

# Private Prisons and the Emerging Immigrant Market in the US:

## Implications for Security Governance

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***Abstract** The purpose of this work is to examine the role and involvement of the two largest private prisons corporations in the US, Corrections Corporations of America (CCA) and The GEO Group, Inc., in the immigration policymaking arena. Recent news reported the role of private prison industry in sponsoring and drafting Arizona's immigration bill, Senate Bill 1070. Following Arizona's SB 1070, 36 state legislatures proposed copycat bills. This is alarming because immigrants and noncitizens continue to grow in detainment and are creating profit for the private prisons that house them as the US continues in and even expands its War on Terror. Parallels of the private prisons' role in sponsoring bills that encouraged harsher, longer sentences during the US's previous War on Drugs that generated them profits for are presented. We find that both CCA and The GEO Group, Inc. spent over 90% of their lobbying dollars between 2003 and 2012 in states that proposed Arizona copycat bills; campaign contributions by these two corporations in states that proposed copycat bills are also illustrated. Implications of heightened securitisation governance and compromises to American democracy are discussed.*

Keywords: private prisons; immigration; immigration policy; securitisation; privatisation; political lobbying; policy making; security studies

### Introduction

The purpose of this work is to examine the role and involvement of the two largest private prisons corporations in the US, Corrections Corporations of America (CCA) and The GEO Group, Inc., in the immigration policymaking arena. This work is organised as follows: first, it begins with data that shows despite declining prison populations, private prisons continue to make incredible amounts of profit. Second, federal data is presented to show the trend of increased detainment of immigrants and noncitizens in the US. This growing phenomenon is due to the securitisation context that has escalated since the attacks of September 11<sup>th</sup>. Third, an interdisciplinary review of the literature examines what is known about private prisons and their role in immigration detention centres. Finally, following the unveiling of how the private prison lobby drafted and sponsored Arizona's infamous Senate Bill (SB) 1070, this study asks if the involvement by the two largest private prison corporations in the US (CCA and The GEO Group, Inc.) through lobbying and campaign contributions was made across all of the 36 states who proposed copycat bills to their state legislatures (see Table 1 below). Data on lobbying and campaign contributions reveals that these two companies were involved in the majority of the states that proposed copycat bills. A new framework is used that combines the private prisons' role in policymaking (this was established during the US's previous War on Drugs) within a securitisation context based on Chebel d'Appollonia.<sup>1</sup> With the collision of restrictive immigration policy and counterterrorism, there is a perpetual "security/insecurity spiral," an endless circle of escalated security measures based on a sense of insecurity.<sup>2</sup> This securitised context facilitates the criminalisation of immigrants and presents a number of challenges to democratic principles in the US.

The link between private prisons and immigration are numerous: 1) it was revealed that 30 of the 36 co-sponsors that wrote the Arizona immigration bill, SB 1070, received political contributions from the private prison industry and that the bill was drafted in their presence; 2) due to the expansion of the Department of Homeland Security (DHS) and increasing numbers of detained immigrants and/or noncitizens, the federal and state governments are contracting with private prisons to house detained immigrants. The role and responsibilities of DHS in the US have especially multiplied after September 11<sup>th</sup> concomitant with the War on Terror (WoT) and other important federal immigration legislation (i.e. mandatory sentencing); 3) the private prison indus-

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try monitors and lobbies federal legislation pertaining to immigration. Due to these fragmented facts, there are a number of items this work seeks to piece together. First, following Arizona's SB 1070, there was a wave of copycat bills across the country. Thirty-six states proposed similar legislation, using Arizona's bill as a model. Since sponsorship came from the private prison lobby to pass SB 1070, this work asks whether *the private prison lobby contributes funds states that proposed copycat legislation?* The study explores the role of the private prison industry in the new emerging and profitable business of detaining immigrants in the US. Lobbying funds and political contributions from CCA and The GEO Group, Inc. are tallied and linked to the 36 states that proposed copycat bills. It is also unclear whether the private prison lobby is involved across political party lines in the US since the political ideology is more typical of conservatives, but the data is needed to confirm whether this is the case or not.

This work includes a review of the interdisciplinary research on what is referred to as the prison industrial complex, or the role of the private prison industry in expanding the scope of incarceration. Some scholars suggest private prisons have created a new market of detaining immigrants to compensate for declining or stalled federal and state prison populations since all immigration facilities are under federal jurisdiction. However, the unique contribution of this work is to present evidence of the direct connection between the private prison corporations' lobbying and campaign funds with states that proposed anti-immigrant legislation, which would promote higher numbers of detainment and higher profits.

The framework used to answer this question is an updated model of Price's<sup>3</sup> cycle within the context of Chebel d'Appollonia's *Frontiers of Fear*.<sup>4</sup> The cycle by Price illustrated how private prisons made formidable profits from pushing "tough on crime" state legislation in the past; this heuristic provided by Price provides a snapshot with how the private prison industry is likely to pursue detention and measures that increase the demand for detention.<sup>5</sup> This causal cycle is included as Figure 1, suggests the private prison industry is capable of duplicating this strategy and pushing anti-immigrant, xenophobic legislation across state legislatures. From a strictly economic perspective, this would be rational behaviour. As a company selling its product, it would behave private prison corporations to not only sell its product, but increase the demand of their product if an opportunity exists. As Price

made clear, in order for private prison corporations to make profits, there must be a demand for incarceration they can supply.<sup>6</sup> Along this line of thought, private prison corporations have a vested interest in encouraging state legislation that facilitates the detainment and incarceration of immigrants and even a lack of federal immigration reform as it results in financial profit for them and their stakeholders.

Price's model on the privatisation of prisons and their influence on "tough on crime" policy is easily adapted for the privatisation of immigrant detention centres and their influence on restrictive, anti-immigrant policy mainly because they are run by the same key players.<sup>7</sup> Chelbel d'Appollonia's work is used because it describes how elites frame immigration as a security issue as a means to justify discriminatory practices against targeted groups.<sup>8</sup> d'Appollonia evaluates transatlantic security policies by comparing outcomes with stated policy objectives before and after 9/11. Ultimately, d'Appollonia suggests we are less safe from the dynamics of failing policies and from a process she calls the 'security, insecurity spiral.'<sup>9</sup> Implications for security governance include the erosion of civil liberties and due process, the perpetuation of the "other" in which immigrants and noncitizens are unable to assimilate and integrate in society; this maintains a sense (or culture) of insecurity and feeds those in the securitisation business who capitalise and make profit from this.

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### General Prison Population in Decline—Noncitizens are the Exception

There is a steady decline of prisoners that began in 2010; however, this has not deterred the private prison industry from making increasing amounts of revenue. According to the BOJ, the percentages of total prisoners (including both federal and state prison populations) held in private prison facilities (as opposed to state-run institutions) have steadily increased; in 2000, this percentage was 6.3%, and in 2012, this figure was 8.6%. This work focuses on the two largest private prison corporations in the US, CCA and The GEO Group, Inc. Annual reports for these companies for 2010 show these companies made over \$2.9 billion in 2010. The contracting process means private prison companies are contracted by the federal or state government to either take over the management of a state-run facility or house inmates in their privately owned and financed facilities; these companies are based on traditional market mechanisms, are for profit, and receive a daily rate

from government agencies that contributes to their bottom line.

The Bureau of Justice's (BOJ) statistics show state correctional facilities experienced a decline in the state prison population in 2009, the first decline since 1977.<sup>10</sup> The year 2009 became the third consecutive year of slower growth in the US prison population and the smallest increase between 2000 and 2010.<sup>11</sup> Twenty-four states reported declines in their prison population during 2009. Despite the federal prison population growing 3.4% this year, 2009 represented growth at its slowest rate in the overall prison population and marked the beginning of a three-year trend of declining state prison populations.<sup>12</sup> In 2010, BOJ statistics show the overall US prison population declined for the first time since 1972.<sup>13</sup> State prison populations continued to decline, and federal prison population grew by only 0.8%.<sup>14</sup> In 2010, 25 states reported declines in their prison populations.<sup>15</sup> This increased to 26 states during 2011. BOJ statistics show 2011 was the second consecutive year that state and federal prison populations both continued to decline; 2012 marked the third consecutive year of this decline. Statistics of violent crimes also show a steady decline.

However, on closer examination of the composition of the prison population, the *citizen population in federal or state corrections is steadily declining, while the detainment of noncitizens has been growing steadily for decades and at a faster pace than the citizen population.* The following section will present the data available on this.

## The Exponential Growth of Immigrant Detention

When examining data from federal entities in the US, there is a clear trend of increased imprisonment of noncitizens.<sup>16</sup> The BOJ noted substantial increases in the number of noncitizens in the federal criminal justice system as early as 1986 and 1989.<sup>17</sup>

In 1996, federal data of the BOJ showed noncitizens (defined by the BOJ as immigrants, refugees/asylees, and non-immigrants) serving federal sentences increased an average of 15% per year, as opposed to the overall federal prison population's average increase of 10%. This became the trend despite the fact that 55% of noncitizens were in the US legally, and despite the fact that noncitizens charged with violent crimes represented 1.4% of the federal court as opposed to 8.5% of citizens.<sup>18</sup> This means there were less violent crimes among noncitizens, yet this group was overrepresented. Most noncitizens were persons admitted to the US for a temporary period, including tourists, stu-

dents, foreigners working in the US, and Mexican and Canadian citizens with border crossing cards.<sup>19</sup> It is well known in the US that the majority of the undocumented in the US cross the border legally and are visa over-stayers.<sup>20</sup> This was documented by the federal agency that precedes the current DHS, the Immigration and Naturalisation Service (INS) as being the case and trend since 1984.

Nearly half of noncitizens convicted by 1996 were of Mexican nationality, with about 15% being from South American countries, and another 14% from Caribbean islands; Hispanics represented 75%.<sup>21</sup> Due to the Sentencing Reform Act of 1984, at least 85% of prison sentences must have been served before being released, and data clearly showed the number of noncitizens serving prison sentences was growing on average faster than the overall federal prison population. The implications of this on prisons are clear; an increasing number of noncitizens were being imprisoned and it seemed likely this would continue to grow at a faster rate for the foreseeable future, indicating a demand and need for facilities where these sentences would be served.

According to a subsequent report on noncitizens in the federal criminal justice system, the incarceration rate of convicted immigration offenders increased from 57% to 91% between 1985 and 2000.<sup>22</sup> Federal sentencing policy changes between 1980 and 1990 made it more likely for immigration offenders to be sentenced to prison and also increased the likely length of that sentence; this changed the average time served in prison rose from 3.6 months to 20.6 months between 1985 and 2000; or, between 1985 and 2000 the number of immigration offenders serving a sentence of imprisonment at yearend increased 9-fold—from 1,593 to 13,676.<sup>23</sup> The demographic descriptions of the defendants charged with immigration offenses were largely Hispanic, which comprised 87%; whites represented 4% while Blacks represented 3%. Over 92% were male. About 78% were between the ages of 21 to 40. Nearly 90% of defendants were from Mexico. The average time served in prison for the original conviction of immigration offenders was 28 months.<sup>24</sup>

A research report created by the Urban Institute's Justice Policy Centre used federal data from the Federal Bureau of Prisons between 1998 and 2010 to examine the size and composition of the federal prison population over time.<sup>25</sup> This report showed immigration offenders represented larger numbers of new admissions in federal prisons throughout this time period. Their data stated that by 2010, immigration of-

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fenders tripled and represented 12% of the total prison population. This is attributed to heightened federal enforcement activity since federal enforcement of immigration offenses is responsible for 19% of the growth of the federal prison population between 1998 and 2010.<sup>26</sup> This runs parallel to an increase of prison inmates as a result of harsher sentencing, including the War on Drugs, which disproportionately affected African American and Latino men in the US. Between 1998 and 2010, increasing numbers of immigration offenders were arrested, convicted, and sentenced to prison; however, their sentences were not long enough to be counted as part of the standing population;<sup>27</sup> this presents challenges with data collection as well as when attempting to find the most accurate figures on immigration offenders and offenses. Federal prisoners increased by 77% between 1998 and 2010, with 2010 including an 'all-time high' record; immigration offenses accounted for the greatest increase, along with drug and weapon offenses.<sup>28</sup> This report also found that immigration offenses represented the leading source of growth, accounting for 56% of new federal prison admissions.<sup>29</sup> The increase in size of the prison population is linked to four trends: the longer expected time served, higher conviction rates, increased law enforcement, and higher prison sentencing rates.<sup>30</sup> Immigration offenders were modestly affected by the first two trends. However, in regards to the third trend, immigration offenders represented the largest group impacted and accounted for about 20% of the growth in the prison population. In fact, 'immigration was the only offense for which enforcement rates increased consistently over time across the 1998-2005 and the 2010 sub-periods.'<sup>31</sup> This is especially relevant to this research as we examine the increase in incarcerating immigrants, the key players involved, and the political context in which this shift is happening.

According to the BOJ, the percentages of prisoners sentenced under federal jurisdiction for an immigration offense were: 11.6% in 2009, 10.6% in 2010, 11.2% in 2011, and 12% in 2012. The BOJ statistics show that 97% of immigration offenses were referred for prosecution as of 2002.<sup>32</sup> According to data from the DHS on Immigration and Customs Enforcement (ICE), detention of "aliens" (about 60% of Mexican nationality) grew 22% in one single year between 2007 and 2008. A record number of detainees was noted in 2008, with a total of 378,582 detainees.<sup>33</sup>

Since 1996, according to the Detention Watch Network (DWN), the

number of people in immigration detention centres has tripled; between 2005 and 2010, the annual number of immigrants detained and the cost of detaining them have doubled.<sup>34</sup> This watchdog organisation reported ICE detained approximately 392,000 immigrants in 2010. At the average cost of \$122 per day, this detainment has cost taxpayers about \$1.77 billion. According to the National Immigration Forum, ICE detention increased from 204,459 detainees in 2001 to 429,247 detainees in 2011.<sup>35</sup> This has translated into substantial profits for private prisons facilities, of which CCA and The GEO Group, Inc. are the two largest for profit prison providers. Private prison corporations provide about half of the beds needed in immigrant detention.

According to the DWN, CCA operates a total of 14 ICE-contracted facilities with a total of 14,556 beds. In 2009, CCA averaged about 6,199 detained immigrants per day. The GEO Group, Inc. has seven facilities, with 7,183 beds and an average daily population of 4,948 during 2009.<sup>36</sup> These two corporate businesses actively lobby ICE, DHS, the Department of Justice, the Bureau of Prisons, the Office of Management and Budget, both houses of Congress, the Department of Labour, the Department of Interior, and the Administration for Families and Children.

The congressional budget for fiscal year 2014 showed that DHS and the White House requested \$1.84 billion for DHS operations. Congress's Intelligence Reform and Terrorism Prevention Act of 2004 mandated the number of detention beds be increased to 8,000 with annual appropriations beginning fiscal year 2006 through 2010. These annual appropriations continued after 2010. Usually, once security measures are in place, these tend to remain. Especially since September 11<sup>th</sup>, 'the prevailing wisdom is still that more [security] is better.'<sup>37</sup> For fiscal year 2014, the appropriations bill requires DHS to 'maintain a level of no less than 34,000 beds.'<sup>38</sup>

This has resulted in the creation of a profitable market for a number of interests, including private prisons and local governments. Local governments have also begun to partake in and petition for ICE contracts. According to the DWN, local governments have treated the increase of detention beds as an opportunity for economic development and consider it a source for both local revenue and jobs.

The private prison industry has made statements that emphasise it is a profit-seeking business, such as: 'It is clear that since September there's a heightened focus on detention... more people are gonna

get caught... So I would say that's positive. The federal business is the best business for us and September 11 is increasing that business,' said Steve Logan of Cornell Corrections in 2001 (Cornell Companies has since then merged with The GEO Group, Inc), or 'The federal market is being driven for the most part as we've been discussing by the need for criminal alien detention beds. That's being consistently funded' by George Zoley of The GEO Group in 2008. There are also comments made by the private prison industry that show they pay careful attention to public policy, as changes to this or new regulations can harm their business:

The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalisation of certain activities that are currently proscribed by our criminal laws.<sup>39</sup>

### Privatised Immigration Detention: What Do We Know?

The following section presents interdisciplinary research that has critically examined the private prison corporations' involvement in immigration detention in the US, which has been a booming business and "cash crop,"<sup>40</sup> especially for CCA and The GEO Group, Inc. The main themes from existing research show consensus on the vulnerability of the immigrant in the US, which makes for easy targeting in political discourse and punishment policy; additionally, the research also agrees that September 11<sup>th</sup> marked a substantial acceleration of the pace at which private prisons grew their immigrant detention business. This is attributed to the fear of the "other," which has continued to expand to include more and more foreigners, whether they are in the US legally or not. The research also agrees that ICE's demand for detention beds has been a "gold rush' as undocumented persons became the fastest growing population behind bars."<sup>41</sup>

The privatisation of immigration detention is part of the neo-liberal movement towards privatisation of state services.<sup>42</sup> The use of immigration detention began with the case of Mariel from Cuba. This story was extensively covered by the media and became politically divisive across the US. Cubans and Cuban immigrants were stigmatised and stereotyped.<sup>43</sup> This marked the beginning of the "prison-industrial complex," which is associated with the signing of the Rockefeller Drug Laws in May 1973 and the first INS detention centre was opened in

Houston, Texas in 1979 by a private prison. The prison-industrial complex refers to the rapid expansion of incarceration in the US. It is within this context that private prison growth expanded to include immigration detention. The immigration detention expansion has occurred ‘within a broader boom’ in American incarceration.<sup>44</sup> This is best illustrated by the fact that ‘The United States has just 5% of the world’s population but 25% of the world’s prisoners. Thanks to the ‘War on Drugs,’ irrational harsh sentencing regimes, and a refusal to consider evidence-based alternatives, the US prison population grew by more than 700% between 1970 and 2009—far outpacing both population growth and crime rates.’<sup>45</sup>

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The prison industrial complex is ‘an enterprise whereby lawmakers and undocumented immigrants are commodified as raw materials for private profit;’<sup>46</sup> it is a ‘lucrative market economy with seemingly unlimited opportunities for an array of financial players: entrepreneurs, lenders, investors, contractors, vendors, and service providers.’<sup>47</sup> This includes private prisons, but also local governments, as well as feeder businesses, which point to possibilities for new lines of research. Feeder industries include food and health providers, airline carriers, and technology companies.

The shift that began the prison industrial complex in the US was the early Reagan administration; detention as a practice of the INS grew during the 1980s.<sup>48</sup> An increasing number of private entities became responsible for carrying out the work of the federal government regarding immigration, including “Motel Kafkas” and private air or shipping companies required to act as jailors for the federal government. The prison-industrial complex operates with the supply-demand principle in reverse: ‘more supply brings increased demand.’<sup>49</sup> With this inverse relationship, anti-immigration campaigns were able to reinforce the social portrayal of noncitizens as the raw materials that will bring large profits to those who detain them.

The perception of a threat presented by the immigrant has already been extensively documented, whether it be a symbolic threat illustrated by the work of Huntington<sup>50</sup> in which he argued the immigrant, specifically the Hispanic immigrant, is responsible for the erosion of the American identity, or whether it be the perception of a real threat, referring to economic factors such as employment, jobs, and the distribution of scarce public resources. Based on this perception, ‘undocumented immigrants serve as convenient scapegoats—viewed as threats

to scarce employment opportunities and blamed for draining public resources and social services.<sup>51</sup> In the name of national security, however, the net of “who is a threat” was made wider to include native-born US citizens. Legislation has facilitated the expansion of this wider net to allow for increased targeting and detention. The Immigration Act of 1990 enabled the INS to detain aliens, and this immigration law was expanded under Presidents Bill Clinton and George W. Bush to include mandatory detention.<sup>52</sup> The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, the Antiterrorism and Effective Death Penalty Act of 1996, and the Patriot Act that was re-authorised in 2006 have all also expanded both the use of immigration detention and the individuals it could detain. Spending on detention and deportation increased by 64% following IIRIRA in 1996.<sup>53</sup> There is also legislation that linked “cimmigration” to social benefits, such as the AEDPA and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),<sup>54</sup> which denied benefits to most legal and illegal immigrants and their children. This act caused ‘immigration, poverty, and criminality [to be] equally feared and regulated.’<sup>55</sup> The ‘hallmark of this increasing criminalisation was the blurring of the distinction between the crime of crossing the border without authorisation and serious offenses such as burglary, drug trafficking, and homicide.’ As a result noncitizens accounted for two-thirds of the growth in the federal prisons’ population from 1985 to 2000.<sup>56</sup> The undocumented are not the only target of the criminalisation of immigration; the targeted include refugees, asylum seekers, legal residents with green cards, and US citizens.<sup>57</sup> On-going constitutional violations exist in the form of failing to provide due process, habeas corpus, and the right to legal counsel.

Bosworth and Kaufman point out noncitizens are specific targets for immigration and imprisonment in the US and the ways in which ‘border control has become imbricated with prison.’<sup>58</sup> One of the main challenges is the “foreignness,” which leads to marginalisation and mistreatment of noncitizens; this is similar to the experience of African American and Latino men during the US’s previous War on Drugs. The noncitizen has become the next and newest enemy,<sup>59</sup> which raises concerns about due process, the conditions of incarceration, and the purpose of penal institution in penal policy.

The noncitizen includes an array of people, ‘Mexicans constitute one of the largest groups of foreign nationals in both US immigration

facilities and prisons.<sup>60</sup> However, the noncitizen also includes ‘new arrivals and long-term residents to economic migrants and terror suspects.’<sup>61</sup> Fear of terrorists became another reason the “other” expanded. Now, those of Middle Eastern descent are also part of this foreign “other” and represent a threat of insecurity to the American people. Currently, a heightened concern of the American people is the Islamic State; national survey research shows fear is high.<sup>62</sup>

By expanding and widening the net to include undocumented immigrants and other non-residents, the prison industrial complex continues the ‘phenomenon of over-incarceration.’<sup>63</sup> Hyper incarceration is not a new phenomenon in the US, and the use of Black and Brown men as scapegoats has been a longstanding part of the American narrative; those in power have frequently used this political discourse as a political opportunity. The US has disproportionately punished Black and Latino men, and by-products of this punishment are severe deficiencies in education, employment, and socioeconomic status across Black and ethnic families. Another deleterious impact of mass incarceration is felony disenfranchisement, which shuts felons out of the electoral participation process.

The criminalisation of immigration, or “cimmigration”<sup>64</sup> results in border control, expansion of state power, and challenges of constitutional freedoms, due to the war on terror, globalisation, and a continued pursuit of social control.<sup>65</sup> There has been a noticeable shift from the War on Drugs with young Black men to the current and on-going WoT, with the foreigner left to the public’s imagination.<sup>66</sup> The “illegal persona” is socially constructed, created, and reinforced, then targeted by restrictive immigration policies. Immigration policies have always targeted certain groups.<sup>67</sup> Numerous scholars describe the criminalisation of immigration as especially accelerating after 9/11. September 11<sup>th</sup> increased the vulnerability of immigration detainees because ‘there is neither automatic judicial oversight of immigration detention centres, nor independent review of ICE decisions to detain arriving asylum seekers.’<sup>68</sup>

Subsequent to September 11<sup>th</sup>, DHS began with a budget of \$9 billion in 2002; this grew to \$59 billion in the 2013 fiscal year. The budget for border control given to the US Customs and Border Protection (CBP) is meant to keep terrorists and their weapons outside the US; yet, the ‘CBP has not identified a single terrorist.’<sup>69</sup> However, these budgets will continue to grow because, despite its fervent chase of national securi-

ty, America will continue to feel vulnerable and unsafe. This justifies the number of tax dollars spent in an attempt to remedy this. In his national address on immigration reform on 20 November 2014, President Obama spoke about three pieces included in his executive order; the first item referred to continuing to make ‘progress at the border with additional resources for our law enforcement personnel so that they can stem the flow of illegal crossings, and speed the return of those who do cross over.’ This shows additional resources for border security will continue to flow to the US-Mexican border.

However, it is important to note this phenomenon of insecurity as the basis for increased state spending and outsourcing with private businesses (which in and of itself causes a host of problems) is not exclusive to the US, but exists on both sides of the Atlantic due to a globalised economy. Crimmigration has contributed to a very profitable “immigration industrial complex.” Scholars have pointed out the expansion of immigration enforcement is situated within the context of global economic changes, the political economy of punishment, and immigration policies subsequent to 9/11 pay increased attention to risk and insecurity.<sup>70</sup> Now, the new meaning of “illegality” includes transnational, global capital. The growing immigration industrial complex ‘feeds on the fears and xenophobia of people in the United States while it builds the bases for long term in-miseration of our neighbours to the south.’<sup>71</sup> Therefore, existing research shows crimmigration and privatised processes of immigration and security are transnational, present both in the US and the UK, initiated by Reagan and Thatcher, and then continued by George W. Bush and Tony Blair.

Bacon provided a study looking at the evolution of immigration detention in the UK and the role of the private prison industry.<sup>72</sup> This work is especially relevant because in the UK, just as in the US, ‘the companies with a large stake in private prisons are the very same as those who have a large stake in privately run immigration detention centres.’<sup>73</sup> Bacon identified four items that are very relevant to this particular study; the immigration detention centres and their growth, the increase of detainment despite principles and rules meant to limit its use, the secrecy and lack of accountability inherent to immigration detention, and the move towards increasingly harsh detention policy and practice.<sup>74</sup> This study illustrated that the market for private correctional services is a growing international one, with global providers competing for contracts on a global scale.<sup>75</sup> As is the case in the US,

the political environment is a component used to explain the growth of the detention estate in Britain. Bacon found the political principles of free enterprise and limited government are main determinants of public-private partnerships; in the US, Reagan's presidency and policy to privatise services that had been provided by the federal government is evidence of this.<sup>76</sup>

The increase of detainment despite principles and rules meant to limit its use is also present in America. In spite of the priority to detain only criminals who pose a threat to public safety, in practice, implementation deviates from this principle. For example, 'in 2007, 51% of those arrested had a deportation order but no criminal record, and 40% were termed "ordinary status violators" who did not fit any of the programme's priority categories.'<sup>77</sup> This may be interpreted as a pacification strategy of political actors to appease the American public by showing quantitative indicators of performance. What the numerical indicators fail to capture, however, is whether crimes are serious, violent crimes. The result of securitised immigration policies that indicate "criminal records" are a determinant of detainment and/or deportation is that these have targeted window washers instead of criminals, smugglers, and terrorists.<sup>78</sup>

In the US and the UK, 'commercial interests have come to play a role in the development and delivery of penal policy that would have been unthinkable twenty years ago.'<sup>79</sup> Both in the US and the UK there is also profit motive for local governments to seek immigration detention contracts because these are "recession proof."<sup>80</sup> However, because of traditional market mechanisms, a number of dysfunctional behaviours emerge as ways to save and increase profit.<sup>81</sup> This includes longer shifts and lower pay, minimising the number of personnel by relying on more electronic and technological resources, reducing costs of food provided to detainees, reducing costs by foregoing supplies detainees need, reducing healthcare costs by altering dosages, and maintaining high secrecy to keep adverse reactions of the market from interfering if problems are reported to the public.<sup>82</sup> Sthanki also discussed how the structure of a privatised immigration detention system is systematically designed to allow and facilitate abuse.<sup>83</sup>

Additional concerns are that private contractors are exempt from complying with Freedom of Information Act (FOIA) requests. Five separate iterations of the Private Prison Information Act have been introduced in Congress since 2005, and each bill has been defeated by

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vigorous lobbying efforts on behalf of the private corrections industry. This bill would allow for more data, transparency, and oversight of the private prisons' managerial operations, but is unlikely such a bill will make it through Congress. In addition, private prisons are not accountable to the public; they are responsible to their shareholders. Profit motive may lead to cutting corners. According to the Bureau of Labour Statistics, private correctional officer makes \$28,790 as opposed to its \$38,380 government counterpart. There is higher turnover in private prisons than in state-run facilities.

Bacon also described the role of the iron triangle and how private prisons usually become involved in the corrections policy-making arena.<sup>84</sup> This is possible through subcommittees of the legislature, the bureaus of the executive branch, and the industries of the private sector. Additionally, Stolz noted that private prisons are able to make major changes through the collaboration of these three entities.<sup>85</sup> The iron triangle operates 'well below public awareness; [its] key participants include private corporations eager to profit from incarceration, government agencies anxious to secure their existence, and professional organisations.'<sup>86</sup>

Bacon concluded that '(a)lthough the increased growth of private interest in immigration detention is dependent on detention policies, it is also apparent that detention policies have become increasingly dependent on private interest.'<sup>87</sup> As a 'complementary explanation' for the detention regime and the increase of harsher practices and policies, Bacon suggests this can be attributed to the involvement of private contractors, whose main concerns are maintaining contracts and keeping facilities full.<sup>88</sup>

The public-private dynamic becomes more convoluted when inter-governmental relations are factored in; in Arizona, for example, the federal judicial intervention that followed this bill was not on civil rights or racial profiling, but on federalism. Challenges to the bill were strictly on disagreement on states' rights to enact policy that impacts immigration, a domain that pertains to the federal government. In addition, the support for decentralisation and greater administrative control at the state and local level (which promote the political ideology of a national government with minimal interventions) has also manifested in a number of ways. And, '(d)espite – or perhaps because of – the absence of federal immigration legislation, some states have sought to enact their own laws and policies on what has traditionally

been a federal matter.”<sup>89</sup> National policy has permeated local practice, enlarging the reach of the federal government while shifting powers and responsibilities to the states and local government units. This is possible because ‘those in detention have few public supporters.’<sup>90</sup> There is evidence to confirm this in the US with a record number of immigration bills passed by state legislatures in 2011.<sup>91</sup> State lawmakers filed more than 600 immigration bills in January 2011 alone; the majority of bills were restrictive and aimed to limit the rights of immigrants.<sup>92</sup> Even if not passed, enacted, and implemented, ‘the bills that do not become law are not harmless—they infect the political climate, and encourage anti-immigrant and anti-Latino sentiment that can often have dangerous consequences.’<sup>93</sup>

An additional area of research relevant to this work includes the “New Penology.” Scholars have used the new penology as a means to explain why the prison industrial complex has expanded to include undocumented immigrants and other non-residents.<sup>94</sup> According to this theory, the prison industrial complex has expanded in an attempt to strictly create a higher demand and more “consumers.”<sup>95</sup> Within the new penology, the public-private partnerships between ICE and the private prison industry establish that immigrants are a dangerous and risky societal group. The new penology consists of a political climate that allows for the increased detention of more people.<sup>96</sup>

Scholars argue that the ‘privatisation of detention leads to for-profit companies seeking to maximise their profit and grow the system of incarceration.’<sup>97</sup> As evidence, some cite the recent drop in the state prison population; since private prisons profit the most from state contracts, if state populations decrease, then so do profits. A new source of revenue can be gained by private prisons through the criminalising of immigration and the detention of immigrants.

However, Ackerman, Sacks, and Furman explain how the criminalisation of immigration is mainly to keep the ‘political status quo through scapegoating undocumented immigrants for social upheaval, insecurity, terrorism, economic downturns, and ultimately crime.’<sup>98</sup> The new penology is not responsible for the criminalisation of immigration; crimmigration, they explain, is mainly used a pacification strategy to placate citizens. Nevins reinforced this when he explained political discourse positions the “problem” and then justifies its solution.<sup>99</sup> This discourse “others” the undocumented immigrant and reinforces the undocumented immigrant as the problem and the danger

when in reality, the undocumented immigrant may be the 'least powerful' person in society.<sup>100</sup>

Interdisciplinary lines of research on the merging of immigration and incarceration reinforce that, in the name of national security, a number of measures have passed in attempts of controlling security threats; the problem is that this perpetuates a sense of insecurity and vulnerability. Accordingly, the 'partnership between government entities and the private prisons industry has set the stage for a prison industrial complex of great complexity and enormity.'<sup>101</sup> In the name of national security, law enforcement tactics are the "necessary evil." Now, the main victim of the US's flawed immigration system is the American public. The public needs protection from immigrants, from those who only come to drain social welfare programmes and refuse to assimilate into the white middle class, to those who are religiously and ethnically constituted group of Muslim and Arab men.<sup>102</sup>

### Theoretical Framework

It has been established that private prison corporations have been involved in policymaking that impacts the rates of incarceration. Price illustrated a causal and perpetual cycle (see Figure 1) that begins with the private prisons' monetary contributions to the American Legislative Exchange Council (ALEC). These donations allow the companies to vote-in members of a task force with state legislators. For example, CCA was previously part of the Criminal Justice Task Force that wrote 'model legislation,' like 'truth-in-sentencing.' This model legislation allowed state lawmakers to take these laws to their respective states and work on getting them passed into law. Once these laws were passed, inmates were required to serve longer sentences, the prison population expanded, and the "solution" was to contract with privately run prisons, like CCA who was an integral part of writing the harsher legislation in the first place. The private prison corporations stepped in to supply the market's demand, the same private prisons that initially provided financial contributions to the state legislatures and inspired the model legislation. Ultimately, Price's *Merchandising Prisoners* demonstrates that the lobbying by private prisons translated into substantial profits for them since this money inspired harsher prison sentences and exponentially grew the prison population in the US, leading to a number of social, cultural, and economic problems brought by a culture of mass incarceration.<sup>103</sup>

This process is very similar to the current situation of immigrant detention. Private prison corporations are voting members of ALEC and are now on the “Public Safety and Elections Task Force” that writes model legislation, like Arizona’s SB 1070. In the case of Arizona, it was Russell Pearce who then took the bill drafted by the ALEC task force to Arizona and worked on getting it passed and signed by Governor Jan Brewer. This bill increases the number of immigrants detained and increases the duration of their detainment, which means DHS must turn to contracting with private prisons or to outsourcing with state or local government to be able to keep up with the number of beds needed.

The framework, however, exists within the context depicted by d’Appollonia’s *Frontiers of Fear*.<sup>104</sup> The reason *why* the causal cycle is able to function is because it is situated within a larger context of securitisation of immigration. Figure 2 includes an updated model in which the causal cycle moves within a context of securitisation and a political climate of fear. Now, the task force is able to write “model legislation” because of a perceived threat to national identity, social cohesion, and internal security. As d’Appollonia explains, this insecurity has led to the securitisation of immigration policies, which is illustrated by Arizona’s SB 1070 and the wave of subsequent copycat bills. The ‘security/insecurity spiral’ she describes consists of the perception of or an existential security threat, the ‘highest threat to homeland security [being] immigrants, Muslim foreigners, and Muslim nationals.’<sup>105</sup> The link between immigration and terrorism has led to immigration policies that are counterterrorist policies and vice versa. However, fear is the impetus for more security policies, which in turn generates more fear, and again leads to more security policies. The increasing number of security measures has a negative impact on the public’s trust in the state’s capacity to effectively deal with these security threats. Despite the political distrust in the efficacy of these security measures, a demand for harsher and tougher measures is the result, and so the cycle is repeated.

The wave of copycat bills across states is evidence of security escalation and a demand for harsher and tougher security measures. The burden of security measures is disproportionately allocated on immigrants and nationals of foreign origin. Ultimately, as a result of the dynamics of policy failures, escalated policies fail to meet their stated objectives while simultaneously consuming a substantial amount of the state’s scarce resources. Not to mention, the security/insecurity

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spiral has also resulted in substantial bureaucratic restructuring and courts overwhelmed by cases challenging immigration administrative decisions.<sup>106</sup> The end result is less democracy, more distrust and insecurity, and an erosion of civil liberties and human rights. Within this securitisation context, it is evidently not difficult for private prison corporations to work with state policymakers to pass policies that lead to the increased detainment of anyone perceived to be a security threat, actual or symbolic.

## Deployed Data

Data was compiled from two non-profit organisations that collect and report data on private corporations' political contributions, including lobbying and campaign contributions. These organisations serve to bring transparency by collecting and making these records public. These organisations are called Follow the Money (followthemoney.org) and Open Secrets (opensecrets.org). Their websites allow for data extraction, so this study used lobbying by state as well as political campaign contributions for CCA and The GEO Group, Inc. Lobbying dollars are provided for years 2003 to 2012, and campaign contributions are provided from years 2007 to 2012; please see Tables 1 through 4.

From this, a small dataset was compiled including the 36 states that included a number of relevant variables that would possibly be able to explain states proposing copycat bills. For example, included in the study are the total size of the population, the racial and ethnic composition of the population, the population with a college education, the median household income, the state's unemployment rate, the number of Republicans and Democrats within the two chambers of the state legislature, as well as the political party of the governor. Ultimately, what the findings show is these socio-demographic variables alone do not provide a 'common denominator' or a possible explanation of the impetus of the wave of copycat bills.

## Findings

### *Political Lobbying by CCA and The Geo Group, Inc.*

The data shows the lobbying dollars for CCA and The GEO Group Inc. were primarily sent to states with proposed copycat bills. For CCA, of the \$2,234,754 total spent on lobbying, 90.5% of this was sent to states with copycat bills (see Table 1), and shows that only \$210,760 went to

the 14 states without copycat bills. The findings are similar for The GEO Group, Inc. Of the \$3,243,561 total lobbying dollars, 93% went to states with copycat bills. This leaves only \$241,300 spent on states without copycat bills. Lobbying by CCA was present in 28 of the 36 states with copycat bills and was present in 8 states that did not propose copycat bills in their state legislatures. The GEO Group Inc. lobbied in 21 of the 36 states that proposed copycat bills. The data also shows both CCA and The GEO Group, Inc. lobbied three states that did not propose copycat bills, and further exploration into this is needed; this includes the states of Alaska, Idaho, and New Mexico. On a cursory glance, there has been a fervent push in Alaska and active lobbying by private prisons to help form partnerships that allow for more privatisation, with the largest number of lobbying money received by state lawmakers (as opposed to governor or political party).

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**Table 2 CCA Lobbying 2003-2012**

|                                      | Lobbying \$<br>Total \$2,234,754 |
|--------------------------------------|----------------------------------|
| States with SB 1070 copycat bills    | \$2,023,994<br>90.5%             |
| States without SB 1070 copycat bills | \$210,760<br>.09%                |

Source: Follow the Money, followthemoney.org

**Table 3 The GEO Group, Inc. Lobbying 2003-2012**

|                                      | Lobbying \$<br>Total \$3,243,561 |
|--------------------------------------|----------------------------------|
| States with SB 1070 copycat bills    | \$3,002,261<br>93%               |
| States without SB 1070 copycat bills | \$241,300<br>.07%                |

Source: Follow the Money, followthemoney.org

*Campaign Contributions for CCA and The GEO Group, Inc.*

The campaign contributions from CCA and The GEO Group, Inc. show a number of interesting findings. For example, contributions are made across party lines to both Republican and Democrat candidates. What campaign contributions show is that both CCA and The GEO Group,

Inc. contribute across party lines to campaigns that ultimately win; this suggests the companies are attentive to the political campaigns at different levels, across different states, and are especially aware of the political environments of each campaign.

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**Table 4 CCA Campaign Contributions 2007-2012**

|  | 2007     | 2008      | 2009      | 2010      | 2011      | 2012      |
|--|----------|-----------|-----------|-----------|-----------|-----------|
| Total \$ spent \$646,590               | \$19,450 | \$103,200 | \$158,070 | \$148,350 | \$101,750 | \$115,520 |
| Total number of contributions          | 31       | 95        | 145       | 167       | 95        | 98        |
| Number of contributions to Republicans | 14       | 46        | 101       | 118       | 63        | 55        |
| Number of contributions to Democrats   | 17       | 47        | 44        | 49        | 32        | 43        |
| Campaigns won                          | 22       | 66        | 89        | 128       | 70        | 69        |
| Campaigns lost                         | 2        | 8         | 39        | 23        | 7         | 17        |

Source: Follow The Money, followthemoney.org

**Table 5 The GEO Group, Inc. Campaign Contributions 2007-2012**

|  | 2007    | 2008     | 2009      | 2010      | 2011     | 2012      |
|--|---------|----------|-----------|-----------|----------|-----------|
| Total spent \$793161.45                | \$8,150 | \$42,150 | \$132,682 | \$183,090 | \$26,810 | \$243,521 |
| Total number of contributions          | 9       | 36       | 63        | 48        | 37       | 98        |
| Number of contributions to Republicans | 3       | 24       | 42        | 32        | 28       | 73        |
| Number of contributions to Democrats   | 6       | 9        | 20        | 16        | 9        | 24        |
| Campaigns won                          | 6       | 18       | 42        | 34        | 31       | 82        |
| Campaigns lost                         | 2       | 0        | 9         | 6         | 2        | 8         |

Source: Followthemoney.org

Further research is needed to examine other legislation that disproportionately affects immigrants and noncitizens across the US, such as voter ID laws that also spread across the country and was repeatedly used in political rhetoric as a means of protecting and providing security from threats of the “other” to determine if this is a lurking variable within the existing data.

## Conclusion

In summation, this work serves to further the dialogue on the role of for-profit prison corporations in immigration detention and security measures. While the privatisation of prisons has been exhaustively studied from a variety of fields and disciplines, little work has been done on how the same private prisons are now operating as immigration detention centres, housing convicted criminals in the same facilities as immigrants and noncitizens. A number of laws and legislation play a role in this by criminalising immigration, requiring mandatory detention, and expanding the reach and control of government entities, such as DHS, CBP (etc). This research emphasises that not just the undocumented are at risk of detainment and deportation; heightened securitisation has widened the net of who is an “other” and who is perceived as a risk, whether it be symbolic or real. This has especially shifted and expanded following the attacks of September 11<sup>th</sup>. This work shows a direct link between CCA and The GEO Group, Inc., on their involvement through lobbying and campaign contributions to states that proposed immigration copycat bills after Arizona passed its controversial SB 1070. The work presents evidence that a majority of lobbying dollars and efforts were sent to states that proposed copycat bills in their state legislatures. This research also identifies potential new lines of research that merit further, critical examination.

To conclude, the implications of heightened securitisation provided by d’Appollonia are worth discussing. d’Appollonia’s work on securitisation on both sides of the Atlantic illustrated it has resulted in policy failures yet continue to be escalated and consume limited public resources. However, because of fear, steps that undermine civil liberties and human rights have been made that compromise democracy. Profit is coming in from the new, booming market of immigrant detention, but this is at a high social cost, and in the end, we are not safer, simply more exposed.

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### Figure 1: Model presented by Price (2006)

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Note: This model was used by Price (2006) from Biewen (2002).

### Figure 2: Updated model by Saldivar and Price (2014)

Graphics disabled

**Table 1 Copycat bills** Copycat bills as of January 2012

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| Bills introduced in 2010 legislative session, ultimately rejected   | Bills introduced in 2011 legislative session, ultimately rejected  | Bills Passed  | Bills currently pending in state legislatures             |
|---|--|---|---|
| Arkansas<br>Delaware<br>Florida*<br>Illinois*<br>Kansas*<br>Louisiana*<br>Maryland<br>Michigan*<br>Minnesota<br>Nebraska*<br>Nevada*<br>North Carolina*<br>Pennsylvania*<br>Rhode Island<br>South Carolina*<br><br>* Reintroduced in 2011 legislative session | California<br>Colorado<br>Florida<br>Iowa<br>Kansas<br>Kentucky<br>Louisiana<br>Maine<br>Mississippi<br>Nebraska<br>Nevada<br>New Hampshire<br>North Carolina<br>Oklahoma<br>South Dakota<br>Tennessee<br>Texas<br>Virginia<br>Washington<br>Wyoming | Arizona*<br>Alabama<br>Georgia*<br>Indiana*<br>Utah*<br>South Carolina*<br><br>*Challenged and blocked by court | Illinois<br>Michigan<br>Ohio<br>Pennsylvania<br>Wisconsin |

Source: National Council of La Raza, January 2012

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