

Inside Bush's Billion-Dollar Immigration Gulag

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The next administration will face an out-of-control immigration enforcement regime that consigns immigrants to a labyrinth of unregulated detention centers, jails, and prisons throughout the country.

While the scope of the detention and imprisonment of immigrants has been greatly expanded by the Bush administration, the problem of unregulated immigrant detention is not new. In the 1990s, increased immigrant detention and federal prison overcrowding led to an outsourcing boom. Instead of being held in federal prisons and detention centers, arrested immigrants increasingly were held in local, state, and privately owned jails and prisons.

But the boom in contracted detention beds for federal detainees produced a series of scandals that alarmed many in Congress. Gross human rights abuses and millions of dollars in overcharges persuaded Congress, prodded by immigrant and prisoner advocates, to create the Office of the Federal Detention Trustee (OFDT) in the Justice Department (DOJ) in 2000. The newly established OFDT, which opened in September 2001, was authorized to coordinate all outsourcing of federal detainees and oversee the implementation of the new detention standards adopted in 2000.

But the onset of the war on terrorism and the creation of the Department of Homeland Security in March 2003 sidelined OFDT's coordination mission. Instead of centralizing detention operations for federal detainees held in non-federal facilities, detention operations have quickly become less coordinated, more diffuse, and riddled with abuse.

More Beds for Immigrants

The Bush administration is fulfilling its promise that there will be sufficient prison beds for all the immigrants caught in the Department of Homeland Security's widening immigrant round-up. In the detention business, bed is a euphemism for jail space.

Supported by generous budget increases for its immigration initiatives, Congress and the Bush administration have approved funding for a major increase in beds for immigrants—as long as they're locked up. Homeland Security has created a national network of bed providers in county, state, and federal facilities. Similarly, the Justice Department has seen major increases in its budget for housing and transporting immigrants through its U.S. Marshals Service (USMS) and OFDT.

While the current focus on immigrants as security threats started in the immediate aftermath of Sept. 11, 2001, the drive to increase the number of beds for arrested immigrants began in earnest in 2004. At the insistence of immigration restrictionists like

Rep. Tom Tancredo (R-CO) and the Immigration Reform Caucus, the Intelligence Reform and Terrorism Prevention Act of 2004 contained an authorization for an additional 40,000 beds to accommodate immigrants held for immigration violations.

Two years later in a major speech on immigration policy on May 15, 2006, President Bush assured the nation that the U.S. government was well on the way to securing the U.S. southern border, noting, "We've expanded the number of beds in our detention facilities, and we will continue to add more."

In an August 2006 visit to the U.S.-Mexico border to promote his immigration policy, President Bush repeated his determination to increase jail space for immigrants. "Step 1," he said, "is to add detention beds."

Today, Immigration and Customs Enforcement (ICE), the DHS agency responsible for immigrant "detention and removal," has 32,000 beds at its immediate disposition, with another 1,000 scheduled to come on line in 2009. In 2008 ICE is spending \$1.7 billion on immigrant detention, in addition to the \$700 million for enforcement and removal operations.

DHS says it can guarantee the availability of a bed for any immigrant in its care. At the onset of the immigration crackdown two years ago, ICE dubbed its promise to find a detention center or prison bed for all arrested immigrants "Operation Reservation Guaranteed." That operation has been subsumed into ICE's Detention Operations Coordination Center.

The Justice Department has a similar initiative to ensure that the U.S. Marshals Service has beds available for detainees—about 180,000 a year, of whom more than 30% are held on immigration charges.

Navigating the Bed Labyrinth

Prior to Sept. 11, 2001 the federal government already knew that it had a bed problem. But new divisions in the federal immigration bureaucracy and the Bush administration's crackdown on immigration have aggravated the difficulties of finding beds for the increasing number of immigrants under federal custody.

Before the Sept. 11 terrorist attacks the immigrant bed problem was largely confined to the Department of Justice, which then housed the government's two main immigration agencies, Border Patrol and Immigration & Naturalization Service (INS).

Back then DOJ was a one-stop shop for immigration enforcement. In addition to border security and immigration investigation and processing, DOJ also adjudicated immigration cases through the Executive Office for Immigration Review (EOIR). Conveniently, the U.S. Marshals Service, another DOJ agency, has been responsible for the "security and transportation" of arrested immigrants.

The pre-9/11 challenge of providing enough beds for the immigrants held either by the Border Patrol, INS, or the USMS was part of the larger national problem of having too many prisoners and too few prison beds. It was a problem that took hold in the 1970s with the onset of the war on drugs and new tough sentencing standards. Over the last three decades, increased inflows of unauthorized immigrants also taxed the government's capacity to detain or jail unauthorized immigrants or ones accused of crimes.

Rather than expanding the federal government's own detention centers and prisons, DOJ started diversifying operations and outsourcing its detainees. Increasingly, DOJ began sending immigrants to county and state jails. Also brought into this patchwork system of immigrant detention were private prison firms that are hurriedly expanding their operations to accommodate the upsurge in arrested immigrants.

As part of the Reagan administration's privatization policy, DOJ encouraged the private sector to move into the detention center and prison business. In fact, the global private prison industry got its start in 1983 when DOJ encouraged a group of Republican entrepreneurs to open a private detention center for arrested immigrants in Houston. That immigrant detention pilot project formed the foundation of what is now the world's largest prison corporation: Corrections Corporation of America.

The steady rise of the illegal immigrant population in the 1990s strained DOJ's capacity to oversee the expanding patchwork quilt of bed providers. Compounding the problem in the mid-1990s was new legislation that set off a process that continues today of criminalizing immigration violations. Immigration violations that had been considered administrative infractions were increasingly regarded as aggravated felonies—raising the number of immigrants subject to "mandatory detention."

The problem before Sept. 11 was not so much finding beds for arrested immigrants but in managing the sprawling, patched-together detention system. No one office was managing bed-rental contracts, setting standards and prices, and negotiating with all the private firms and local governments offering detention beds. What's more, there were no uniform standards and no enforceable regulations for detention center conditions and the treatment of detainees.

According to a DOJ audit: "The lack of standards led to inconsistent practices, confusion among detention providers, and lack of accountability. Also, these facilities were not adequately monitored to ensure safe, secure, and humane conditions of confinement. Standards for inspections were inconsistent, inspection staff lacked subject matter expertise, and no system existed to ensure corrective action and follow-up."

In what has turned out to be an ill-fated attempt to manage and regulate the ad hoc network of bed providers, Congress authorized the creation of the Office of the Federal Detention Trustee within the DOJ bureaucracy. According to the OFDT, Congress "determined that one coordinated effort was necessary to achieve detention efficiencies, effectiveness, and operational synergies across departmental and agency lines."

OFDT, which continues to boast that it is the only government agency that coordinates "detention activities for DOJ and ICE," has never come close to fulfilling its mission. Mismanagement—including overlooked over-charging by county jails—has sullied its reputation, and Homeland Security has ignored its feeble attempts to coordinate detention operations.

Finding a Bed for the Night

Imagine yourself as a detained immigrant.

An ICE raid at your workplace or home suddenly rips you away from your family, friends, and job. Who, you may ask, is arresting me? Who is taking me where?

Imagine yourself an immigrant—not necessarily because of any feelings of sympathy or solidarity but as a way to better understand the Kafka-esque nightmare that America's immigration system has become.

You may be able to count on a bed for the night, but it's likely that you won't know who the innkeeper is.

Unlike a national hotel chain each with its distinctive logo and guarantee of the same quality of service no matter where you stay, the federal government's chain of detention beds comprises literally thousands of "service providers," each with its own insignia, each with its own standard of service.

Once in ICE's custody, where you will spend the night will depend on the occupancy rates of the providers. This will be determined by ICE's new Detention Operations Coordination Center (DOCC). ICE boasts: "By monitoring bedspace and operations constantly, the DOCC ensures that no alien amenable to removal proceedings is released from ICE custody."

There's always room in the inn for immigrants. That's essentially the guarantee offered by the Department of Homeland Security.

Fewer than two of 10 arrested immigrants actually gets a bed at one of the eight ICE processing centers. More than 50% of ICE detainees are contracted out to county jails. But it may be difficult to determine who your host is since in many cases all the jailers sport the logos of the private firms that own and operate these local jails. ICE contracts with more than 350 county and state jails, all of which have a different approach to handling immigrants and many of which don't have bilingual staff.

You may find that your custodians are not government employees at all but are hired hands of the Corrections Corporation of America (CCA), GEO Group, Management and Training Corporation (MTC), or Cornell Companies. In addition to the subcontracts these companies have with local jails that have contracted out bed space to ICE, CCA and GEO own and operate seven of the 15 ICE processing centers.

From being hauled out of one part of corporate America, where you may have worked as a meatpacker or a hotel service worker, you could find yourself transported in Homeland Security buses to another corporate plant identified by its CCA, GEO, MTC, or Cornell logos and flags but surrounded by high fences with razor-sharp concertina wire.

It's increasingly likely, though, that you be transferred to another detention booking system run by the DOJ's Office of the Detention Trustee. As part of the immigration crackdown, the federal government is increasingly prosecuting immigration violations. Which means that after initial processing and detention within ICE's network, you will be turned over to DOJ's own chain of detention centers, jails, and prisons.

Like ICE, the Justice Department's OFDT has developed its own booking system to handle the recent increase in the federal detainee population, spurred mainly by the arrests of immigrants. It's called the Detention Services Network (DSNetwork), which OFDT describes as providing "One-stop shopping" for detention facilities and services.

OFDT says it aims to "avoid duplication of effort and cost of detention activities by competing agencies. OFDT focuses on process and infrastructure improvements. OFDT has developed a strategic approach that crosses organizations to meet the increasing demands on the detention community of aggressive immigration and law enforcement initiatives. In an effort to meld the many requirements of the USMS, the BOP [Bureau of Prisons], and ICE, OFDT is implementing a national detention strategy characterized and driven by an *enterprise perspective* [OFDT's emphasis]."

What OFDT doesn't like to mention is that ICE rarely coordinates with DSNetwork or other OFDT services. As an internal DOJ report noted, "ICE infrequently uses OFDT's services. According to the OFDT, it has no leverage to force ICE to use its services."

This "enterprise perspective" means outsourcing. Although federal detainees have historically been placed in federal prisons while they await trial, most are now contracted out either to 1,600 local and state jails or directly to private "contract facilities." As OFDT notes, "This saturation of state and local facilities forces an increased reliance on private facilities that are historically higher in cost."

Although OFDT says it has a cross-organizational view of detention, in practice it manages only DOJ detainees—the nearly 20,000 immigrants held every day in USMS custody during the time after they have been charged and until they have been convicted or acquitted. According to OFDT, "The number of persons held [by USMS] for immigration offenses is growing at a faster rate than other offense categories."

If found guilty of an immigration violation—such as entering or re-entering the country without proper documents or giving an employer a false Social Security number—you will be sentenced to a jail term (oftentimes in addition to the time you have already been detained). However, given that federal prisons are fully booked, you will likely be transferred yet again by the USMS to another contracted bed in one of a myriad of private

prisons or local jails. It's all part of the booming enterprise of detaining and imprisoning immigrants.

Problems with Enterprise Detention

The new hard line on immigration, says ICE, aims to "restore integrity" to the immigration system. But in the name of enforcing the law, the federal government is increasingly obliged to outsource immigrant detainees to detention centers, jails, and prisons.

While there is now a list of detention system standards, these weak standards are not enforceable. In this enterprise system of immigrant detention, there is little or no quality control. As a result, the abuses that plagued the system before 2001 have continued and deepened.

"DHS is one of the largest jailers in the world," said Paromita Shah, Associate Director of the National Immigration Project of the National Lawyers Guild, which filed suit last month against DHS. "But it behaves like a lawless local sheriff. The refusal to adopt comprehensive, binding regulations has contributed to a system in which thousands of immigration detainees are routinely denied necessary medical care, visitation, legal materials, or functioning telephones."

The oversight by DHS and DOJ of their thousands of contracting jailors is minimal. Aside from dropping off and picking up the detainees, the main interaction with its outsourcing partners is the negotiation of per diem rates for bed rentals.

The uncoordinated, unregulated detention system came under congressional and public criticism in the 1990s. But the creation of a new federal bureaucracy in the form of the Office of the Detention Trustee failed to solve the problem. Instead, the problems of the detention system for immigrants have been compounded by the creation of a new immigration bureaucracy and the immigration crackdown of the last couple of years.

Both DOJ and Homeland Security boast of the increased ability to find beds for immigration violators, but they provide no guarantee for the conditions at their "service providers."

It's time that Congress again review this unregulated detention system for which it is ultimately responsible. Immigration policy should regulate sustainable inflows of immigrants, not manage a penal bureaucracy. Nor should immigrant detention be regarded as just another enterprise that can be outsourced.

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