

The Immigrant Gold Rush: The Profit Motive Behind Immigrant Detention

**Submitted to the U.N. Special Rapporteur on the Rights of Migrants by
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I. Introduction

Over the past year a moral panic over immigration has triggered a massive crackdown on immigrants in the United States. The Department of Homeland Security (DHS) has greatly stepped up enforcement, launching a series of special “operations” geared to reduce illegal migration and remove immigration fugitives, so-called “criminal aliens,” and other immigration violators.

A restructuring of the Immigration and Customs Enforcement (ICE) detention and removal system has entailed termination of the “catch and release” policy, under which non-Mexicans apprehended crossing the southwest border without required documentation were released and instructed to return to immigration court at some future date. The number of ICE fugitive operation teams has tripled since January 2006, and by September 30, 2006, the number of “immigrant fugitives” arrested had grown by 260 percent.¹ A rapid increase in worksite enforcement investigations has resulted in arrests of thousands of individuals, both employers and immigrant employees. A six-state dragnet of meatpacking plants owned and operated by *Swift & Company* on December 12, 2006 involved more than 1,000 federal enforcement officers and, resulted in 1,282 arrests of immigrants.²

Immigrants now comprise the fastest growing population in federal custody. The immigrant crack-down is fueling explosive growth in the ICE detention system. The Intelligence Reform and Terrorism Prevention Act of 2004 contained authorization for 40,000 new immigrant detention beds by 2010 – a measure that would triple the number of beds available to ICE. In June 2006, DHS officials said they needed 35,000 new detention beds to hold immigrants awaiting detention. By the end of September, the daily detention population had swelled to 27,521, from an average of 19,000 before July.

¹ ICE Office of Detention and Removal “Fact Sheet,” online at <http://www.ice.gov/pi/news/factsheets/dro110206.htm>

² ICE Office of Detention and Removal press release, December 12, 2006

The ICE detention system is comprised of an unwieldy patchwork of detention beds, located in hundreds of facilities nationwide. Just a handful of these facilities are operated by DHS. Most are actually state and county lock-ups and private prisons where immigrants are detained under federal contracts. This fragmented immigrant detention system has long been a troubled operation, rife with human rights abuses. The recent crack-down campaigns have added strain to this poorly-managed crazy-quilt of detention beds. Immigrant rights advocates have criticized the lack of accountability of this system for many years. The Department of Homeland Security has introduced detention standards, developed with advocates – yet complaints of sub-standard conditions and abusive treatment continue.

II. Cashing in on the detention boom

Both private prison executives and local jailers have eagerly joined the “immigrant gold rush,” raking in cash payments at an average *per diem* rate of \$95 for each immigrant held under contract for ICE. Private prison companies employ some of the best lobbyists money can buy to hook lucrative contracts, and it is clear that they command the “top dollar” for lease of their detention beds. ICE *per diem* payments for jail beds in New Jersey currently average in the neighborhood of \$80 per detainee. But private prison companies with contracts in the same region appear to be able to reach far more deeply into the public purse. Federal authorities recently converted the GEO Group’s contract with ICE to detain immigrants in their Queens, N.Y. facility into a contract to hold detainees for the U.S. Marshals. Local news reports revealed that ICE had been paying \$225 per day for each detainee they placed in the GEO jail.

Private prison executives have long relied on immigrant detention to grow their business. Both of the industry giants, the Corrections Corporation of America and Wackenhut Corrections (which recently changed its name to the GEO Group), obtained their very first private prison contracts back in the mid-1980s from the former INS.

Within weeks of the attack on the World Trade Towers in 2001 the chairman of Cornell Companies – a mid-sized private prison company based in Houston, Texas – excitedly told stock analysts that the massive terrorist strike was going to boost his business. “It is clear that since September 11 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.”

III. The crackdown on immigrants has spawned a “hot market” for detention beds

Correctional authorities in states that have long relied on private prison companies are feeling hard pressed by the flood of new immigrant detainees into the tight prison bed market. A correctional spokeswoman in Arizona complains that prison managers find themselves at “the whim and fancy” of their contractors.³ Available beds are now a hot commodity and private prison executives are demanding price hikes as high as 30 percent.

Correctional managers in Oklahoma were notified last October that Cornell Companies was requesting removal of 814 prisoners housed under contract at the Great Plains Correctional Facility in Hinton, Oklahoma. Oklahoma’s corrections director, Justin Jones, said that Cornell was in contract negotiations with officials at ICE who were offering a better rate than the \$48 *per diem* Oklahoma had been paying. While state prison authorities scrambled to find space to absorb the evicted prisoners, U.S. Representative John Sullivan (R-Tulsa) welcomed the move, arguing that an increased ICE presence in the state would be a positive step toward serving Oklahoma’s immigration enforcement needs.⁴

During 2006, ICE detention capacity at the southwest border was expanded by 6,300 beds, including the T. Don Hutto Residential Center, a 512-bed “family facility” operated by the Corrections Corporation of America (CCA). Hutto was built by CCA and had been operated as a prison for men for many years. Some 200 children are now held there with family members who face immigration hearings.

Last month the American Civil Liberties Union (ACLU) filed a law suit charging that DHS had contracted with CCA in violation of *Flores v. Meese*, a 1997 court settlement that stipulated that children should not be detained by immigration authorities unless no other alternatives were available and set minimum standards for their detention.⁵ *Flores* requires that if detained, children must be kept in the least restrictive environment possible, and be released to care in the community by family members at the earliest possible time. While in custody, children must receive proper health care and appropriate educational and social services.

Attorneys for ten young plaintiffs who range in age from 3 to 10 years of age charge that Hutto is operated as a prison. Children are housed in prison cells and dressed in prison “scrubs”

³ Saunders, Diane, “Safford Complex, other Arizona prisons, ‘overflowing.’” *Eastern Arizona Courier*

⁴ Rabe, Josh, “State’s prison contract is in doubt.” *The Oklahoman*, October 6, 2006. Cornell Companies has not yet received a contract from ICE. According to Justin Jones, when federal officials inspected the prison in Hinton they determined that it did not yet meet ICE detention standards. The prison remains empty for the time being.

⁵ Press Release, *ACLU Challenges Prison-Like Conditions at Hutto Detention Center*, available online at <http://www.aclu.org/immigrants/detention/hutto.html>

similar to those worn by adult prisoners. Until protests by immigrant rights advocates drew media attention to the facility, CCA offered just an hour a day of recreation and no more than two hours of educational services. Lawyers say the food is inadequate and the guards are psychologically abusive, threatening to separate children from their parents if they misbehave. Children who have been released from Hutto are said to exhibit signs of stress – weight loss, bed-wetting and nightmares.

A second ACLU lawsuit filed earlier this year challenges conditions at a CCA detention facility in San Diego, California.⁶ Attorneys charge that adult immigrants held under ICE custody at the San Diego Correctional Facility endure severe overcrowding, with many detainees sleeping on plastic slabs on the floor in small prison cells designed for two people. Others are bunked in dayrooms. Triple-celling has led to the spread of infectious diseases and severe psychological suffering, while medical and mental health services are insufficient for the extra load of detainees, resulting in delays. A recent report of the DHS inspector general cited allegations of serious physical and sexual abuse by correctional officers at the San Diego facility.

The immigrant detention boom has been highly profitable for CCA. The company is reported to receive \$2.8 million each month under the Hutto contract.⁷ CCA executives say that their company received contracts for about half of the new detention beds secured by ICE in 2006. CCA's earnings per share are running 130 percent over last year and the company is planning an expansion of more than 10,000 beds over the next 18 months.

CCA is not the only private company benefiting in the detention boom. 2,000 immigrants are being held in a huge complex of windowless Kevlar tents surrounded with barbed wire at Raymondville, Texas.⁸ The \$63 million Willacy County Processing center was built in 90 days by Management and Training Corporation (MTC). The tent complex holds both men and women in prison-like conditions. At \$78 per-prisoner per-day, the costs to ICE for housing immigrants at the tent city appears to be a bargain, but the huge size of the complex likely assures MTC that operations will produce a considerable profit.

IV. County Governments Cash-In

⁶ ACLU "Proposed Second Amended Complaint for Class-wide Declaratory and Injunctive Relief." Online at http://www.aclu.org/images/asset_upload_file904_28128.pdf

⁷ Women's Commission for Refugee Women and Children. "Crossing the Border: Immigrants in Detention and Victims of Trafficking" <http://www.womenscommission.org/pdf/Detention%20test%20DHS.pdf>

⁸ Hsu, Spencer S. and Sylvia Moreno. "Border Policy's Success Strains Resources." *The Washington Post*, February 2, 2007

Profits are not only recognized in the private sector; a growing number of county governments rent jail beds to the United States government to warehouse immigration detainees. By jailing largely non-violent individuals in removal proceedings under lucrative Intergovernmental Service Agreements (“IGAs”) with ICE,, counties are able to finance jail construction, defray the cost of jail operations, and fill county coffers with “profits” – money received from ICE in excess of actual expenditures for housing ICE detainees. The expected profits from agreements with ICE has fueled county jail expansion since 1996, when Congress passed a series of draconian changes in immigration law. The changes expanded the categories of non-citizens subject to mandatory detention and deportation following certain criminal convictions.

Information on the revenue county governments rake in from these contracts is not publicly available, but revenue figures occasionally appear in news reports and audits that result from public scandal. A review of recent newspaper articles provides limited and patchy information. For example, in New Jersey, the Passaic County Jail received \$17.7 million from ICE in 2004, the year before the county stopped housing immigration detainees following national news reports and public pressure surrounding abusive treatment and mis-use of dogs to threaten and harass detainees. This figure represented 74 percent of the sheriff department’s total revenue.⁹

Immigrants are fast becoming the modern day cash crop in the prison industry. Last fall a local newspaper in Shawnee County, Kansas, reported that the county was in negotiations to house children in ICE custody. “It’s a huge need,” said the Betsy Gillespie, Director of the Shawnee County jail, “Like adults, if we can offset costs and provide that service we will do that.” Gillespie hoped to increase the \$2 million in revenue the county obtained from 2001 to 2005 by tapping into the new growing immigration detention market—detention of children.¹⁰

The detention of immigrants is viewed as a booming industry that counties can cash in on. With a state prison, death row facility, privately run contract immigration prison, ICE detention facility, and county jail, Florence Arizona has become a modern-day penal colony. The county, undoubtably realized it was missing out. In November 2005, local officials in Pinal

⁹ *Opinion: Arrogant or not, let the Feds inside the Jail; Probe will Settle Issue of Inmate Mistreatment*, Herald News, September 6, 2005, at B7.

¹⁰ Tim Carpenter, *Shawnee County Jail a Station on the Deportation Line*, The Capital-Journal, October 22, 2006, at 1A.

County, Arizona, completed construction of a 1000-bed facility. The \$42 million facility was constructed with the expectation of receiving \$15 or \$16 million dollars in annual revenue from a contract with ICE.¹¹

Government audits also provide revenue-related information that illustrates how IGA revenue can produce “profit” for local county budgets. A series of Department of Justice audits conducted with various county jails in 2001 and 2002 illustrate the vast amount of unaccounted dollars moving from the federal government to county coffers. An audit of the DeKalb County Jail, in Atlanta, Georgia, found that county officials had over-billed the former INS \$5.6 million dollars in fiscal year 2000.¹² In August 2001, following a report of severely substandard medical care at the jail, the INS transferred detainees from the jail to a variety of jails across the southeast.¹³ County officials reported losing revenue of more than \$13 million a year. In Manatee County, Florida, a similar audit found the county had over-billed INS \$1 million in fiscal year 2001.¹⁴

The history of federal immigration authorities’ involvement with York County, Pennsylvania clearly illustrates how county officials work to get a piece of the immigrant pie. The York County jail was opened for INS business when the Golden Venture ship ran aground on Rockaway Beach in 1993 and 300 undocumented Chinese swam ashore. After taking in 100 of the immigrants, the county realized their own “golden venture” by building a \$20 million expansion on the jail replete with offices for INS officials and courtrooms for INS judges.

York County officials publicly boasted about raking in \$60 a day per detainee until the Inspector General of the Department of Justice audited the books and determined that the actual *cost* of housing the detainees in the York jail was just \$37 per day. The auditors found that in 2000, York officials had overcharged the Department of Justice by more than \$6 million for housing detainees. Auditors estimated that overcharges had totaled \$20 million. Federal

¹¹ Preston McConkie, Pinal County Wants You, Casa Grande Valley Newspaper, November 22, 2005.

¹² Office of the Inspector General, Department of Justice, US INS Intergovernmental Service Agreement for Detention Facilities with the DeKalb County, Georgia, Sheriff’s Office, November 2001, available at www.usdoj.gov/oig/grants/g4002002.htm.

¹³ Will Anderson and Mark Bixler, *INS Moving 400 Detainees from DeKalb*, Atlanta-Journal Constitution, August 9, 2001, at 8E.

¹⁴ Office of the Inspector General, Department of Justice, US INS Intergovernmental Service Agreement for Detention Facilities with the Manatee County, Florida Board of County Commissioners and the Sheriff of Manatee County, Florida, March 2002, executive summary available at www.usdoj.gov/oig/grants/g4002006.htm.

authorities demanded repayment of \$20 million, plus \$40 million in punitive damages and they reduced York County's *per diem* rate to \$47.

In April 2006, York County settled with the federal government, agreeing to pay back \$16 million, plus interest, for a total of \$18.5 million, over the next 6 years. In addition, county officials negotiated a higher *per diem* rate in order to avoid using local tax revenue to pay back the federal government. The *per diem* rate was increased to \$60 dollars in December 2006.

In Bergen County, New Jersey local officials have also used an IGA to derive "profit" to augment slumping county finances. But in contrast to the situation in York County, it appears that federal authorities have made no efforts to stem the practice.

In 2000 New Jersey's state correctional managers moved to reduce the level of contracting for local county jails beds to house state prisoners. That year, the Bergen County Sheriff's Department received approximately \$1.2 million less in revenue from contracts for jail beds.¹⁵ The budget shortfall came amidst construction of a controversial county jail expansion. At each stage of construction, the jail increased its capacity without new contract prisoners to fill the beds. Once construction was fully complete the county's jail capacity would total 1,128. County officials were anxious that without new contracts to house prisoners from other jurisdictions, they would not be able to pay off the construction bonds.¹⁶

In May 2001 the county began accepting immigration detainees and housing them in a new 64-bed housing unit located in the jail's south side. The IGA with the former Immigration and Naturalization Service (INS) provided \$65 a day per detainee. The IGA was expected to generate a little over \$1.5 million a year in revenue if the housing unit was kept at maximum capacity year round.¹⁷ Once that agreement was in place, Sheriff Gordon Johnson urged county officials to re-negotiate with INS for more detainees, and – based on figures he obtained from other New Jersey sheriffs – he press for a higher *per diem* rate.

After September 11, the Sheriff began negotiations anew to increase the number of detainees and *per diem* from the federal government. Local newspaper articles from September 2001 indicate that the Sheriff and other county officials were hoping to increase the number of detainees from 64 to 150, or even 300 per day, and to negotiate a higher *per diem* of somewhere

¹⁵ Hugh R. Morley, "Bergen Jail May Soon House Deportees Sheriff Hammering out Deal with INS," *The Record*, March 5, 2001.

¹⁶ *Id.*

¹⁷ Shannon D. Harrington, *Bergen Jail Housing Aliens in U.S. Deportation Program Stays are Short While Travel Arrangements are Completed*, *The Record*, May 12, 2001, at A15.

between \$70 and \$82. The issue became politicized when a Republican TV and print campaign ad featured Democrats opposing the proposed increase as “refusing to put those who threaten America and Bergen County into our jail.” That November, Joel Trella – a Republican – was elected Sheriff.

When the long-awaited agreement was finally signed in May 2003, the federal government agreed to provide \$3.75 million dollars to help offset the \$67.2 million dollars in construction costs for the expansion. In July 2004, Sheriff Trella announced he had secured another new deal with the federal government. The county would receive \$85 dollars a day, retroactive to May 2003, with a guaranteed 150 immigration detainees every day.¹⁸ Despite the windfall that Sheriff Trella claimed the county would receive from the newly negotiated agreement, the issue remained politicized.

In May 2004 the Bergen County Executive – a Democrat – hired an accounting firm to conduct an audit he said was needed to verify whether the county was actually profiting from the ICE agreement. Sheriff Trella called the move a “political witch hunt.” He reported that the county obtained a profit of more than \$40 per inmate every day, based on actual costs he estimated would range from \$12 to \$24 dollars a day to house the detainees, depending on the salaries of the officers on duty. He said that revenues would reach \$6.5 million in the first year, and \$71 million over the life of the contract.¹⁹ Trella charged that Democratic candidate Leo McGuire’s attempt to unseat him as Sheriff was the real reason county officials had paid the accounting firm, a Democratic contributor, \$20,000 to dig up information to use against him in the upcoming election.

After McGuire defeated Trella in the 2004 election, the study’s results were released. The audit confirmed Trella’s claims of enormous profit to the county, verifying that the county could expect \$4.6 million from the federal authorities in annual revenue, resulting in a net profit of \$2.1 million even after subtracting overtime payments. The Bergen County Jail continues to house at least 150 detainees each day, and the county continues to reap the financial benefits.

V. Conclusion

¹⁸ Shannon D. Harrington, *Bergen gets \$1 Million More to House Detainees, \$4.6 million Projected from New Jail Deal*, The Record, July 20, 2004.

¹⁹ Office of Joel G. Trella, Press Release: Immigration Incarceration Program a Success Political Interference Undermining the Department, May 4, 2004.

The current zeal for immigrant detention has roots in social, economic, and political forces which are driven by dynamics that run to the very core of our social system. The expansion of immigrant detention capacity comes on the heels of an astonishing upward shift in the overall U.S. incarceration rate which has swept this country into the uncharted territory of mass incarceration. The sharp increase in recent months raises fundamental issues about the nature of our governmental system and the prospects for remaining an open, democratic society.

Opponents of prison privatization have long argued that turning the operation of prisons over to organizations that are chartered for the purpose of generating profits inevitably produces pressure for increased incarceration. It seems likely that the prison contract tail is wagging the policy dog. Private prison companies represent just one sector of the special interests that are profiting greatly from the rise of mass incarceration in the U.S., however.

The developments described above in locations as diverse as Bergen County, New Jersey and Pinal County, Arizona illustrate how – once created – a national “market” for prison bed contracts has penetrated the public sector with notions that expanding capacity of local lockups will generate “profit” for the public purse. And, in rural areas hard-hit by decades of economic decline, the immigrant detention boom is now being heralded as economic development – “jobs for our community.”

We must never forget, however, that this “market” results in commodification of immigrant bodies. Detention-for-dollars puts perverse financial incentives in play. Public jailers are increasingly heard to boast about cutting expenditures for custody and care of detainees well below the *per diem* price they’ve negotiated with federal authorities. This insidious incentive cuts directly across concerns about compliance with detention standards that were created to foster a decent, humane custodial environment for the rapidly-growing number of people who are subjected to detention.

Under international human rights norms, detention may be justified only when it is necessary and proportional; thus its use should always be appropriate to achieve a specific function. According to the principle of proportionality, any restrictive measure must be the least intrusive option available to achieve the desired result, and must be both permissible and

necessary for protection.²⁰ Therefore, the United States must fully implement alternatives to detention programs in all parts of the country.

Moreover, the United States government should end the policy of mandatory detention and should re-examine whether use of detention is necessary and proportional. As long as the laws provide for the mandatory detention of immigrants without the right bond or bail, the country will continue to see the massive expansion of jails, prisons, and private contract facilities, increasingly fueled by the profit-making motives of both the private and public sectors, as much as by anti-immigrant hysteria.

²⁰ HRC General Comment No. 27 on freedom of movement, 2 November 1999 (adopted at 1783rd meeting on 18 October 1999), CCPR/C/21/Rev.1/Add.9, para 14.