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THE PRIVATE PRISON DILEMMA

by ADRIANA BALLINES

In September 2009, Tanya Guzman-Martinez, a transgender woman, was placed in removal proceedings and held for eight months at the Eloy Detention Center.¹ Eloy Detention Center is a private prison operated by Corrections Corporations of America (“CCA”), the largest private-prison corporation in the United States.²

Despite her requests for protection, Guzman-Martinez was placed in the male housing unit.³ There, she was subjected to verbal abuse and harassment, was patted down by male officers, and was forced by a CCA officer to perform sexual acts.⁴ Guzman-Martinez filed a lawsuit against CCA, but her case was dismissed.⁵ She re-filed her case in August of 2012.⁶

THE GROWTH OF PRIVATE PRISONS

In 2012, the Department of Homeland Security spent a record-high, \$2 billion, in tax dollars on detaining immigrants.⁷ Approximately 34,000 immigrants are detained every night.⁸ Like Guzman-Martinez, about half of these detained immigrants are held in privately run prisons.⁹

Since the opening of the first private prison in 1984, the industry has expanded rapidly throughout both state and federal corrections.¹⁰ Supporters of prison privatizations argue that the significant cost savings that private prisons purport to offer - lower wage and benefit costs for labor, lower procurement costs, and more efficient administration and operation - warrant their continued growth.¹¹ However, a recent nationwide research study indicated that “average savings from prison privatization was only about 1 percent, rather than the projected 20-percent savings.”¹²

Moreover, in the last decade, “the three largest corporations with stakes in immigration detention,” CCA, the GEO Group, and Management and Training Co. together spent “at least \$45 million. . . on campaign donations and lobbyists at the state and federal level.”¹³

Several sources suggest a correlation between campaign contributions and lobbying, and an increase in profits and contracts with US Immigration and Customs Enforcement (“ICE”). For example, between 1999 and 2009, CCA alone spent \$18,002,000 on federal lobbying.¹⁴ “Of its 43 lobbying disclosures [filed between 2008 and 2010]. . . only five do not expressly state [an] intent. . . to . . . influence immigration reform policy. . .”¹⁵ In 2010, CCA reported a gross revenue of \$1.7 billion.¹⁶

The correlation “is definitely not coincidental” said Alexis Perlmutter, acting director of policy for the National Immigrant Justice Center.¹⁷ “I think [private prison corporations] lobby to make more money, and they have been very good at it up to this point.”¹⁸ The result is an “incarceration rate that is not justified legally with the realities of immigrant detainees,” said the Assistant Director at UC Davis Immigration Law Clinic, Holly S. Cooper.¹⁹

This is problematic because, as the United Nations Special Rapporteur on the Human Rights of Migrant, François Crépeau, explains, “the level of accounta-

bility and the level of transparency that are required for proper supervision of detention facilities are usually not present in the case of privately-run corporations. When you have a private corporation with its profit-generating bottom line, you have a significant interference with public policy outcomes,” said Crépeau.²⁰ For instance, in 2011 CCA “lobbied heavily against a bill that would force them to comply with the same open records requirements governing public facilities.”²¹

DETENTION CONDITIONS

In a report published in May, 2012, the American Civil Liberties Union (ACLU) of Georgia interviewed 68 immigrant detainees and visited four different immigrant detention facilities under investigation.²² Three of the four facilities visited, including Stewart, North Georgia Detention Center (NGDC), and Irwin, were privately run prisons. Stewart and NGDC are both managed by CCA, while Irwin is operated by Detention Management, LLC.²³

Stewart had the highest deportation rate in the country – at 98.8%.²⁴ Yet, only two out of the 28 detainees interviewed at Stewart had legal representation.²⁵ “[B]ecause the majority of immigrant detainees are housed in facilities in rural locations far away from their homes,” legal representation for them is scarce and cost-prohibitive.²⁶

In response to the report, Steve Owen, CCA spokesman and operator of Stewart and the NGDC, said that “ACLU ignored or underplayed CCA responses to some of the criticisms of its facilities.”²⁷ “Some of the allegations were unsubstantiated or incorrect,” argued Owen.²⁸

“I wouldn’t say that detainees are more at risk of human rights abuses” in private prisons, said Perlmutter.²⁹ In fact, those prisons “could be doing things better” but it is difficult to know because it is “very challenging to find out information from them without suing.”³⁰

ALTERNATIVES TO DETENTION

While detaining an individual costs the US government about \$166 per day, more humane and efficient alternatives to detention (“ATD”) cost only about \$8.88 per day.³¹ Yet, the Obama administration requested only \$111.59 mil-

lion for ATD for fiscal year 2013.³² This amount is much lower than the \$2.026 billion that the U.S. House of Representatives appropriated for the detention of immigrants.³³

“We encounter people all the time who do not need to be detained,” said Perlmutter.³⁴ Perlmutter explains that “Congress determines the immigration detention bed space every year, the problem is that DHS interprets this number as a mandatory requirement that they have to hold in custody.”³⁵

In fact, when the Director of Intergovernmental Affairs, Cecilia Muñoz, was asked whether it was true that ICE agents who do not meet the goal of deporting 400,000 individuals every year pay a very high price in Washington,” she responded, “Congress passes the laws, appropriates the funds for implementing the laws, and the federal agency’s job is to do what Congress has told them to do. That is how a democracy works.”³⁶

“There are two elements that affect the lack of use of ATD,” explained Crépeau. One is that “ATD are not sufficiently developed.”³⁷ The other element is “the fact that irregular migrants are not a political constituency. [Thus], politicians are not incentivized to protect them, and this is a structural failure of our democracies.”³⁸ Because the courts are not subject to the same electoral pressure, “access to the justice system for migrants is extremely important.”³⁹

The case of Guzman-Martinez exemplifies many of the difficulties that individuals and attorneys face when seeking legal remedies against private-prisons corporations. As Cooper explained, “the weakness of private prisons is the lack of transparency and the fact that they are using their resources to advocate for increased incarceration rates.”⁴⁰

NOTES

1 Guzman-Martinez v. Corr. Corp. of Am., CV 11-02390-PHX-NVW, 2012 WL 2873835 (D. Ariz. July 13, 2012)

2 Azadeh Shahshani, The Sunk Costs of a Profit-Driven Prison System (May 2012), <http://www.aljazeera.com/indepth/opinion/2012/05/2012526112812469344.html>.

3 Guzman-Martinez, *supra* note 1, at 2–3.

4 *Id.* at 4.

5 *Id.* at 9, 13, 16.

6 Phone interview with Holly S. Cooper, Assistant Director UC Davis Immigration Law Clinic (Oct. 23, 2012).

- 7 Shahshani, *supra*, note 2.
- 8 ALEXIS PERLMUTTER ET AL., *INVISIBLE IN ISOLATION: THE USE OF SEGREGATION AND SOLITARY CONFINEMENT IN IMMIGRATION DETENTION* 8 (Holly Cooper et al. eds., 2012).
- 9 *Private Prison Companies Making Big Bucks on Locking up Undocumented Immigrants*. Aug. 2012, available at <http://www.nydailynews.com/news/national/private-prison-companies-making-big-bucks-locking-undocumented-immigrants-article-1.1127465>.
- 10 Elaine Rizzo & Margaret Hayes, *An Assessment of the Risks and Benefits of Prison Privatization*, 2 (2012) available at http://www.privateci.org/private_pics/NewHampshireRiskAssessment.pdf
- 11 *Id.*
- 12 *Id.*
- 13 *Id.* See also PERLMUTTER, *supra* note 8; *The Influence of Private Prison Industry in Immigration Detention*, DETENTION WATCH NETWORK, <http://www.detentionwatchnetwork.org/privateprisons>.
- 14 DETENTION WATCH NETWORK, *supra* note 13.
- 15 Beau Hodai, *Private Prison Companies Behind the Scenes of Arizona's Immigration Law*, PRISON LEGAL NEWS, https://www.prisonlegalnews.org/22734_displayArticle.aspx.
- 16 ALEXANDRA S. COLE, *PRISONERS OF PROFIT: IMMIGRANTS AND DETENTION IN GEORGIA* 12 (Azadeh Shahshahani ed. 2012).
- 17 Phone interview with Alexis Perlmutter, acting director of policy for the National Immigrant Justice Center (Oct. 25, 2012).
- 18 *Id.*
- 19 Cooper, *supra* note 6.
- 20 Phone Interview with François Crépeau, the United Nations Special Rapporteur on the Human Rights of Migrant (Oct. 9, 2012).
- 21 PERLMUTTER, *supra* note 8.
- 22 COLE, *supra* note 16.
- 23 *Id.* at 28.
- 24 *Id.* at 13.
- 25 *Id.* at 37.
- 26 *Id.*
- 27 Richard Fausset, *Immigration: ACLU alleges Rights Violations at Detention Centers*, L.A. Times (May 16, 2012), <http://articles.latimes.com/2012/may/16/nation/la-na-nn-georgia-immigration-20120516>.
- 28 *Id.*
- 29 PERLMUTTER, *supra* note 8.
- 30 *Id.*
- 31 Shahshani, *supra* note 2.
- 32 PERLMUTTER, *supra* note 8, at 30.
- 33 *Id.*
- 34 PERLMUTTER, *supra* note 8.
- 35 *Id.*
- 36 Interview by PBS Frontline with Cecilia Munoz, Director of Intergovernmental Aff. (2011), available at <http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/obama-official-under-fire-after-lost-in-detention-interview/>.
- 37 Crépeau, *supra* note 20.
- 38 *Id.*
- 39 *Id.*
- 40 Cooper, *supra* note 6.