

The Influence of Private Prison Corporations on Immigration Detention: The Link between Bed Quotas, Bond Amounts, and Detention Time

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Abstract

In the context of immigration detention, little empirical research has illuminated the ways in which contracts with private prison corporations have extended the reach of corporate influence into judicial proceedings of detainment, creating pressure on the government to expand detention despite a realized demand on the system. I argue that contracts with for-profit prison corporations, which prioritize profit-maximizing agendas, have led to longer average detention time for immigrants and reduced the quality of conditions in detention centers. I test the relationship between bed quotas and length of detention time by conducting a case study of the Otay Mesa Detention Center to observe changes in bond amounts and conditions in detainment before and after the expansion of their facility in 2018. These findings illuminate the ways in which private prison corporations, by including bed quotas in their contracts, may be altering the function of immigration detention by incentivizing detention of broader categories of migrants, promoting longer detention time, and creating carceral conditions that degrade quality of care.

Introduction

The U.S. currently operates the largest immigration detention center¹ network in the world, maintaining over 200 facilities, with the average daily population in detention reaching around 50,000 in Fiscal Year (FY) 2019 (Detention Watch Network). Populations held in detention include refugees, asylum seekers, undocumented immigrants awaiting

¹ According to Ryo and Peacock (2018), “Immigration detention refers to the U.S. federal government’s practice of confining individuals accused of immigration law violations. Detention is civil confinement, whereas criminal incarceration allows state or federal governments to confine individuals charged with, or convicted of, a criminal offense. Immigration detention occurs in a range of facilities and may last the duration of an individual’s immigration proceedings and, in certain situations, even after his or her immigration proceedings are completed” (4). Ryo and Peacock (2018) define immigration detention centers as a “complex network of jails and jail-like facilities, both publicly and privately operated” to confine individuals “accused of violating U.S immigration laws (1).

deportation or visa granting, and documented immigrants whose status is under review. The average daily detainee population has increased more than fivefold in the past three decades, coinciding with an increased presence of contracts² with private prison corporations for detention facilities and a rise in lobbying/campaign dollars spent by these corporations (Ryo and Peacock 2018; Gilman and Romero 2018). According to Gilman and Romero (2018), this rise in detainees is at odds with the reality that irregular border crosses are at “historic lows,” “the undocumented population in the United States is declining,” and “only a small portion of those in immigration detention have criminal histories” (150).

In FY 2015, around 70% of all detainees crossed the threshold of a privately-operated detention facility at least once during their overall detainment, while confinement in these facilities were associated with significantly longer detention and a higher number of grievances filed (Ryo and Peacock 2018). Our understanding of the detention landscape must be rooted in the reality that more than half of all immigration detention beds are housed and maintained by private-prison corporations (Sinha 2017). Increased contracting with private-prisons is attributed to waves of neoliberalism and a conservative aim for social control following the events of 9/11 (Jing 2010), increased detention of migrants since the turn of the century due to harsher immigration policy that expanded categories of those eligible for mandatory detention (Eisen 2018), and the ability of private corporations to create detention space more rapidly than our underfunded public systems (Sinha 2017). Numerous authors discuss the stipulations of minimum-bed quotas

² Jing (2010) defines contracts with private prison corporations as the government’s deference of control over the supervision of detainees, the maintenance of facilities, and the execution of detainment services such as “food, laundry, healthcare, and education” to private prison corporations who in return receive monetary compensation from the federal government and taxpayers (265).

in private-prison contracts as the primary factor influencing immigration detention policy (Collingwood, Morin, and El-Khatib 2018; Moreno and Byron 2015; Lopez 2019).

Due to data limitations, there is mixed evidence on how privatized detention has had tangible effects on the processes of detainment, detention outcomes, and the conditions within detainment (Ryo and Peacock 2018). Most scholars tend to have a negative assessment of privatized detention, believing that profit-incentives degrade our democratic values (Ryo and Peacock 2018; Moreno and Byron 2015; Sinha 2017), threaten due-process (Gilman and Romero 2018; Ray 2018), and incentivize more enforcement rather than better enforcement (Gilman and Romero 2018), all at the expense of the human rights of the most vulnerable populations (Martinez-Aranda 2020; Lopez 2019). Other scholars, however, find that a lack of systematic evidence leaves us with little room to conclude whether privatized detention centers are arguably worse environments for detainees in comparison to publicly-operated facilities, while warning that most literature perpetuates normative claims about privatization (Chacon 2017; Blakely and Bumphus 2004). My theory is informed by Gilman and Romero (2018), who found that government obligation to private-prison contracts, that stipulate a minimum number of beds be filled daily, has distorted U.S Customs and Immigration Service (ICE) decisions on bail bond amounts and the average length of detention set for illegal immigrants. In my research, I seek to answer: how do contracts with for-profit prison corporations influence government implementation of immigrant detention by affecting immigration detention time and conditions of detainment?

Immigration detention, according to the federal government and the Department of Homeland Security (DHS), is a process necessary to ensure accountability of immigrants

awaiting a determination of their immigration status, while also functioning to preserve greater community security. The influence of private prison corporations raises the question as to whether the current immigration detention system is civil in nature and whether profit-motives are directly translating into our distribution of justice – that is our standards of due process and our protection of human rights. Private prison corporations, by including bed quotas in their contracts, may be altering the function of immigration detention by incentivizing detention of broader categories of migrants and longer detention time (Gilman and Romero 2018). These corporations may be manufacturing a need to detain migrants and perpetuating a false justification for the expansion of an unnecessary institution, despite no real or true demand on the system (Lopez 2019). Assessing the role of these contracts in increasing immigration detention time through higher bond amounts and aiding in the construction of abusive conditions in detention, is crucial for establishing whether corporations are altering the execution of government agendas without consequence.

In the next sections, I first summarize existing literature detailing the history of privatization in immigration detention, the role of corporate contracts in forming public policy, relevant developments in legislation that have facilitated greater criminalization of immigrants, and research that has examined the causal link between bed quota requirements and detention patterns. Then, I argue that contracts with for-profit prison corporations have created a carceral experience of civil immigration detention and incentivized greater detainment rates in conjunction with longer detention times. Next, I outline a research design to test how contracts with private prisons affect the conditions of detention and the average length of time spent in detention. I conclude with an assessment

of how the function of detention has been altered due to the profit-maximizing goals of private prison corporations and the implications this has on securing justice and human rights.

The Causes and Consequences of Bed Quotas

The Link between the Criminalization of Immigration and the Privatization of Detention

The increased criminalization of immigration is inextricably linked to private-prison corporations identifying immigration detention as a new market for revenue (Ackerman and Furman 2013; Hernandez 2008). Since the attacks of September 11th, the conceptualization of undocumented immigrants as a threat has rapidly expanded, with private actors pushing for a more securitized state and offering their services to shoulder the increased demand that they have played a role in creating (Ackerman and Furman 2013; Moreno and Price 2016). A majority of scholars agree that 9/11, and the neoliberalization of security that it enabled, is responsible for the shift toward the privatization of detention (Ackerman and Furman 2013; Moreno and Price 2016; Ray 2018). The “War on Terror,” which has facilitated an era of harsher immigration legislation coincides historically with a decline in state prison populations in the wake of the “War on Drugs,” leaving for-profit prison corporations with a dwindling source of revenue (Ackerman and Furman 2013; Ray 2018). Starting in the early 2000s, the federal government began to bail out the private prison industry by prioritizing them for governmental contracts (Ray 2018). These bailouts coincided with rapidly increasing bed capacity within our detention system due to Congressional acts that expanded the categories of which immigrants were subject to mandatory detention (Ray 2018).

Private prison corporations were instrumental in lobbying for the inclusion of an immigration detention bed quota in the Department of Homeland Security's (DHS) custody operations budget and appropriations bill, which for the first time in Fiscal Year (FY) 2010 established that their funding was contingent on maintaining a level of no less than 33,000 beds (Sinha 2017). Since FY 2010, the detention bed quota has steadily risen while the number of non-citizens that DHS detains yearly has increased by almost 25 percent (Sinha 2017). Many scholars have argued that a bed quota inhibits detention decisions from being based on individualized, case-by-case determinations in court and does not create a detention system based on actual need (Sinha 2017; Gilman and Romero 2018). These bed quotas have also directly influenced the structure and methods utilized in the contracts of private prison corporations. These contracts operate with occupancy guarantee clauses or "lockup quotas," meaning the state government is contractually obligated to ensure filled bed quotas or pay the private corporation, using tax dollars, for the empty beds (Sinha 2017; Ray 2018). Scholars have found that ICE prioritizes keeping detention facilities with occupancy guarantees full over those that do not have contractual obligations, largely due to this financial incentive (Sinha 2017; Lopez 2019; Gilman and Romero 2018).

The tangible influence of private-prison corporations in the public policy realm of immigration legislation has been briefly explored by scholars. According to Ackerman and Furman (2013), private prison companies seek to increase their revenue and ownership by giving campaign contributions to state and federal politicians, lobbying state legislatures and congress, and partnering with third-party organizations, such as the American Legislative Exchange Council (ALEC), who create legislation that advance the interest of the private sector. Additionally, the "revolving door" of government officials repeatedly allows those from the

private-prison industry to earn roles as influential government officials, directly responsible for policy formation (Burkhardt 2019). Collingwood, Morin, and El-Khatib (2018), in their carceral market expansion thesis, found evidence that having a privately owned or managed ICE detention facility in a legislator's district increases the probability that legislators will co-sponsor harsher immigration legislation with the purpose of increasing the detainee population, though they were not able to find evidence that campaign donations made by private prison companies had the same effect on legislators. Others scholars such as Moreno and Byron (2015) found that private-prison corporations such as the CCA and the GEO Group are cognizant of political developments, as they made campaign contributions to those primed to win, and spent majority of their lobbying dollars in states that were implementing copycat bills of strict immigration legislation that had already passed in other states.

Implications of Bail Bonds

Immigration detention court proceedings are thoroughly understudied in terms of empirical research, especially in understanding the implications of bail bonds. However, much understanding of the inadequacy and harmful nature of bail bonds within the broader criminal justice system can be applied to the logic of bail bonds in the immigration detention setting. In both settings, economic disadvantage is a significant predictor of likelihood of detention, meaning wealth is more of a factor in securing liberty pre-trial than determinations based on flight risk or threat to the community (Ryo and Peacock 2018). Gilman and Romero (2018) have proposed that the least wealthy of immigrants are the most likely to face detention and are the most likely to be detained for longer periods of time due to inability to pay bond amounts and inability to pay for legal representation. Additionally the DHS Office of the Inspector General has cited that "breached immigration bonds" are utilized to in fact fund the system of detention,

alongside government appropriations to pay for detention contracts (Gilman and Romero 2018). Scholars have proposed that ICE has utilized the bond program to fund the expansion of detention bed space, by setting bond levels at a high rate to collect from those able to pay and then adjusting levels for those unable to pay exorbitant bond amounts (Gilman and Romero 2018; Ryo and Peacock 2018).

The Reality of Detainment in Private Facilities

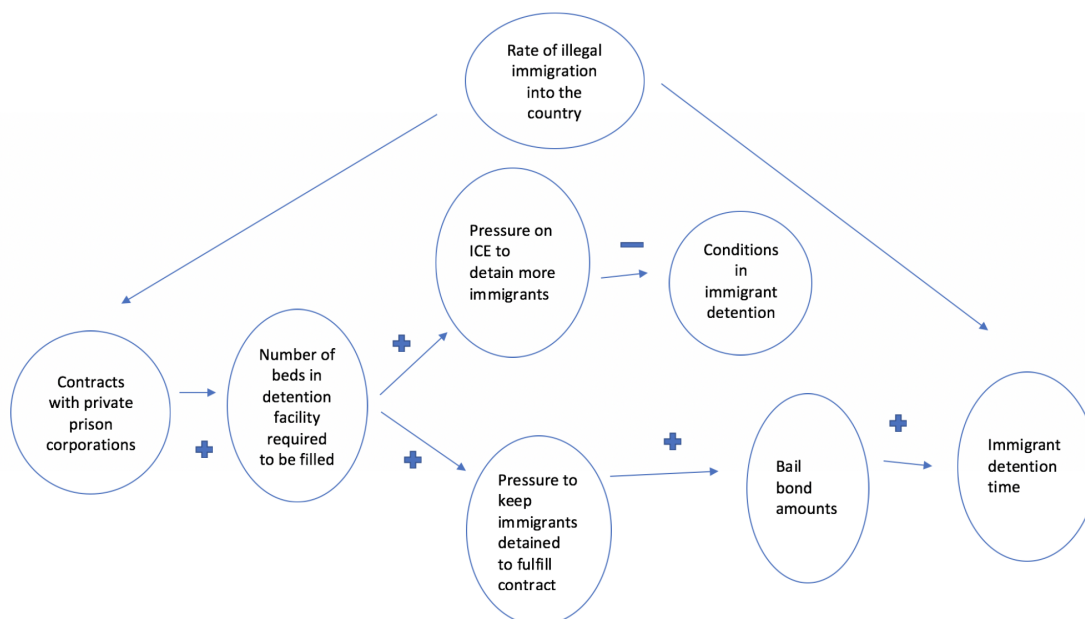
There is relatively little consensus among scholars as to whether contracting with private prison corporations diminishes the quality of services in criminal facilities and immigration detention centers due to flawed design, bias, and limited comparison data utilized in these studies (Eisen 2018). Chacon (2017) posits that criticisms of the conditions in detention facilities are not precise because they “pivot with insufficient specificity between and among private facilities, public facilities that are run by private companies and public facilities that use private contractors to provide specific services within an otherwise public facility” (44). In the context of private prisons, which are markedly different than detention centers but are a point of comparison, scholars have found there is less staffing and training for staff, fewer educational and rehabilitative programming, and increased rates of violence among inmates in private prisons versus public prisons (Blakely and Bumphus 2004; Ryo and Peacock 2018).

Many authors focus on how immigrants are impacted by the increasingly punitive and carceral experience of detention, despite it legally being classified as civil detention. Scholars such as Lopez (2019) attribute carceral-like conditions in immigrant detention to the design and structure of facilities which hinder environments conducive to community survival, positive mental health, and proper hygiene. Additionally, detention time can often be prolonged due to the qualities of private detention, like remoteness of facility (away from urban centers) and

phone inaccessibility, which prevent detainees from accessing community and legal support networks (including nonprofit legal defense) which are crucial for achieving favorable court case outcomes (Ryo and Peacock 2018). Authors such as Martinez-Aranda (2020) and Eisen (2018) classify any detention time, especially increased length of stay, as physically and psychologically traumatizing due to lack of quality health services, instances of racially and sexually-motivated harassment and abuse, separation from family, and the constant uncertainty regarding deportation among other factors. Harmful and uneven detention conditions in various centers that are contracted out by the government to for-profit corporations, can be attributed to weak guidelines and lack of enforcement mechanisms established by ICE and the DHS to hold these corporations accountable (Hernandez 2008).

Effect of Private Prison Contracts

Theory



I argue that contracts with private prison corporations are causing an increase in immigrant detention time through one mechanism and also causing decreased quality of conditions in immigrant detention through one mechanism. First, as the government defers the maintenance and implementation of immigrant detention centers to private-prison corporations via contracts, there will be an increase in the number of beds in detention facilities required to be filled so as to satisfy occupancy guarantee clauses within these contracts. This demand in turn increases the pressure on ICE to detain more immigrants because they are financially motivated to fill beds to avoid an increased burden on taxpayers. As the pressure on ICE to detain more immigrants increases, the quality of conditions in immigrant detention decreases due to their viewing of illegal immigrants as a quota they must fill. Both Lopez (2019) and Gilman and Romero (2018) have argued that due to the profit-maximizing goals of private prison corporations, there is constant incentive to choose cost-efficient and lesser quality services in the realm of healthcare, food, and staffing. Additionally, they both argue that the private prison corporation's implementation of immigration detainment has resulted in a more punitive, carceral environment that prioritizes surveillance over mechanisms that would improve quality of life in these centers.

The number of beds required also increases the pressure on ICE to keep immigrants detained. As ICE deals with lower rates of illegal immigration, and are still bound by contracts to fill a certain number of beds, they are left to extend the average detention length of the limited pool of immigrants so as to maintain overall number of beds filled. My theory is largely informed by the work of Gilman and Romero (2018) who have found an inverse relationship between the number of arriving immigrants with bail bond amounts set by ICE courts. When the number of new arrivals to the detention center was low, bail bonds were set much higher and

when influx of new arrivals was high, bail bonds were set very low or even at zero (Gilman and Romero 2018). Their case study produced evidence that ICE sets monetary bond amounts (which immigrants have to pay in order to not be detained pre-trial) not solely based on the flight risk or threat of the individual, but rather based on how long they need the bed space to be filled so as to fulfill occupancy guarantee clauses. Ultimately, the number of immigrants entering detention has decreased, while evidence shows the average length of their sentencing has increased -- a phenomenon that Gilman and Romero (2018) claim occurs because ICE wants to compensate financially for low book-in rates.

Research Design

I will be conducting a case study of the Otay Mesa Detention Center which operates in San Diego, California and is run by the private-prison corporation CoreCivic in order to test my theory. The Otay Mesa Detention Center is the only immigration detention facility in San Diego County, situated in close proximity to the Mexican border (Morrissey 2018). As of 2018, this facility began operations to expand the number of beds by 35% percent, meaning an additional 512 beds (Morrissey 2018). I chose to supplement the only other existing study on the correlation between number of beds and immigrant detention time, a case study conducted at the T. Don Hutto Detention Facility in Texas by Gilman and Romero (2018), to provide for potential case-study comparison and add to the significance of their findings. I chose a case study so as to have an isolated environment to study the before and after effects of bed expansion. Each detention center is uniquely different due to the corporation that runs it, the region, and the rate of illegal immigration into the area. Most importantly, I believe an in-depth case study can provide insight for further research, as there are too many gaps in the literature to conduct large-n observational studies.

I hypothesize that:

H1: If the number of beds in a facility required to be filled increases the pressure on ICE to detain more immigrants, then in the period in which I measure an increase in the number of beds then I will be more likely to observe an increase in hiring, an increase in budget, and an increase in community campaigns at the San Diego ICE field office.

H2: If the number of beds in a facility required to be filled increases the pressure on ICE to keep immigrants detained longer, then in the period in which I measure an increase in the number of beds then I will be more likely to observe an increase in internal memos that express concern about book-in rates and records that show consecutive days in which the quota for beds-filled was not met.

H3: If pressure on ICE to detain more immigrants decreases the quality of conditions in immigration detention, then in the period in which I measure an increase in hiring, an increase in budget, and an increase in community campaigns by ICE then I will be more likely to observe increased claims of abuse filed or interview responses that indicate poor quality of care.

H4: If pressure to keep immigrants detained longer increases the bail bond amounts set, then in the period in which I measure an increase in internal memos expressing concern about book-in rates and records that show consecutive days in which the quota for beds-filled was not met then I will be more likely to observe an increase in dollar amount of bail bonds.

H5: If bail bond amounts increase immigrant detention time, then in the period after expansion of the facility in which I measure an increase in dollar amount of bail bonds then I will be more likely to observe an increase in the average length of detention in days.

In order to understand the impact that each variable has on my theory, I will be explaining how to precisely measure each of the given variables. For the number of beds in the detention facility required to be filled I will look at the total number of beds in the facility, before and after expansion. Additionally, I will examine the contract with CoreCivic to see what stipulation it contains for the minimum number of beds required to be filled each day (i.e 90% capacity filled) and whether the expansion of the facility led to any changes in contract requirements. I will measure the conditions in immigrant detention based on three separate categories of conditions: quality of food, healthcare, and amenities within the facility. In order to obtain more nuanced data about these conditions, I will conduct interviews with detainees, preferably those detained before and after expansion. In addition, I will factor in the number of claims of abuse filed before and after expansion to the Detention Reporting and Information Line.

My interview questions will be as follows:

- How would you describe your experience at the detention center?
- Have there been any changes since you first arrived? Have you noticed greater or fewer number of detainees coming in on a daily basis?
- How would you describe the food you receive, both in quantity and quality?
- Do you have access to medications, doctors, and medical procedures if requested? How are you treated by the medical staff?
- Can you describe your living quarters? What is your bed like and the space of your room?
- What emotions do you experience on a day-to-day basis?

In order to measure the pressure on ICE to detain more immigrants, I will conduct a content analysis of various documents from the ICE field office of San Diego. This analysis will

look primarily at staffing records, financial reports, and any press releases. Evidence that there is greater pressure on ICE to detain more immigrants will be reflected in hiring of more ICE officials, expansion of budget to fund greater surveillance technologies, and an increase in campaigns urging community members to stay more vigilant or collaborate with ICE as informants. To assess the pressure on ICE to keep immigrants detained longer, I will engage in content analysis of internal memos at the Otay Mesa Detention Facility among senior staff and their correspondence between ICE (looking additionally at whether the volume of correspondence increases). Evidence that there is greater pressure on ICE to keep immigrants detained longer will be language that reflects lower book-in rates at the facility, expressed need to fill beds, and number of days in a row that the quota for beds-filled was not met. I will be assessing the bond amounts (in U.S dollars) set by Otay Mesa Immigration Court, located within the Otay Mesa Detention Facility, and operated by ICE/Department of Homeland Security. I will conduct a comparison of bond amounts set in the two years before expansion of the facility (adding an additional 512 beds), and the two years after expansion. I will be measuring average immigrant detention time, in days, with data obtained from the Freedom of Information Act for the Otay Mesa Detention facility. This would ultimately enable me to compare the average length of detention time in the two years before expansion of the facility and the two years after the expansion.

Conclusion

In this project I examined the increasing role of private prison corporations in shaping immigration detainment policy, more specifically how an increase in contracts with privately-run

facilities correlates with longer detention times and diminishes the conditions in detention in terms of quality of healthcare, food services, and amenities within the living quarters. I traced the existing literature on the criminalization of immigration and the expanding market of detention that has been identified by private-prison corporations as the newest endeavor for profit-making. Ultimately, I offered an argument that an increased presence of private-prison corporations in the public policy sphere has resulted in the co-opting of the purpose of our detention system as it has shifted from a mechanism to safeguard U.S communities into a system maintained to be a constant stream of revenue.

Due to my case study being only the second of its kind, following the suit of Gilman and Romero (2018), my findings may not be representative of all private-prison facilities and thus does not contribute to what is very much needed in the literature – an analysis of broad trends occurring across varying private immigration detention centers. There are other potential limitations of this project. While the Otay Mesa Facility’s expansion was publicized, we can expect that much manipulation of contracts happens beyond the public view causing more nuanced and subtle consequences that may be hard to empirically measure. Moreover, my measure of “pressure on ICE to detain immigrants longer” may fail to capture the true nuance of this pressure, as the documents that the public or researchers have access to is highly limited due to a lack of internal control policies by ICE that would require private prison corporations to produce more documentation of their internal proceedings (Hernandez 2008).

If we can trace tangible effects of private-prison contracts on immigration detention proceedings, then we can begin to demand greater mechanisms of public oversight of private-prison contracts, instead of allowing these corporations to be accountable only to the government. Ultimately, if for-profit prison corporations can incentivize an expansion of

immigration detention, especially detention served in carceral-like environments, there will be a greater criminalization of immigrants in the public eye. The use of bed quotas incentivizes more enforcement rather than better enforcement, and as this need to fill beds manifests in higher bail bond amounts, greater physical and emotional trauma will land primarily on black and brown bodies who are economically disadvantaged. Moreover, if bail bond amounts are being set not based on flight risk or threat to the community but rather on arbitrary, profit-driven determinations then our due process has been made futile. If my findings confirm that contracts with private-prisons decrease the quality of conditions in detention centers, then these disadvantaged populations will also be subject to disproportionate instances of violence, sexual and physical abuse, substandard medical care, exploitative labor practices, mental trauma, etc. This research could hopefully lead us to imagine a future reality in which economic interests are no longer a factor in detainment, and thus a detention-centered approach to migration might not be rational or necessary.

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