

REPORT: HOMELAND SECURITY



A New Migration Policy: Producing Felons for Profit

Inside an ICE detention facility in Taylor, Texas, run by CCA, the largest private U.S. prison company. “We’ve never seen the wind behind our back like it is today,” the company’s CEO told investors in 2006.

By Renee Feltz

HUNDREDS OF IMMIGRANTS WHO CROSSED the Rio Grande River into Texas over Labor Day weekend found themselves in a Laredo courtroom the following week. They faced criminal charges for illegally entering the United States.

“We might need to squeeze,” said U.S. Magistrate Judge Adriana Arce-Flores, as a group of men and women shuffled into her courtroom, some of them with dirt still caked on their T-shirts and tennis shoes from their journey across the border.

They stopped to stand shoulder to shoulder before her in rows of 12. Once the rows were three deep, a guard directed another dozen to an area normally reserved for members of the jury. After they raised their right hands to be sworn in, a Spanish interpreter had to instruct them to lower them. They clasped their hands behind their back, furrowed their brows, and listened intently as the judge explained that they were charged with a misdemeanor crime and faced up to six months in jail.

“How do you plead?” the judge asked each one individually. “*Culpable*,” they replied, echoed by a “guilty” from the interpreter.

This continued for the rest of the morning,

yielding about 100 misdemeanor convictions. About as many people would be convicted each day for the rest of the week.

Judge Arce-Flores paused to issue a stern warning before she sentenced each group of newly minted criminals.

“I want you to know that from now on, every one of you is subject to a felony for reentry,” she said. “So keep that in mind, and stay home.”

Her warning reflected immigration policy in the era of Homeland Security: Immigration officials have teamed up with the U.S. Department of Justice and federal judges to send a message to people who lack the documents to live and work in the United States.

As Homeland Security Secretary Michael Chertoff said in a June speech: “These illegal migrants come to realize that violating the law will not simply send them back to try over again, but will require them to actually serve some short period of time in a jail or prison setting—and will brand them as having been violators of the law.”

As a result of this merger of immigration and criminal policy, undocumented immigrants now face jail time before they are placed in detention pending their immigration hearing in civil court. Their criminal record makes them less likely to be

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approved for any legal path to citizenship that might be developed in the future. This crackdown has been made possible by the nation's largest private prison company, which has devoted close to half of its resources to the business of detaining immigrants.

FEDERAL LAW ENFORCEMENT AGENCIES BEGAN OPERATION Streamline in the Del Rio, Texas border sector in late 2005. Since then, the program has expanded to Laredo, the Rio Grande Valley, and parts of the Arizona border. "It has become standard operating procedure for us," said Eugenio Rodriguez Jr., spokesman for the Laredo Sector of the U.S. Border Patrol.

Streamline is based on two main misdemeanor charges—"entry of an alien at improper time or place" and "reentry of a deported alien."¹ Before Streamline, prosecutors reserved these charges for the worst offenders. The shift in policy means almost every immigrant arrested where the program is in place now faces prosecution on one of these charges.

First-time offenders often receive time served, and those convicted of reentry face up to 180 days in jail depending on their criminal history and prior apprehensions. After their conviction they are turned over to the U.S. Marshals Service to serve their prison sentence.

The resulting surge in prosecutions is staggering: The U.S. Justice Department predicts 60,000 immigrants will face charges in fiscal year 2008, mostly in border districts of Texas and Arizona. This is almost twice the number as in fiscal year 2007.²

Many migrants charged with reentry in Laredo were arrested while trying to return to lives they had established in the United States.

"The only thing I want to do is return to support my family," said one man who had spent 13 years living in Dallas. His children are still there, and so is his job. He had five prior apprehensions. When he told his story to the judge, her response was one of zero tolerance.

"Even if your daughters are here, you really should stay home," Judge Arce-Flores told him. "If you return you're facing a significant amount of jail time." She sentenced him to 60 days in jail. "Next time you're not going to get the same break," she said.

While the majority of Streamline cases are misdemeanors heard in U.S. Magistrate Court, the program is generating a dramatic increase in the number of felony cases heard in U.S. District Court. In March, reentry of a deported alien accounted for more than the other top nine charges combined in the district of Laredo.³

Immigrants convicted of felony reentry face up to 20 years in prison and are permanently barred from reentering the country. Those convicted of misdemeanors are barred

for five years. If they return before then, prosecutors can pursue the felony charge.

Border Patrol officials emphasize that the convictions will go on the immigrant's criminal record and be used to determine if he or she is eligible for any legal path to citizenship that becomes available. "If something happens in the future, they'll have that record and that would affect their chances," Rodriguez said.

Despite the introduction of jail time for illegally crossing, there is a strong incentive for immigrants to plea guilty. "I'd like to apologize," one man told Judge Arce-Flores. "I want to go back to my home as soon as possible." Anyone who fights their charges faces months in detention while their case is handled and more time if convicted at trial.

ASIMILAR DYNAMIC UNFOLDED IN MAY WHEN THE Immigration and Customs Enforcement (ICE) agency raided the Agriprocessors meatpacking plant in Postville, Iowa, and charged close to 300 undocumented workers there with felony "aggravated identity theft," which carries a mandatory minimum sentence of two years in prison for knowingly using "a means of identification of another person with the intent to commit any unlawful activity or felony."

ICE agents found that only one of the 697 employees at the plant was using a Social Security number that coincided with a reported identity theft. A more accurate charge of possessing false Social Security numbers carries a lesser penalty. But as court interpreter Erik Camayd-Freixas, who worked on the cases, observed in a statement before an Iowa U.S. District Court: "By handing down the inflated charge of aggravated identity theft . . . the government forced the defendants into pleading guilty to the lesser charge and accepting five months in jail."⁴

A plea bargain was offered to the defendants, but it was good for only seven days. It required the workers to waive their right to an immigration hearing and agree to immediate deportation pending completion of their prison sentence. Almost everyone pleaded guilty.

"Through the day, the procession continued, ten by ten, hour after hour, the same charges, the same recitation from the magistrates, the same faces, chains and shackles, on the defendants," Camayd-Freixas said. "Occasionally, as though to break the monotony, one would dare to speak for the others and beg to be deported quickly so that they could feed their families back home."

Most of the defendants arrested at Agriprocessors are serving their time in federal detention centers in Florida and Louisiana. Prosecution for "fraud and misuse of visas and permits" has increased by 223% since last year.⁵

"It is no secret that the Postville ICE raid was a pilot operation, to be replicated elsewhere, with kinks ironed

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out after lessons learned,” Camayd-Freixas said. “Next time, ‘fast-tracking’ will be even more relentless.”

UNLIKE IMMIGRANTS FACING CIVIL CHARGES, defendants in a criminal case have a right to court-appointed counsel. The Laredo Public Defender’s office devotes three lawyers to handle the heavy load of misdemeanor illegal-entry cases. “We used to go through peaks and valleys,” said Supervisory Assistant Attorney Marissa Perez-Garcia of the Laredo office, referring to the number of illegal-reentry cases her office handles. “Now it’s just peaks all the time.”

Court-appointed counsel is crucial for immigrants facing felony reentry convictions, such as a mother of two children, both of them U.S. citizens, who appeared with shackles around her wrists and ankles before Federal District Judge Micaela Alvarez.

“This is someone who—besides from working in the U.S. without documents—has never done anything to harm anyone,” Perez-Garcia reminded the judge. The woman was given a relatively light sentence of 135 days.

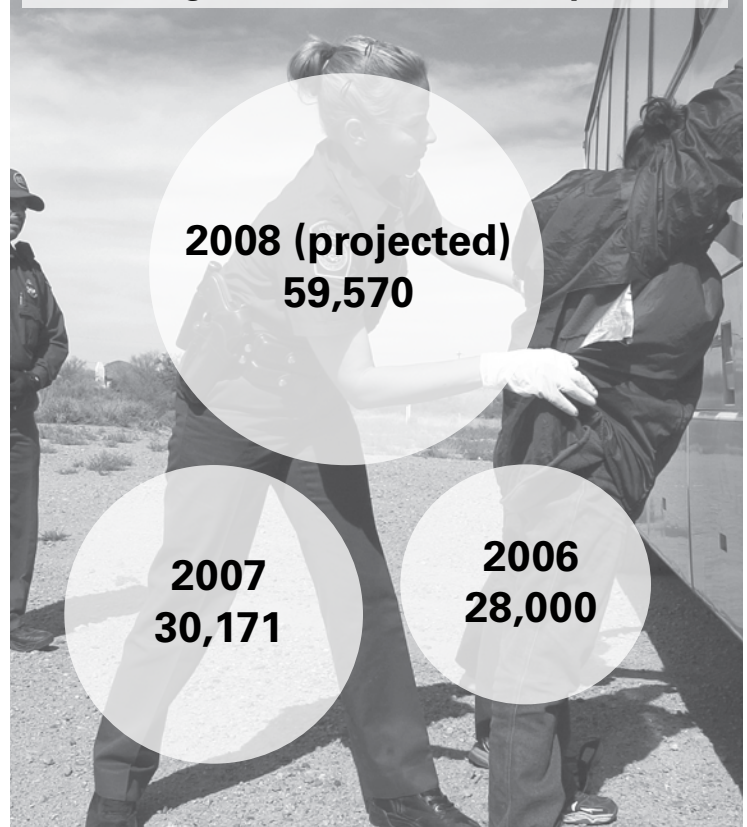
Public defenders can also ask the judge to sideline the cases of clients who want to pursue an immigration claim that would allow them to legally remain in the country, “but it might mean that person stays in custody for as long as it takes to investigate it,” Perez-Garcia said. “Since we’re not immigration lawyers, all we can do is say you may want to get that followed up on by someone else.”

Many of the immigrants may still not realize they have committed a crime. “Most of them look at it as if, ‘I’m not hurting anybody. It’s not a crime of violence. I’m not sneaking drugs across the border. I’m just trying to reunite with my family,’” explained Jose Tellez, a longtime immigration attorney in Laredo.

Part of the reason for the confusion is that immigrants are first processed by civil immigration authorities, not by criminal courts. This raises questions of fairness about how prosecutors gain access to information for their cases. “During the civil procedure they’re asked for a statement,” Tellez said. “They tell them, ‘We’re just gathering information and we don’t read you your rights until we decide to file a criminal charge.’ Well, at what point do you decide to go criminal? When you have all the facts.”

Tellez believes the surge in prosecutions will continue to grow but that authorities will become overwhelmed when they run out of detention space. However, the partnership

Criminal prosecutions of undocumented immigrants in the last three years



between private prison companies and the federal government means more space can be made available for a price.

IN OCTOBER, MANY IMMIGRANTS PROCESSED IN THE Laredo area began serving their time in a new 1,500-bed detention center on the outskirts of town. Geo Group, the nation’s second-largest private prison company, built the facility for the U.S. Marshals Service in anticipation of increased demand for space as a result of Operation Streamline. It is less than a mile away from a 480-bed USMS detention center owned and operated by Corrections Corporation of America (CCA).

Nearly 80% of CCA’s immigrant inmates come from ICE, a division of the Department of Homeland Security, and the U.S. Marshals Service.⁶ In all, CCA facilities house more than half of the immigrants currently detained in private facilities. Its competitors, Geo Group, Cornell Company, and Avalon Correctional Services, share the rest of the business, along with several other smaller companies.

When the Bush administration first began its crackdown on immigrants in 2003, it lacked enough prison space to

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detain those issued deportation orders. As a result it often allowed immigrants to remain free pending their hearing, a policy critics call “catch and release.” In 2005, after companies like CCA and Geo Group had been contracted to provide detention facilities, the policy shifted to “catch and return.” Now a yearly average of about 300,000 immigrants are detained until being deported.⁷

“We’re here to take care of the product they deliver to us,” said Michael Davis, who doubles as the chaplain and spokesman for CCA’s Houston Processing Center. CCA has had its eye on privatizing the entire immigrant detention system since 2004, when it proposed taking over detention operations and building even more facilities in anticipation of rising demand.

INVESTORS RECOGNIZE THAT CCA’S INVENTORY OF PRISON beds means the company is best suited to meet a flood of demand, and by March, the company’s stock value had more than doubled since 2004, reaching \$26.86.

“Certainly, the forces of supply and demand are working in the company’s favor,” observed Bank of America analyst T.C. Robillard. CCA relies on contracts with ICE and the U.S. Marshals Service for about 40% of its total revenue. Five of the company’s lucrative contracts to detain immigrants have no end date. Several of its other contracts contain “take or pay” clauses that guarantee a certain amount of revenue regardless of occupancy rates, as well as periodic rate increases. The company’s contract renewal rate is almost 95%, and any cost savings it may reap are kept for the company, not passed on to the taxpayers.

“At the federal level there is such a demand for beds, and private operators are able to do it cheaper and build the facility at half the cost of the federal government because they don’t have to go through procurement red tape. And the government tends to go with who they built with before,” said Gregg Klein, a corrections analyst with BNP Paribas, a Paris-based bank.

“We’ve never seen the wind at our back like it is today,” CCA’s president and CEO, John D. Ferguson, said during a May 2006 conference call with investors, referring to the company’s \$1.3 billion in revenue that year. By March 2008 Ferguson had his eye on Operation Streamline as the next opportunity for a growth spurt in detention beds.

“The intent now is to detain everyone that’s apprehended at the border and charge them initially with something called ‘entry without inspection,’ ” Ferguson explained to investors. “That will be a misdemeanor, requiring somewhere between 15 and 30 days of detention . . . someone who [has] then committed misdemeanor will face a felony charge, which could lead to six months to two years of

detention or incarceration.”

Later in the call, Ferguson optimistically eyed the president’s fiscal year 2009 budget.

“We see that the budget supports the detention population of 33,000 inmate detainee beds—that’s up from 27,500 the previous year and quite above what the president’s original budget was,” Ferguson said. “What I am most encouraged about is, everything we are hearing says 33,000 is still not enough.”

In fact, CCA’s confidence in future demand is so great that the company is already slated to develop 10,700 new beds by 2009.

DESPITE INTERNATIONAL CRITICISM, EVEN CHILDREN are included in plans to expand detention. The Department of Homeland Security solicited proposals in April for three new family detention centers that will hold as many as 600 parents and their children and double the space currently available for such detainees.⁸

“I look at ICE’s current strategy as ‘show no mercy,’ ” said Michelle Brane of the Women’s Commission for Refugee Women and Children. “They make the entire process difficult and traumatic for people, and one central piece of that is detaining families.” Her organization has called on ICE to halt the growth of family detention, citing lawsuits that allege conditions in facilities like CCA’s T. Don Hutto Residential Center, where immigrant families are held, violate minimum standards of care for minors in federal custody. Brane argues that private-facility standards are based almost wholly on adult correctional standards and that families should instead be held in a residential setting.

When she outlined her concerns in a letter, ICE policy director Susan Cullen replied that the agency routinely evaluates its needs for family detention space, its overall bed space needs, and the appropriateness of each facility regarding its intended use. “We determined there is a possibility that there may be a need for the facilities as described, and issued the Request for Proposal,” Cullen said in a letter to the commission.

It seems unlikely that a change in administration will decrease the demand for detention beds from ICE and the U.S. Marshals Service working in collaboration with Border Patrol agents. Even if a compromise is reached on immigration reform, “there are still going to be folks that are going to be defined as needing to be detained,” CCA’s Ferguson observed while speaking with investors in June, “and you will also continue to have folks who will still try to enter the United States, and they will not be getting any benefits from the new legislation.” ■

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Building the Homeland Security State

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2. See the description of SBLnet from the Department of Customs and Border Protection available at www.cbp.gov.
3. Associated Press, "\$57 Million Border Fence Is Going Up Near San Diego," August 16, 2008.
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5. See Kent Paterson, "Cross Border Activists Escalate Fight Against 'The Wall of Death,'" Americas Policy Program Report, September 12, 2008, available at americas.irc-online.org/am/5530.
6. See Melissa Del Bosque, "Holes in the Wall," *The Texas Observer*, February 22, 2008, available at www.texasobserver.org.
7. Louie Gilot, "El Pasoans Say Border Fence 'Not Solution,'" *El Paso Times*, October 26, 2006.
8. See reports and statistics assembled by the Latin American Working Group on its "US Border Security and Migration" page, at www.lawg.org.
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10. See Douglas S. Masse, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (Russell Sage Foundation, 2002).
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2. According to "Prosecutions for 2008," an analysis of U.S. Justice Department

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3. According to "Surge in Immigration Prosecutions Continues," an analysis of U.S. Justice Department data by TRAC, available at trac.syr.edu.
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 6. See CCA's 2007 Annual Report, available at investor.shareholder.com.
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Panic Attack

1. I draw the term *sex panic* from work by Jeffrey Weeks and Gayle Rubin: Jeffrey Weeks, *Sex, Politics, and Society: The Regulation of Sexuality Since 1800* (London: Longman, 1981), and Gayle Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in Henry Abelove, Michèle Aina Barale, and David M. Halperin, eds., *The Lesbian and Gay Studies Reader* (Routledge, 1993), 3-44.
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3. Solomon Moore, "Using Muscle to Improve Health Care for Prisoners," *The New York Times*, August 27, 2007.
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5. With apologies to Giorgio Agamben, whose title, *The State of Exception* (University of Chicago Press, 2004), is blended here with Gillian Rose's, *Mourning Becomes the Law: Philosophy and Representation* (Cambridge University Press, 1996). I am greatly indebted to these two slim volumes.
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7. Daniel M. Filler, "Terrorism, Panic, and Pedophilia," *Virginia Journal of Social Policy and the Law* 10, no. 3 (2003): 345-82, esp. 345, 356.
8. Frank James, "Immigrant Sex Offenders Targeted," *Chicago Tribune*, February 25, 2005.
9. I echo part of the argument laid out by Paul Craig Roberts and Lawrence M. Stratton in *The Tyranny of Good Intentions: How Prosecutors and Bureaucrats Are Trampling the Constitution in the Name of Justice* (Prima Publishing, 2000). I also echo something of Hannah Arendt's suspicion of compassion and pity in politics; see *On Revolution* (Viking Press, 1965), 74-75, 80-82.
10. See Samuel R Gross, Kristin Jacoby, Daniel J. Matheson, Nicholas Montgomery, and Sujata Patil, "Exonerations in the United States, 1989 through 2003," *Journal of Criminal Law and Criminology* 95 no. 2 (2005): 523-60.

Containing Multitudes

1. This is a revised, updated version of an essay that appeared in *CounterPunch* 14, no. 1 (January 2007). It relies very heavily on the pioneering work of Deborah and Rodrick Wallace, *A Plague on Your Houses: How New York Was Burned Down and National Public Health Crumbled* (Verso, 1998); Christian Parenti, *Lockdown America: Policing and Prisons in the Age of Crisis* (Verso, 1999); and Joshua Freeman, *Working-Class New York: Life and Labor Since World War II* (The New Press, 2000). For data on Bushwick, see the profile for Community District 4 from the mayor's office (www.nyc.gov) and at NYU's Furman Center for Real Estate and Urban Policy (furmancenter.nyu.edu).
2. Roger Starr, *Urban Choices: The City and Its Critics* (Penguin, 1969), 43.
3. Parenti, *Lockdown America*, 18.
4. Peter Marcuse, "Migration and Urban Spatial Structure in a Globalizing World: A Comparative Look," paper, Conference on African Migration in Comparative Perspective, Johannesburg, South Africa, June 4-7, 2003.
5. Mike Davis, *Planet of Slums* (Verso, 2007), 13, 16-17; idem, "The New Industrial Peonage," *Dead Cities: And Other Tales* (The New Press, 2002), 191-204.
6. Deborah and Rodrick Wallace, *A Plague on Your Houses*, 114.