

# ABOLISHING THE PRIVATE PRISON INDUSTRY’S EVOLVING INFLUENCE ON IMMIGRANT OPPRESSION

*Antonio Iglesias*

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## INTRODUCTION

The social, political and economic subordination of immigrants—who embody the marginalized identities of persons of color, criminals and foreigners—is in high demand as they continue to supply the profit-seeking machine that is the private prison industry.<sup>1</sup> The underlying economic relationship between the lucrative private prison industry and the societal and political pressures for stricter immigration and criminal law and policy, result in the imprisonment, and ultimately, the oppression of more immigrants.<sup>2</sup>

Currently, the United States federal government and most states authorize private prisons in some form.<sup>3</sup> Officials in the federal government and private prison companies claim that competition and market forces promote cost-savings and greater corrections service for contracting governments.<sup>4</sup> These alleged benefits, however, fail to justify the grave humanitarian and social consequences that arise under the private prison industry.<sup>5</sup> In addition to humanitarian and social exploitation, as non-citizens, immigrants also suffer the additional long-term, seemingly incessant effects of political and racial subordination.<sup>6</sup>

This Note will detail why the federal government and all other states, especially states such as Arizona which have relatively harsher laws that implicitly intend to criminalize immigration, should adopt legislation that abolishes private prison contracts. These states should adopt laws such as those in Illinois and New York which abolish private prison contracts because such legislation preserves the rights of immigrants who suffer resulting adverse effects, such as: (1) large increases in immigrants in detention, even with minor initial arrest charges such as traffic violations; (2) fear of law enforcement, and specifically fear of reporting instances of crime for fear that local police will contact federal immigration authorities; (3) fleeing back to their countries of origin in fear of immigration detention; (4) the separation of families and crippling effects on communities; (5) anxiety-related health effects; (6) racial profiling and

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<sup>1</sup> See Mariela Olivares, *Intersectionality at the Intersection of Profiteering & Immigration Detention*, 94 Neb. L. Rev. 963, 964 (2016).

<sup>2</sup> See *Id.*

<sup>3</sup> See Lucas Anderson, *Kicking the National Habit: The Legal and Policy Arguments for Abolishing Private Prison Contracts*, 39 Pub. Cont. L.J. 113, 115 (2009); but see Illinois Private Correctional Facility Moratorium Act, 730 Ill. Comp. Stat. Ann. 140/1 to 140/4 (West 2009) (outlawing the use of private prisons in the State of Illinois); N.Y. Correct. Law §§ 120-121 (McKinney 2009) (outlawing the use of private prisons in the State of New York).

<sup>4</sup> In 1992, President George H. W. Bush issued Executive Order No. 12,803 encouraging state and local governments to contract with the private sector because “private enterprise and competitively driven improvements are the foundation of our Nation’s economy and economic growth.” 57 Fed. Reg. 19,063, 19,063 (Apr. 30, 1992).

<sup>5</sup> Anderson, *supra* note 3, at 116.

<sup>6</sup> Olivares, *supra* note 1, at 965.

discrimination; and (7) fear and mistrust in schools leading to decreases in school enrollment.<sup>7</sup>

Part I of this Note will provide background information relating to (1) the rise of the private prison industry, (2) the development of immigration detention in the U.S., (3) the role that the private prison industry plays in immigration detention and its economic incentives in shaping substantive criminal and immigration laws and policies that make it easier to criminalize immigration and increase private prison populations, and (4) the private prison industry's growing influence in the political and legislative process to secure its continued success. Part II seeks to dispel the popular myth that the private prison system offers state and federal governments cost-saving opportunities, while also confronting practical challenges associated with achieving the abolition of private prison contracts, such as today's political climate and the intergovernmental immunity doctrine. Part III will propose that the federal government, along with Arizona and other similarly situated states that have relatively harsher laws that implicitly intend to criminalize immigration, should adopt legislation like that of Illinois and New York that prohibits the use of private prisons. Further, Part III will analyze the results that Arizona's Senate Bill 1070 ("SB-1070"), partially inspired and written by private prison corporations, has had on immigrants in Arizona and will compare them to how immigrants have fared in states such as New York and Illinois that have abolished the use of private prisons through state legislation.<sup>8</sup> Part IV will conclude with a final presentation of the legislative proposal and how its adoption can contribute to a nationwide reduction in the oppression of immigrants.

#### PART I: BACKGROUND

The practice of detaining immigrants for alleged civil and criminal infractions derives from the Immigration Nationality Act ("INA").<sup>9</sup> Congress' plenary powers under Article I of the U.S. Constitution afford it the broad and nearly absolute power to establish immigration law and policy through governing statutes without judicial oversight.<sup>10</sup> Congress uses its plenary powers over immigration law and policy to exclude,

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<sup>7</sup> See Thomas Lopez, *LEFT BACK: The Impact of SB 1070 on Arizona's Youth*, Southwest Institute for Research on Women, College of Social and Behavioral Sciences, Bacon Immigration Law and Policy Program, James E. Rogers College of Law, (Sept. 2011).

<sup>8</sup> See *Id.*; see also Illinois Private Correctional Facility Moratorium Act, 730 Ill. Comp. Stat. Ann. 140/1 to 140/4 (West 2009); N.Y. Correct. Law §§ 120-121 (McKinney 2009).

<sup>9</sup> Olivares, *supra* note 1, at 967.

<sup>10</sup> See Jon Feere, *Plenary Power: Should Judges Control U.S. Immigration Policy?*, Center for Immigration Studies (2009).

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detain and deport immigrants.<sup>11</sup> Specifically, Congress adopted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), which expanded INA provisions to allow and mandate immigrant detention for a multitude of offenses.<sup>12</sup> As codified, the Department of Homeland Security’s (“DHS”) Immigration and Customs Enforcement (“ICE”) may apprehend and detain non-citizens both in the interior of the U.S. and at its borders.<sup>13</sup> Moreover, ICE is authorized to “take into custody criminal aliens and suspected terrorist aliens,” which allows ICE to detain significant numbers of non-citizens.<sup>14</sup> The U.S. Supreme Court has upheld the power of the federal government to detain non-citizens pending their removal from the U.S. before and after an adjudicative proceeding regarding their removability.<sup>15</sup>

*A. The Growth of the Private Prison Industry*

The modern prison privatization trend is deeply rooted in the history of the United States.<sup>16</sup> State and local governments have contracted with private entities to administer various aspects of penal administration throughout the history of the U.S.<sup>17</sup> The growth of the private prison industry began primarily in the 1970’s and 1980’s as the Federal Bureau of Prisons (“BOP”) and some states were outsourcing operations functions for entire jails and prisons.<sup>18</sup> In 1984, the Corrections Corporation of America (“CCA”), currently the second-largest private prison contractor in the U.S.<sup>19</sup> and now known as CoreCivic,<sup>20</sup> contracted

<sup>11</sup> Olivares, *supra* note 1, at 968.

<sup>12</sup> See Stephen H. Legomsky, *The Detention of Aliens, Theories, Rules and Discretion*, 30 U. Miami Inter-Am. L. Rev. 531, 533-34 (1999) (discussing the ways in which IIRIRA and the Antiterrorism and Effective Death Penalty Act of 1996 altered the landscape of immigrant detention).

<sup>13</sup> Olivares, *supra* note 1, at 970.

<sup>14</sup> See INA § 236(a); 8 U.S.C. § 1226(a); see also Olivares, *supra* note 1, at 973-74.

<sup>15</sup> See *Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding the detention of an immigrant pending his or her removal and holding that detention may not exceed a period reasonably necessary to secure removal); see also *Clark v. Martinez*, 543 U.S. 371 (2005) (upholding detention of inadmissible immigrants, though also with temporal limitations, per *Zadvydas*).

<sup>16</sup> See James Austin & Garry Coventry, *Emerging Issues on Privatized Prisons*, Bureau of Justice Assistance, 9-13 (2001).

<sup>17</sup> See *Id.*

<sup>18</sup> See *Id.*

<sup>19</sup> The Corrections Corporations of America, *by the Numbers*, Mother Jones (July/August 2016) (“[CoreCivic] currently houses more than 66,000 inmates, making it the country’s second-largest private prison company. In 2015, it reported \$1.9 billion in revenue and made more than \$221 million in net income—more than \$3,300 for each prisoner in its care.”).

<sup>20</sup> Corrections Corporation of America, *Corrections Corporation of America Rebrands as CoreCivic*, GlobeNewswire, <https://globenewswire.com/news-release/2016/10/28/884335/0/en/Corrections-Corporation-of-America-Rebrands-as-CoreCivic.html> (last visited Oct. 14, 2018).

with the state of Tennessee to run its Hamilton County facility.<sup>21</sup> Since 1984, the private prison industry continues to grow as it operates a multitude of prisons, juvenile centers, and other correctional facilities under contract with the federal government and many state and local governments.<sup>22</sup> Furthermore, by 1996, “thirteen states had outsourced some portion of their penal systems<sup>23</sup> and by 2004, thirty-four states contracted for private prisons.”<sup>24</sup> Despite the private prisons industry’s numerous legal, policy and economic flaws, only New York and Illinois have enacted legislation expressly barring private prison contracts.<sup>25</sup>

The federal government’s decision to build new facilities to accommodate large inmate populations has played a major role in the recent surge in corrections privatization.<sup>26</sup> Drastic rises in incarceration rates are attributable not to increased criminal activity, but rather to various items of “get tough” legislation at the federal and state levels, which includes minimum mandatory sentencing guidelines,<sup>27</sup> three-strikes laws,<sup>28</sup> and the War on Drugs.<sup>29</sup> This “get tough” legislation movement also, in part, fueled immigration detention.<sup>30</sup>

The U.S. is still experiencing the effects of “get tough” legislation, as there are currently over 2.3 million people in 1,719 state prisons, 102 federal prisons, 901 juvenile correctional facilities, 3,163 local jails, and 76 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, and prisons in the U.S. territories.<sup>31</sup> Since repealing criminal and immigration laws may be a politically unpopular solution, especially given today’s political hostility

<sup>21</sup> See Anderson, *supra* note 3, at 118.

<sup>22</sup> See *Id.*; see also Stephanie Chen, Larger Inmate Population Is Boon to Private Prisons, *Wall St. J.*, Nov. 19, 2008, at A4 (asserting that in 2007, private prisons housed approximately 7.4% of all state and federal prisoners).

<sup>23</sup> See Anderson, *supra* note 3, at 118.

<sup>24</sup> See *Id.*

<sup>25</sup> See Illinois Private Correctional Facility Moratorium Act, 730 Ill. Comp. Stat. Ann. 140/1 to 140/4 (West 2009); N.Y. Correct. Law §§ 120-121 (McKinney 2009).

<sup>26</sup> See Anderson, *supra* note 3, at 118; see also Judith Greene, Bailing Out Private Jails, 12 *Am. Prospect* 23 (Sept. 2001) (“For close to a decade, [private prison] business boomed and its stock prices soared because state legislators across the country thought they could look both tough on crime and fiscally conservative if they contracted with private companies to handle the growing multitudes being sent to prison under new, more severe sentencing laws.”).

<sup>27</sup> See Anderson, *supra* note 3, at 119; see also Marie Gottschalk, Dismantling the Carceral State: The Future of Penal Policy Reform, 84 *TEX. L. REV.* 1693, 1716-17 (2006) (“[T]he extent of the U.S. carceral state continues to dwarf the imprisoned population of Europe . . . European countries have resisted adopting legally binding sentencing guidelines like those widely used in the United States.”).

<sup>28</sup> See Anderson, *supra* note 3, at 119.

<sup>29</sup> See *Id.* (“In the 1980s, about two-thirds of the growth in incarceration was attributed to locking up more non-violent offenders, notably substance abusers.”).

<sup>30</sup> See *Id.*

<sup>31</sup> See Peter Wagner and Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2017* (Mar. 14, 2017), available at <https://www.prisonpolicy.org/reports/pie2017.html>.

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towards immigration, many lawmakers continue to support new prison construction as a means of accommodating the influx of prisoners.<sup>32</sup> Ultimately, contracting with the private sector to build and administer prison facilities allows the federal government to address the overcrowding of prisons without facing the politically unpopular possibility of repealing criminal and immigration laws.<sup>33</sup>

The U.S. has become the world's leader in incarceration with the aforementioned 2.3 million people currently in its prisons and jails—a 500 percent increase over the last forty years.<sup>34</sup> Changes in sentencing law and policy, not changes in crime rates, are largely responsible for this increase.<sup>35</sup> Additionally, these trends have resulted in fiscal burdens on states to accommodate a rapidly-expanding penal system, despite increasing evidence that large-scale incarceration is not an effective means of achieving public safety.<sup>36</sup> Further, states have been forced to allocate more of their budgets to corrections in order to accommodate the growing inmate population.<sup>37</sup> For example, in 1985, average state expenditures on corrections was \$6.7 billion and in 2015, it skyrocketed to approximately \$56.9 billion.<sup>38</sup> The enormous boom in state expenditures has led states to adopt innovative corrections policies to reduce the cost of prison administration.<sup>39</sup> These innovative corrections policies have come in the form of a growing and substantial dependency on contracts with “private entities for correctional and rehabilitative services.”<sup>40</sup>

Moreover, in 2012, DHS spent a record-high, \$2 billion, in tax dollars for the purpose of detaining non-citizens.<sup>41</sup> In 2012, due to a

<sup>32</sup> See Anderson, *supra* note 3, at 119.

<sup>33</sup> See *Id.* at 120.

<sup>34</sup> See Trends in U.S. Corrections, The Sentencing Project, <https://www.sentencingproject.org/publications/trends-in-u-s-corrections/> (last visited Jan. 3, 2018).

<sup>35</sup> See *Id.*

<sup>36</sup> See *Id.*

<sup>37</sup> See National Association of State Budget Officers (1985-2015), State Expenditure Report Series, available at [https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/SER%20Archive/2018\\_State\\_Expenditure\\_Report\\_S.pdf](https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/SER%20Archive/2018_State_Expenditure_Report_S.pdf) (last visited Jan. 3, 2018).

<sup>38</sup> See *Id.*

<sup>39</sup> See *Id.*

<sup>40</sup> See Anderson, *supra* note 3, at 114; see, e.g., La. Rev. Stat. Ann. § 39:1800.2 (2009) (“The legislature hereby finds that . . . contracting for portions of governmental services is a viable alternative considering the fiscal problems facing the state, in addition to the interest on the part of many citizens in reducing the overall size of government.”); see, e.g., MONT. CODE ANN. § 53-30-601 (2008) (“It is the policy of the state of Montana to encourage innovative methods to provide the correctional resources necessary to confine persons convicted of crimes. The state recognizes that there may be benefits to confining convicted persons in private correctional facilities operated consistently with public policy.”).

<sup>41</sup> See Azadeh Shahshani, *The Sunk Costs of a Profit-Driven Prison System* (May 2012),

federal mandate, approximately 34,000 non-citizens were detained every day—about half of which were held in privately-run prisons.<sup>42</sup> Since the opening of the first private prison in 1984, the industry has expanded rapidly throughout both state and federal corrections.<sup>43</sup> Supporters of prison privatization argue that the significant cost savings that private prisons purport to offer—lower wage and benefit costs for labor, lower procurement costs, and more efficient administration and operation—justify their continued growth.<sup>44</sup> Moreover, in the last decade, “the three largest corporations with stakes in immigration detention,” CoreCivic, The GEO Group, and Management and Training Co. together spent “at least \$45 million . . . on campaign donations and lobbyists at the state and federal level.”<sup>45</sup>

### *B. The Continued Rise in Immigration Detention*

Despite his or her specific method of entry into the U.S. or particular legal status, a non-citizen can potentially be detained at various points and junctures within the U.S. and at its borders.<sup>46</sup> Indeed, at any time from when a non-citizen physically enters—or attempts to enter—the U.S. until even the time when the non-citizen naturalizes and becomes a U.S. citizen, if he or she is able to naturalize, he or she can be subjected to detention by the U.S. government under the INA.<sup>47</sup> As part of the growth of mass incarceration in the U.S., Congress has prioritized mandatory detention of non-citizens to unprecedented levels.<sup>48</sup> Roughly 70% of non-citizens in detention are mandatorily detained, meaning their incarceration is required without any assessment of possible alternatives or immigration relief.<sup>49</sup>

As evidence of these unprecedented levels, in January 2014, Congress passed and President Obama approved a Fiscal Year 2014

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available at <http://www.aljazeera.com/indepth/opinion/2012/05/2012526112812469344.html> (last visited Jan. 3, 2018).

<sup>42</sup> See Alexis Perlmutter et al., *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention*, National Immigrant Justice Center (Sept. 2012).

<sup>43</sup> See Elaine Rizzo & Margaret Hayes, *An Assessment of the Risks and Benefits of Prison Privatization*, 2 (2012) available at [http://www.privateci.org/private\\_pics/NewHampshireRiskAssessment.pdf](http://www.privateci.org/private_pics/NewHampshireRiskAssessment.pdf) (last visited Jan. 5, 2018).

<sup>44</sup> See *Id.*

<sup>45</sup> See *Id.*

<sup>46</sup> See Jacqueline Stevens, *U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens*, 18 Va. J. Soc. Pol’y & L. 606 (2011).

<sup>47</sup> See *Id.*

<sup>48</sup> See *Mandatory Detention, Detention Watch Network*, <https://www.detentionwatchnetwork.org/issues/mandatory-detention> (last visited Mar. 17, 2018) (“The dramatic expansion of immigration detention in the United States is largely due to mandatory detention laws.”).

<sup>49</sup> See *Id.*

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operating budget for DHS that allocated \$2,038,239,000 to “Custody Operations,” which facilitated the detention of 34,000 immigrants each day.<sup>50</sup> Congress imposed this detention “bed quota” upon ICE that required the agency to jail a mandatory minimum of 34,000 immigrants per day solely due to immigration status.<sup>51</sup> The quota is further mandated annually by congressional appropriations bills.<sup>52</sup> People who are detained under this quota include:

- (1) those who are seeking asylum or other forms of protection after recent entry into the U.S.; (2) undocumented people arrested for immigration status violations; and (3) legal permanent residents or other status holders who are in removal proceedings as a result of previous criminal convictions—often being taken into ICE custody directly after having served their criminal sentence.<sup>53</sup>

Moreover, just ten years prior in 2004, DHS operating budgets allocated funds for 18,000 detention beds.<sup>54</sup> In 1995, DHS detained approximately 85,730 immigrants throughout the entire year.<sup>55</sup> In 2013, by contrast, DHS detained a total of 440,557 immigrants.<sup>56</sup> The explanations for the enormous boom in the number of immigrants detained have varied, but, as detailed briefly above, many point to the legislative reforms beginning in the 1980’s and continuing through present day as one of the primary contributors of increased detention.<sup>57</sup> As an increasing number of immigrants qualified for discretionary or mandatory detention, the government’s perceived need for increased detention facilities became critical.<sup>58</sup>

Furthermore, additional bed space meant a new incentive and a congressionally mandated need to supply the beds with more non-citizens.<sup>59</sup> In 2014, the DHS responded to this need to fill the mandatory minimum of 34,000 beds by calling for an increase in “family detention units.”<sup>60</sup> DHS reported:

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<sup>50</sup> *See Id.*

<sup>51</sup> *See* How For-Profit Prison Corporations Shape Immigrant Detention and Deportation Policies, American Friends Service Committee (Dec. 2015) archived at <https://www.afsc.org/resource/how-profit-prison-corporations-shape-immigrant-detention-and-deportation-policies> (last visited Mar. 17, 2018).

<sup>52</sup> *See Id.*

<sup>53</sup> *See Id.*

<sup>54</sup> *See Id.*

<sup>55</sup> Olivares, *supra* note 1, at 973–74.

<sup>56</sup> *See Id.*

<sup>57</sup> *See Id.*

<sup>58</sup> *See Id.*

<sup>59</sup> *See Id.*

<sup>60</sup> *See* U.S. Immigration and Customs Enforcement, ICE Enforcement and Removal Operations Report 3 (2014), archived at <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf> (noting that unaccompanied children are not placed in detention but rather turned over to local agencies of Health and Human Services for care and guardianship; family



[the increase in the number of non-citizens] requires ICE to maintain an increased level of family detention space, which historically has been limited to fewer than 100 beds nationwide. ICE cannot detain family units, including children, in adult detention facilities. As a result, in the summer [of 2014] ICE sought substantial resources and authority to build additional detention capacity to detain and remove family units, and since then ICE has opened or expanded the use of three facilities for this purpose.<sup>61</sup>

CoreCivic and The GEO Group then constructed or repurposed 3,700 bed spaces for family detention units by the first quarter of 2015.<sup>62</sup> DHS used these “family residential centers” to house thousands of women and children non-citizens who were fleeing from violence in their home countries—particularly from Latin American countries—and had entered the U.S. without inspection.<sup>63</sup>

### *C. The Private Prison Industry’s Extensive Role in Immigration Detention*

DHS’ enormous demand for prison space played an instrumental role in the rise of the private prison industry’s stronghold and influence on not only immigrants themselves, but immigration law and policy in general.<sup>64</sup> Immigration detainees are held in roughly 257 detention facilities around the country, which are either operated by state and local law enforcement agencies or by for-profit corporations.<sup>65</sup> Moreover, immigration detainees are often held in the same units as criminal detainees, “subject to various inhumane conditions, including shackling, solitary confinement, and lack access to proper nutrition, exercise, and basic healthcare.”<sup>66</sup> In fact, there have been 111 reported deaths within immigration detention facilities largely due to improper medical attention

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units—i.e., mothers with their children—are placed in separate detention facilities, euphemistically called “family residential centers”) (last visited Mar. 17, 2018).

<sup>61</sup> *See Id.*; see also “ICE’s New Family Detention in Dilley, Texas to Open in December,” ICE (Nov. 7, 2014), archived at <https://www.ice.gov/news/releases/ices-new-family-detention-center-dilley-texas-open-december>.

<sup>62</sup> *See* The Detention of Immigrant Families, Nat’l Immigrant Justice Ctr. (2015), available at <https://immigrantjustice.org/ice-july-2015-family-detention-announcement>.

<sup>63</sup> *See* Olivares, *supra* note 1, at 975.

<sup>64</sup> *See Id.*

<sup>65</sup> *See* The Math of Immigration Detention: Runaway Costs for Immigration Detention, Nat’l Immigration Forum 2, 4 (Aug. 22, 2013), available at <https://immigrationforum.org/article/math-immigration-detention/>.

<sup>66</sup> A Toxic Relationship: Private Prisons and U.S. Immigration Detention, Detention Watch Network (Dec. 2016), available at [https://www.detentionwatchnetwork.org/sites/default/files/reports/A%20Toxic%20Relationship\\_DWN.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/A%20Toxic%20Relationship_DWN.pdf) (last visited Mar. 20, 2017).

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as well as suicide.<sup>67</sup> Some of the most unhealthy and dangerous conditions are found in privately-owned prisons, which in 2011, held roughly half of the U.S. immigrant detention population.<sup>68</sup>

Private prison companies like CoreCivic and The GEO Group have asserted their dominance in the market for immigration detention as they continue to promise to provide efficiency, effective management and maintenance of prison facilities at a significantly lower cost for the government (local, state, or federal).<sup>69</sup> In 1983, CoreCivic received the United States' first federal contract with INS to detain noncitizens.<sup>70</sup> One year later, in 1984, CoreCivic opened the first privately-owned immigration detention facility for non-citizen detainees in Houston, Texas.<sup>71</sup>

The prison business, and specifically the market for immigration detention, has yielded enormous profits for CoreCivic and The GEO Group, their leaders, and their shareholders.<sup>72</sup> In the fourth quarter of fiscal year 2017, The GEO Group's earned revenue was \$569 million—or roughly \$189.7 million per month—up from \$566.6 million for the fourth quarter of fiscal year 2016.<sup>73</sup> Similarly, in the fourth quarter of fiscal year 2017, CoreCivic's earned revenue was \$440.6 million—or roughly \$146.9 million per month.<sup>74</sup> Government contracts are largely

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<sup>67</sup> *See Id.*

<sup>68</sup> *See Id.*

<sup>69</sup> *See* Patrice A. Fulcher, *Hustle and Flow: Prison Privatization Fueling the Prison Industrial Complex*, 51 *Washburn L.J.* 589, 598 (2012).

<sup>70</sup> *See Id.*; see also *The CCA Story: Our Company History*, Corrs. Corp. of Am., available at <http://www.correctionscorp.com/our-history> (last visited Dec 29, 2018) (“[CoreCivic] was founded on January 28, 1983 with a progressive vision: to create public-private partnerships in corrections, replacing the government-only failures of the past with smarter, more effective solutions for the future. Co-founders Tom Beasley, Don Hutto and Doctor Crants brought diverse skills to their new venture: public policy, knowledge of the legislative process, experience in public corrections and financial expertise.”) (emphasis added).

<sup>71</sup> *See Id.* (“[In April 1984, CoreCivic] open[ed the] Houston Processing Center, located in Houston, Texas – the first detention center in the world designed and constructed by a corrections company.”).

<sup>72</sup> *See* Fulcher, *supra* note 73, at 598.

<sup>73</sup> *See* *The GEO Group Reports Fourth Quarter and Full-Year 2017 Results and Announces \$200 Million Stock Repurchase Program*, CNBC, Inc. (Feb. 14, 2018) archived at <https://www.cnbc.com/2018/02/14/business-wire-the-geo-group-reports-fourth-quarter-and-full-year-2017-results-and-announces-200-million-stock-repurchase-program.html> (reporting that “the activation of a new contract with ICE at GEO’s 780-bed Folkston ICE Processing Center in Georgia in January 2017” as playing a significant role in the increased revenue fourth quarter 2017 in comparison to fourth quarter 2016).

<sup>74</sup> *See* *CoreCivic Reports Fourth Quarter and Full Year 2017 Financial Results*, CoreCivic, Inc. (Feb. 14, 2018) archived at <http://ir.corecivic.com/news-releases/news-release-details/corecivic-reports-fourth-quarter-and-full-year-2017-financial> (reporting \$5 million of additional revenue compared with the prior year quarter at our Northeast Ohio Correctional Center as a result of (i) an amended contract with the State of Ohio to house up to an additional 996 offenders that commenced in the third quarter of 2017 and is expected to reach normalized occupancy in the second quarter of 2018, and (ii) a new contract executed during the fourth quarter of 2016 with ICE to house detainees at this facility.).

the primary source of these enormous revenues.<sup>75</sup> DHS consistently contracts with these private prison companies to construct, open, operate, and maintain immigrant detention facilities.<sup>76</sup> A report in 2013 estimated that, based on the 2014 congressional allocation of money to DHS for immigrant detention practices, this amounts to \$5.6 million of taxpayer money per day,<sup>77</sup> which corresponds to \$164 per day per imprisoned immigrant.<sup>78</sup> Further, “when ICE increased its apprehensions of mothers and children, both CoreCivic and The GEO Group quickly jumped into the market by opening the ‘family residential centers’ in Karnes, TX (GEO Group) and Dilley, TX [(CoreCivic)], thereby helping to realize these enormous profits.”<sup>79</sup>

Intuitively then, to maintain such high profit margins, private prison companies like CoreCivic and The GEO Group rely heavily on a constant influx of non-citizen detainees.<sup>80</sup> It follows that in order to maintain this constant influx, state and federal legislation must continue to prioritize arrest, prosecution, and lengthy detention of immigrants.<sup>81</sup> The profitability of imprisoning non-citizens is clear, and so long as there is a demand, there will be a supply. For example, on May 6, 2015, CoreCivic released its first quarter 2015 investor relations report stating, in short, that CoreCivic realized \$8 million dollars in revenue each month for the first quarter of 2015 by imprisoning almost exclusively immigrant mothers and children.<sup>82</sup>

*D. The Growing Influence of The Private Prison Industry In The Political And Legislative Process To Secure Its Continued Success*

As long as the U.S. government at both the federal and state level continues to contract with private prison companies, there will be a market for incarceration overall, and more specifically, immigrant

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<sup>75</sup> See, e.g., *Id.*

<sup>76</sup> See In The Public Interest, Criminal: How Lockup Quotas And “Low-crime Taxes” Guarantee Profits For Private Prison Corporations (2013), archived at <http://perma.unl.edu/4RHB-FSTM> (discussing in depth (1) about how private prisons require contracts with government agencies that guarantee certain prison occupancy rates, thus ensuring payment even if the prison beds remain empty and (2) that such quota contracts are linked to the congressional mandate of 34,000 beds for detained immigrants and point to the incentive of criminalizing more activity to fill the quota-required beds and contracts.).

<sup>77</sup> Olivares, *supra* note 1, at 990.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> See *Id.*

<sup>81</sup> See *Id.*

<sup>82</sup> See *Id.*; see also CCA Reports First Quarter 2015 Results, CCA (May 6, 2015), available at [http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-newsArticle\\_pf&ID=2044970](http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-newsArticle_pf&ID=2044970), archived at <http://perma.unl.edu/6KGS-J6ZB>.

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detention.<sup>83</sup> Moreover, private corporate interests will continue to oppose efforts to end mass incarceration and extensive immigrant detention.<sup>84</sup> Lobbying efforts by CoreCivic, The GEO Group, and the Management and Training Co. at the state level continue to prioritize self-serving immigration and criminal legislation.<sup>85</sup>

With the aforementioned exponential increase in government expenditure on immigration enforcement since 2001, the private prison industry views immigration detention as a growth industry, and corporations have increasingly devoted their resources to lobbying for policies and programs that will increase their opportunities to contract with the U.S. government.<sup>86</sup> Among the five corporations that ICE contracts with, for which official federal lobbying records are currently available, the total expenditure on lobbying for 1999-2009 was \$20,432,000.<sup>87</sup> CoreCivic expended the most for lobbying at \$18,002,000, while The GEO Group expended \$2,065,000.<sup>88</sup> Lobbying efforts have targeted a wide spectrum of government entities, “indicating a comprehensive strategy for influencing policy and legislation.”<sup>89</sup>

<sup>83</sup> See Detention Watch Network, *supra* note 66 (quoting Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons 12-13, American Civil Liberties Union (September 2016)) (“In 2008 [CoreCivic] and The GEO Group received \$307 million combined in revenue for running immigration detention facilities. By 2015 it had more than doubled to \$765 million.”).

<sup>84</sup> See Michelle Alexander, *The New Jim Crow: Mass Incarceration In The Age Of Colorblindness* (2010) (“[Private prisons] are deeply interested in expanding the market—increasing the supply of prisoners—not eliminating the pool of people who can be held captive for a profit.”); see also Center for American Progress, *How For-Profit Companies are Driving Immigration Detention Policies* (Dec. 2015), page 3, <https://cdn.americanprogress.org/wp-content/uploads/2015/12/17121556/ForProfitDetentionbriefDec.pdf> (“In 2015, [CoreCivic] lobbied against the Justice Is Not For Sale Act, which would have banned private prisons at the federal, state, and local levels, and the Private Prison Information Act which would have removed the exemption that allows private prison companies to avoid disclosing the details of its contracts or information about what goes on inside its facilities.”).

<sup>85</sup> *See Id.*

<sup>86</sup> See *The Influence of the Private Prison Industry in the Immigration Detention Business*, Detention Watch Network (May 2011), available at <https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Private%20Prison%20Influence%20Report.pdf>.

<sup>87</sup> *See Id.*

<sup>88</sup> *See Id.*

<sup>89</sup> *Id.*; see also Laura Carlsen, *With Immigration Reform Looming, Private Prisons Lobby to Keep Migrants Behind Bars*, Prison Divestment Movement (Mar. 5, 2013) (“Akin Gump Strauss Hauer & Feld, lobbyist for [CoreCivic], received \$220,000 for its services for [CoreCivic] in 2012. Mehlman Vogel Castagnetti Inc., received \$280,000 to lobby for [CoreCivic] in 2012. McBee Strategic Consulting received \$320,000 in 2012 from [CoreCivic]. [CoreCivic] in-house lobby registered \$970,000 in lobbying for 2012. Navigators Global lobbies for GEO. GEO paid Navigators Global \$120,000 for lobbying in 2012. Lionel Aguirre was also paid \$120,000 for lobbying for GEO . . . Chuck Schumer (D-N.Y.): Chair of the Rules Committee, Member of Judiciary and Chair of Subcommittee on Immigration and Border Enforcement. In 2012, Schumer received at least \$64,000 from lobbyists Akin Gump et al., and \$2,500 from Mehlman Vogel. He also received \$34,500 from FMR (Fidelity), which owns 5.09 percent of [CoreCivic] and 8.67 percent of GEO. Marco Rubio (R-Fla.): Member of the Commerce, Science, and Transportation

In 2015 alone, CoreCivic and The GEO Group spent \$1.6 million to hire 20 lobbyists in Washington D.C.<sup>90</sup> In October 2016, The GEO Group significantly increased its lobbying capacity, hiring three new firms, which included David Stewart and Ryan Robichaux, both of whom were former staff of former Attorney General Jeff Sessions.<sup>91</sup> Further, about 70 percent of CoreCivic and The GEO Group lobbyists have previously worked in Washington D.C. for the federal government.<sup>92</sup> This revolving door also exists between the federal agencies issuing contracts and private prison companies.<sup>93</sup> For example, “David Venturella, former Assistant Director of ICE, is now the Executive Vice President for Corporate Development at GEO, and Julie Myers Wood, a former DHS Assistant Secretary for ICE, is now on The GEO Group’s [Board of Directors].”<sup>94</sup> Over time, both CoreCivic and The GEO Group have had multiple employees in their senior leadership positions who had formerly served as high-level government officials—including Director of the BOP, General Counsel for DHS and Director of the U.S. Marshals Service.<sup>95</sup>

Furthermore, the private prison industry does not hide its intention to influence immigration detention policy and practice in accordance with its own profit motive.<sup>96</sup> Private prison corporations influence detention policy and practice at both the federal and state levels.<sup>97</sup> Most notably,

[A] series of stories from several media outlets in 2010 described the

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Committee, and Foreign Relations, received \$29,300 from the GEO Group. Wells Fargo (also heavily invested in private prisons) gave Rubio \$16,150. Bob Menendez (D-N.J.): Finance Committee, new chair of Foreign Relations, received more than \$39,000 in documented money from private prison lobbyists, with \$34,916 coming from Akin Gump, \$6,300 from Mehlman Vogel Castagnetti Inc. and \$1,000 from McBee Strategic Consulting. Michael Bennet (D-Colo.): Finance Committee, received at least \$30,794 from Akin Gump. The prison lobby also targeted several key House members Patty Murray (D-Wash.), chair of the Budget committee and member of Appropriations, received \$21,600 from Akin Gump; \$74,700 from McBee Strategic Consulting. Debbie Wasserman Schultz (D-Fla.), who is on the House Budget and Judiciary committees, received money from: Akin, Gump et al. (\$19,600); and contributions from Mehlman Vogel associates totaling \$2,500. What these lobbyists want for their money is an immigration reform bill that tightens, rather than loosens the criminal net for undocumented workers and their families.”).

<sup>90</sup> See *Buying Influence: How Private Prison Companies Expand Their Control of America’s Criminal Justice System*, In the Public Interest (Oct. 2016), page 3, available at <https://www.inthepublicinterest.org/buying-influence-howprivate-prison-companies-expand-their-control-ofamericas-criminal-justice-system/>.

<sup>91</sup> *See Id.*

<sup>92</sup> *See Id.*

<sup>93</sup> *See* Carlsen, *supra* note 96.

<sup>94</sup> American Civil Liberties Union, *Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons* (Sept. 2016), page 11, [https://www.aclu.org/sites/default/files/field\\_document/white\\_paper\\_09-30-16\\_released\\_for\\_web-v1-opt.pdf](https://www.aclu.org/sites/default/files/field_document/white_paper_09-30-16_released_for_web-v1-opt.pdf).

<sup>95</sup> *See* Cristina Costantini & Jorge Rivas, *Shadow Prisons: A Private and Profitable Corner of the Federal Prison System Thrives After a Long-Ignored Offense Is Prosecuted*, Fusion (Feb. 4, 2015), <http://interactive.fusion.net/shadow-prisons/>.

<sup>96</sup> *See* Carlsen, *supra* note 96.

<sup>97</sup> *See Id.*

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private prison industry's involvement in the drafting and passage of Arizona's controversial Senate Bill 1070, detailing relationships between powerful state officials (including Senator Russell Pearce and Governor Jan Brewer) and various political players, including the American Legislative Exchange Council, a group of million-dollar corporations and legislators with CoreCivic as a member of its Public Safety and Elections Task Force.<sup>98</sup>

These deep connections between corporate and government actors raises concerns regarding the extent to which private industry is influencing policy in an area where the lives, liberty and basic rights of hundreds of thousands of people are at stake.<sup>99</sup>

*E. Arizona's SB-1070*

Arizona's SB-1070, formally titled the "Support Our Law Enforcement and Safe Neighborhoods Act," was signed by then-Governor Jan Brewer on April 23, 2010.<sup>100</sup> In *Arizona v. United States*, the Supreme Court struck down most of SB-1070's core provisions on grounds that it intruded upon the government's plenary power over immigration.<sup>101</sup> However, the Court upheld section 2(B) of SB-1070,

<sup>98</sup> See Prison Economics Help Drive Ariz. Immigration Law <https://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law> ("Arizona state Sen. Russell Pearce was the originator of the draft legislation that later became Arizona SB 1070.... Last December Sen. Russell Pearce sat in a hotel conference room with representatives from [CoreCivic] . . . Together they drafted model legislation that was introduced into the Arizona Legislature two months later, almost word for word."); see also Beau Hodai, Ties That Bind: Arizona Politicians and the Private Prison Industry, *In These Times* (Jun. 21, 2010) ("A little over a week after Pearce introduced S.B. 1070 on the floor of the Arizona Senate, [CoreCivic] enlisted Highground Consulting, one of the most influential lobbying firms in Phoenix, to represent its interests in the state. Lobby disclosure forms filed with the Arizona Secretary of State indicate that Maricopa County, Arizona also employed Highground during the time of the bill's formation. Highground's owner and principal, Charles Coughlin, is [also] a top advisor and the current campaign manager of Gov. Brewer. State lobby reports show that Brewer's current spokesman, Senseman, previously worked as [CoreCivic's] chief lobbyist in Arizona as an employee of Policy Development Group, another influential Phoenix consulting firm. His wife, Kathryn Senseman, is still employed by Policy Development Group and still lobbies the legislature on behalf of [CoreCivic]."); see also Hannah Rapplewe Profit from Prisons, *The Crime Report* ("Companies like [CoreCivic] and GEO are prominent members of the American Legislative Exchange Council, a non-profit that connects lawmakers and heads of industry to collaborate on state and federal legislation. Reports [have] exposed [CoreCivic's] involvement in the controversial law, which allows Arizona law enforcement to stop and detain anyone suspected of being an undocumented immigrant.").

<sup>99</sup> See Carlsen, *supra* note 96.

<sup>100</sup> See Kevin R. Johnson, Immigration and Civil Rights: State and Local Efforts to Regulate Immigration, 46 *Ga. L. Rev.* 609, 630 (2012).

<sup>101</sup> See *Id.*; see also Kevin R. Johnson, Immigration in the Supreme Court, 2009-13: A New Era of Immigration Law Unexceptionalism, 68 *Okla. L. Rev.* 57, 111 (2015); *Arizona v. United States*, 567 U.S. 387 (2012).

which had generated considerable concern and criticism.<sup>102</sup> Popularly known as the “show your papers”<sup>103</sup> requirement, SB-1070 mandates state and local police to verify the immigration status of anyone for whom they have a “reasonable suspicion” of unlawful presence in the United States.<sup>104</sup> Furthermore, the purpose behind SB-1070, as stated by the Legislature of the State of Arizona, was to “discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.”<sup>105</sup> After SB-1070 passed in 2010, two dozen similar bills were introduced in state legislatures across the country, such as Alabama, Georgia, Indiana, South Carolina and Utah.<sup>106</sup>

As an example of the influential effect that Arizona’s SB-1070 created in other states, Alabama created HB-56, its version of SB-1070, which went even further to attempt to reduce the number of undocumented non-citizens through force of state law.<sup>107</sup> Among HB-56’s provisions is a requirement that public schools determine and record the immigration status of every enrolled student.<sup>108</sup> Further, section 12 of HB-56 initially stated that “[u]pon any lawful stop, detention or arrest made by a law enforcement officer (state, county, or municipal) and reasonable suspicion exists that a person is an alien, unlawfully present, a reasonable attempt shall be made, when practical, to determine immigration status.”<sup>109</sup> Section 12 of HB-56 remains in effect, “though it has since been limited to disallow arrest of an individual solely for the purpose of checking his or her immigration status.”<sup>110</sup> Moreover, there is a section of HB-56 that mandates that employers with fewer than 25 employees use the federal database “E-Verify” to confirm that their workers are authorized to work in the U.S.<sup>111</sup> This section has not been struck down in court, along with several other similarly discriminatory provisions.<sup>112</sup> Ultimately, there “remains concern among legal experts that enforcement of such HB-56 provisions that do remain in place will

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<sup>102</sup> See Johnson, *supra* note 100.

<sup>103</sup> See *Id.*

<sup>104</sup> See S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010).

<sup>105</sup> State of Arizona Senate Forty-ninth Legislature Second Regular Session 2010 SENATE BILL 1070.

<sup>106</sup> See Arizona’s SB 10-70, American Civil Liberties Union, available at <https://www.aclu.org/issues/immigrants-rights/state-and-local-immigration-laws/arizonas-sb-1070>.

<sup>107</sup> See Lopez, *supra* note 7.

<sup>108</sup> See *Id.*

<sup>109</sup> See Connor Sheets, Alabama’s 2011 Anti-immigrant Law H.B. 56 Still on Books, Gets New Life Under Trump (2017), available at [http://www.al.com/news/birmingham/index.ssf/2017/03/hb\\_56\\_alabamas\\_2011\\_anti-immig.html](http://www.al.com/news/birmingham/index.ssf/2017/03/hb_56_alabamas_2011_anti-immig.html) (last visited Dec. 17, 2018).

<sup>110</sup> *Id.*

<sup>111</sup> See *Id.*

<sup>112</sup> See *Id.*

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be revived as a result of President Trump's immigration crackdown."<sup>113</sup> The concerns and uncertainties created by this legislation, along with the influence of the private prison industry in general, only instills more confusion and fear among immigrant communities across states that have implemented laws like those in Alabama.

## PART II: OTHER CONSIDERATIONS

A. *Dispelling the Myth That Private Prison Systems Offer Cost Saving Opportunities For State And Federal Governments*

Proponents of private prison systems claim that privatization is cheaper and more efficient than a strictly public prison system.<sup>114</sup> Boasting of less bureaucratic roadblocks, the private sector claims that "on average, it takes approximately twelve to eighteen months to build a private prison, whereas state or federal governments take at least a year longer."<sup>115</sup> However, contemporary evidence has revealed that the private prison system, in fact, does not offer state and federal governments cost-effective saving opportunities.<sup>116</sup> Not only does the private prison system fail to cut government costs, but privatization overall negatively impacts the treatment, rehabilitation, and care of prisoners, "indicating that the market-driven business model is fundamentally incompatible with an effective and humane corrections system."<sup>117</sup> One of the reasons for this tension is that private prison companies are inherently profit-seeking entities that, by their very nature, work to minimize costs wherever possible.<sup>118</sup> Cost-cutting measures, however, promote inferior contract performance, undue safety risks, and poor delivery of inmate services.<sup>119</sup> Finally, to expand their markets in the immigration context, private prison operators have a financial incentive to advance harsh immigration laws that make it easier to detain non-citizens.<sup>120</sup> However, all of these market-

<sup>113</sup> *Id.* ("It seemed like [H.B. 56] had been kind of dormant for a while, but it seems like it's come back and resurfaced a little bit . . . [T]he most important part of H.B. 56, which clearly hasn't been overturned by the courts, is this environment of suspicion and discrimination of people who are brown and people who don't speak fluent English.").

<sup>114</sup> See Joseph Field, *Making Prisons Private: An Improper Delegation of Governmental Power*, 15 Hofstra L. Rev. 649 (1987).

<sup>115</sup> *Id.*

<sup>116</sup> See *Id.*

<sup>117</sup> Geiza Vargas-Vargas, *The Investment Opportunity in Mass Incarceration: A Black (Corrections) or Brown (Immigration) Play?*, 48 Cal. W. L. Rev. 351, 358 (2012).

<sup>118</sup> See *Id.*

<sup>119</sup> See *Id.*

<sup>120</sup> See Brigitte Sarabi & Edwin Bender, *The Prison Payoff: The Role of Politics and Private Prisons in the Incarceration Boom*, Western Prison Project (2000) (discussing the efforts made by private prison companies to encourage strict criminal sentencing legislation).



based incentives, as applied to the field of corrections, operate to the detriment of the U.S. Government, prison inmates, and society as a whole.<sup>121</sup>

Opponents of privatization not only question whether privatization is more cost-efficient, but they also insist that the government, not the private sector, is better-equipped to operate prisons.<sup>122</sup> Particularly, opponents of privatization argue that the non-delegation doctrine requires that governmental entities administer prisons, thereby prohibiting private entities from operating them.<sup>123</sup> Furthermore, privatization opponents doubt that the private sector can fully accomplish the goals of the penal system—given its obvious primary concern with profit.<sup>124</sup> In sum, opponents of the private prison industry insist that since the economic incentives created to maintain a steady flow of inmates may prove undeniably incompatible with prisoners' constitutional rights, the private sector is not the proper vehicle for operating an inherently governmental operation.<sup>125</sup>

### *B. The Trump Administration and Today's Political Climate*

Passing legislation at the federal level to abolish the use of private prisons seems quite unlikely with the Trump Administration, given its consistent discriminatory rhetoric surrounding non-citizens.<sup>126</sup> Since the campaign trail, with promises to build a wall, now-President Trump has vowed to “crackdown” on immigration enforcement.<sup>127</sup> The Trump Administration has held true, in part, to this “crackdown” by declaring in 2017 that “ICE should consider anyone who is in the U.S. illegally as a potential target for immediate detainment and removal from the country.”<sup>128</sup> The Trump Administration has also proposed hiring 10,000 new immigration agents and deputizing local law enforcement officers to enforce immigration laws in their communities, as local law enforcement officers were initially directed to do in Alabama under HB-56.<sup>129</sup>

Moreover, the private prison industry experienced a resurgence when President Trump was elected.<sup>130</sup> Specifically, on November 9,

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<sup>121</sup> *See Id.*

<sup>122</sup> *See Id.*

<sup>123</sup> *See* Peter J. Duitsman, *The Private Prison Experiment: A Private Sector Solution to Prison Overcrowding*, 76 N.C. L. Rev. 2209, 2218 (1998).

<sup>124</sup> *See Id.*

<sup>125</sup> *See Id.*

<sup>126</sup> *See* Ron Nixon, *Trump Administration Touts Border Arrests as Proof of Crackdown on Illegal Immigration*, *New York Times* (Dec. 5, 2017).

<sup>127</sup> *See Id.*

<sup>128</sup> *See* Sheets, *supra* note 115.

<sup>129</sup> *Id.*

<sup>130</sup> *See* The Editorial Board, *Under Mr. Trump, Private Prisons Thrive Again*, *New York Times*

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2017, the day after President Trump won the presidential election, CoreCivic's stock price jumped 43 percent, while The GEO Group, rose 21 percent.<sup>131</sup> Furthermore, some of the most disheartening news since President Trump took office is that his former Attorney General, Jeff Sessions, reversed an order issued in August 2016 by then-President Barack Obama's Justice Department to phase out the government's use of private prisons.<sup>132</sup> The memorandum put out by Sally Yates, then-President Obama's Deputy Attorney General, explained that "privately operated prisons compare poorly with government facilities on most key measures."<sup>133</sup> In sum, it seems that under the Trump Administration, the federal government is exceedingly unlikely to pass legislation abolishing the use of private prisons.

*C. Intergovernmental Immunity Doctrine*

Since it may be difficult today to adopt federal legislation to abolish the use of private prison contracts, proposing such legislation at the state level may be a viable alternative. Proposing such legislation at the state level, however, raises important issues regarding federal preemption. Notwithstanding potential political blowback, what if the federal government implements a policy in which it explicitly provides that it will continue to contract with private prisons corporations, or at least, will not abolish private prison contracts? Is there anything that states can do to stop the federal government from building or contracting with private prisons companies? The short answer is "maybe." Perhaps the state could pass a tax on private prisons located within their state. This solution, however, confronts the Supreme Court's holding in *McCulloch v. Maryland*.<sup>134</sup> However, the state entity has "the authority to impose regulatory costs on the federal contractors . . . only to the extent of the contractors' interest."<sup>135</sup> The rule to be derived from the Supreme Court's more recent decisions, then, is that "the economic burden on a federal function of a state tax imposed on those who conduct business with the federal government does not render the tax unconstitutional so long as

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(Feb. 24, 2017) available at <https://www.nytimes.com/2017/02/24/opinion/under-mr-trump-private-prisons-thrive-again.html>.

<sup>131</sup> *See Id.*

<sup>132</sup> *See Id.*

<sup>133</sup> *Id.* ("They aren't as safe or secure for staff members or inmates. They don't provide the same level of rehabilitative services, like educational programs and job training, that help people lead law-abiding lives after prison. They don't even save substantially on costs.")

<sup>134</sup> *McCulloch v. Maryland*, 17 U.S. 316, 400 (holding that states may not impose taxes that discriminate against the federal government).

<sup>135</sup> *California Farm Bureau Fed'n v. State Water Res. Control Bd.*, 51 Cal. 4th 421, 445 (2011), as modified (Apr. 20, 2011).

the tax is imposed equally on other similarly situated constituents of the State.”<sup>136</sup> This leaves the door open to the possibility of states imposing regulatory costs on private prisons within their respective states.

### PART III: PROPOSAL

The relationship between private prison companies and the continuous detention of immigrants is symbiotic.<sup>137</sup> Mass incarceration of immigrants fuels the proliferation of for-profit prisons while for-profit prison corporations encourage laws and policies that increase the number of immigrants in detention.<sup>138</sup> To end this oppressive cycle, public policy must ultimately address incentives to expand the use of private prisons and to hold immigrants in detention.<sup>139</sup>

#### *A. Effects on Immigrants in Arizona following SB-1070*

Arizona is no stranger to anti-immigrant laws and the influence of the private prison industry.<sup>140</sup> Arizona’s SB-1070 was the most recent and dramatic of a series of laws with harsh effects for the state’s undocumented immigrant population.<sup>141</sup> Immigrant youth in particular had been negatively impacted in 2006, “when Arizona voters passed Proposition 300, which prohibited state financial assistance to college students who could not prove their legal immigration status.”<sup>142</sup> In 2008, the Arizona State legislature passed the “Legal Arizona Workers Act, which was aimed at cracking down on businesses that knowingly hired undocumented workers by requiring employers to use the federal database, ‘E-Verify,’ to verify employment authorization for all new employees.”<sup>143</sup> In addition, in 2009, Arizona’s HB-2008 became official, “which required applicants for public assistance from the state to prove their legal status and instructed Arizona state agencies to report the names of any undocumented immigrant applicants to the federal government.”<sup>144</sup>

The passing and implementation of SB-1070 has left a lasting impact

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<sup>136</sup> *United States v. Fresno Cty.*, 429 U.S. 452, 462, 97 S. Ct. 699, 704–05 (1977).

<sup>137</sup> See generally Olivares, *supra* note 1.

<sup>138</sup> See discussion *supra* Part I (A)–(D).

<sup>139</sup> See discussion *supra* Introduction.

<sup>140</sup> See Lopez, *supra* note 7.

<sup>141</sup> See *Id.*

<sup>142</sup> *Id.* at 6.

<sup>143</sup> *Id.* at 5.

<sup>144</sup> *Id.* at 5-6.

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on immigrants in Arizona.<sup>145</sup> As mentioned above, private prison corporations played a major role in passing SB-1070 as they have a clear incentive to create legislation that helps to detain as many non-citizens as possible.<sup>146</sup> An enlightening series of reports conducted by the University of Arizona that analyzed the impact of SB-1070 on the youth in Arizona summarized “the perspectives of teachers, parents, and students on how young people have been impacted by the law’s passage.”<sup>147</sup> Reporters revealed a disturbing picture of a “destabilized, disillusioned, and disadvantaged” youth that resulted from the passage of SB-1070.<sup>148</sup> The deportation of large numbers of family members and friends dismantled established communities throughout Arizona.<sup>149</sup> These deportations also resulted in, among other factors, “decreased school enrollments and distress left in the wake of those deportations.”<sup>150</sup> Furthermore, what is also troubling is that “many young people and their families also [continue to] maintain a powerful sense of mistrust of the public institutions around them.”<sup>151</sup>

Even those non-citizens who were not removed also either left or considered leaving Arizona as a result of SB-1070.<sup>152</sup> These departures, both anticipated and actual, “had a range of consequences for those left behind, including the loss of friends and family, social and academic problems, anxiety-related health effects, and loss of trust in schools.”<sup>153</sup> The reporters also found that:

(1) [a] school counselor who specializes in working with students who live without their parents reported that the number of students she served nearly doubled after the passage of SB-1070 and she attributed much of this leap to the fact that many parents left the state and left their children behind to complete their schooling; (2) [s]everal high school personnel shared their suspicions that SB-1070 triggered an increase in teenage marriages for immigration purposes; (3) [s]chool nurses and health staff for several schools reported an increase in stress-related health problems in their schools in the aftermath of the law’s passage; [and] (4) [s]everal schools reported lost funding and resulting job cuts due to dropping school enrollment numbers.<sup>154</sup>

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<sup>145</sup> *See Id.*

<sup>146</sup> *See* Detention Watch Network, *supra* note 93.

<sup>147</sup> *See* Lopez, *supra* 7 at 1.

<sup>148</sup> *Id.*

<sup>149</sup> *See Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *See Id.*

<sup>153</sup> *Id.* (“One parent described the fear that led people to leave: ‘[People] do not feel freedom to work, to go out, to eat—you’re scared to go out and eat! [Even when] you sleep, you feel like immigration [authorities] will be at the door.’”).

<sup>154</sup> *Id.* at 1-2.

The provisions of SB-1070 have had a clear impact on immigrants in Arizona—all while those who created it continue to profit from streamlining immigrants into detention.<sup>155</sup>

Moreover, non-citizens' growing mistrust of public institutions "affected their daily routines and reduced their civic and social engagement."<sup>156</sup> While such mistrust was oftentimes centered around police, in some cases, as aforementioned, it also often extended to schools.<sup>157</sup> The University of Arizona reporters found that:

(1) [a] school principal spoke of having to convince parents his school was safe after receiving several calls from parents in the aftermath of SB-1070 who had heard that there were immigration "sweeps" going on at local schools, (2) [s]chool parent liaisons discussed decreased participation in their programs, (3) [a] number of youth spoke of their reluctance to contact police when they otherwise might, out of a fear that police would call immigration authorities.<sup>158</sup>

Living in constant fear is yet another effect that this type of legislation and those who created it have had on immigrant communities.<sup>159</sup>

Today, according to an Immigrant Legal Resource Center report on Sanctuary Cities, counties in Arizona still have policies to assist in immigration enforcement.<sup>160</sup> According to this nationwide study, certain counties in Arizona are among those that lead the country in "spend[ing] substantial local time and resources on civil immigration enforcement, whether under a 287(g) agreement,<sup>161</sup> by contracting with ICE to detain immigrants, or both."<sup>162</sup> Similar to the passing of SB-1070 and the prevalence of the private prison industry in Arizona, these policies can only make Arizona a more hostile environment for immigrants.<sup>163</sup> There remains some hope, however, because in February 2017, the local government in Maricopa County, Arizona, with an immigrant population of 595,300,<sup>164</sup> announced that "it would no longer honor ICE requests to

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<sup>155</sup> *See Id.*; *see also* discussion *supra* Part I (A)–(D).

<sup>156</sup> *Id.* at 2.

<sup>157</sup> *See Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *See Id.*

<sup>160</sup> *See* Krsna Avila et al., *The Rise of Sanctuary: Getting Local Officers Out of the Business of Deportations in the Trump Era*, Immigrant Legal Resource Center. (Jan. 2018).

<sup>161</sup> *See* *The 287(g) Program: An Overview*, American Civil Liberties Union, available at <https://www.americanimmigrationcouncil.org/research/287g-program-immigration> ("Through the 287(g) program, state and local police officers collaborate with the federal government to enforce federal immigration laws. In the past, the 287(g) program has been costly for localities, has not focused on serious criminals, and has harmed the relationship between police and local communities.").

<sup>162</sup> *Id.*

<sup>163</sup> *See Id.*

<sup>164</sup> *See Id.*

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detain inmates beyond the period of time allowed by state law.”<sup>165</sup> This agreement to no longer honor ICE detainers was due in large part to the efforts of local immigrant activist groups in Arizona.<sup>166</sup> The agreement only took effect in one county, but perhaps this individual county’s agreement could serve as an optimistic forecast of the state’s potential to further the interests of immigrants in Arizona.

*B. Immigrants in New York*

Unlike Arizona, in 2007, the New York State Legislature passed “N.Y. Correct. Law § 121,” which prohibits the use of private prisons and jails in New York.<sup>167</sup> The New York State Legislature intended to prohibit the use of private prisons because of their demonstrated negative effects on inmates and general lack of cost-efficiency.<sup>168</sup> Since the introduction of N.Y. Corrections Law § 121 in 2007, New York State has not implemented anti-immigrant laws and, at the city level, has passed sanctuary city laws.<sup>169</sup>

New York is often considered one of the greatest cultural hubs in the country and one of the most immigrant-friendly states in the United States.<sup>170</sup> Currently, one-fifth of New York’s total population is comprised of non-citizens.<sup>171</sup> Non-citizens are vital contributors within their communities and to New York as a whole.<sup>172</sup> Non-citizens are responsible for “over \$229 billion of economic output in New York State, and make up over 28 percent of the workforce.”<sup>173</sup> Further, non-citizens “play roles in every sector, from finance and banking, to law, to STEM fields, to farming, domestic work, manufacturing, and hospitality

<sup>165</sup> *Id.*

<sup>166</sup> *See Id.*

<sup>167</sup> N.Y. Correct. Law § 121 (McKinney) (“[T]he private operation or management of a correctional facility . . . the private ownership or operation of a facility for housing state or local inmates or the private ownership or operation of a facility for the incarceration of other state’s inmates is prohibited.”).

<sup>168</sup> N.Y. Correct. Law § 121 (McKinney), Practice Commentaries by Mark Bonacquist (“Private operation of correctional facilities is not uncommon around the country, but the practice has been criticized on the grounds that guards are poorly trained; essential services, such as food and medical care, are inadequate; and the savings to taxpayers negligible.”).

<sup>169</sup> *See* Christine Kwon & Marissa Roy, Local Action, National Impact: Standing Up for Sanctuary Cities, 127 Yale L.J. Forum 715, 716 (2018) (“Sanctuary jurisdictions” are those cities, counties, and states whose police forces maintain separation from federal immigration enforcement. It is important to note that sanctuary jurisdictions do not thwart or interfere with federal immigration enforcement; these jurisdictions exercise their discretion and do not opt to aid federal immigration enforcement.”).

<sup>170</sup> *See* Immigrants in New York, American Immigration Council 1 (Oct. 2017), available at <https://www.americanimmigrationcouncil.org/research/new-americans-new-york>.

<sup>171</sup> *See Id.*

<sup>172</sup> *See Id.*

<sup>173</sup> *Id.*

industries.”<sup>174</sup> Moreover, in 2014, immigrant New Yorkers “paid more than \$42 billion in taxes, spent over \$100 billion, led more than half of the state’s Fortune 500 companies, and employed nearly 500,000 New Yorkers.”<sup>175</sup>

In addition to making up a large portion of economic life in the state, immigrant New Yorkers are active in the civic and education sectors.<sup>176</sup> By 2014, “over 1,000,000 of New York’s foreign-born immigrants had received a college education, with a 41.9 percent increase between 2000 and 2011.”<sup>177</sup> In fiscal year 2016, “over 90,000 immigrants became naturalized citizens in the metropolitan area of New York City, Newark, and Jersey City.”<sup>178</sup> Further, over 23 percent of registered voters in the state are considered “New Americans” who are naturalized citizens or U.S.-born children of immigrants.<sup>179</sup>

As workers, business owners, taxpayers, and neighbors, non-citizens constitute an integral part of New York’s diverse communities and make extensive contributions that benefit the entire state.<sup>180</sup> According to a study by the American Immigration Council, over 500,000 U.S. citizens in New York live with at least one family member who is undocumented.<sup>181</sup> Similarly, more than 30,000 Deferred Action for Childhood Arrivals (“DACA”) recipients live in New York.<sup>182</sup> Further, DACA recipients in New York “paid an estimated \$140 million in state and local taxes in 2016.”<sup>183</sup> Moreover, as consumers, “immigrants add \$100 billion to New York’s economy and, in immigrant-led households, had \$103.3 billion in spending power (after-tax income) in 2014.”<sup>184</sup>

New York State also became the first state in the U.S. to provide legal representation for all non-citizens who are detained and are in removal proceedings.<sup>185</sup> The 2018 New York State budget included a grant of \$4 million to significantly expand the New York Immigrant Family Unity Project (“NYIFUP”), the U.S.’s first public defense program for immigrants facing deportation that was launched in New

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<sup>174</sup> See The Contributions of New Americans in New York, New American Economy (Aug. 2016), available at

<http://www.newamericaneconomy.org/locations/new-york/>.

<sup>175</sup> *Id.*

<sup>176</sup> See *Id.*

<sup>177</sup> See Jie Zong & Jeanne Batalov, College-Educated Immigrants in the US, Migration Policy Institute, available at

<http://www.migrationpolicy.org/article/college-educated-immigrants-united-states> (Feb. 3, 2016).

<sup>178</sup> See New American Economy, *supra* note 179.

<sup>179</sup> See *Id.*

<sup>180</sup> See American Immigration Council, *supra* note 175.

<sup>181</sup> *Id.* at 2.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> See New York State Becomes First in the Nation to Provide Lawyers for All Immigrants Detained and Facing Deportation, The Vera Institute of Justice (Apr. 2017).

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York City in 2013.<sup>186</sup> In funding NYIFUP, New York has “taken affirmative steps to ensure that no immigrant will be detained and permanently separated from his or her family solely as a result of the economic hardship presented by having to pay a lawyer.”<sup>187</sup> Moreover, without counsel, a study shows, “only 3 percent of detained, unrepresented immigrants avoid deportation, but having access to a public defender can improve an immigrant’s chance of prevailing and remaining in the U.S. by as much as 1000 percent.”<sup>188</sup> These are a few of the steps taken by New York, in addition to abolishing the use of private prisons, to ensure the safety and overall well-being of immigrants in the state.

*C. Immigrants in Illinois*

In 1990, the State of Illinois adopted the Private Correctional Facility Moratorium Act, which prohibits the use of private prisons and jails in Illinois.<sup>189</sup> In passing the Private Correctional Facility Moratorium Act, the Illinois Legislature found that, contrary to the assertions of most proponents of private prisons,

the management and operation of a correctional facility or institution involves functions that are inherently governmental. The imposition of punishment on errant citizens through incarceration requires the State, any unit of local government or a county sheriff, to exercise its coercive police powers over individuals and is thus distinguishable from privatization in other areas of government. It is further found that issues of liability, accountability and cost warrant a prohibition of the ownership, operation or management of correctional facilities by for-profit private contractors.<sup>190</sup>

Since the introduction of Private Correctional Facility Moratorium Act in 1990, the State of Illinois has not implemented anti-immigrant laws and, at the city level, has passed sanctuary city laws.<sup>191</sup>

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<sup>186</sup> See Jennifer Stave et al., Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unit, Vera Institute of Justice 20 (Nov. 2017).

<sup>187</sup> See New York State Becomes First in the Nation to Provide Lawyers for All Immigrants Detained and Facing Deportation, The Vera Institute of Justice (Apr. 07, 2017).

<sup>188</sup> *Id.*

<sup>189</sup> See Avila et al., supra note 166; Illinois Private Correctional Facility Moratorium Act, 730 Ill. Comp. Stat. Ann. 140/3 (West 2009) (“the State, any unit of local government, or a county sheriff, shall not contract with a private contractor or private vendor for the provision of services relating to the operation of a correctional facility or the incarceration of persons in the custody of the Department of Corrections, the Department of Juvenile Justice, or a sheriff.”).

<sup>190</sup> Illinois Private Correctional Facility Moratorium Act, 730 Ill. Comp. Stat. Ann. 140/2 (West 2009).

<sup>191</sup> See Avila et al., supra note 166 (“In 2017, five states enacted statewide policies restricting



Illinois has a growing community of immigrants.<sup>192</sup> For example, Cook County in Illinois has an immigrant population of 1,108,400—the third largest immigrant-populous in the U.S.<sup>193</sup> Furthermore, “one in seven Illinois residents is an immigrant, while one in eight is a native-born U.S. citizen with at least one immigrant parent.”<sup>194</sup> Further, Illinois has a large population of undocumented immigrants<sup>195</sup> and DACA recipients.<sup>196</sup> As students, workers, business owners, taxpayers, immigrants are crucial contributors to Illinois’ diverse communities.<sup>197</sup>

The need to protect this large, affluent immigrant population in Illinois also contributed to the passing of the TRUST Act.<sup>198</sup> The Illinois TRUST Act, was introduced in the Illinois legislature in Spring 2014.<sup>199</sup> The TRUST Act was intended “to make it as comprehensive as possible to find novel ways by which state and local governments can restore trust to immigrant communities in Illinois.”<sup>200</sup> The TRUST Act “bars law enforcement agencies throughout the Illinois from complying with ICE

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the use of their agencies’ time, money, or other resources from being spent on immigration enforcement or helping ICE . . . Illinois . . . passed legislation banning all detention on ICE holds and restricting any inquiry into immigration status, respectively. In addition, the governor[] of New York . . . directed all state-level agencies not to ask about immigration status in carrying out their duties, unless otherwise required by law in order to perform the service.”)

<sup>192</sup> See Immigrants in Illinois, American Immigration Council 1 (Oct. 2017), available at <https://www.americanimmigrationcouncil.org/research/immigrants-in-illinois>.

<sup>193</sup> See *Id.*

<sup>194</sup> *Id.* (“In 2015, 1.8 million immigrants comprised 14.2% of the population [in Illinois]. Illinois was home to 870,770 women, 863,196 men, and 92,190 children who were immigrants . . . Nearly half of all immigrants in Illinois are naturalized U.S. citizens.”)

<sup>195</sup> See *Id.* at 2 (“450,000 undocumented immigrants comprised 24 percent of the immigrant population and 3.5 percent of the total state population in 2014.”)

<sup>196</sup> See *Id.* (“More than 35,000 DACA recipients live in Illinois. As of 2016, 73 percent of DACA-eligible immigrants in Illinois, or 45,663 people, had applied for DACA.”)

<sup>197</sup> *Id.* at 1 (“[O]ver 20 percent of all business owners in the Chicago metropolitan area are immigrants . . . [A]lmost one in three adult immigrants had a college degree or more education in 2015, while one in four had less than a high school diploma . . . [O]ne in six workers in Illinois is an immigrant, together making up an important part of the state’s labor force in a range of industries [with] 1.2 million immigrant workers compris[ing] 17.9 percent of the labor force in 2015. . . . [I]mmigrants in Illinois have [also] contributed billions of dollars in taxes. Immigrant-led households in the state paid \$9.8 billion in federal taxes and \$5.2 billion in state and local taxes in 2014. Undocumented immigrants in Illinois paid an estimated \$758.9 million in state and local taxes in 2014. Their contribution would rise to over \$917.4 million if they could receive legal status . . . [A]s consumers, . . . Illinois residents in immigrant-led households had \$40.1 billion in spending power (after-tax income) in 2014. Immigrant entrepreneurs in Illinois [also] generate billions of dollars in business revenue [with] 119,404 immigrant business owners account[ing] for 21.3 percent of all self-employed Illinois residents in 2015 and generat[ing] more than \$2.5 billion in business income.”)

<sup>198</sup> Joseph M. Gietl, Restoring Trust and Advancing Justice: Adopting the Illinois Trust Act Is the Real Way to Secure Communities, 19 Pub. Int. L. Rep. 114, 115 (2014) (“Increased deportations and state and local involvement in federal immigration enforcement greatly impact the 198,000 Illinois family households that contain at least one undocumented member.”)

<sup>199</sup> See *Id.*

<sup>200</sup> *Id.*

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detainers once an individual is eligible for release from custody.”<sup>201</sup> This bill also intended to help restore trust between the state’s immigrant population and, in particular, law enforcement agencies, who depend on immigrants to report criminal activity and to “act as the eyes and ears of the community.”<sup>202</sup> Legislation like the TRUST Act helps provide protection for Illinois’ “nearly 500,000 undocumented residents, who could otherwise enter the deportation pipeline through any simple interaction with police, such as a minor traffic violation.”<sup>203</sup> These are a few of the steps taken by Illinois, in addition to abolishing the use of private prisons, to ensure the safety and overall well-being of immigrants in the state.

## PART IV: CONCLUSION

The practice of profit-driven immigrant detention should cease on principled grounds of the humanitarian and democratic goals of a society that protects the rights of the vulnerable and oppressed. To accomplish this end, activists and advocates should concentrate on pushing corporate actors out of the business either through public and political pressure on the supply side, i.e., private companies creating immigration detention centers—or on the demand side, i.e., governmental and public agencies contracting with and paying the companies to do so.<sup>204</sup> Moreover, some states have statutory bans against entering into contracts with private corporations for the operation of their prison system.<sup>205</sup> These state statutory bans, however, do not always result in a state excluding itself from the private prison industry.<sup>206</sup> In Wisconsin, for example, Governor Scott Walker, who has a history of ties with the prison industry,<sup>207</sup> worked around the Wisconsin ban on private prison contracts by shipping Wisconsin prisoners out of state to private prisons in Ohio and Kentucky, thus still directing Wisconsin tax dollars to private prison companies.<sup>208</sup> Therefore, a federal ban on private prison contracts would be even more beneficial than a state ban because it would be the most efficient way to

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<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *See* Olivares, *supra* note 1, at 1018.

<sup>205</sup> *See, e.g.*, Illinois Private Correctional Facility Moratorium Act, 730 Ill. Comp. Stat. Ann. 140/1 to 140/4 (West 2009); N.Y. Correct. Law §§ 120-121 (McKinney 2009).

<sup>206</sup> *See, e.g.*, Scott Keyes, How Scott Walker Built a Career Sending Wisconsin Inmates to Private Prisons, *The Nation* (Feb. 26, 2015), available at <http://www.thenation.com/article/how-scott-walker-built-career-sending-wisconsin-inmates-private-prisons/> (discussing links between Walker and prison lobbying efforts, campaign contributions, and legislative amendments like the truth in sentencing laws that would increase prison sentences).

<sup>207</sup> *See Id.*

<sup>208</sup> *See Id.*

impact immigrants nationwide and to ensure that they do not continue to suffer the adverse effects from the economic incentives that private prisons have in creating self-serving, harsh immigration laws that increase detention populations.<sup>209</sup>

The private prison industry has influenced the democratic process by way of influencing and creating immigration and criminal law and policy since its inception in the 1980's.<sup>210</sup> As long as the federal government and state governments continue to contract with private prison companies, there will be a market for immigrant detention, and ultimately, immigrant oppression.<sup>211</sup> Although implementing federal or state legislation that abolishes the use of private prisons for use of immigration detention would inevitably present certain practical challenges, it's potential positive effects may be long-lasting.

In sum, the federal government and all other states, especially states such as Arizona, should adopt legislation that abolishes private prison contracts, similar to that of Illinois and New York, for such legislation has the potential to preserve the rights of immigrants, who suffer resulting adverse effects such as: (1) large increases in immigrants in detention, even with minor initial arrest charges such as traffic violations; (2) fear of law enforcement, and specifically fear of reporting instances of crime for fear that local police will contact federal immigration authorities; (3) fleeing back to their countries of origin in fear of immigration detention; (4) the separation of families; (5) anxiety-related health effects; (6) racial profiling and discrimination; and (7) fear and mistrust in schools leading to decreases in school enrollment.<sup>212</sup> The livelihood of countless current and future immigrants throughout the United States are potentially on the line.

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<sup>209</sup> See discussion supra Part II (C).

<sup>210</sup> See discussion supra Part I (A).

<sup>211</sup> See discussion supra Part I.

<sup>212</sup> See discussion supra Introduction.