

A CRISIS OF MASS DETENTION

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ASSESSING
IMMIGRATION
POLICY IN THE
UNITED STATES

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TABLE OF CONTENTS

A CRISIS OF MASS DETENTION: ASSESSING IMMIGRATION POLICY IN THE UNITED STATES

The Lead Fund Author's Program	3
Abstract	4
Introduction.....	5
Immigration Industrial Complex	6
Methodology.....	7
The Rise of Neoliberalism.....	8
Legal Framework.....	10
Immigration Enforcement	14
Anti-Immigrant Rhetoric	15
Immigration Industrial Complex in the Trump Era	18
Conclusion	21
Policy Change Recommendations	22
Bibliography.....	23

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Abstract

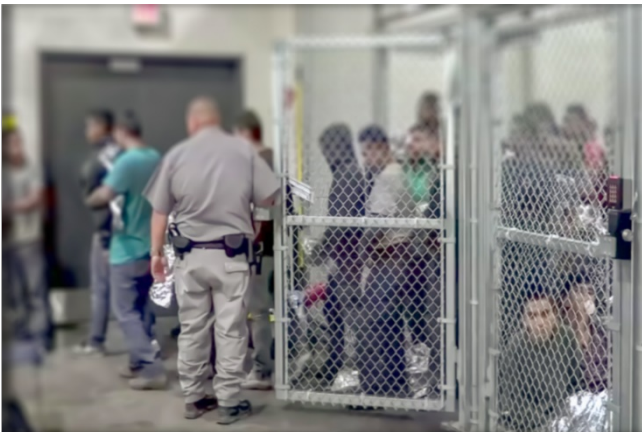
Over the last four decades, immigration policy in the United States has created a crisis of mass detention. Despite growing concerns over the punitive effects of detention, Congress has failed to reform our current immigration system. In this paper, I seek to answer what factors have shaped our current immigration policy in creating mass detention. I based my theory on the “immigration industrial complex,” which highlights a relationship between public and private sectors that work together to criminalize undocumented migration, employ immigration law enforcement, and promote “anti-illegal” rhetoric.¹ I hypothesized that if the United States maintains the existence of the immigration industrial complex, then immigration policy will lack reform, and mass detention will persist. I provided a legal framework of immigration policy over the past four decades and then looked into the Department of Homeland Security’s increased enforcement in connection with the private prison industry’s incentives to drive up the rate of detained migrants. I also relied on historical events to explain the current anti-immigrant sentiment that shaped immigration policy under Donald Trump and its effects for future administrations. I found the immigration industrial complex evolved to establish our current immigration system whereby immigrants are treated as profits and lack civil and human rights protections.

CAROLINA C. GOMEZ
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¹ Golash-Boza, *The Immigration Industrial Complex*, 296.

Introduction

Since the 1980s, immigration policy in the United States has shifted to expand the use of detention to control unauthorized entry.² Although the detention system is legally classified as a civil procedure to ensure court appearances and effective removal, it serves a punitive purpose whereby a substantial percentage of migrants without criminal convictions are in custody, and only a small percentage have criminal records based on violent conduct or pose a national security threat.³ Legislation passed over the last four decades has blurred the line between criminal enforcement and immigration control, increasing the population in detention centers.⁴ The United States went from holding a modest 3,000 immigrants a day in the late 1970s to around 50,000 in 2020.⁵ As detention facilities become overcrowded, migrants face inadequate conditions of confinement and due process violations. A report by the Secretary of Homeland Security in 2009 acknowledged that most detainees are held systematically and unnecessarily under circumstances inappropriate for immigration detention's noncriminal purposes.⁶



Even though the rate of unauthorized entry has declined over the past decade and most undocumented immigrants are now long-term residents,⁷ any attempts to reform immigration policy has faced gridlock from a partisan government. The presence of the detention system became a more prominent threat for immigrants' rights under Donald Trump's presidency during which the punitive effects of detention raised further

concerns amid a family separation crisis. Therefore, in response to a flawed immigration system in the United States, this essay explores what factors have shaped our current immigration policy in creating mass detention.

The United States went from holding a modest 3,000 immigrants a day in the late 1970s to around 50,000 in 2020

² Kassie, "How the United States created the largest immigrant detention," 2019.

³ American Bar Association, "Civil Immigration Definition Standards," 2012.

⁴ Kalhan, "Rethinking Immigration Detention," 42.

⁵ Kassie, "How the United States created the largest immigrant detention," 2019.

⁶ Kalhan, "Rethinking Immigration Detention," 42.

⁷ Passel, Jeffrey, and D'Vera Cohn, "U.S. Unauthorized Immigrant Total Dips," 2018.

Immigration Industrial Complex

Annual apprehensions have increased every year since the 1980s when immigration policy became centered on increasing border security and providing a greater rationale for detaining migrants out of fear of terrorism. With the rise of neoliberal policies, private prison companies could capitalize on this new era of immigration policy that punished migration through detention. Over time, anti-immigrant sentiment has grown to justify its practice and overlook a system that treats immigrants as commodities. Our immigration system has become an organization in which industry and law have aligned to criminalize migration and carry out profitable incentives, all with a disregard for the human and civil protection of immigrants. I use the “immigration industrial complex” to explain this concept and assess the polarization of immigration policy today. Therefore, I hypothesize that if the United States maintains the existence of the immigration industrial complex, then immigration policy will lack reform, and mass detention will persist.

Deepa Fernandes defined the term “immigration industrial complex” in her book *Targeted* (2007) to argue that since the September 11, 2001, terrorist attacks, the United States has been implementing systemic changes to outdated immigration policy by increasing the use of the private sector in government functions to profit from the war on terror.⁸ Because there’s a monetary incentive not to disrupt the current immigration system, Congress continues to enforce immigration policies that have failed to achieve their stated goals of stopping unauthorized entry while violating the human rights of migrants in the process.⁹ The immigration industrial complex is a system built from the military- and prison-industrial complexes, where the intersection between the government and private sectors criminalize undocumented migration, employ immigration law enforcement, and promote “anti-illegal” rhetoric.¹⁰ In effect, the features behind the immigration industrial complex have contributed to the punitive practice of mass detention.



A drawing by a child held at Don Hutto Center run by CCA.

A drawing by a child held at Don Hutto Center run by CCA.

⁸ Seven Stories Press, *Targeted*, <https://www.sevenstories.com/books/3542-targeted>.

⁹ Golash-Boza, *The Immigration Industrial Complex*, 296.

¹⁰ *Ibid.*



Methodology

In this essay, I provide an analysis of how the military-industrial complex plays out in immigration policy as the government increases its funding to the Department of Homeland Security to apprehend and detain more immigrants. I argue that in combination with the military-industrial complex, the prison-industrial complex contributes to the mass incarceration of migrants by influencing policy that serves their interests and criminalizes migrants in the process. Thus, this essay begins by giving a historical analysis of the role of neoliberalism in creating the emergence of a military-and prison-industrial complex to understand when and how these systems worked together to create an immigration industrial complex. Then, I demonstrate the evolution of the immigration industrial complex in creating mass detention over the past four decades by connecting it to a legal framework of stringent immigration policies from the 1980s to 2000s and find that these laws have reduced the scope of due process for detainees. Next, I analyze the growing influence of the Department of Homeland Security and ICE in conjunction with the private prison industry to demonstrate how they have worked together to treat migrants as commodities. Finally, I discuss a key anti-illegal rhetoric."¹¹ I used Arizona' S.B. 1070 as an example of rising anti-immigrant sentiment, paving the path of Trump's presidency and the current partisan divide surrounding immigration policy.

In testing my hypothesis, I relied on historical events by using newspaper and digital articles along with published government documents. This essay also drew from other scholarly research, including law review articles, to explore what factors have shaped our current immigration policy that relies on the mass incarceration of immigrants. Additionally, I found quantitative data, which I obtained from the Pew Research Center, to discuss immigration trends and changing immigration views.

¹¹ Golash-Boza, "The Immigration Industrial Complex," 296.

The Rise of Neoliberalism, the Prison and Military-Industrial Complex

A military-and prison-industrial complex emerged as an impenetrable system in U.S. politics due to the rise of neoliberal policies in the 1980s that established a partnership between public and private sectors. Neoliberalism is defined as an approach to governing in which governments are met with distrust and deemed incapable of generating economic growth or social welfare.¹² In the United States, Ronald Reagan popularized neoliberalism throughout his presidential campaigns¹³ at the time of a political climate filled with skepticism towards the government and a failing economy. As a result, Reagan's neoliberal policies for less government involvement and more reliance on private companies as well as a free market to generate economic and social prosperity, were appealing to Americans. Soon after Reagan was elected president in 1980, a market logic of efficiency, competitiveness, and profitability moved the United States to outsource government functions to the private sector.¹⁴



America's defense became almost entirely privatized in the wake of an arms race, and domestically, defense spending after the September 11, 2001, terrorist attacks contributed to an increase of private contracts, totaling \$14 billion a year by 2005.

However, the military-and prison-industrial complexes reveal neoliberalism policy as an attempt to uphold capitalist power and conditions for profitability. In 1961, President Dwight Eisenhower warned Americans of the potential threat of an arms industry where corporate elites and politicians would work together to serve capital interests, a concept he referred to as the "military-industrial complex."¹⁵ Eisenhower's warnings were warranted. America's defense became almost entirely privatized in the wake of an arms race, and domestically, defense spending after the September 11, 2001, terrorist attacks contributed to an increase of private contracts, totaling \$14 billion a year by 2005.¹⁶

While the buildup of the military-industrial complex was based on outsider threats, a fear of crime developing inside the United States led to the buildup of the prison-industrial complex.¹⁷

¹² Bockman, "Neoliberalism," 14.

¹³ Reagan Foundation, "Ronald Reagan's Remarks."


¹⁴ Bockman, "Neoliberalism," 14.

¹⁵ Golash-Boza, "The Immigration Industrial Complex," 301.

¹⁶ Lisa, "50 insights into the US military-industrial complex," 2020.

¹⁷ Golash-Boza, "The Immigration Industrial Complex," 301.

By 1983, neoliberalism formalized to push the federal government to contract with the Corrections Corporation of America (CCA) (which is now known as CoreCivic) to house prisoners in their privately-owned facilities. At the time, CCA promoted its efficiency to perform government functions by praising its facility design and electronic surveillance for being able to operate larger prisons with less staff than the public sector.¹⁸ In their capitalistic nature, for-profit prisons looked for an opportunity to make money and found it through the mass incarceration of people of color at the height of the War on Drugs. In 1998, Angela Davis defined this idea as the “prison-industrial complex,” in which “the political economy of prisons relies on racialized assumptions of criminality — such as images of black welfare mothers reproducing criminal children — and on racist practices in arrest, conviction, and sentencing patterns.”¹⁹



The 1986 Anti-Drug Abuse Act facilitated the demand for private prisons as an increasingly disproportionate number of African Americans were arrested for drug offenses.²⁰ Despite evidence that demonstrates mass incarceration does not create a safer environment, these types of tough-on-crime laws continue to exist to fill up prison beds.²¹ It is the loophole private prison companies found to sustain their business and have used to their advantage by lobbying and donating money to politicians who will uphold their political interests.

The biggest private prison operators, CCA and GEO Group, do not exist to serve prisoners effectively and humanely; they exist to generate a high market value on Wall Street. In 2000, when prison occupancy rates dropped and reports of abuse started to arise, CCA and GEO’s stock prices fell, forcing them to restructure their business model throughout the rest of the early 2000s.²² To remain profitable, private prisons began to capitalize on the government’s expansion of detention centers as a new era of immigration criminalization policy increases the number of detainees. The immigration system shifted to make unauthorized entry illegal and increase funding for more border and interior law enforcement. As a result, we see the convergence of the military-and prison-industrial complexes to establish an immigration industrial complex. This complex is the foundation for the several factors that have constructed a flawed immigration system.

¹⁸ Pauly, “A Brief History of America’s Private Prison Industry,” 2016.

¹⁹ Davis, “Masked Racism: Reflections on the Prison Industrial Complex,” 1998.

²⁰ Douglas and Sáenz, “The Criminalization of Immigrants,” 211.

²¹ Sentencing Project, “Criminal Justice Facts,” <https://www.sentencingproject.org/criminal-justice-facts/>.

²² Pauly, “A Brief History of America’s Private Prison Industry,” 2016.

Legal Framework

I. A New Era of Immigration Criminalization Policy

I refer to immigration policy created in 1980 through 2001 as a “new era of immigration criminalization policy” and define it as the reemergence of immigration policy’s being centered on punishing unauthorized entry by increasing the practice of detention. I say “reemergence” because anxiety over the immigrant “alien” has always been a characteristic of American immigration policy,²³ which is seen through the Chinese Exclusion Act of 1952 when federal law for the first time barred the entry of an ethnic group on the premise of “endangering the good order of certain localities.”²⁴ One of its provisions was challenged in *Chae Chan Ping v. the United States* (1889), but the Supreme Court upheld Congress’ plenary power to regulate all matters of immigration and in doing so affirmed the belief that immigrants are a threat of foreign invasion.²⁵ Subsequently, Congress was able to enact the Geary Act (1892) which sentenced Chinese residents to detention and deportation if they were caught without their “Certificate of Residence.”²⁶ Racial restrictions were eventually eliminated with the Immigration and Nationality Act of 1952, but the era of the Chinese Exclusion Act shaped the current landscape of immigration policy.

The Immigration Reform and Control Act (IRCA) of 1986 marked the return of immigration policy centered on criminalizing migration. To curtail the rising numbers of undocumented immigrants coming from Latin America, IRCA included an amnesty that provided a pathway to citizenship for undocumented immigrants who met certain requirements.²⁷

To halt unauthorized entry, IRCA also designed a section that created sanctions meant to punish employers who hired undocumented immigrants, but instead, undocumented workers became the target of immigration law with minimal consequences for employers.²⁸ Although IRCA failed to control immigration or decrease the number of undocumented workers, subsequent immigration policy employed similar tactics.²⁹

²³ Douglas and Sáenz, “The Criminalization of Immigrants,” 200–201.

²⁴ National Archives, “Chinese Exclusion Act,” <https://www.archives.gov/historical-docs/todays-doc/index.html?dod-date=506>.

²⁵ Douglas and Sáenz, “The Criminalization of Immigrants,” 201.

²⁶ Immigration History, “Geary Act (1892),” <https://immigrationhistory.org/item/geary-act/>.

²⁷ Congress Gov, “Immigration Reform and Control Act,” <https://www.congress.gov/bill/99th-congress/senate-bill/1200>.

²⁸ National Immigration Law Center, “Worksite Immigration Raids,” 2020.

²⁹ Golash-Boza, “The Immigration Industrial Complex” 298.

After the terrorist bombings on the World Trade Center and Oklahoma City in the 1990s, politicians used the public's fear to portray immigrants as a threat to public safety and implemented more stringent immigration policy.³⁰ President Clinton added to the fear by saying he 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."³¹ In 1996, he followed up on this sentiment and toughened up on immigrants by signing into law the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). At the time of its passage, supporters praised IIRIRA as an overdue breakthrough, while immigrant advocates denounced it as the most stringent legislation since the 1920s.³² Certainly today, the expansion of the detention system can be largely attributed to AEDPA and IIRIRA.

The 1996 legislation drove up detention records by first gaining immediate control of the border. IIRIRA allocated more funding to border control measures to add new border patrol agents for the following five years and to build a fence along the U.S. border.³³ Between 1993 and 1999, the Immigration and Naturalization Service's (now the Immigration and Customs enforcement) budget tripled from 1.5 billion to 4.2 billion.³⁴ Second, AEDPA and IIRIRA increased detention by expanding the list of crimes for which immigrants, now including legal permanent residents and asylum seekers, could be considered inadmissible and automatically deported. The definition of "aggravated felony" shifted to include minor and nonviolent



offenses (such as prostitution, undocumented entry after removal, drug addiction, shoplifting, failure to appear in court, filing a false tax return, or any crime with a one-year sentence or more), and now IIRIRA also required the mandatory detention of migrants with criminal convictions until the final resolution of the case.³⁵

³⁰ *Ibid.*, 300.

³¹ Douglas and Sáenz "The Criminalization of Immigrants," 204.

³² McDonnell, "Hunting a Way In," 1997.

³³ Douglas and Sáenz, "The Criminalization of Immigrants," 211.

³⁴ Douglas and Sáenz, "The Criminalization of Immigrants," 211.

³⁵ Abrego, Coleman, and Martinez, "Making Immigrants into Criminals," 193.

II. Lack of Due Process

IIRIRA legislation was designed to increase the practice of detention, but it failed to provide due process protections for detainees to quickly and effectively undergo their removal proceedings. As a result, determining a migrant's removability by putting them through the detention system is a mentally taxing and ill-fated experience. In 2010, *The New York Times* released an article looking into the 107 immigrant deaths counted in custody since 2003, the year Immigration and Customs Enforcement (ICE) was created by the Department of Homeland Security. The investigation revealed a lack of oversight within the agency and attempts by prison officials to cover up evidence of substandard care and abuse.³⁶ Along with inadequate conditions of confinement, detainees grapple with presenting effective arguments in court which further delays the removal process. For example, IIRIRA increased the use of removal proceedings, but it also informalized the procedure by creating an expedited removal process, giving immigration officers authority to decide who gets deported without a detainee's ability to present their case in court.³⁷ Furthermore, transfers to detention facilities far from where the detainee lives make it difficult for them to form attorney-client relationships and gather witnesses, as it is common for attorneys and family members to be unable to locate them.³⁸ This lack of due process allows many detainees to find themselves stranded in detention for prolonged or indefinite periods of time. In 2008, the median completion time for detained cases was seven days; by 2017, it had drastically increased to a median of forty-three days.³⁹ Additionally, Freedom for Immigrants reports it is more common to find migrants held in detention centers for two to four years (48 percent), as opposed to less than six months (7 percent) or six months to one year (12 percent).⁴⁰ IIRIRA molded the detention system into a punitive procedure of mass detention that pushes migrants into prisons and also keeps them locked up indefinitely.



³⁶ Bernstein, "Officials Hid Truth," 2010.

³⁷ Abrego, Coleman, and Martinez, "Making Immigrants into Criminals," 193.

³⁸ Kalhan, "Rethinking Immigration Detention," 47.

³⁹ Executive Office for Immigration Review. "Median Completion Times for Detained Cases," 2018.

⁴⁰ Freedom for Immigrants. "Detention by the numbers,"

<https://www.freedomforimmigrants.org/detention-statistics>.

In establishing Section 1226(c) of IIRIRA, which mandated the detention without a bond of noncitizens who have committed a qualifying crime for the duration of their removal proceeding, Congress assumed these noncitizens posed a threat of potentially evading their court hearing for removal or continuing to engage in criminal activity.⁴¹ This statute is able to target U.S. lawful permanent residents such as Alex Rodriguez, who at no point suggested he posed a flight risk or danger to the community. Mr. Rodriguez was sentenced to deportation for two misdemeanors and was imprisoned in a detention facility for more than three years without receiving a bond hearing while his case was pending.⁴² Without an indication of when he would be released or deported to his birth country, Mr. Rodriguez and a class of migrant detainees argued the government does not have a right to hold noncitizens in detention centers for more than six months without a hearing before an immigration judge.⁴³ The Court of Appeals for the Ninth Circuit concluded prolonged detention becomes constitutionally suspect after six months, and it provided an automatic right for a bond hearing after six months of detention.⁴⁴

In *Jennings v. Rodriguez* (2018), however, the Supreme Court rejected the Ninth Circuit's ruling, concluding there is no automatic right to a bond hearing after six months by interpreting IIRIRA's statute as neither "ambiguous or unclear."⁴⁵ The case was remanded to the lower courts to consider arguments based on merits of constitutionality since the Supreme Court declined to consider whether the statute raises constitutional doubts.⁴⁶ In doing so, the Supreme Court failed to enforce the Constitution's Fifth Amendment and protect the due process of detained immigrants.⁴⁷ But because the government may civilly commit any person "when there is a finding for future dangerousness,"⁴⁸ IIRIRA's statute, in defining a "criminal alien," has limited the protections the United States will grant an undocumented immigrant.



⁴¹ Peguero, "Not Yet Gone, and Not Yet Forgotten," 600.

⁴² Safstrom and Dunn, "The Right to Due Process in Detention," 2017.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Peguero, "Not Yet Gone, and Not Yet Forgotten," 602

⁴⁶ *Ibid.*, 602.

⁴⁷ *Ibid.*, 603.

⁴⁸ *Ibid.*, 606.

Immigration Enforcement

This new era of immigration criminalization policy progressed after the September 11, 2001 terrorist attacks to drastically increase immigration enforcement. As in 1996, the Bush administration launched legislation to deter terrorism by passing the Patriot Act. The Patriot Act created the Department of Homeland Security (DHS) to manage all immigration functions, significantly increasing the budget allocated to immigration enforcement.⁴⁹ In the



following years, the U.S. Customs and Border Protection (CBP), the DHS' branch responsible for enforcement at the border, grew from 10,000 agents in 2003 to 17,000 in 2008.⁵⁰ With an increase in agents, the government has given immigration officers a greater ability to apprehend more migrants and increase detention through enforcement tactics like the Consequences Delivery System (CDS). By 2005, this system established the use of formal removal proceedings and outlawed allowing migrants to return to their country voluntarily with no legal consequences.⁵¹ The Patriot Act also led to the creation of the U.S. Immigration and Customs Enforcement (ICE), the DHS' branch responsible for interior enforcement, which experienced a growth in agents from 2,700 to 5,000 between 2003 and 2008.⁵² ICE employs enforcement by apprehending undocumented immigrant workers through worksite raids, arguably one of the most visible and damaging enforcement tactics.⁵³ The procedure involves ICE agents militaristically invading low-wage job worksites by showing up unannounced, a process that subjects migrants to racial profiling, invasive and unlawful searches, intimidation, and the separation from their families.⁵⁴ Raids enhance the punitive effects of immigration policy but also create a system that treats undocumented laborers as a "disposable workforce" whereby businesses profit by paying their immigrant workers low wages knowing they will be deported before they have the opportunity to move up in earnings.⁵⁵

⁴⁹ Congress Gov, "Public Law 107-56 Oct. 26, 2001", <https://www.congress.gov/107/plaws/publ56/PLAW-107publ56.pdf>.

⁵⁰ Chishti, Pierce, and Bolter, "The Obama Record on Deportations," 2017.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ National Immigration Law Center, "Worksite Immigration Raids," 2020.

⁵⁴ *Ibid.*

⁵⁵ Stribley, "What Is The 'Immigration Industrial Complex'?", 2017.

The Bush administration's tough approach to "catching" immigrants was responsible for driving rising numbers of migrants into privately-owned detention centers that also profit when ICE contracts them to house their detainees. In 2018, ICE spent over \$250 million on contracts with GEO Group and another \$60 million with CCA, the two largest private prison companies.⁵⁶

As stringent immigration policy rolled out, CCA executives believed immigrant detention was their next big market, writing that they expected to bring in "a significant portion of our [their] revenues" from ICE.⁵⁷ In 2001, CCA and GEO experienced sharp gains after the Patriot Act was signed into law, and again in 2003, the year ICE was created.⁵⁸ ICE and private prison companies share a beneficial partnership to maintain their institution's power; as ICE gains more authority to detain, CCA and GEO Group stock market values increase. CCA and GEO Group saw their biggest surge in 2006 when ICE halted the practice of "catch and release,"⁵⁹ meaning the government would no longer practice releasing a detainee from detention if it did not consider it necessary or likely the detainee would attend their court hearing for removal.⁶⁰ The result is a system of criminal punishment and immigration enforcement intertwined to create an industry that commodifies migrants.



Anti-immigrant attitudes flared up in 2010 after the head of one of the oldest ranch families in southeast Arizona, Robert Krentz, was found shot and killed on one of his ranch properties.⁶¹ The rancher's death set off a national debate about immigration because police initially suspected Krentz's assailant was an undocumented immigrant who might have fled south toward the border, but the yet-to-be-solved investigation has identified suspects from both sides of the border.⁶² In the wake of the event, politicians with a history of having a tough stance on immigration, such as former Colorado Rep. Tom Tancredo, quickly demanded stricter border

⁵⁶ Kassie, "How the United States created the largest immigrant detention system," 2019.

⁵⁷ Laura, "Prison Economics Help Drive Ariz. Immigration Law," 2010.

⁵⁸ Douglas and Sáenz, "The Criminalization of Immigrants," 216.

⁵⁹ Ibid.

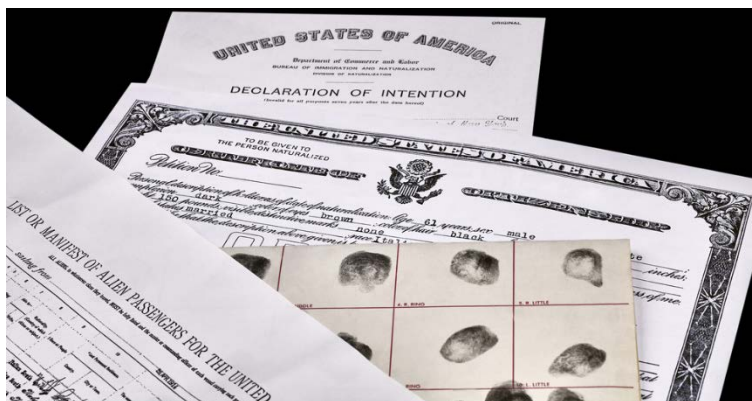
⁶⁰ Linda, "Catch and release explained," 2017.

⁶¹ Anti-Defamation League, "Mainstreaming Hate: The Anti-Immigrant Movement," 2018.

⁶² Niguel, "Death on the border," 2017.

security and immigration laws.⁶³ Amid this heightened anti-immigrant climate, Arizona passed S.B. 1070, which became known as one of the strictest laws established to punish undocumented immigrants.⁶⁴

The “show me your papers” law allowed police to detain anyone they suspected of being undocumented and ask for proof of documentation, influencing other states, including Alabama, Georgia, and South Carolina, to pass their own anti-immigration laws.⁶⁵ The states’ desire to establish immigration policy led to a legal controversy in which the Supreme Court upheld the federal government’s plenary power by striking down the bill that required immigrants to carry documentation, but it left in place law enforcement’s ability to “check a suspected immigrant’s status while enforcing other laws.”⁶⁶ Nevertheless, S.B. 1070 managed to reinforce the criminalization of immigrants to maintain the detention system, highlighting the incentives for private prison companies who helped write S.B. 1070 behind closed doors.



The language behind S.B. 1070 was conceived and drafted by anti-immigrant groups and lawmakers. Among these figures was a conservative business lobbying group, the American Legislative Exchange Council (ALEC), whose board members included representatives from CCA and Arizona state senator Russell Pearce, who took credit for drafting S.B. 1070.⁶⁷ According to an investigation conducted by NPR, Russell Pearce and members of ALEC met up in Washington D.C. to write up the bill, and thirty-six of its co-sponsors (two-thirds of them attended the meeting) received campaign contributions from private prison companies. This relationship between lawmakers and private prisons in the creation of Arizona’s bill exposes how money and politics intersect for profit and how politicians use anti-immigrant rhetoric to induce unfounded fears about migrants in order to justify why they should be punished under policy instead of legalized.

Donald Trump’s anti-immigrant rhetoric is a consequence of the immigration industrial complex, but it is also one of the reasons it continues to exist and set back any efforts to reform the detention system. Anti-immigrant attitudes have been intensified by anti-immigrant groups such as the Federation for American Immigration Reform (FAIR) and the Center for Immigration

⁶³ Berger, “Rancher’s Murder Exposes Deadly Gaps,” 2010.

⁶⁴ Anti-Defamation League, “Mainstreaming Hate: The Anti-Immigrant Movement,” 2018.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Sullivan, “Prison Economics Help Drive Ariz. Immigration Law,” 2010.

Studies (CIS), which have influenced an “anti-immigrant” movement by using false claims describing immigrants as “third-world invaders” who are “colonizing” the United States by “swarming” the border. Then they tie these ideas to the economy, education, and jobs to claim undocumented migrants are taking up Americans’ resources in these sectors.⁶⁸ Anti-immigrant sentiments pushed over the last four decades set the stage for Donald Trump to successfully incentivize voters by openly embracing anti-immigrant rhetoric.

But this was also not the first time a presidential candidate ran on similar nativist ideals. Before Donald Trump, Pat Buchanan ran presidential campaigns in 1992, 1996, and 2000 using anti-immigrant rhetoric to fuel a right-wing base, reminiscent of Donald Trump’s language in his 2016 presidential campaign. Buchanan is described as “one of the original television pundits” who established “a market for an edgy brand of nationalist politics” by expressing ideas such as building a wall to keep immigrants out and promising to “make America first again.”⁶⁹ In 2016, Trump borrowed Buchanan’s extreme anti-immigrant rhetoric to portray American voters as victims of foreign exploiters and create a dedicated base of supporters who allowed anti-immigrant attitudes to prevail.

An excerpt from Buchanan’s 1992 campaign brochure, titled “Putting and keeping America First,” where he laid out his ideals and proposals for president.⁷⁰

Put America First

2. Play Hardball in Trade Talks. We believe in Free and Fair Trade -- with nations that practice Free and Fair Trade. No more Unilateral concessions. We will demand reciprocity. Nations that adopt a closed-door policy to America’s exports should not expect an open-door policy to America’s markets.

Make America First

7. Keep America Strong. In a still-dangerous world, America’s armed forces must remain first on land, sea, in the air, and in space. We will build a missile defense for the U.S.A. But, we must also become first in industry manufacturing and standard of living, if we are to remain a force for good in the world.

Keep America First

10. Restore America the Beautiful. Just as we must protect and preserve America’s natural beauty, so, too, we will take the side of our families and communities in cleaning up the pollution of America’s popular culture. We will fight for a constitutional amendment to restore voluntary prayer in the public schools and we will lead the Fight For Life in the Congress and the federal courts.

⁶⁸ Anti-Defamation League, *“Mainstreaming Hate: The Anti-Immigrant Movement,”* 2018.

⁶⁹ Kornacki, *The Red and the Blue*, 12.

⁷⁰ 4President.org, “Pat Buchanan for President 1992 Campaign Brochure,” <http://www.4president.org/brochures/1992/patbuchanan1992brochure.htm>.

Immigration Industrial Complex in the Trump Era

In 2016, Trump was loudly and consistently calling for a tougher stance on immigration policy by painting undocumented immigrants as security threats to the country with speeches that spotlighted violent crimes committed by undocumented immigrants. (He failed to acknowledge that immigrants commit violent crimes at lower rates than those born in the United States.)⁷¹ From the start, Trump was clear about his intentions in expanding the use of enforcement tactics and private prisons, which attracted campaign contributions from CCA and GEO Group. They each donated \$250,000 to his inaugural committee.⁷² The private prison industry saw Trump as their opportunity for their business to survive. A few months before the November 2016 election, the U.S. Department of Justice announced it was eager to begin the process of reducing and ultimately ending the use of private prisons, condemning them as more expensive and less safe than government-run facilities.⁷³ Hillary Clinton followed and called for an end of private prison use if she was elected president. This announcement sent CCA and GEO Group's stocks to the lowest level they had been since the Great Recession; however, once Donald Trump was elected into office, their stock market value doubled.⁷⁴

Trump's amplified anti-immigrant stance on immigration policy was a shift from the previous administration in calling for the apprehension of *all* undocumented immigrants, whether they were convicted criminals or not. On the other hand, Obama's administrative reforms, announced in 2014, targeted "felons, not families. Criminals, not children. Gang members, not a mom who's working hard to provide for her kids."⁷⁵ The estimated five million undocumented immigrants who evaded deportation under Obama's program were no



longer protected when the Trump administration took over. As a result, numbers reflect how ICE focused its efforts on detaining immigrants with no criminal history instead of those with prior criminal records. In the first 14 months of the Trump administration, 69 percent of undocumented immigrants arrested had a criminal record; in contrast, over the final two years of the Obama administration, that number was 86 percent.⁷⁶

⁷¹ Montanaro, et. al., "Donald Trump's Speech on Immigration," 2016.

⁷² Ahmed, "How Private Prisons Are Profiting," 2019.

⁷³ Justice.gov, "Memorandum for the Acting Director Federal Bureau of Prisons," 2016.

⁷⁴ Long, "Private prison stocks up 100% since Trump's win," 2017.

⁷⁵ Thompson, "Deporting 'Felons, Not Families,'" 2014.

⁷⁶ Gomez, "ICE arresting more non-criminals," 2018.

Obama's attempts to pass comprehensive reform had been met with resistance from Republicans, and in turn, Democrats had to make tradeoffs that included ramping up border militarization and interior enforcement. With the increasing amount of power given to immigration agents, they have politically allied themselves with the Republican Party.⁷⁷ The Morton memos released in 2011 that instructed border patrol and ICE which immigrants they should target as high priorities for deportation were criticized by immigration agents who saw these instructions as an attempt from the federal government to keep them from doing their job.⁷⁸ The Morton memos were therefore not enough to give immigrants protections, and Obama followed up with a series of deferred programs: the Deferred Action for Childhood Arrivals program (DACA) and the Deferred Action for Parents of Americans program (DAPA), with provisions to hold enforcement agencies more accountable in applying his executive orders.⁷⁹



As immigration agents play a big role in enforcing executive immigration orders, it raises the question of who actually controls immigration policy. Alarming, ICE has become a symbol of Trump's aggressive immigration policies. In a letter addressed to Trump, ICE's union, the National ICE Council, stated that 2016 was the first time their organization had formally endorsed a candidate for president, and that they were endorsing Trump again for president in 2020 because he was the only candidate on the ballot "who stood firm and diligently supported law enforcement and the rule of law, despite the radical left's dangerous 'defund the police' movement."⁸⁰ Furthermore, the ICE union emphasized their opposition to Biden as president, warning against his ideas for immigration reform.

In Joe Biden's America, 11 million illegal aliens would be granted amnesty and no longer be prohibited from receiving taxpayer-funded healthcare. In Joe Biden's America, the deportation of illegal aliens would be halted immediately for the first 100 days of his presidency, and after that, only illegal aliens who have committed felonies would be deported. In Joe Biden's America, immigration law enforcement would be slashed and immigration detention facilities would be abolished.⁸¹

⁷⁷ Dara, "Obama just picked a fight with border agents," 2015.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Crane, "National ICE Council Announces Endorsement," 2017.

⁸¹ Crane, "National ICE Council Announces Endorsement," 2017.

ICE's endorsement is a reflection of the anti-immigrant views they hold in common with politicians and anti-immigrant groups who work tirelessly to prevent the legalization of immigrants. With their looming agency, immigration officers are factors of the immigration industrial complex that make it difficult for the executive branch to reform the detention system.

With the blatant anti-immigrant rhetoric that dominates the right-wing of the Republican party, the pillars of the immigration industrial complex shaped immigration policy into a highly debated partisan issue. Despite the discourse surrounding immigration, a survey conducted by the Pew Research Center found that today Americans largely believe immigrants are an asset to the country. In 2019, 62 percent of Americans said immigrants strengthen the country due to their "hard work and talents," whereas 28 percent said immigrants are a burden on the country because they take jobs, housing, and health care.⁸² What these results more importantly revealed is that a deep partisan divide exists between Republicans and Democrats in their views on immigrants. Eighty-three percent of Democrats said immigrants are a strength to the nation, while only eleven percent said they are a burden. In comparison, among Republican and Republican-leaning independents, 38 percent said immigrants strengthen the country, while almost half – 49 percent – said they are a burden.⁸³ It is a dramatic divide that grew exponentially under Trump's presidency where he pushed an anti-immigrant narrative to target hardworking immigrant families. In contrast, President Biden acknowledges the punitive effects of detention and is set to reduce the government's reliance on private prisons and modernize our immigration system.⁸⁴



To dismantle the immigration industrial complex, immigration policy needs to reshape the narrative surrounding immigrants. If future administrations commit to emphasizing immigrants as an asset to the country rather than a threat, immigration policy may be able to progress beyond a focus for punishment.

⁸² Bradley, "Majority of Americans continue to say immigrants strengthen the U.S.," 2019.

⁸³ Ibid.

⁸⁴ Whitehousegov, "President Biden Sends Immigration Bill to Congress," 2021.

Conclusion

The immigration industrial complex is a system built on three factors – policy, money, and prejudice – that influence one another to maintain the system’s power. These three factors have created a cycle of mass detention that pushes immigrants into prisons without due process rights to keep them indefinitely locked up. In the process, corporate influences have profited



from mass detention where the commodification of immigrants has systemically worked to prohibit migrants from claiming agency in the United States. To reform our immigration system and reduce the punitive practice, the cycle the immigration industrial complex perpetuates needs to be disrupted.

Over time, the immigration industrial complex has showcased itself in a more extreme anti-immigrant climate, shaping immigration policy into a partisan issue. Due to this polarization, the trend right now suggests the party in the executive branch will determine the course regarding the rhetoric of immigration and how harshly immigrants will be targeted for deportation. President Biden’s executive order to phase out private prisons is an essential step toward dismantling corporate influences.⁸⁵ However, given the lack of bipartisanship in the country today, if a president from the opposite party is elected, it can significantly set back any progress the previous administration made in giving migrants protections. Therefore, addressing and revising one aspect of the immigration industrial complex will not reform the immigration system extensively, but I believe the first step in reducing the use of detention, and ultimately ending its practice, requires immigration policy centered on giving undocumented immigrants an avenue for legalization. Nevertheless, a series of policy changes is required to adequately alleviate the issues that have fueled mass detention rates. I will provide a brief set of policy changes that I believe are instrumental in reducing the use of the detention system.

⁸⁵ Adams, “Biden’s order terminates federal private prison contracts,” 2021.

Policy Change Recommendations

I. Create Comprehensive Immigration Reform

The Immigration Act of 1990 was considered a win for immigrants at the time of its implementation because it raised legal admissions to 50 percent above the pre-IRCA level. However, today its outdated quota system does not account for the 11 million undocumented immigrants residing in the United States. Current immigration laws do not provide enough paths to permanent residency as only approximately 700,000 people a year are granted permanent visas. The current laws have also created a lengthy process due to backlogs and an overwhelming number of people trying to petition for residency. Therefore, comprehensive immigration reform that provides a path toward citizenship can amend the lack of protections immigrants face while building power in our economy.

II. End Contracts with Private Prisons

The federal government should uphold its plan to phase out the use of private prisons because they have been shown to operate under substandard conditions and to be overly costly to American taxpayers in comparison to alternative programs that do not rely on detention. Additionally, states like California and Nevada have started banning private prisons from operating in their state. A collective effort at the federal and state level can lead to a faster demise of this business practice.

III. Reform Enforcement Agencies

"Abolish ICE" became a rallying call from activists amid the family separation crisis in 2018. Some Democratic lawmakers have also called for ICE to be abolished, but so far there has been no action in reforming or dismantling the agency. Congress needs to take bigger steps in limiting the power immigration agents are given under current laws or proceed by reducing the heavy amount of spending allocated to enforcement agencies.

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