



Twenty Years After IIRIRA: The Rise of Immigrant Detention and Its Effects on Latinx Communities Across the Nation

Melina Juárez
University of New Mexico

Bárbara Gómez-Aguiñaga
University of New Mexico

Sonia P. Bettez
University of New Mexico

Executive Summary

This paper studies the dynamics of detention, deportation, and the criminalization of immigrants. We ground our analyses and discussion around the Illegal Immigration Reform and Immigrant Responsibility Act of 1996's (IIRIRA's) detention mandate, the role of special interest groups and federal policies. We argue that these special interest groups and major federal policies have come together to fuel the expansion of immigrant detention to unprecedented levels. Moreover, we aim to incite discussion on what this rapid growth in detention means for human rights, legislative representation and democracy in the United States. This study analyzes two main questions: What is the role of special interests in the criminalization of immigrants? And does the rapid increase in detention pose challenges or risks to democracy in the United States? Our study is grounded within the limited, yet growing literature on immigrant detention, government data, and “gray” literature produced by nonprofits and organizations working on immigration-related issues. We construct a unique dataset using this literature and congressional reports to assess what factors are associated with the rise of immigrant detention. A series of correlations and a time series regression analysis reveal that major restrictive federal immigration policies such as IIRIRA, along with the increasing federal immigration enforcement budget, have had a significant impact on immigrant detention rates.

Based on these findings, we recommend three central policy actions. First, the paper recommends increased transparency and accountability on behalf of the Department of Homeland Security, Immigration and Customs Enforcement, and on lobbying expenditures from for-profit detention

corporations. Second, it argues for the repeal of mandatory detention laws. These mandatory laws have led to the further criminalization and marginalization of undocumented immigrants. And lastly, it argues that repeal of the Congressional bed mandate would allow for the number of detainees to mirror actual detention needs, rather than providing an incentive to detain. However, we anticipate that the demand for beds will increase even more given the current administration's push for the criminalization and increased arrests of undocumented individuals. The rhetoric used by the present administration further criminalizes immigrants.¹

Introduction

The events of September 11, 2001 have been widely seen as the catalysts for the draconian shifts in immigration policy that led to the creation of the Department of Homeland Security (DHS) and one of its main enforcement agencies, the US Immigration and Customs Enforcement (ICE) (Meissner et al. 2013). Trends towards tougher and more repressive forms of immigration enforcement, however, predate the creation of either agency. Repressive immigration and immigrant policies are not new. Scholars have outlined earlier developments in immigration policy tying them to notions of “otherness” and to the view of immigrants as posing threats of foreign invasion (Douglas and Saenz 2013).

Beginning in the mid-1990s, federal immigration policies began tapping into local resources to aid in enforcement. In 1996, the Clinton administration passed three instrumental pieces of legislation that greatly curbed immigrant rights and set precedence for local-federal partnerships: the 1996 Anti-terrorism and Effective Death Penalty Act (AEDPA); the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA); and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which also set boundaries for immigrant access to social services and public benefits.

Moreover, IIRIRA is also a key milestone in contemporary immigration policy. First, IIRIRA founded one of the cornerstone programs for current immigration policy enforcement, the 287(g) program. Section 287(g) of the Immigration and Nationality Act allows for local law enforcement agencies to partner with ICE and essentially deputizes local police officers as ICE agents with the ability to investigate the immigration status of any person detained in that jurisdiction (Michaud 2010). As of October 2017, there were 60 local law enforcement agencies across 18 states with 287(g) agreements (ICE 2017). Secondly, along with codifying federal-local partnerships, IIRIRA expanded the list of crimes set by the AEDPA that required mandatory detention (Hines 2006; ACLU 2017).

1 As reflected in the January 25, 2017 executive order from the White House: “Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the human interest” (Enhancing Public Safety in the Interior of the United States, Exec. Order No. 13768, 82 Fed. Reg. 8799 [Jan. 25, 2017]).

The two aspects of IIRIRA explained above coalesced to increase the participation of localities in immigration enforcement and helped to fuel the incentives and profits for localities to buy into the nascent immigrant detention complex. For example, in their study of the immigrant detention complex, Doty and Wheatley (2013) found important economic interests at play that involved not only localities, but also corporations. They mention, for example, the case of Eloy, Arizona, a small desert town, and its partnership with CoreCivic (formerly known as Corrections Corporation of America, or CCA):

In fiscal year (FY) 2008-2009, approximately \$95 million in revenue passed through Eloy, from Immigration and Customs Enforcement (ICE) to CCA. ICE does not contract directly with the CCA for the Eloy Detention Center, but uses a “pass-through” contract with the city of Eloy, which in turn contracts with the CCA. Eloy receives 25 cents per day for each inmate held at the center.

(Doty and Wheatley 2013, 427)

Although the locality’s logic for pursuing federal agreements or memorandum of agreements (MOAs) could be primarily economic, communities affected by the increase in detentions and deportations argue that there are grander sociopolitical externalities that go beyond economic profit.

For example, the immigrant community, with the Latinx² community at the forefront, has pointed to the conditions detained immigrants face. Detainees have recounted their experiences of rampant abuse (both sexual and psychological), inadequate facilities, and even rape and murder in detention centers across the nation. These conditions have been attributed to the privatization of detention centers where DHS and ICE have contracted private corporations for the management of detention facilities (Friedman 2015; Project South 2017).

While IIRIRA provided the foundation for the detention of immigrants, a slew of enforcement programs allowed for the growth in detentions as well. The most well-known of these are 287(g) and Secure Communities. As stated, the 287(g) program allows local law enforcement to act as federal immigration agents. The deputizing of local police officers gives ICE the ability to penetrate deeper into communities without increasing their own manpower. Secure Communities (S-COMM) (2008-2014 and 2017-today) works in tandem with 287(g). S-COMM is an information sharing system between the Federal Bureau of Investigation (FBI), DHS, and federal, state, local, and tribal enforcement agencies. Under this program, the FBI automatically shares fingerprints with DHS for all individuals in the booking process. For persons deemed undocumented or otherwise removable in DHS databases, ICE issues a detainer and assumes custody of the individual (ICE 2009).

Along with the implementation of new programs that increased the number of detainees, policies that went counter to the detention of immigrants were also repealed. In 2005, the Bush administration sought to end the practice of “catch and release,” which allows

² We chose to utilize the gender-neutral term “Latinx” in lieu of the gendered “Latino” or “Latino/a.” This term captures the great heterogeneity within the Latinx community that includes differences in gender, sex, race, ethnicity, national origin, and language, among others. Additionally, given the issues surrounding the detention of LGBTQI Latinxs (to be expanded upon in the paper), it is appropriate to utilize a term that does not discriminate against this minority within this population.

noncriminal undocumented immigrants to await their removal hearings outside of detention facilities. DHS Secretary Michael Chertoff (2005-2009) announced that due to increased bed space and detention capabilities of DHS and ICE, all undocumented immigrants awaiting removal proceedings would be detained (Gavett 2011). This meant that even noncriminal undocumented immigrants would be placed in detention centers regardless of their noncriminal histories. Thus, although IIRIRA provided the foundation for the detainment of immigrants, the confluence of privatization and federal immigration policy fueled the growth of immigrant detention centers to unprecedented levels.

This paper studies the dynamics of detention, deportation, and the criminalization of immigrants. We ground our analyses and discussion around IIRIRA's detention mandate, the role of special interest groups and federal policies. This paper seeks to incite discussion around two main questions: What is the role of special interests in the criminalization of immigrants? And does the rapid increase in detention pose challenges or risks to democracy in the United States?

Our study is grounded within the limited, yet growing literature on immigrant detention, government data, and “gray” literature produced by nonprofits and organizations working in immigration-related issues. We construct a unique dataset through this literature and congressional reports to assess the factors associated with the rise of immigrant detention. A series of correlations and a time series regression analysis reveal that restrictive federal immigration policies such as IIRIRA, along with the increasing federal immigration enforcement budget, have had a significant impact on immigrant detention rates.

This paper begins with a discussion of the economic and political context surrounding the growth of immigrant detention. A section on the costs of immigrant detention then follows. This section also provides an overview of the conditions of detention and their psychosocial effects on individuals and communities. It next presents data, analyses and findings. The discussion then focuses on the implications of these results for human rights, legislative representation, and democracy. It concludes with a discussion of alternatives to detention and policy approaches to immigration enforcement.

The Rise of Criminalization and Detention

Immigrant detention has skyrocketed over the past three decades. For example, immigrant detention centers in 1980 had the capacity to hold just over 4,000 detainees, by 1994 the capacity increased to 6,785 detainees per day, by 2009 the number of detention beds had reached 33,400 (Flynn 2014; Tonry, 2014; Gruberg 2015), and by 2016 the number of detainees in private facilities reached 37,000 (Takei, Tan, and Lin 2016). These rates and growth, however, have not been due to a rise in undocumented immigration. The estimated number of undocumented immigrants in the United States has dropped to 11.045 million in 2015, down from an estimated 12.2 million in 2007 (Krogstad, Passel, and Cohn 2016; Warren 2017).

There are currently over 200 immigrant detention centers (IDCs) across the nation (Gruberg 2015; Community Initiatives for Visiting Immigrants in Confinement 2017). Over two thirds of these are located in nine states: Texas, California, Arizona, Georgia, New Jersey,

Louisiana, Florida, Washington, and Pennsylvania (Kerwin 2015). ICE does not directly operate many of these facilities, but instead contracts for bed space with the Federal Bureau of Prisons (BOP), for-profit prison corporations, the US Marshals Service (USMS), and states and localities, which subcontract the operation of their facilities to third parties. In 2015, 59 percent of IDCs were run by state and local entities, 90 percent of which were subcontracted to private corporations (Kerwin 2015). In the first three months of the Trump administration, interior arrests related to immigration increased by 38 percent or 41,318 individuals, or more than 400 per day, “reflect[ing] the president’s commitment to enforce our immigration laws fairly and across the board” as stated by the acting director of ICE, Thomas Homan in May 2017 (Dickerson 2017).

The growth of immigrant detention has been characterized by large-scale privatization. In 2015, the two largest IDC corporations — CoreCivic,³ formerly known as the Corrections Corporation of America (CCA), and the GEO Group — operated nine out of the 10 largest immigrant detention centers in the country (MRS/USCCB and CMS 2015). In 2014, the CoreCivic and Geo Group housed 45 percent of all detained immigrants (14,149 per day) (Carson and Diaz 2015; MRS/USCCB and CMS 2015). The privatization of IDCs far outpaces that of prisons for persons serving criminal sentences Gruberg (2015) reports that while 8 percent of the prison population is held in privately run facilities, 62 percent of immigrant detainees are housed in private IDCs.

We argue that corporate interests have helped to fuel the growth of immigrant detention and to convert the criminalization of immigrants into a profitable industry. Although it is difficult to make a direct association between lobbying by these firms and the number of immigrants detained, multiple data sources show there is an indirect relationship between these two (Gruber 2015; Ewing, Martínez, and Rumbaut 2015). It is telling that the news of President Trump’s election led to a nearly 58 percent raise in the stock of CoreCivic (Demefack 2016).

CoreCivic and GEO Group have a long history of business with the federal government on immigrant-related operations. The first CoreCivic immigrant detention contract dates to 1984 when it contracted with the (now defunct) Immigration and Naturalization Services (INS) for a 350-bed IDC. The GEO Group (under its previous name, the Wackenhut Corporation) first contracted with INS in 1987 (MRS/USCCB and CMS 2015).-

Both groups directly lobbied federal officials for increases in DHS and ICE budgets and for the “bed mandate” — which was passed by Congress in 2009. Under this requirement, ICE must hold a minimum of 34,000 immigrants per night in detention, although the number of detainees has averaged over 44,000 since 2016 (Chen 2017). According to Carson and Diaz (2015), since 2010, CoreCivic has spent 75 percent of its total lobbying expenditures on the DHS appropriations subcommittee (the entity with the power to sustain or revoke the bed mandate). Gruberg (2015) finds that between 2006 and 2015, CoreCivic and GEO Group spent over \$10 million in lobbying on DHS appropriations.

Growing detention rates of noncitizens in the past three decades have spurred the criminalization of immigrants (Ewing, Martínez, and Rumbaut 2015). Although scholars

3 The CCA rebranded as CoreCivic in 2016, as announced on October 28, 2016. See www.cca.com/insidecca/corrections-corporation-of-america-rebrands-as-corecivic.

have found that immigrants are less likely to commit crimes than their native-born counterparts, and cities with higher percentages of immigrants have been associated with lower crime rates (Grieco et al. 2012; Passel and Cohn 2014; Sampson 2008), federal policies have applied a double standard to noncitizens in regard of the consequences of criminal behavior or even encounters with law enforcement agents. When non-naturalized immigrants are in touch with the criminal justice system for insignificant issues, such as misdemeanors or traffic violations, they are subject to detention, removal, and even banishment from the country (Cincotta 2010). Additionally, while DHS reports portray large shares of deported immigrants as “known criminal aliens,” scholars have found that the majority of the criminal offenses committed by deported immigrants are minor in nature, such as previous immigration offenses, possession of marijuana, and criminal traffic offenses (Ewing, Martínez, and Rumbaut 2015; Simanski and Sapp 2013; Simanski 2014).

Despite the decrease in the undocumented immigrant population since the Great Recession, Congress increased the bed mandate from 33,400 to 34,000 in 2012 (Carson and Diaz 2015). This increase coincided with a dramatic rise in the DHS immigrant detention budget, from \$700 million in 2005 to over \$2 billion in 2015 (Gruberg 2015). The increase in the detention budget together with the bed mandate has translated into a dramatic increase in immigrant detainees, from 230,000 detained in 2005 to 440,600 in 2013 (Gruberg 2015, 4).

ICE contracts stipulate that payment to for-profit prison corporations will cover a minimum number of beds per night, regardless of whether the beds are filled (Kerwin 2015).

Table 1. Total Profits For CoreCivic and GEO Group, 2007 and 2014

Year	CoreCivic Profit	GEO Group Profit
2007	\$133,373,000	\$41,848,000
2014	\$195,022,000	\$143,840,000
Total	\$328,395,000	\$185,688,000

Source: Carson and Diaz (2015).

These stipulations have led to handsome profits for both the CoreCivic and GEO Group as Table 1 illustrates. In 2014 CoreCivic received 44 percent of its total revenue from contracts with the BOP, ICE, and the USMS. And the GEO Group saw a dramatic 244 percent increase in profits for the same year (Carson and Diaz 2015).

Costs of Immigrant Detention on Immigrants and Their Communities

Profits are only one dimension of the costs of increased immigrant detention. Immigrants, their families, and their communities suffer socioeconomic and psychological effects because of toughened enforcement of federal immigration laws. The effects of detention and ultimately deportation start at the individual level but reverberate to the family and

community levels. The repressive manner by which these policies are enforced contributes to the disruption of family ties and exacerbates already high stress levels in families and communities (Hagan, Castro, and Rodriguez 2010).

Studies focused on the effects of deportation found that even knowing someone who has been deported can have a negative effect on that person's health (Vargas et al. n.d.). Additionally, living in anti-immigrant environments can also affect the health and well-being of individuals (Vargas, Sanchez, and Juarez 2017; Salas, Ayon, and Gurrola 2013; Hacker et al. 2011; Cavazos-Rehg, Zayas, and Spitznagel 2007). Moreover, children who have witnessed the detention or deportation process of their parents are more prone to stress, anxiety, and depressive disorders (Hendricks 2007; Capps, Hagan, and Rodriguez 2004; Chaudry et al. 2010).

Along with the often-traumatic experience of being apprehended by ICE or a deputized local officer, detained individuals are often exposed to physical and mental abuse through isolation, solitary confinement, or the opposite — overcrowded facilities. Limited or no access to basic necessities such as clean clothing, bedding, hygiene, or healthcare is rampant. Detainees have reported having to wait over 15 hours between meals, which are often of poor quality and past its expiration date. Many detainees also report instances of physical and/or psychological abuse such as solitary confinement (Cole 2012). One formerly detained immigrant commented:

After twenty months away from home, you lose faith, you feel worthless, this place breaks you, it is made to break your soul. The constant screaming and verbal abuse the guards inflict on the detainees is just made to break your soul and handicap you.

(Cole 2012)

These issues are especially salient for transgender and LGBTQI individuals whose gender identity is not respected and are often put in facilities with the opposite sex, exposing them to abuse, harassment, and rape by other detainees as well as prison guards (Anderson 2010; Carson and Diaz 2015; Gruberg 2015). The above conditions have led to countless immigrant detainee deaths, deaths that are often inadequately investigated or reported.⁴

Multiple studies and reports (Cole 2012; Cho and Shah 2016; Project South 2017) have documented the inhumane, substandard conditions detained immigrants face in privately run detention centers, specifically those IDCs in the south. The American Civil Liberties Union (ACLU) detailed the conditions in one of the most infamous of these southern IDCs — the Stewart Detention Center in Lumpkin, Georgia which has been under CoreCivic (at that time CCA) management since 2006 (Cole 2012). Among the litany of detainee abuse claims, CoreCivic was charged with violating the detainees' due process rights. Some detainees were found to be in custody six months or more *after* their deportation orders, in violation of a 2003 Supreme Court decision holding that detainees could be held a maximum of only six months following their removal order (MRS/USCCB and CMS 2015).

4 Nina Bernstein of the *New York Times* has reported on this facet of immigrant detention. A collection of her articles can be found at: http://topics.nytimes.com/top/reference/timestopics/subjects/i/immigration_detention_us/incustody_deaths/index.html.

The report also documents the “voluntary” labor required of detainees. Some detainees are paid from \$1 to \$3 per day for full-time kitchen or general cleaning duties. Detainees have declared that they took on kitchen duties in order to have access to food. This pay is far below minimum wage and is tantamount to prison labor. Some detainees are also forced to take on cleaning and laundry duties without pay. These conditions persist years later, as documented in the 2016 Southern Poverty Law Center (Cho and Shah 2016) and 2017 Project South (Project South 2017) reports.

Although we focus exclusively on immigrant detention centers, it is also important to note the existence of a parallel system of immigrant detention being run by the Bureau of Prisons (BOP). Criminal Alien Requirement (CAR) prisons are operated under the discretion of the BOP and used to hold immigrants serving short-term prison sentences. The 13 CAR prisons presently active are privately run but with little to no oversight by the BOP. In a multiyear study looking at five CAR prisons in Texas, the Texas ACLU found gross violations of human rights against immigrant detainees (2014).

Because of the lack of mechanisms for redress, detainees have often used extralegal means to fight against mistreatment. In 2010, at the Reeves CAR near Pecos, Texas undocumented detainees rioted after learning about the death of a fellow detainee Jesus Manuel Galindo. Galindo died in solitary confinement due to a seizure. An epileptic, Galindo was denied medical treatment and his pleas to be removed from solitary confinement went unheard. A month later, fears of another inmate death prompted a second riot. This time, detainees caused \$20 million in damages and held two officials hostage (ACLU 2014).

On February 20, 2015, undocumented immigrants being held at the Willacy County CAR prison near Raymondville, Texas, rioted over barbaric detention conditions. Nicknamed “Ritmo” or Raymondville’s Guantanamo, the prison under private management by Management and Training Corporation has been accused of housing detainees in squalid and inhumane conditions. These conditions led detainees to protest and riot, which prompted closure of the detention center (Lewis 2015). After the riots, local officials worried about the financial impact of the prison’s closure on the local economy. According to reports, Willacy County receives approximately \$2.8 million from the federal government for the prison, roughly \$2.50 per day per detainee. The riot and closure of the prison is expected to cost the county \$2 million of those federal funds (KRGV 2015).

Methods and Data

To analyze the relationship between the growing criminalization of immigrants, federal immigration policies, lobbying, and immigration enforcement budget, we collected data from multiple sources, including various Congressional Research Service (CRS) reports, US Census Bureau foreign-born data tables, INS service budgets, and DHS yearly reports. Due to data limitations, primarily scarce lobbying reports, the analysis of this study is limited to data from 1995 to 2013.

The dependent variable of the study is the criminalization of immigrants. This variable is measured through a ratio of average daily population of detained immigrants divided by the total number of noncitizens residing in the United States; this ratio was multiplied by 1,000

for clearer interpretation of the results. While the average daily population of detained immigrants was obtained from various CRS reports, the total number of noncitizens in the United States was obtained from the various US Census Bureau foreign-born data tables. The ratio has an increasing growth, ranging from 0.4425×10^{-3} in 1995, to 1.6067×10^{-3} in 2013.

We make use of multiple independent variables. We obtained data from OpenSecrets.org to measure federal lobbying expenditures of CoreCivic and GEO Group in both Congress and federal agencies such as the Department of Justice and DHS; although the available data does not provide the exact expenditures on immigration-related campaigns, it serves as a proxy of lobbying on immigrant detention because CoreCivic and GEO Group operate a large share of the immigrant detention centers in the United States (MRS/USCCB and CMS 2015). Additionally, scholars have reported that these two corporations have spent a large share of their total lobbying expenditures on DHS appropriations (Carson and Diaz 2015; Gruberg 2015).⁵

The next set of independent variables include various federal immigration policies that have been implemented since 1996. We account for IIRIRA in 1996, the end of the “catch and release” in 2006,⁶ the “bed quota” mandate in 2009, and Secure Communities in 2008. These policies are dichotomous variables measured yearly, with zero representing the absence of each policy, and one representing its implementation.

Our final independent variable is federal immigration enforcement spending, which is measured year by year. Due to the termination of INS and the implementation of DHS, we collected data from the Department of Justice, measuring the INS budget from fiscal year (FY) 1995 to 2003, as well as various budget reports from DHS. In order to measure the immigration enforcement budget of DHS specifically, we followed the methodology of Meissner et al. (2013), exclusively accounting for the budgets⁷ of the following DHS agencies: US Customs and Border Protection (CBP), US Immigration and Customs Enforcement (ICE), and the US Visitor and Immigrant Status Indicator Technology (US-VISIT) program, which was replaced by the Office of Biometric Identity Management (OBIM) in March 2013.⁸ The budgets were adjusted to 2016 dollars, following the Consumer Price Index (CPI) estimate from the Bureau of Labor Statistics to account for inflation. The immigration enforcement budget grew from \$3.4 billion in 1995 to \$18.2 billion in 2013, peaking in 2009 with \$19.7 billion. Table 2 provides the descriptive statistics of all the variables used in this study.

5 “CCA and GEO operated 45% of total ICE detention beds and 72% of privately contracted ICE detention beds . . . and together, they spent \$11,020,000 in federal lobbying . . . on immigration issues from 2008-2014” (Carson and Diaz 2015).

6 Although the “Catch and Release” policy ended in 2006 under President George W. Bush, CBP and ICE memos, along with ICE metrics, have shown that while a significant proportion of the number of encounters end in arrests or detainers, a proportion of those caught in violation of immigration laws are released after having encounters with ICE or CBP (Vaughan 2014).

7 The budgets refer to the fiscal year budgets that were revised enacted per agency; they come from various DHS *Fiscal Year Budgets in Brief*. See <https://www.dhs.gov/publication/dhs-budget>.

8 The US-VISIT program was launched in 2004 but was replaced by OBIM in March 2013. We make use of DHS’s *Budget in Brief Fiscal Year 2015* to account for OBIM’s fiscal year 2013 revised enacted budget. This report is available at <https://www.dhs.gov/sites/default/files/publications/FY15BIB.pdf>.

Table 2. Summary Statistics of Variables

Variables	Mean	SD	Min - Max
Ratio of detained immigrants	1.098	0.3389	0.4425 – 1.6067
Lobbying CoreCivic	1,254,444	904,792.6	140,000 – 3,380,000
Lobbying GEO Group	333,333.3	169,723.5	80,000 - 660,000
IIRIRA	0.6667	0.4797	0 - 1
Bed mandate	0.2333	0.4302	0 - 1
End of catch and release	0.3667	0.4901	0 - 1
Secure Communities	0.2667	0.4498	0 - 1
Immigration enforcement budget	9,121.556	6,880.683	1,262.94 – 19,714.53

** $p < 0.01$, * $p < 0.05$

Notes: The detained immigrant measure is a ratio of the average daily population of detained immigrants, as reported by various congressional reports, divided by the total non-naturalized immigrant population residing in the United States, as reported by the US Census Bureau. This ratio was multiplied by 1,000 to make interpretation of the table easier.

The measure of immigration enforcement budget is reported in millions, and was adjusted to 2016 dollars following the Department of Labor’s Consumer Price Index (CPI) Inflation Calculator.

We first created a series of bivariate correlations between the dependent and the independent variables. Through Pearson correlations conducted in Stata 14, we found that five out of seven independent variables were statistically correlated with the yearly ratio of detained immigrants. Then we conducted a time series regression and tested for autocorrelation using the Durbin-Watson test statistic and Breusch-Godfrey LM test to verify any autocorrelation issues.

Results

The results of the series of bivariate Pearson correlations show that all federal immigration policies are statistically correlated with the ratio of immigrants detained. As observed in Table 3, IIRIRA, the “bed mandate,” the end of “catch and release,” and Secure Communities are statistically significant.

Table 3. Correlation Coefficients

	Ratio of detained immigrants
Lobbying CoreCivic	-0.2087
Lobbying GEO	0.0109
IIRIRA	0.4681*
Bed mandate	0.7646**
End of catch and release	0.6939**
Secure Communities	0.8385**
Immigration Enforcement Budget	0.8729**

** $p < 0.01$, * $p < 0.05$

Sources: Various Congressional Research Service reports, US Census Bureau foreign-born data tables, INS service budgets, DHS budgets in brief, and data from OpenSecrets.org.

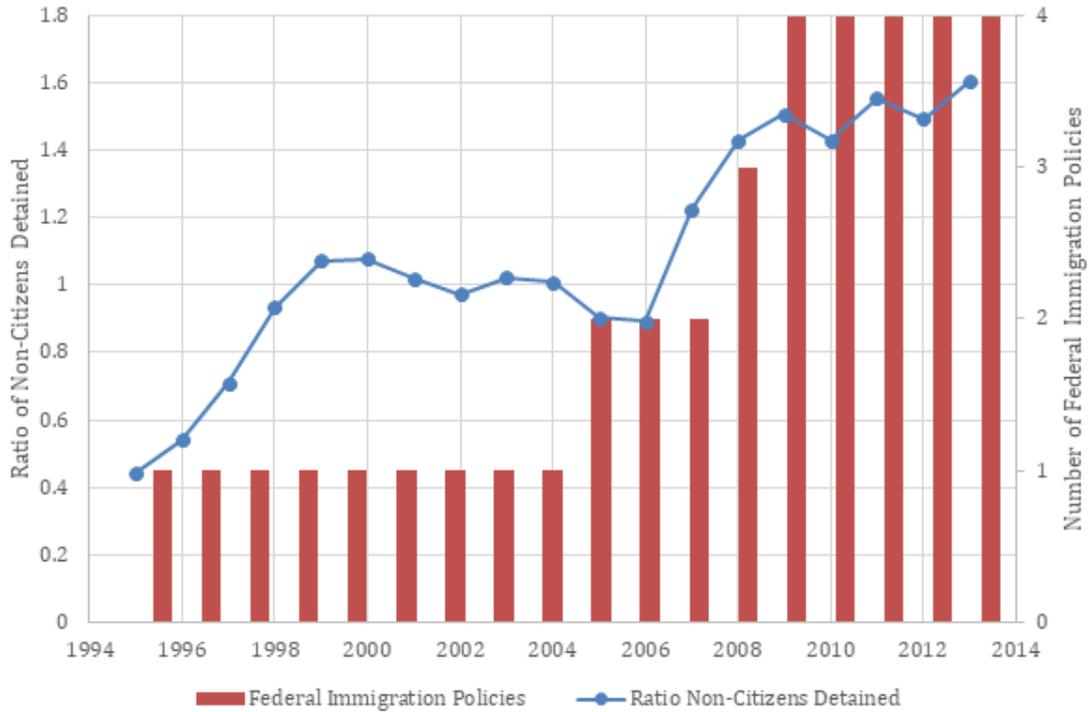
Notes: The detained immigrant measure is a ratio of the average daily population of detained immigrants, as reported by various congressional reports, divided by the total non-naturalized immigrant population residing in the United States, as reported by the US Census Bureau. This ratio was multiplied by 1,000 to make interpretation of the table easier.

The measure of immigration enforcement budget is reported in millions, and was adjusted to 2016 dollars following the Department of Labor's CPI Inflation Calculator.

Figure 1 shows the parallel increase of federal immigration enforcement policies and the ratio of non-naturalized immigrants who are detained. The number of federal immigration policies of this study ranges from zero to four. There were zero policies analyzed in this study in 1995. In Figure 1, a value of 1 represents the existence of IIRIRA; 2 the parallel existence of IIRIRA and end of "catch and release;" 3 IIRIRA, end of "catch and release" and Secure Communities; and 4 IIRIRA, end of "catch and release," Secure Communities and the "bed mandate." See Figure A for further details.

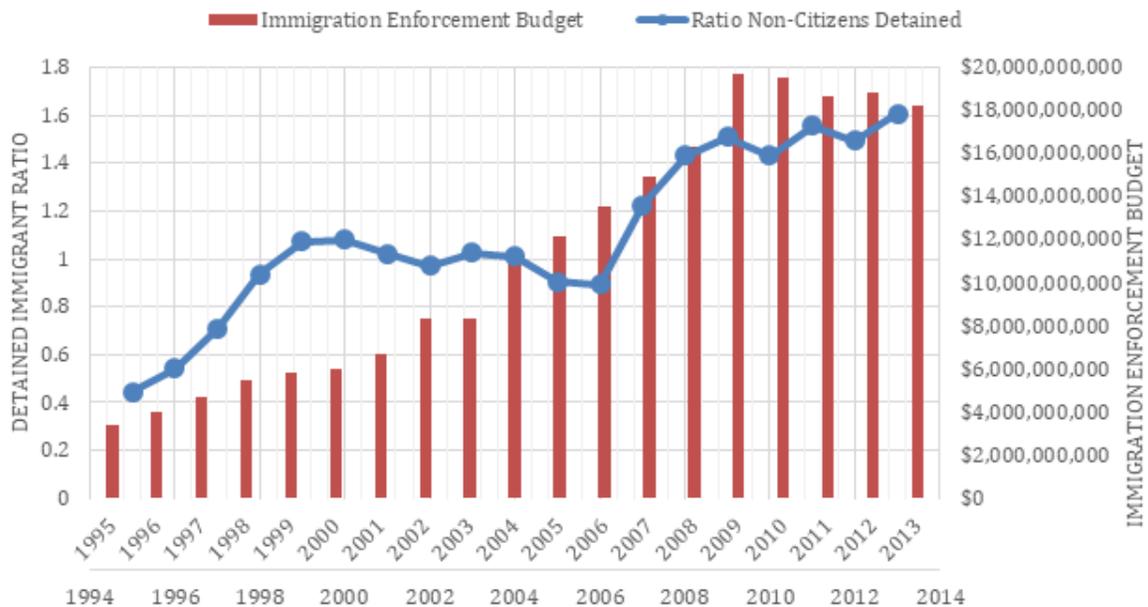
The results of Table 3 also show that the federal immigration enforcement budget is statistically correlated with the ratio of detained immigrants at the $p < 0.01$ level. With a positive coefficient of 0.8729, the results suggest that for every million dollar increase in the federal immigration enforcement budget, there is an increase of the ratio of immigrants detained of 0.8729×10^{-3} ; in other words, for every one million dollar increase in the federal immigration enforcement budget, there is an increase of 87 immigrants detained for every 100,000 noncitizens. Figure 2 shows the immigration enforcement budget growth from 1995 to 2013, along with the ratio of average daily population of detained immigrants.

Figure 1. Number of Federal Immigration Enforcement Policies, and Ratio of Noncitizens Detained, 1995-2013



Sources: Various Congressional Research Service reports and US Census Bureau foreign-born data tables.

Figure 2. Immigration Enforcement Spending Adjusted to 2016 Dollars, and Ratio of Noncitizens Detained, 1995-2013



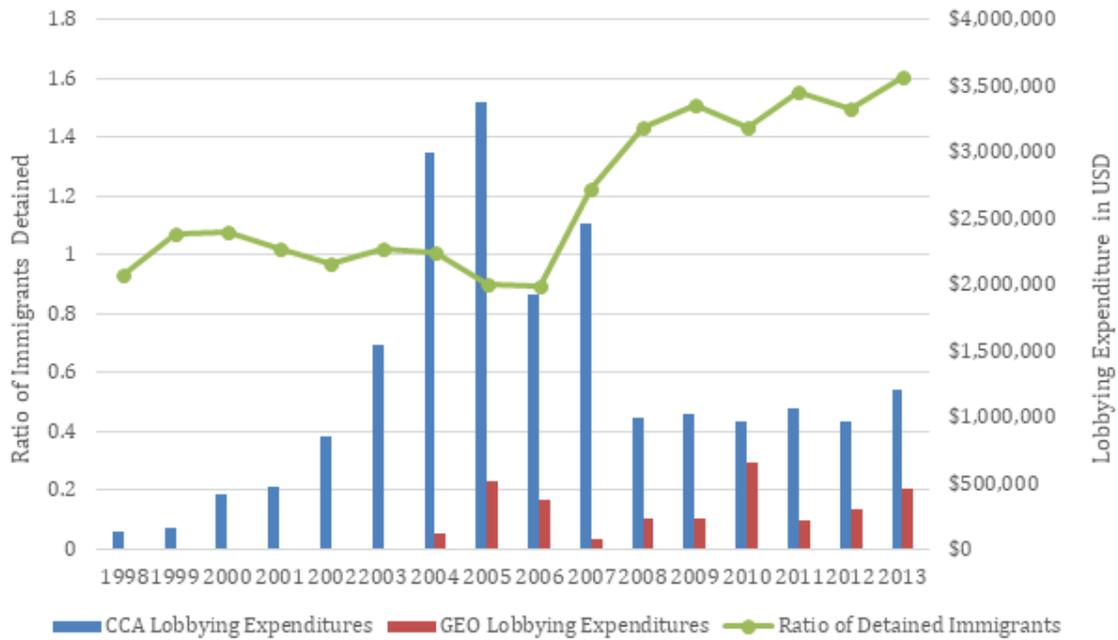
Sources: Various Congressional Research Service reports, US Census Bureau foreign-born data tables, INS service budgets, and DHS budgets in brief.

Notes: The detained immigrant measure is a ratio of the average daily population of detained immigrants, as reported by various congressional reports, divided by the total non-naturalized immigrant population residing in the United States, as reported by the US Census Bureau. This ratio was multiplied by 1,000 to make interpretation of the table easier.

The measure of immigration enforcement budget is reported in millions, and was adjusted to 2016 dollars following the Department of Labor’s CPI Inflation Calculator.

On the other hand, the results of Table 3 show that neither CoreCivic nor GEO Group lobbying expenditures are statistically correlated with the ratio of detained immigrants, as visually shown in Figure 3. As previously indicated, we used these measures as proxies for further immigration-related lobbying primarily because they do not show the exact amounts that were dedicated to immigration efforts at the federal level.⁹ Additionally, these variables are not constantly increasing over time, given that there are decreases and increases in expenditures occurring during or before major political events (e.g., 2005 after the creation of DHS, and a year before the two latest presidential elections).

Figure 3. CoreCivic and GEO Lobbying Expenditures, and Ratio of Noncitizens Detained



Sources: Various Congressional Research Service reports, US Census Bureau foreign-born data tables, and data from OpenSecrets.org.

Notes: The detained immigrant measure is a ratio of the average daily population of detained immigrants, as reported by various congressional reports, divided by the total non-naturalized immigrant population residing in the United States, as reported by the US Census Bureau. This ratio was multiplied by 1,000 to make interpretation of the table easier.

⁹ The authors recognize that a proportion of the immigration lobbying expenditures occurs at the state level; however, the authors only account for federal lobbying expenditures due to lack of data at state and local levels.

Table 4. Time Series Regression Analysis

Variables	Ratio of Detained Immigrants
IIRIRA	0.3279* (0.163)
Bed mandate	-0.0407 (0.163)
End of catch and release	0.2511 (0.171)
Secure Communities	0.2895 (0.172)
Immigration enforcement budget (in millions)	4.82x10 ⁻⁵ ** (2.1x10 ⁻⁵)
Constant	0.2781* (0.157)
Observations	19

Standard errors in parentheses.

** $p < 0.05$, * $p < 0.1$

Notes: The detained immigrant measure is a ratio of the average daily population of detained immigrants, as reported by various congressional reports, divided by the total non-naturalized immigrant population residing in the United States, as reported by the US Census Bureau. This ratio was multiplied by 1,000 to make interpretation of the table easier.

The measure of immigration enforcement budget is reported in millions, and was adjusted to 2016 dollars following the Department of Labor's CPI Inflation Calculator.

The results of the time series regression analysis¹⁰ indicate that the enactment of IIRIRA, along with the federal immigration enforcement budget, has a statistically significant relationship with the ratio of noncitizens detained for immigration purposes. The enactment of IIRIRA, for example, led to an increase of 33 detained persons out of 100,000 noncitizens per year (0.3279×10^{-3}). The rest of the federal immigration policies were not significantly associated with the ratio of detained immigrants, suggesting that the enactment of IIRIRA was so consequential in the detention of immigrants that it decreased the effects of other restrictive policies at the national level.

10 We conducted two autocorrelation tests to detect non-randomness in our data set. While the Durbin-Watson test statistic are inconclusive (d-statistic of 1.392636 was located between the dL and dU), the results of the Breusch-Godfrey LM test for autocorrelation suggest that there is no autocorrelation.

Table 4 also shows that the federal immigration enforcement budget was significantly associated with the detention of noncitizens for immigration enforcement purposes. The results show that an increase of a million dollars in the federal enforcement budget is associated with an increase of the ratio of noncitizens detained of 4.82×10^{-5} . In other words, for every million-dollar increase, there is an expected increase of 48 immigrant detainees for every million noncitizens.

Implications for Democracy

Corporate influence on policymaking undoubtedly affects democracy (Parenti 1995). As discussed previously, corporate influences have helped inflate the detention center industry far beyond the actual needs for such facilities. As Parenti (*ibid.*, 205) states, “the question is not only who governs, but whose interests and whose agenda are served by who governs — who benefits and who does not.” Miriam J. Wells (2004) speaks to the structural nature of federalism, and argues that our federalist system is disjunctured. These disjunctions create access points for a variety of actors to influence policymaking. The saturation of these access points by moneyed interests pose a direct challenge to the legitimacy of the democratic process. However, the influence of corporate monies on the creation and implementation of policy is only one factor in this story. The growth of the immigrant detention center complex also affects aspects of representation given that Congressional representation is apportioned based on Census counts.

The Census not only helps to provide a more accurate picture of the changing demographic diversity in the United States, but it primarily provides a mechanism for representation and fiscal allocation. Michelle Alexander (2011) has described the way by which prisoners have been exploited through census counts. Similarly, undocumented immigrants being held in detention centers suffer from even greater exploitation in this sense. Undocumented immigrants and legal residents are barred from voting and face limited access to services rendered to citizens. Federal legislation, such as IIRIRA and PWRORA along with state laws, regulate the services and benefits that legal residents can access. Yet, undocumented immigrants are counted in the Census and their numbers are reported as being part of the locality in which they are detained. According to Census residence rules, people in correctional residential facilities, federal detention centers, federal and state prisons, local jails, and other municipal confinement facilities are to be counted at the facility.¹¹

This is extremely problematic for several reasons. First, many of those detained are being housed in detention centers outside of their hometowns. The Georgia ACLU report found that one third of the detainees they interviewed were from out of state (Cole 2012). Considering that many detention centers are located in rural areas, the population counts of those towns are inflated and can therefore claim higher federal budget appropriations. In fiscal year 2008, the federal government appropriations from the census count averaged \$1,469 per person (Valdes 2010).

Federal money to localities is used for subsidizing public works, such as roads and schools. As Kevin Sieff (2010) reported for the *Texas Observer*,

¹¹ <https://www.census.gov/2010census/about/how-we-count.php#>.

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Four hundred billion dollars in federal funding over the next 10 years will be distributed based on the count, making detainees worth thousands of dollars to cities, counties, and states where they are briefly detained. The government will allocate more than \$100 million in additional funds to places where immigrants are detained.

These localities then are profiting from detained undocumented immigrants without making any contribution to these immigrants' families or their communities. The real communities of those detained miss out on such funds once ICE removes the person.

Second, all persons are counted in the Census for purposes of apportionment. Citizens, green card holders, the undocumented, and all those falling in more complicated legal statuses are included in the counts to decide apportionment for the US House of Representatives (Camarota 2013). There are long-standing debates on whether to count only citizens, only citizens and residents, or to count all persons in the United States during the Census. Legal action has been used in these debates since the 1980 Census when plaintiffs argued that counting all persons including undocumented immigrants would benefit only certain states over others and, as a consequence, would be unconstitutional (Woodrow-Lafield 2001). The courts, however, have ruled in favor of counting all individuals, including the undocumented.

Because of the inflated census numbers due to the counting of detained undocumented immigrants, political representation is then possibly skewed in favor of jurisdictions that would support stricter enforcement of immigration policies — stricter enforcement that necessitates the expansion of the immigrant detention complex. As Sieff (2010) writes,

This year's population count points to an often ignored irony: The country's detention facilities are concentrated in districts represented by some of Congress' most outspoken advocates of reform — including several South Texas congressmen who will benefit from counting immigrant detainees.

Counting individuals at the detention center where they are being held does not necessarily imply a gain for conservatives over liberals, both parties benefit from this system. As one of the states with the largest undocumented immigrant population and home to 13 ICE detention centers and five CAR prisons, Texas is an interesting case in point. Just north of Laredo, the small town of Dilley is home to the largest immigrant detention center in the country with a capacity of approximately 2,400 individuals. William Hurd, a Republican, represents Dilley. A few miles east in Corpus Christi, Solomon Ortiz, a Democrat, has been criticized by supporters and opponents alike for his “two-faced” stance on immigration. Ortiz has been a strong proponent for immigration reform; yet, his district is home to approximately 5,000 detention beds bringing in millions in extra federal funds (ibid.).

Policy Recommendations and Conclusion

In this paper we document and analyze the effects that IIRIRA has had in the criminalization of immigrants. We begin to unravel how the federalist system was used to undermine the democratic process in several ways. First, the immigration detention system has resulted in large part from the influence of special monetary interests in shaping federal policies. The

paper documents how immigrant detention policies had a great deal more to do with profit-making for a few private corporations than with an increase in undocumented immigration. Second, it argues that democracy is compromised when the human rights of thousands of immigrants and their families are violated. Third, counting immigrants in detention centers as part of the population of small communities with large detention centers results in unfair representation and allocation of monies for services.

In our research we uncovered the difficulties in finding accurate data due to lack of transparency and reporting, which contributes to obscuring undue influences in policy. Additionally, we describe the unnecessary expenditures created by unfair policies that divert public money for private gain in ever-increasing amounts.

Based on our findings and research we have identified three key recommendations that would aid in addressing the issues we have uncovered with the immigrant detention system. Our first recommendation is for the increased transparency and data management from ICE, and increased transparency in lobbying expenditures. A major issue we encountered during our research process was the availability of data on the number of people detained in immigrant detention centers. Data was often only available for certain years and different sources provided vastly different numbers.

Additionally, the influence of money and lobbying on policy was difficult to trace. We obtained much of our information from third-party studies that also only provided data for certain years or conflicting amounts. This issue of transparency and data availability has been noted as an issue by other researchers as well (Kerwin 2015; Velez and Brenner 2011).

Secondly, we propose the repeal of all mandatory detention legislation. Mandatory detention has contributed to the criminalization of undocumented immigrants. As the Migration and Refugee Services of the US Conference of Catholic Bishops and the Center for Migration Studies (2015) note, undocumented immigrants are subject to a civil process. Yet mandatory detention means they are being processed and housed as if they are criminals. According to Kerwin (2015), on a particular night in 2012 only 10 percent of those immigrants detained had committed violent crimes. Chishti and Mittelstadt (2016) find that only 820,000 (or 7 percent) of the estimated 11 million undocumented immigrants living in the United States have criminal convictions. Moreover, mandatory detention has led to a tremendous backlog in removal proceedings. The Transaction Records Access Clearinghouse (TRAC) (2017a,b) at Syracuse University reports that as of September 2017 immigration courts were facing a backlog of nearly 630,000 cases, with an average wait time for a removal hearing of 691 days. Ending mandatory detentions means that DHS and ICE must ensure that detention is used only when the US government has proven that none of the effective, but less restrictive alternatives to detention are appropriate.

Finally, we argue for the repeal of the bed mandate. The bed mandate provides a direct incentive for detaining undocumented immigrants who otherwise do not pose any real danger to society at large. As the data provided above shows, a large number of undocumented immigrants do not have criminal convictions that would require detention. Moreover, the bed mandate only serves to increase business for private detention corporations. The increase in the bed quota does not reflect an increase in crimes or in the number of undocumented immigrants residing in the United States. Data shows that undocumented

immigration has decreased over the past several years, while the number of detentions and deportations has continued to rise.

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