionally, the INA imposed for the first time a limit of 120,000 immigrants from Western Hemisphere countries. These dual immigration policies – a ceiling of 170,000 per year from Eastern Hemisphere countries, and 120,000 per year from Western Hemisphere countries – lasted until 1976, when they were replaced by a 20,000 visas per

country cap for both Eastern and Western Hemisphere countries.[21] While immediate family members were not subject to these numerical restrictions, immigration from Mexico already exceeded 20,000 when the ceiling was established. Thus, the INA spurred undocumented immigration rather than deterred it. Andreas has succinctly summarized the situation: "as the front door of legal entry became more regulated, the backdoor of illegal entry became more attractive."[22]

Passage of IRCA in 1986 did little to halt undocumented immigration from Mexico and other Latin American countries. In theory, IRCA sanctioned employers for knowingly hiring undocumented migrants, forced them to verify the identity and status of employees via the I-9 form, and expanded the Border Patrol. But weak economies and civil unrest in Latin America, combined with lax enforcement of employer sanctions, propelled undocumented migration through the latter part of the twentieth century. At best, the employer verification provision prompted a thriving black market for fake documents needed to satisfy the I-9 requirements for employment.[23] IRCA also offered a legal avenue for naturalization for undocumented migrants who could prove continuous residency for a specified period of time, and millions of migrants took the opportunity to legalize.

Terrorist attacks, politics, and the economy joined forces in the 1990s to escalate anti-immigrant sentiment and lay the groundwork for more stringent immigration policies.[24] The bombing of the World Trade Center in February 1993 provided both the impetus and purpose for President Clinton to address immigration during his first term in office. While no Mexicans were involved in the 1993 bombing, U.S.-Mexico border policies were incorporated into broader terrorism-focused initiatives. President Clinton introduced his new immigration policy on July 27, 1993, explaining, "I asked the Vice President to work with our departments and agencies to examine what more might be done about the problems along our borders. I was especially concerned about the growing problems of alien smuggling and international terrorists hiding behind immigrant status, as well as the continuing flow of illegal immigrants across American borders."[25]

While President Clinton did not single out the southern U.S. border, most of the allocated federal resources were devoted to hardening the U.S.-Mexico border. Between 1993 and 1999, the INS budget tripled, from $1.5 billion to $4.2 billion. The stated goal of the militarization of the southern U.S. border with Mexico was *prevention through deterrence*: to make the border-crossing so difficult that would-be immigrants were deterred from their initial efforts. In addition to funding more Border Patrol agents, the Clinton administration authorized the infusion of high-tech military equipment, including magnetic footfall detectors and infrared body sensors, along the U.S.-Mexico border.[26]

Politics and economics combined with maximum effect in California Governor Pete Wilson's 1994 reelection campaign. Under a backdrop of what border officials dubbed "Banzai runs" – groups of fifty undocumented migrants running en masse across the border, weaving into and out of traffic – Wilson declared undocumented immigrants enemy combatant no. 1 and waged a war that bred copycat anti-immigrant legislation across the country. He fired his first salvo with a political campaign advertisement in which he declared that he was "suing the federal government to control the border" and "working to deny state services to illegal immigrants."[27] The tough anti-immigrant rhetoric galvanized his reelection campaign and he won handily.

Wilson fired his second round with Proposition 187, making good on his campaign promise to deny state services to illegal immigrants. In a referendum before California voters, the measure passed by a three-to-two margin.[28] Although Proposition 187 was ultimately struck down by the U.S. Supreme Court, the idea of undocumented immigrants as a drain on the economy sparked a new wave of anti-immigrant sentiment that had already been simmering near the surface. In 1996 alone, more than 500 anti-immigrant state-level bills were introduced across the United States (37 in Arizona alone). By 1997, the number had tripled to 1,562.[29]

Building on the immigration reforms of 1993, and working in tandem with welfare reform, President Clinton in 1996 signed the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). These new pieces of legislation revised the denial and/or deportation provisions for every class of immigrant. In most instances, the limited rights held by aliens were further constrained, while the power of the immigration enforcement branch of the Immigration and Naturalization Service (INS; now Immigration and Customs Enforcement) was strengthened.

Cumulatively, these policies imbued the INS with the power to arrest, detain, and deport unauthorized immigrants while significantly curtailing, and in certain circumstances eliminating, immigrant rights to appeal the decisions. AEDPA declared that "any final order of deportation against an alien who is deportable by reason of having committed" any of a long list of criminal offenses "shall not be subject to review by any court."[30] The new law also significantly expanded the definition of criminal grounds for removal from the United States to include crimes that may be classified as misdemeanors in state courts. What is more, the law considered offenses retroactively, meaning that past convictions could be used as a basis for deportation.[31]

The complementary IIRIRA, meanwhile, authorized the construction of a fourteen-mile fence along the U.S.-Mexico border; doubled the force of border patrol agents; allowed for summary exclusion of immigrants (for example, immigration officials were granted the authority to summarily deport individuals apprehended within one hundred miles of the border); expanded the grounds for deportation; reduced the allowable documents to satisfy I-9 requirements; and prohibited legal immigrants from federal welfare provisions for the first five years of their U.S. residency.[32] In what would become a boon to private prison companies, legislative changes also "required the detention of all immigrants, including permanent residents, facing deportation for most criminal violations until the final resolution of the case."[33]

The "likely to become a public charge" clause, a mainstay in immigration policy, was also strengthened in the 1996 legislation. The legislation required that a family-sponsored visa applicant be denied unless the sponsoring family member in the United States submits an affidavit that stipulates that the sponsor agrees to: 1) support (and maintain support of) the applicant at an annual income of not less than 125 percent of the federal poverty guideline for ten years and/or until the applicant has become a U.S. citizen (using the 2011 poverty line data and assuming a two-person household, this figure is $18,387 or greater); 2) be held liable to the sponsored immigrant, the federal government, any state, or any other entity that provides means-tested public support; and 3) be under the control of any federal or state court.[34]

Significantly, IIRIRA built a partnership between federal immigration authorities and local and state law enforcement officials. Section 287(g) of IIRIRA authorized immigration officials to sign a memorandum of agreement (MOA) with local and state law enforcement officials that designated officers to perform immigration law enforcement functions.[35] Although little used at the time of its crafting, the 287(g) program allowed state and local police to make immigration arrests on behalf of federal authorities. Exercise of this provision began in earnest in 2004. Indeed, it has become a major tool in the law enforcement arsenal, enabling officers to racially profile, arrest, detain, and deport record numbers of undocumented immigrants.

The blurring of immigration and criminal laws reached a new apex after the terrorist attacks of September 11, 2001. Within a month after the attacks, President George W. Bush established the Department of Homeland Security through executive order. And on October 26, 2001, he signed into law the USA PATRIOT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act of 2001, which dramatically revamped the security and immigration road map of the United States.[36]

The PATRIOT Act significantly increased the budget for immigration enforcement and tripled the number of Border Patrol agents on the northern border.[37] More so than even the 1996 immigration legislation, the PATRIOT Act expanded the government's ability to detain and deport terrorists, however defined. In a demonstration of these newly expanded powers, the government instituted a "Special Registration" program in November 2002. This racially targeted effort required men aged 16 to 45 from Arab and Muslim countries in residence in the United States to register with the Department of Homeland Security and answer questions. Failure to comply could have resulted in deportation. Further, the government required notification of foreign travel by the registrant, and even restricted future travels to select ports of departure. This program led to the detention of 1,834 registrants and 13,000 deportation proceedings. Ultimately, no criminal charges for terrorism were filed against any of the more than 18,000 registrants.[38] Amid a flurry of accusations of racial profiling, the program ended in May 2003.

Immigrant detention has grown dramatically since 2006, when the U.S. Office of Homeland Security shifted its policy from "catch and release" to "catch and detain" in the case of apprehended non-Mexican immigrants. This change in policy thereby placed *all* immigrants in the category (catch and detain) that had previously included only Mexican immigrants. As in the case of the post-9/11 policies that infringed many basic rights and liberties of the American people, new policies regarding the detention of immigrants and the development of machinery to house detainees occurred in the shroud of secrecy, with little knowledge from the general public.

Equally alarming is the increasing use of criminal prosecution for immigration offenses that have historically been handled administratively. In 2008, for example, ICE raided a food processing plant in Postville, Iowa, criminally charging 305 detainees with some combination of aggravated identity theft, social security fraud, and/or illegal reentry into the United States. Almost all those detained accepted the plea deal offered to them by federal prosecutors, in which prosecutors agreed to drop the most serious charge of aggravated identity theft and waive court fees in exchange for a five-month sentence and an order of judicial removal. As

a consequence of these sentences, the detainees were precluded from ever becoming legal permanent residents or citizens of the United States.[39]

Beginning in earnest during the 1920s, the continual hardening of the U.S.-Mexico border has had many negative consequences for migrants trying to reach the United States. For migrants whose family members live in the United States but are undocumented, the legal avenues for entry have become long and tortuous, with an average wait of sixteen years before an application is even considered. And most visas for entry to the United States are issued to skilled workers, often at the expense of laborers from Latin America, further obstructing the path to legal entry for those without a U.S. citizen sponsor.[40]

The militarization of the U.S.-Mexico border has made the border-crossing much more dangerous, and undocumented migrants often hire agents to assist them in the journey. And as the border has hardened, so, too, have the fees these agents charge, often resulting in a form of indentured servitude for labor migrants.[41] The U.S. labor market itself has been characterized as a *Juan Crow* caste system that locks undocumented and largely Latino labor into low-wage, exploitative working conditions with limited avenues for recourse. Even so, most migrants willingly submit to degrading work conditions even with the constant threat of workplace raids, racial profiling, discrimination, and deportation. Civil rights lawyer Michelle Alexander has persuasively argued that the criminal justice system is the reconstituted Jim Crow for young African American men.[42] Legal scholars Kevin Johnson and Bernard Trujillo have extended this argument to Latinos, reasoning that the immigration system, in tandem with the Juan Crow caste labor market, has created a new Latino underclass.[43] And as is the case with black men in the new Jim Crow, imprisoned/detained Latinos are increasingly locked away in for-profit, private prisons/detention centers, the growth and proliferation of which has marched lockstep with the hardening of the U.S.-Mexico border.



The growth in immigrant detention did not occur in a vacuum, but rather alongside and in response to social, economic, and political changes that facilitated its development. Economic downturns have historically bred anti-immigrant sentiment, and in the past thirty years, the United States has been characterized by growing inequality. Coupled with governmental devolution of programs designed to assist individuals in times of crisis, this growing inequality is a recipe for social anxiety and anti-immigrant sentiment. Victims of this devolution include the usual working-class suspects. As political scientist Jacob Hacker has described, the transference of economic risks from government and corporations to workers and their families has exposed the middle class to the harshest aspects of an economic downturn.[44] Recently, teachers, policemen, and firemen (particularly if represented by a union) have found themselves in the crosshairs of federal, state, and local budget cuts. American workers have felt besieged.

The historical record shows that during periods of economic downturn and uncertainty, immigrants make convenient scapegoats, blamed for a host of societal ills. As psychologists Priscila Diaz, Delia Saenz, and Virginia Kwan have explained: "there is a pattern in U.S. history in which presence of economic competition is associated with greater negativity toward certain groups, even when immigration is not relevant. . . . Similarly, anti-immigrant sentiment and extreme immigration policy may arise from the desire

to blame outsiders for poor economic conditions."[45] Just as low-income women were blamed in the 1980s for not taking personal responsibility for their own economic welfare, so, too, have immigrants been blamed for irresponsibly draining scarce economic resources intended only for citizens.

Some of the strongest anti-immigrant legislation dates to the relatively robust economy of the 1990s. Despite the optimism surrounding this prosperity, terrorist attacks on the World Trade Center and Oklahoma City left Americans feeling vulnerable, prompting political action that resulted in militarized zones along the U.S.-Mexico border and draconian immigration policies. Social activist Naomi Klein's book *Shock Doctrine: The Rise of Disaster Capitalism* offers an analogy for understanding the drastic shifts the country took after the terrorist bombings in 1993, and even more so post-9/11. Klein uses psychological shock as an analogy to illustrate the initial shock that many countries around the world have experienced over the course of the last four decades in the face of calamitous "wars, terror attacks, coups d'état and natural disasters."[46] These initial shocks numb the populace, inducing anomie.[47] As the shock spreads through the population, the traditional ways, regulations, and customs of the society no longer prevail. Citizens enter survival mode, with the principal goal of perseverance. It is in this context of societal numbness that corporations and politicians attempt to subject the populace to severe and punitive economic and political shocks. Klein argues that corporations and politicians "exploit the fear and disorientation of [the] first shock to push through economic shock therapy."[48] Thus, policies that under normal conditions would not be tolerated are easily imposed on the population without any – or at best, with minimum – opposition.

The series of terrorist attacks that began in 1993 and culminated on the morning of September 11, 2001, no doubt, shocked the nation. The nation experienced a collective numbness in the face of such an unprecedented terrorist attack on its own soil. Media commentators argued that September 11 would mark a watershed in the history of the nation. While the nation mourned in a dazed state, Congress and the Bush administration quickly implemented drastic legislative changes in the name of protecting Americans from terrorism. In short order, Americans lost many of the rights and freedoms – such as privacy and civil liberties – that they had long enjoyed in peacetime. The PATRIOT Act passed through Congress swiftly and with overwhelming support, with many Americans truly unaware of the rights and civil liberties that they were surrendering. Notably, the indefinite detention of immigrants, even those not considered to be terrorists, is among the litany of provisions of the PATRIOT Act.

Consequently, amidst federal, state, and local budget contractions, the criminal justice industry was an exception to the rule of devolution. With an expanded scope and seemingly unlimited budget – the result of a stunned populace and an opportunistic administration – the security industry was overhauled. Existing facilities to house immigrant detainees were quickly stretched beyond their limits. Significantly, the private sector seized the opportunity to build new detention centers, operate them, and provide provisions for them. A steady flow of undocumented immigrants into the United States coupled with a sizable undocumented population already resident in the country offered private prison entrepreneurs an ideal growth market: vilified "illegal aliens" who possessed limited rights thanks to the plenary power doc-

trine and a hostile public wanting assurance that something was being done about the threat of terror and the "immigration problem."

Sociologist Douglas Massey and his colleagues have provided an inventory of the theoretical perspectives that account for international migration.[49] The most common of these perspectives are based on how economic forces and labor markets influence the flow of people across international boundaries as well as how social networks facilitate and sustain international migration. The institutional theory of migration is a relatively new perspective for understanding international migration.[50] This theory focuses on the institutions and organizations that emerge once international migration is set in motion to "satisfy the demand created by an imbalance between the large number of people who seek entry into capital-rich countries and the limited number of immigrant visas these countries typically offer."[51] The institutional theory of migration emphasizes the underground markets that emerge to assist migrants in overcoming obstacles erected to keep them out of capital-rich countries, in addition to voluntary humanitarian organizations that press for the protection of undocumented immigrants and their human rights.

A variety of underground economic markets have blossomed to facilitate migration in the face of the barriers erected to deter it. These include, for example, business ventures related to human smugglers (*coyotes* help bring Mexicans and other Latin Americans into the United States; *snakeheads* help smuggle in Chinese migrants); fraudulent documents such as social security cards, birth certificates, visas, and passports; labor contracts; and arranged marriages between undocumented migrants and citizens. Entrepreneurs gain handsomely through their provision of services to migrants who attempt to gain entry into the United States and obtain the documents required to work and access resources here.

While the institutional theory of migration has helped us understand how institutions and organizations emerge to support international migration, it was narrowly conceived. The perspective focuses on underground market economic endeavors and on the institutions and organizations that facilitate the movement of people into capital-rich countries. The perspective must be broadened to understand how "aboveboard" state-supported business ventures have emerged to apprehend, detain, and deport migrants as a means of discouraging people from migrating to the United States. In this case, it is not underground entrepreneurs but corporations that, through contracts with ICE, establish or extend their business ventures to house immigrant detainees. The profits reaped by these businesses in the fight against international migration dwarf those garnered in the underground economy. Further, corporations in the business of immigrant detention centers do not have the legal risks that their counterparts in the underground economy face.

The prison-industrial complex is a derivative of the military-industrial complex, as conceived by President Eisenhower in his 1961 Farewell Address.[52] Social scientist Tanya Golash-Boza has noted that the military-industrial complex reflects the "close relationships between the corporate elite, bureaucrats, and politicians, and these actors work together to ensure that state military investments serve the interests of capital."[53] The military-industrial complex emerged and is sustained by the element of fear and the profits gained by corporate, governmental, and military actors. In particular, the arms

buildup was justified by the fear of Communism, as well as the powerful entities – in the form of the corporate elite, government bureaucrats, and the military hierarchy – who benefited economically and politically from the ceaseless buildup of the military machinery.[54]

Analyses linking the prison system to the military-industrial complex began to emerge in the 1980s. Scholar Mike Davis described the context in which California established a prison-industrial complex:

> California has the third-largest penal system in the world, following China and the United States as a whole: 125,842 prisoners at last official count. Over the past decade, the state has built Calipatria, located 220 miles southeast of L.A., and fifteen other new prisons – at a cost of $10 billion (interest included). An emergent 'prison-industrial complex' increasingly rivals agribusiness as the dominant force in the life of rural California and competes with land developers as the chief seducer of legislators in Sacramento. It has become a monster that threatens to overpower and devour its creators, and its uncontrollable growth ought to rattle a national consciousness now complacent at the thought of a permanent prison class.[55]

These ideas were expanded beyond California by activist and writer Angela Davis as well as by journalist Eric Schlosser, who has defined the prison-industrial complex as "a set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need." Schlosser has added that the prison-industrial complex represents a "confluence of special interests that has given prison construction in the United States a seemingly unstoppable momentum."[56] Alongside new get-tough policies (for example, longer sentences, mandatory minimums, felonizing drug offenses, and "three strikes and you're out"), changes in drug policies in the mid-1980s resulted in a tremendous growth of the prison population and in the construction of new prisons to house inmates.[57] In this context, the demography of the prison population shifted from predominantly white prisoners to African American and Latino prisoners.

Golash-Boza has isolated three defining features of the prison-industrial complex: a rhetoric of fear; the confluence of powerful interests; and a discourse of other-ization.[58] The rhetoric of fear in the prison-industrial complex is focused on the at-large criminal in society. The confluence of powerful interests includes people in the government, corporate, and criminal justice sectors who gain economically and politically through mass incarceration. Private prison corporations, such as Corrections Corporation of America and the GEO Group Inc. (formerly a division of the Wackenhut Corporation), especially benefit from well-placed connections in the government and criminal justice sectors. Finally, the discourse of other-ization focuses the fear of the criminal on black men and, increasingly, on Latino men.

Beginning in the early 1980s, the Reagan administration pressed for the outsourcing of many government functions to the private sector. President Reagan argued that the free market would enhance competition and consequently promote better quality service and greater efficiency. Changes in U.S. drug and immigration policy, as well as a variety of "push" factors in Latin American states, necessitated increased space for the imprisonment of detainees, leading the way for the growth of the private incarceration sector. For example, during the early 1980s, the U.S. government denied the majority of political asylum petitions of Central Americans fleeing the violence

associated with U.S.-backed wars in Guatemala, El Salvador, and Nicaragua. And as the cases of asylum-seekers were decided, the refugees were placed in detention centers for varying amounts of time.

Moreover, new legislation that intensified the criminalization of both drug use and undocumented immigration accelerated and expanded the privatization of prisons. The 1986 Anti-Drug Abuse Act mandated minimum sentences for drug-related offenses, including five- and ten-year minimum sentences for drug distribution or importation. The policy also enforced disparate treatment of powder cocaine (used primarily by the middle and upper classes) and crack cocaine (used disproportionately by poor persons of color) offenses, with crack cocaine charges attracting the most punitive actions. Meanwhile, the 1986 Alien Criminal Apprehension Program, based on joint efforts between the Bureau of Prisons (BOP) and INS, sought to uncover immigrants with criminal records, even those whose sentences had already been completed. The objective of this policy was to apprehend, detain, and eventually deport these immigrants.

Between 1980 and 1994, the number of inmates in federal prisons nearly quadrupled, from 24,363 to 95,034.[59] The composition of the inmate population also shifted dramatically during this period. For instance, while drug offenders accounted for one-fourth of all inmates in 1980, they made up more than three-fifths in 1994. And the changes in drug policy disproportionately affected African Americans and Latinos, as the number of black drug offenders increased fivefold and the number of Latino drug offenders quadrupled between 1986 and 1991 (compared to a twofold increase in white drug offenders in federal prisons).[60]

To meet the rising demands for jail and detention space, two major private-sector corporations answered the call. Corrections Corporation of America (CCA) was established in 1983, and the GEO Group was incorporated in 1984. These are the two dominant private-sector providers of prisons and detention centers in the country, with CCA being the largest. CCA and the GEO Group have profited handsomely from the nation's growth in prisoners and detainees (see below). Nonetheless, many local and county jails have also benefited by renting out space to house detainees. For example, in 1993 the ship *Golden Venture* ran aground close to New York City. The ship had attempted to smuggle approximately three hundred undocumented Chinese immigrants to the United States, many of whom were detained in York, Pennsylvania, for nearly four years to await a hearing of their cases. Journalist Mark Dow has described how communities vied for the privilege to detain some of the Chinese immigrants:

> Local politicians and business entrepreneurs have taken full advantage of the revenue possibilities in immigration detention. Many asylum seekers aboard the *Golden Venture*, for example, were detained in a York County Pennsylvania jail. In a neighboring county, a *Harrisburg Patriot* headline read, "Prison Board Shopping for Immigrants to Prevent Layoffs." A Perry County commissioner told the *Patriot*, "We tried like the dickens to get some of the Chinese . . . but it didn't pan out. . . . If no immigrants are secured, some layoffs may be inevitable." The federal government paid York County $45.00 per detainee per day, although it only cost the prison $24.37 to maintain each prisoner. As the Chinese asylum seekers approached the two-year mark of their detention, the county's general fund boasted a profit of about $1.5 million. A Mississippi sheriff said, "We don't always agree with the INS holding them. . . . But we like the money,'" and a Miami INS

official confirmed that a jail in northern Florida was "calling us all the time to bring back some business for them." A Nigerian detainee being transferred from Krome to the Monroe County Jail in Key West overheard a jail officer and an INS officer discussing vacancies and wondered, "Is this slave trade or what?"[61]

To some, undocumented immigrants represented a threat to their way of life; however, to enterprising entrepreneurs, immigrants represented potential profit, and to many local officials, immigrants represented the key to healthy budgets and job protection. A threshold had been crossed.

Over the last decade, private prison corporations, such as CCA and GEO Group, have turned their attention to the business of housing undocumented immigrants. Indeed, the massive profits that these corporations garnered in the prison-industrial complex abruptly declined from 1998 to 2001 as they built *speculative prisons*: "excess prison space for inmates who did not yet exist."[62] Because 9/11 dramatically increased government resources available to combat terrorism and undocumented immigration, including the increased effort to apprehend and deport undocumented immigrants, private prison corporations shifted their attention to the business of housing undocumented detainees.

The booming expansion of the construction of detention centers to house these immigrants has resulted in the emergence of the immigration-industrial complex: "the public and private sector interests in the criminalization of undocumented migration, immigration law enforcement and the promotion of 'anti-illegal rhetoric.'"[63] Analyses of the immigration-industrial complex have emerged only recently.[64] More broadly, policies to curb terrorism and undocumented immigration have included the development of other complexes, including the security-industrial complex[65] and the border-industrial complex.[66]

As is the case with the prison-industrial complex, the immigration-industrial complex has three major features: a rhetoric of fear; the confluence of powerful interests; and a discourse of other-ization.[67] In particular, efforts to counter terrorism have featured a dual concern with national security alongside immigration law enforcement. The fear of a terrorist attack at the hands of immigrants has been used to justify the massive increase in funds in the war against terrorism and the protection of international borders. And similar to the prison-industrial complex, a confluence of interests surrounding immigrants binds together powerful entities in the government, corporate, and criminal justice sectors.

The links between private prison corporations, such as CCA, and the government and criminal justice sectors have been crucial to the expansion of for-profit detention centers and the increase in detentions of undocumented immigrants on which they rely. Finally, the immigration-industrial complex is further supported and sustained by the discourse of other-ization and the racialization of immigrants, especially the portrayal of Mexican immigrants as "invaders" and "foreigners" who do not belong in the United States.[68]

A variety of corporations have contracts with ICE to house immigrant detainees. The corporations that provide such services to ICE include CCA, Emerald Companies, the GEO Group, Immigration Company of America-Farmville, LCS Corrections Services, Inc., and Management and Training Corporation. We will provide an overview of CCA, the largest such corporation, to examine its role in the prison-/immigration-industrial complex.

Founded in 1983, CCA made its first major contract with the INS in 1984 to construct and manage the Houston Processing Center. CCA's website calls attention to its cofounders' skills and connections to the political, criminal justice, and corporate sectors, the triumvirate of confluences that embody the prison-/immigration-industrial complex: "Co-founders Tom Beasley, Don Hutto and Doctor Crants brought diverse skills to their new venture: public policy, knowledge of the legislative process, and experience in public corrections and financial expertise."[69] CCA highlights its industry leadership in pioneering public-private partnerships in the field of corrections and in establishing cost-effective solutions to correctional problems.[70] The vision of CCA is "to be the best full service adult corrections system in the United States. . . . In partnership with government, we will provide meaningful public service by operating the highest quality adult corrections company in the United States."[71] CCA's corporate profile states:

> Corrections Corporation of America is the nation's largest owner and operator of privatized correctional and detention facilities and one of the largest prison operators in the United States, behind only the federal government and three states. CCA currently owns and operates more than 65 facilities including 47 company-owned facilities, with a design capacity of more than 90,000 beds in 19 states and the District of Columbia.
>
> The Company specializes in owning, operating and managing prisons and other correctional facilities and providing inmate residential and prisoner transportation services for governmental agencies. In addition to providing the fundamental residential services relating to inmates, CCA offers a variety of rehabilitation and educational programs, including basic education, life skills and employment training and substance abuse treatment. These services are intended to reduce recidivism and to prepare inmates for their successful reentry into society upon their release. The Company also provides inmates health care (including medical, dental and psychiatric services), food services and work and recreational programs.[72]

Spanning twenty-one states, CCA consists of sixty-five facilities, which CCA has described as an adjustment center, correctional centers/facilities/institutions, detention centers/facilities, jails, preparole transfer facilities, processing centers, a residential center, a treatment facility, a women's correctional facility, as well as CCA's corporate headquarters.[73] Of these sixty-five facilities, about one-fifth have contracts with ICE: thirteen facilities containing a total of 15,016 beds.[74]

In calendar year 2011, CCA reported total revenues of approximately $1.72 billion, compared to total revenues of $1.66 billion in 2010.[75] In addition, CCA declared a net income of $162 million in 2011 compared to $157 million in 2010, representing a gain of 3.4 percent.[76] Unfortunately, we are not able to identify what portions of the total generated revenues and net incomes were generated from ICE contracts.

The three cofounders of CCA possessed connections to the corporate, political, and criminal justice sectors. One of these founders, Tom Beasley, was serving as the chairman of the Tennessee Republican Party in the late 1970s when he observed that the state's correctional system was hampered by high levels of turnover, tight budgets, and overcrowding.[77] He thought that the private sector may be a solution to these problems. Beasley subsequently shared his thoughts and plans with the two persons who would become his fellow cofounders of CCA: Doctor ("Doc") Crants, Beasley's West Point

roommate who held an M.B.A. and law degree from Harvard University but who had no corrections experience; and Don T. Hutto, former commissioner of corrections in Arkansas (1971–1976) and Virginia (1976–1981), and later president of the American Corrections Association (1984–1986).[78]

The current board of directors of CCA likewise has deep ties to the political, criminal justice, and corporate sectors. John D. Ferguson became the chairman of the board and CEO of CCA in July 2008, after serving as president of CCA from 2000 to June 2008.[79] Before joining CCA, Ferguson had thirty-three years of experience in "finance, entrepreneurial ventures, corporate turnarounds and government experience."[80] Immediately before coming to CCA, he served as Tennessee's Commissioner of Finance and Administration, a post he held for four years.

The CCA board also includes Donna M. Alvarado, William F. Andrews, John D. Correnti, Dennis DeConcini, Damon Hiniger, John Horne, C. Michael Jocobi, Anne L. Mariucci, Thurgood Marshall, Jr., Charles L. Overby, John R. Prann, Jr., Joseph V. Russell, and Henri L. Wedell.[81] We highlight three board members below to illustrate the interconnectivity between the political, criminal justice, and corporate sectors.

- Donna M. Alvarado is the founder and managing director of Aguila International, an international business-consulting firm. She has held senior management positions in government as deputy assistant secretary of defense in the U.S. Department of Defense, counsel for the U.S. Senate Committee on the Judiciary subcommittee on Immigration and Refugee Policy, and staff member of the U.S. House of Representatives Select Committee on Narcotics Abuse and Control.
- Dennis DeConcini is a former U.S. senator from Arizona, having held the office for three terms (1977 to 1995). He currently serves as director of Ceramic Protection Corporation and is a partner in the law firm of DeConcini McDonald Yetwin and Lacy. DeConcini is a principal in the lobbyist consulting firm Parry, Romani, DeConcini & Lacy P.C. in Washington, D.C.
- Thurgood Marshall, Jr. is the son of Thurgood Marshall, the first African American Supreme Court Justice. He is a partner in the law firm Bingham McCuthen LLP in Washington, D.C., and a principal in Bingham Consulting Group, which assists business clients with communications, political, and legal strategies. Marshall has held appointments in each branch of the federal government, serving as cabinet secretary to President Clinton and director of legislative affairs and deputy counsel to Vice President Al Gore.[82]

Many CCA employees have held important government posts prior to joining the corrections business. For instance, John Ferguson, CCA's current CEO, served on Tennessee Governor Don Sundquist's Transition Advisory Council, which was charged with providing policy recommendations at the time that the state was considering privatizing 70 percent of its correctional system.[83] Other individuals moving from the Tennessee state government to CCA include Brian Ferrell (aide to Governor Sundquist, later CCA's vice president for government relations), John Tighe (Governor Sundquist's top health care advisor, later CCA's vice president of health services), Natasha Metcalf (Tennessee's commission of health services, later CCA's vice president for local government customer relations), and Tony Grande (Tennessee commission of economic and community development,

later CCA's vice president of state customer relations).[84]

CCA also has a long history of using its ties and personal relationships with people in government to gain economic advantages and contracts.[85] CCA's relationship with former Governor of Tennessee and Senator Lamar Alexander is one of the earliest and strongest such ties. Tom Beasley worked for Alexander when he was governor of Tennessee, though they share a history extending back to Beasley's time as an undergraduate at Vanderbilt University, when he rented an apartment above Alexander's garage. Honey Alexander, Lamar's wife, also was an investor in CCA, and such ties were helpful in CCA's ultimately unsuccessful bid to win a contract to operate Tennessee's correctional system in 1985.[86] Furthermore, Philip Perry, who is a son-in-law of former Vice President Dick Cheney, lobbied for CCA prior to holding the post of general counsel for the Department of Homeland Security.[87]

CCA has aggressively lobbied and made campaign contributions to affect public policy issues related to corrections, criminal justice, and immigration, and to gain government contracts. As privatization researchers Philip Mattera, Mafruza Khan, and Stephen Nathan observe in their report *Corrections Corporation of America: A Critical Look at Its First Twenty Years*:

> For an industry whose only customer is the public sector, it is no surprise that private prison operators need to cultivate relationships with government officials. Yet CCA has taken this to great lengths. Most controversial has been the involvement of CCA in American Legislative Exchange Council, a conservative group that promotes changes in state laws by drafting model bills and networking with legislators.
>
> CCA has also attempted to use its direct relationships with executive branch officials and legislators, especially in its home state of Tennessee, to improve its chances of winning contracts. The company has nurtured these relationships through its generous campaign contributions and its practice of hiring former government officials.
>
> CCA's efforts to make friends and influence important people are also evident at the federal level. The company has depended heavily on federal contracts since its founding, and it was the feds who were largely responsible for helping CCA survive its brush with bankruptcy several years back. The emphasis on homeland security in the wake of 9/11 has created new opportunities for CCA and the rest of the prison industry.
>
> For 20 years CCA has invested large amounts of time and money in the public sector, and it expects to receive a continuing payoff.[88]

As noted, business in the private prison industry was not always booming. Between 1998 and 2001, corporations in the prison business experienced significant declines in their profits. This was the case with CCA, which saw its stock market value plummet from 144.239 on January 2, 1998, to 68.368 on January 1, 1999; 18.343 on January 7, 2000; and finally 2.501 on January 5, 2001.[89] The downward slide was not as dramatic for GEO: 8.025 on January 9, 1998; 9.546 on January 1, 1999; 3.481 on January 7, 2000; and 3.293 on January 12, 2001.[90]

The events of 9/11 reversed this descent, for the immediate federal response to the terrorist attacks was to allocate massive amounts of resources to wage war against terrorism, with the control of borders and the detention of unwanted immigrants part and parcel of this plan. It is clear that the corporations in the business of detention centers anticipated the oncoming windfall profits. For instance, the chairman of the Houston-based Cornell Companies, speaking in a

conference call to investors shortly after 9/11, gushed:

> It can only be good . . . with the focus on people that are illegal and also from Middle Eastern descent. . . . In the United States there are over 900,000 undocumented immigrants from Middle Eastern descent. . . . That's *half* of our entire prison population. . . . The federal business is the *best* business for us . . . and the events of September 11 [are] increasing that level of business.[91]

Similarly, the head of the Wackenhut Corporation (the parent company of the GEO Group) noted:

> As a result of the terrorist attacks in the United States in September we can expect federal agencies to have urgent needs to increase current offender capacity if certain anti-terrorism and homeland security legislation is passed. . . . It's almost an oddity that . . . given the size of our country and the number of illegal immigrants entering our country that we have such a small number of beds for detention purposes, and I think this has become an issue under the 'homeland security' theme, and I think it's likely we're going to see an increase in that area."[92]

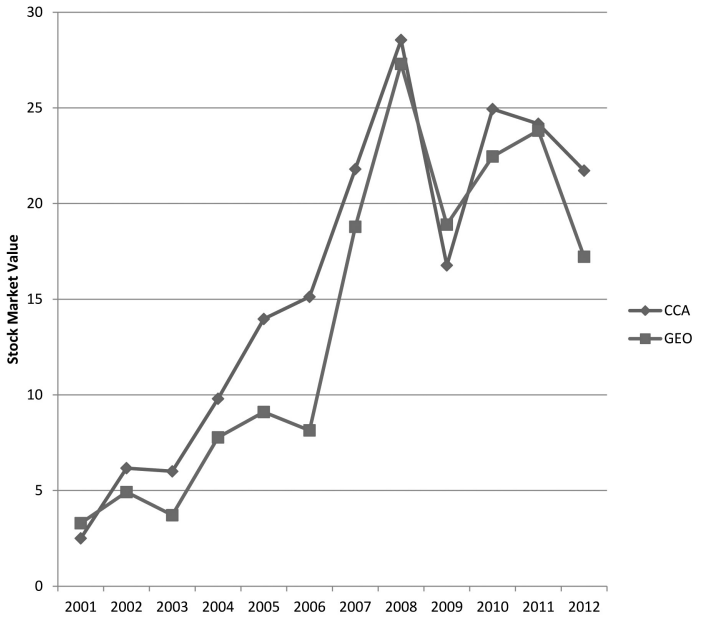
As anticipated, the aftermath of 9/11 proved to be a bonanza for corporations like CCA and the GEO Group. Stock prices rebounded robustly. Figure 1 provides the stock market values of CCA and GEO stock on the January opening for each year between 2001 and 2012. The stock value of each corporation experienced significant gains between 2001 and 2008. Indeed, the value of CCA stocks soared elevenfold, from 2.501 in 2001 to 28.55 in 2008, while that of GEO stocks climbed eightfold, from 3.293 in 2001 to 27.30 in 2008. CCA experienced the greatest annual percentage increase (147 percent gain) in its stock between 2001 and 2002, while GEO's greatest surge (131 percent gain) took place between 2006 and 2007, the time period associated with the change in policy from catch-and-release to catch-and-detain. In general, there has been a slight decline in the value of the stock of both corporations between 2010 and 2012.

Lobbying is a key strategy for CCA to exert its influence on the political process, and Figure 2 shows CCA's lobbying expenditures between 1998 and 2011. These expenditures nearly doubled from year to year during the 2001 to 2004 period. By 2005, CCA spent $7 in lobbying for each $1 that it spent in 2001. From 2008 to 2011, CCA's lobbying expenditures dropped significantly from the 2007 levels; yet the corporation still paid approximately $1 million in each of the last four years. As noted earlier, CCA has combined its lobbying efforts with generous campaign contributions to influence public policy and help acquire government contracts. CCA's role in the formation of Arizona's controversial S.B. 1070 legislation is the most recent example of its influence on public policy. National Public Radio exposed the important role that CCA, through its association with the American Legislative Exchange Council (ALEC), played in political discussions that led to the formation of S.B. 1070, with CCA standing to gain handsomely from the enactment of the bill.[93]

In sum, CCA has been the pioneer and leader in the establishment of the prison-industrial complex and the immigration-industrial complex through its strong ties across the political, criminal justice, and corporate sectors. But what trends can we observe in the growth of the immigration-industrial complex? And in what direction can we expect it to go?

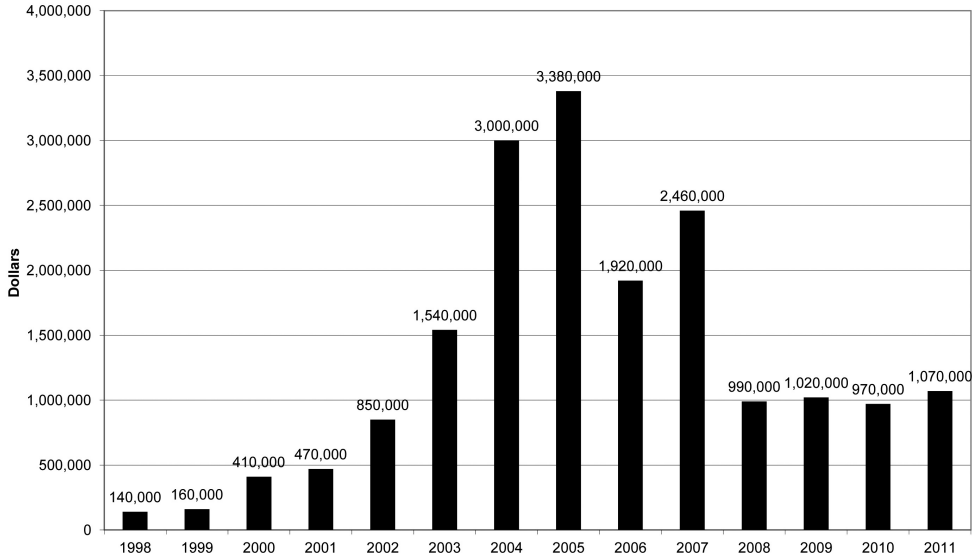
The growth in immigrant detentions has been exceptionally strong over the last few decades. The average number of

*Figure 1*
Market Values of CCA and GEO Stocks During First Week of January, 2001–2012




Source: New York Stock Exchange, "Corrections Corp of America (NYSE:CXW)," https://www.google.com/finance?client=ob&q=NYSE:CXW (accessed July 27, 2012); and New York Stock Exchange, "The GEO Group, Inc. (NYSE:GEO)," https://www.google.com/finance?client=ob&q=NYSE:GEO (accessed July 27, 2012).

*Figure 2*
Lobbying Expenditures of CCA, 1998–2011




Source: "Annual Lobbying by Corrections Corporation of America," OpenSecrets.org, http://www.opensecrets.org/lobby/clientsum.php?id=D000021940&year=2012 (accessed July 30, 2012).

immigrant detainees increased nearly fivefold, from 6,785 in 1994 to 33,330 in 2011 (see Figure 3). We can clearly see the impact of IIRIRA in 1996, as well as the change of policy from catch-and-release to catch-and-detain in 2006. For example, the average number of detainees more than doubled from 1996 to 2001, while the average has increased by approximately 72 percent between 2006 and 2011. The average number of detainees has surpassed 30,000 each year since 2009.

The growth trends surrounding the 2006 policy change are also attributable to a significant increase in arrests from ICE worksite raids (see Figure 4). The number of persons arrested for criminal violations (employers, contractors, and managers who hire undocumented workers; immigrants who use fraudulent documents to find employment; and immigrants charged with identity theft) increased more than fivefold, from 176 in 2005 to 1,103 in 2008, while the number of administrative arrests (undocumented immigrants arrested but not charged with criminal violations) rose more than fourfold, from 1,116 in 2005 to 5,184 in 2008. Nonetheless, the volume of criminal arrests has dropped by 35 percent from 2008 to 2011, while the number of administrative arrests has declined by 72 percent during this period.

Neoliberal policies that came to the fore during the Reagan administration provided an ideological rationalization for the privatization of many functions of the criminal justice system. Mass incarceration has been used as the primary weapon in the war on drugs (declared by Nixon and waged by every administration since), solidifying and expanding the prison-industrial complex. And after 9/11, the federal government targeted undocumented immigrants with unprecedented punitive actions. The privatization of the prison system and the demonization of immigrants combined with the threat of terror to propel for-profit incarceration companies like CCA to record profits. These trends have been advanced by politicians in response to vague public demands for the government to "do something" about crime, drugs, terrorism, and immigration. They have not, however, been without significant human rights implications for citizens and non-citizens alike.

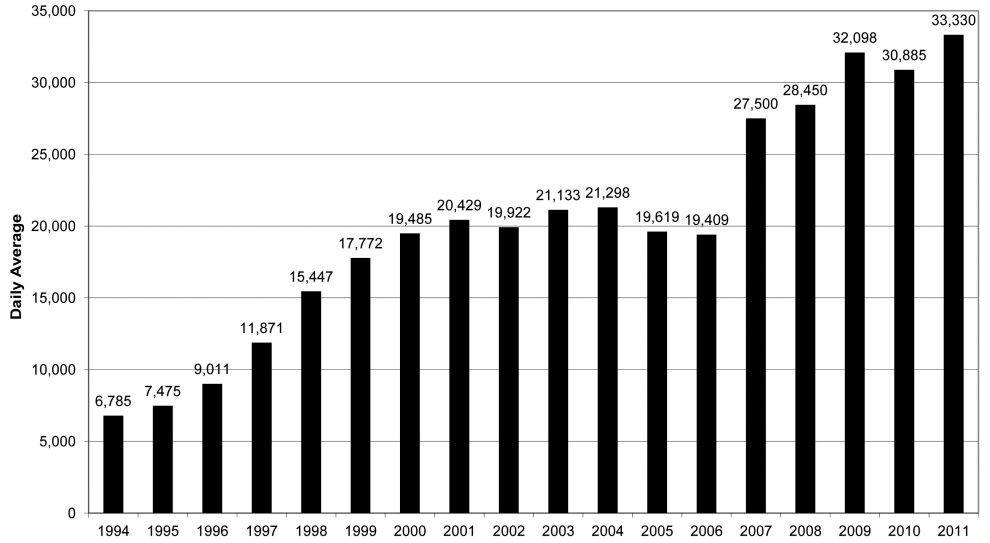
As Edmund Burke warned, those who cannot remember the past are destined to repeat it. In many ways, history tells us that immigrant-bashing is more the norm than not. It was the tremendous nativist backlash against Southern and Eastern Europeans that inspired the National Origins Act of 1924, which significantly curtailed immigration from these areas and concomitantly gave rise to the phenomenon of illegal immigration. The current climate of immigrant-bashing distinguishes itself from this history of nativism by focusing almost exclusively on Latinos as scapegoats.

The adoption of terminology such as "alien" and "illegal alien" to characterize this administratively created class is fraught with racial connotations. As Johnson and Trujillo have pointed out:

> The construction of alien has justified our legal system's restrictive approach, offering noncitizens extremely limited rights. References to the "alien," "aliens," and "illegal aliens" as societal others thus helps make the harsh treatment of people from other countries seem reasonable and necessary.[94]

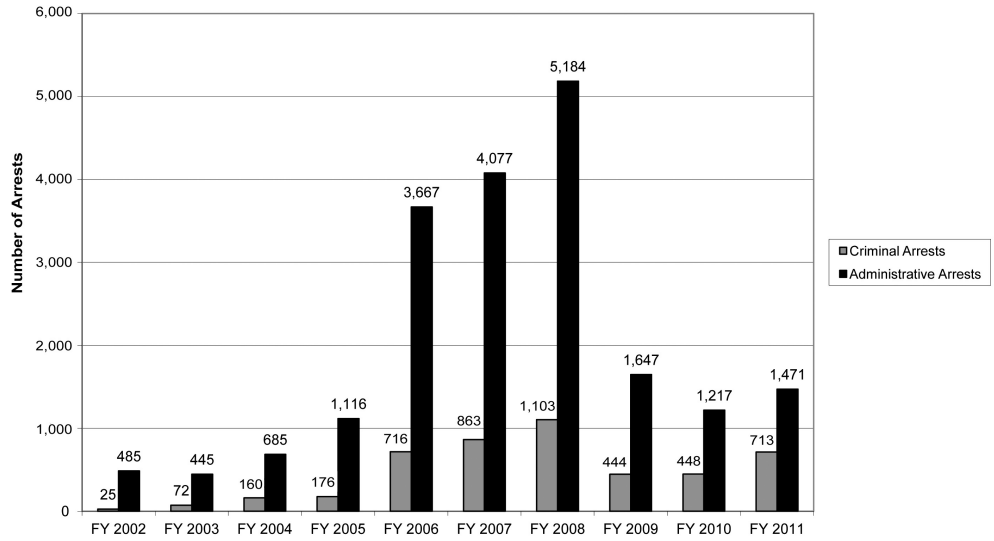
They have also observed that the usage of alien terminology is not benign because it treats "racial minorities poorly on the grounds that they are 'aliens' or 'illegal aliens' [which] allows people to reconcile the view that they 'are not racist' while

*Figure 3*
Average Daily Immigrant Detainee Population, FY 1994 to FY 2011




Source: Data for FY 1994 to FY 2006 are from Alison Siskin, *Immigration-Related Detention: Current Legislative Issues* (Washington, D.C.: Congressional Research Service, 2007), http://www.ilw.com/immigdaily/news/2007,0406-crs.pdf; and data for FY 2007 to FY 2011 are from Alison Siskin, *Immigration-Related Detention: Current Legislative Issues* (Washington, D.C.: Congressional Research Service, 2012), http://www.fas.org/irp/crs/RL32369.pdf.

*Figure 4*
Immigration and Customs Enforcement Worksite Enforcement Arrests, FY 2002 to FY 2011




Source: Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures* (Washington, D.C.: Congressional Research Service, 2012), http://www.fas.org/sgp/crs/homesec/R40002.pdf.

pursuing policies that punish certain groups of persons viewed as racially or otherwise different."[95]

Moreover, it is hard to distinguish between documented and undocumented immigrants, and consequently, "alien" becomes synonymous with "Mexican appearance," irrespective of citizenship.[96] Unfortunately, racial profiling by law enforcement has been sanctioned by the highest courts for over thirty years. The U.S. Supreme Court, in *United States v. Brignoni-Ponce* (1975), held that "Mexican appearance is a relevant factor" that can be taken into consideration in law enforcement decisions regarding whom to stop and interrogate.[97]

The plenary power doctrine is the cornerstone that allows, if not encourages, the disparate and highly questionable treatment of immigrants. According to Ngai, the plenary power doctrine "has allowed Congress to create rules that would be unacceptable if applied to citizens. Second, it has marginalized or erased other issues from consideration in policy formation, such as human rights and the global distribution of wealth."[98] The merging of immigration and criminal law, a trend that escalated in the 1990s and expanded considerably after 9/11, has allowed that "mundane, everyday policing with no direct relevance to national security by nonfederal authorities can now lead to detention and eventually deportation."[99] These policies further disenfranchise immigrant communities and act as a form of legal, political, and economic apartheid.[100] Additionally, deportations devalue assimilation and fracture families.[101]

Two competing views have framed the human rights issues regarding immigration and immigrant rights: the citizenship and national sovereignty perspective, and the human rights perspective.[102] The latter recognizes the fundamental right that all people have to dignity, respect, and equality regardless of citizenship. The citizenship/national sovereignty perspective, meanwhile, holds that rights are conditional upon nation-state recognition. Citizenship comes with rights (for example, to vote and receive a trial by jury) and responsibilities (to pay taxes and follow the law). The citizenship/national sovereignty perspective has held sway in the United States. Consequently, the mere presence of undocumented aliens is evidence of their lawbreaking nature and justification for the dismissal of their human rights.[103] When framed within the post–9/11 anti-terrorism and national security discourse, it is even easier for the public to stomach these human rights abuses.

Profiting from prisoners is also not a new practice. As historian Robert Perkinson has detailed, the United States, particularly the South, embraced a convict leasing system within decades of the formal abolishment of slavery.[104] By exploiting a loophole in the 13th Amendment that abolished slavery "except as punishment for crime," Texas and other Southern states were able to reestablish a slavery-like system using convicts (primarily blacks) as leased labor to high bidders. Today, private contractors are engaged in social control functions that have fundamentally altered the traditional social control apparatus. The general assumption is that privatizing government functions will generate greater efficiency. Although this idea is in and of itself questionable, an even more fundamental question is whether or not efficiency as judged by corporate profits should be the measure by which we evaluate prisons and/or detention centers. It is, after all, in the best interest of corporations to increase occupancy rates and punish people for longer periods of time.

The immigration-industrial complex is enormous, as are its entrenched interests.

Investors are profiting handsomely from the imprisonment of other people, creating a new class of what journalist Joseph Hallinan has called "prison millionaires" that marks "a turning point in American penology. Never before had it been possible in this country to become rich by incarcerating other people. Now, it is commonplace."[105] Unfortunately, the profit generated by detaining immigrants extends beyond individuals, as the system has itself become institutionalized. Although detainees are at most temporary and unwanted "residents," their inclusion in the U.S. Census as residents of the counties in which they are detained contributes thousands, if not millions, of dollars to state and local budget coffers. As journalist Henry Sieff has observed: "four hundred billion dollars in federal funding over the next 10 years will be distributed based on the count, making detainees worth thousands of dollars to cities, counties, and states where they are briefly detained. The government will allocate more than $100 million in additional funds to places where immigrants are detained."[106]

What can be done about detention centers now and in the future? And how can their negative impact on U.S. society be minimized? Professor of Government Michael Sandel has called for a discussion regarding the "reach of markets, and market-oriented thinking into aspects of life traditionally governed by non-market norms."[107] As has been illustrated in this essay, private corporations are managing detention centers and making huge profits from doing so. We must recognize that the market system, in this case as reflected in the construction and operation of private detention centers, are, as legal scholar Bernard Harcourt has stressed, a creation of the state.[108] The corporations that manage these detention centers have a vested interest in expanding them; they secure state funding for managing the lives of detainees, all the while making money for their shareholders.

As sociologist Gideon Sjoberg has articulated, corporations "are in the curious position of having a monetary stake in destabilizing social orders through their support of certain economic and political policies."[109] Indeed, CCA illustrates such a "curious position" in its participation in the creation of the destabilizing, anti-immigrant S.B. 1070 in Arizona through which they stand to profit. Moreover, the standards of transparency and accountability between the public and private sectors are very different. What further complicates the situation is that the moral accountability of corporations is seldom addressed by social scientists or even legal scholars, let alone the broader citizenry.[110] In a larger sense, Sjoberg suggests that we may need to reexamine the legal foundation of corporations if these social entities are to be held morally accountable, especially in light of the rise of the prison-industrial complex and now the immigrant detention industry and, beyond the focus of this essay, the international scope of these organizations. At minimum, Sjoberg urges that corporations be prohibited from profiting from coercion and violence.[111] As Professor Sandel has contended, one of the consequences of the shift to a market society is the corrosive and corruptive effects that markets have on our integrity, for treating human beings as commodities "fails to value human beings in the appropriate way – as persons worthy of dignity and respect, rather than as instruments of gain and objects of use."[112]

The issues addressed in this essay are part of a major transformation under way in the United States (and globally) in which neoliberal ideology dominates nearly all aspects of society. What has resulted in the United States is an increas-

ing wealth and income stratification, high levels of risk for individuals, and harsh and punitive policies for immigrants and the poor.[113] An urgent discussion is needed about the encroachment of market-based policies and principles into our nation's prisons and immigrant detention centers. Unfortunately, the 2010 Supreme Court ruling in *Citizens United v. Federal Election Commission*, in addition to its 2012 ruling against Montana's efforts to limit corporate reach into state and local politics, indicates that the reexamination of the legal structure of corporations is an idea whose time has not yet come, at least not under the present political and legal constructions. However, as Perkinson has documented, penal reform, even in the most unlikely of places (like conservative Texas), has happened in the past.[114] Furthermore, the issue of the need for a broader human rights platform in light of growing corporate power *is* being addressed by the United Nations. In his opening address to the United Nations Forum on Business and Human Rights, human rights scholar John Ruggie pointedly urged that "states must protect; companies must respect; and those who are harmed must have redress."[115]

Demonizing and criminalizing immigrants – by and large, nonthreatening labor migrants – serves no one's interests. It disenfranchises the immigrants and maintains their marginality and exploitation. The billions of dollars spent to militarize the U.S.-Mexico border has not made us safer; arresting and deporting the most vulnerable among us does nothing to address the growing economic inequality that Jacob Hacker and political scientist Paul Pierson have vividly described.[116] It does, however, tarnish the reputation of a nation that purports to stand for "liberty and justice for all."



ENDNOTES

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