

EXHIBIT 3

Congress Mandates Private Jail Beds for 34,000 Immigrants

William Selway and Margaret Newkirk

September 24, 2013 — 12:01 AM EDT



Detained immigrants walk back to their housing units following lunch at the U.S. Immigration and Customs Enforcement (ICE) detention facility on July 30, 2010 in Florence, Arizona. ICE in Arizona holds almost 3,000 immigrants statewide, all at the detention facilities in Florence and nearby Eloy. Photographer: by John Moore/Getty Images

Noemi Romero, who came to the U.S. illegally at age 3, was arrested in January working at a Phoenix grocery store, where she used someone else's name to get the job.

Romero, a 21-year-old who likes to draw and dance, spent the next four months behind bars, almost half of it in a cramped cell at a 1,596-bed detention center in Eloy, Arizona, run by Corrections Corp. of America. The company, with Geo Group Inc. and other for-profit prison operators, holds almost two-thirds of all immigrants detained each day in federally funded prisons as they face deportation, U.S. data show.

Under law, taxpayers must pay to keep 34,000 people like Romero in jail, at a cost of about \$120 each per day, even as the number of immigrants sneaking across the border has fallen by more than half since the past recession began.

Since 2009, when then-Senator Robert Byrd, a West Virginia Democrat, inserted a change into the

Homeland Security Department's annual spending bill, federal immigration officials have been placed in the unusual position of operating under a statutory quota on how many people to hold behind bars. Congressional Republicans have been defending it ever since.

"People are being kept in detention -- in many cases for weeks or months at a time -- without consideration for the individual circumstances," said Denise Gilman, co-director of the Immigration Clinic at the University of Texas law school in Austin. "This is being done at a tremendous financial cost to taxpayers and a tremendous human cost to families."

Detention Quota

Prisons are one of the few institutions that states and the federal government have moved to privatize, creating a booming business for Corrections Corp. and Geo, the two publicly traded companies that dominate the market. Both actively lobby Congress. Serving as government jailer has been a hit on Wall Street, as Corrections Corp. and Geo have each about doubled in value since mid-2010.

The results haven't always been good. Regulatory, court and state records show that privately run prisons have been troubled by staffing shortages, rapid employee turnover or cost-cutting that has led to dangerous conditions for inmates, and some academic studies have cast doubt on the industry's core claim of saving taxpayers' money. This year, Ohio auditors faulted Corrections Corp. after assaults almost tripled following its takeover of a state prison, and a riot at its Natchez, Mississippi, immigrant facility left a guard dead and 20 people injured last year.

No Impediment

Such incidents have proven no obstacle to growth for Corrections Corp. and Geo. This month, California Governor Jerry Brown moved to commit more than \$1.14 billion over the next three years to lease thousands of prison cells, while Geo said it won a federal contract, valued at \$8.5 million a year, to hold as many as 400 immigrants in Alexandria, Louisiana.

While states and the federal government move to curb the nation's prison population, immigration detention has been protected by Congress. The "bed mandate," as it's called on Capitol Hill, forces President Barack Obama's administration to fill a minimum of 34,000 prison slots a day.

Congress has pressed to ensure the beds are full, and lawmakers say it forces U.S. Immigration and Customs Enforcement to find and deport the millions who are in the country illegally.

Mandate Reminder

Texas Republican Michael McCaul, the Homeland Security Committee chairman in the House of Representatives, told ICE officials in February that they were “in clear violation of statute” when the detainee population fell to 30,773 after 2,200 were released to save money.

While the number held varies daily, the average follows the level set by Congress. Through mid-April, around the midpoint of the federal budget year, ICE detainees averaged 33,811 a day, according to records obtained through a Freedom of Information Act request. Brian Hale, an ICE spokesman, declined to comment.

The Obama administration has questioned the need to hold so many. It has asked Congress to cut the bed quota so it can use less costly measures, such as ankle bracelets, to ensure that detainees show up in court. Lawmakers have rejected the move.

At an April hearing, then-Homeland Security Secretary Janet Napolitano, whose department includes ICE, called the mandate “artificial” and said reducing the required number of detainees would let the agency free low-risk offenders who could be on supervised release.

Prioritize Detentions

“We ought to be detaining according to our priorities, according to public-safety threats, level of offense and the like,” she said, “not an arbitrary bed number.”

In June, Representative Ted Deutch, a Florida Democrat, proposed an amendment to remove the requirement from next year’s appropriations bill.

“No other law-enforcement agencies have a quota for the number of people that they must keep in jail,” he said. “Mandating ICE detain 34,000 individuals a day does not secure our borders or make us safer.”

The proposal lost 232 to 190, on a largely party-line vote.

Lawmakers and immigration advocates say the quota forces ICE to squander taxpayer money to needlessly hold people like Romero.

“It’s not just pressure,” said North Carolina Representative David Price, the top Democrat on the House Homeland Security appropriations subcommittee. He was the panel’s chairman when Congress passed the mandate.

“It’s a requirement that they choose one course rather than the other, when the alternatives to detention would be less expensive and equally effective,” Price said. He said he tried, and failed, to stop the inclusion

of the mandate language during negotiations between House and Senate lawmakers. In the end, he voted for the final bill in 2009.

Another Name

Romero's arrest was for using another person's name in order to obtain work. In an interview, she said she had planned to apply for temporary legal status that became available in 2012 for people like her, who had been brought illegally to the U.S. as children. She got a \$7.65-an-hour grocery cashier job in order to earn the \$465 application fee, using a legal resident's name, she said.

She was arrested in a workplace raid and pleaded guilty to criminal impersonation. She ended up in a khaki uniform reserved for low-level felons held at Eloy, where she says she was offered a chance to work legally on the prison's inmate staff for \$1 a day. She stayed in her cell drawing instead and lay awake and claustrophobic most nights in a space with two bunks and just a few feet of room to walk, she said.

Detention Cost

The U.S. immigration agency spends about \$2 billion annually on detention. While most are in for-profit prisons, ICE data show the rest are scattered among jails run by local governments paid to hold immigrants.

The greater use of detention is an outgrowth of get-tough immigration policies that started amid security concerns after the Sept. 11 terrorist attacks and expanded rapidly, as Presidents George W. Bush and Barack Obama pursued border crackdowns and increased arrests and deportations of people in the country illegally.

Since 2005, the number of beds to hold undocumented immigrants has surged 84 percent, according to the Congressional Research Service. That has helped boost revenue for commercial prison operators and cash-strapped governments alike, as companies and lawmakers with jails in their districts have pushed for a greater share of a growing pie.

Revenue Driver

Federal contracts accounted for about 43 percent, or \$752 million, of Corrections Corp.'s 2012 revenue -- up from about 23 percent in 2000 -- including \$206 million from ICE in the most recent year.

The flood of cash spurred construction, expansion and conversion of jail space to accommodate immigrants, by prison companies and government agencies, sometimes leading to clashes between states with rival facilities for detainees, such as a 2010-2011 spat between lawmakers from Alabama and Georgia.

Congress pressured both Bush and Obama to confine undocumented immigrants, saying it would prevent them from avoiding deportation proceedings.

The expansion of the detention system began in 2004, when the Intelligence Reform and Terrorism Prevention Act, a response to Sept. 11, directed Homeland Security to add 8,000 beds a year, provided Congress supplied the money.

The job fell to the House and Senate appropriations panels. The budget writers committed funds for 33,400 beds by 2009 from 18,500 in 2005, Congressional Research Service data show.

Company Lobbying

Both Corrections Corp. and Geo rely on Washington lobbyists to advance their interests.

Corrections Corp. has spent more than \$13 million on lobbyists since 2005, among them past appropriations-committee employees, according to Senate records. The company's representatives disclose lobbying on annual appropriations bills that set Homeland Security spending, including the one that created the bed mandate.

Geo has spent more than \$2.8 million lobbying over that time.

"Private detention facilities are heavily invested in Congress appropriating money for this phenomena," said Muzaffar Chishti, the Migration Policy Institute director at New York University's law school. "There is a huge private interest involved in all this."

Geo has never taken a position on incarceration or immigrant detention policies, and its involvement in politics is limited to discussing the benefits of privatization with officials, said Pablo Paez, a company spokesman.

Narrow Focus

Corrections Corp. and its lobbyists don't advocate for laws or policies that determine whether someone is jailed or the prison terms they face, said Steve Owen, a spokesman. He said the company does lobby on government spending decisions that affect its contracts.

"We do lobby on appropriations to ensure our partners -- and therefore our contracts -- are fully funded," Owen said in a statement. "Lobbying for full funding of our government partners in the appropriations process is something our company has done for many years."

In 2009, the year Congress set the bed quota, as many as 25 lobbyists represented Corrections Corp. on budget and appropriations issues, according to filings with Congress.

Since the 2008 elections, Corrections Corp., Geo and Management & Training Corp., the three biggest prison operators, have donated at least \$132,500 to the campaigns of members of Congressional subcommittees that appropriate money to ICE and determine how much is spent on incarceration, according to the data from the Center for Responsive Politics, a Washington-based nonprofit group that tracks campaign spending.

Supporting Lawmakers

Most of the contributions were made by Corrections Corp. and nearly half, 43 percent, went to Republican Representatives Hal Rogers of Kentucky, the appropriations committee chairman; John Carter of Texas, head of the panel's homeland security subcommittee; Robert Aderholt of Alabama, Carter's predecessor in that post; and John Culberson of Texas, a member of the subcommittee, which oversees ICE's budget.

"In terms of CCA's political giving, we support individuals who are open to solutions that partnership corrections can provide to serious national challenges, such as recidivism, pension liabilities and prison overcrowding," Owen said.

Congress proved a receptive audience. Adding beds for illegal immigrants became political shorthand for taking a strong stance on protecting U.S. borders, said Price, the former subcommittee leader when Byrd added the bed quota.

Powerful Backer

Byrd, an outspoken supporter of detention for illegal immigrants who died in June 2010, was chairman of the homeland security sub-panel of the Appropriations Committee when the detainee quota passed. The senator wanted to ensure that cost increases wouldn't lead ICE to fund fewer beds, said a former aide who asked not to be identified because he wasn't authorized to discuss committee deliberations.

Republicans have backed the bed mandate since then, saying it compels the administration to enforce immigration laws. ICE holds undocumented immigrants rounded up by fugitive-operations teams, which target those with criminal records and those picked up by local law enforcement and border-patrol agents.

"This bill holds the administration's feet to the fire," Alabama's Aderholt said last year as the homeland security appropriations panel raised the bed quota to its current level.

Holding Line

“In response to the administration’s repeated attempts to water down enforcement, this bill directs ICE to maintain 34,000 detention beds,” Aderholt said.

Some lawmakers have a more parochial interest in supporting the mandate: money and jobs in their districts, both in private prisons and in those built by local governments to get a share of the immigrant-detention business.

The economic-development stake in jailing immigrants was on display at a March hearing, at which lawmakers grilled John Morton, the ICE director who later resigned, for releasing detainees because of budget constraints.

During the hearing, Representative Tom Marino, a Pennsylvania Republican, complained to Morton about not getting enough inmates to fill detention beds in his district, including one where it costs \$82.50 a day for each detainee.

“Why not take advantage -- more advantage -- of facilities like this, and particularly in Pike County, who built a whole new facility just to house these individuals?” he asked Morton.

Local Jobs

Aderholt also got involved in a fight to keep immigrant detainees and ICE dollars in his state, along with Alabama Senator Richard Shelby, the top Appropriations Committee Republican and a member of the sub-panel that handles ICE’s budget.

Both assisted an Alabama jail that held about 250 immigrants in Gadsden after ICE’s Atlanta office announced that it was moving inmates to a new private facility in Georgia run by Detention Management LLC, based in Atlanta.

Company disclosures to bondholders and ICE e-mails obtained through an open-records request indicate that Georgia’s congressional delegation had lobbied ICE to use the Georgia jail, putting the agency in a bind.

“Where those bodies come from is anybody’s guess,” said one 2010 e-mail received by ICE’s Atlanta director, Felicia Skinner, adding that the agency would have to either detain more immigrants, or move them from the Alabama jail or a Corrections Corp. facility in Georgia. The sender’s name was blacked out.

When ICE announced that it would fill the new Georgia beds with immigrants held in Alabama, in a move the agency said would save transportation costs, Aderholt and Shelby both intervened, with Shelby’s

appropriations-committee staff threatening to block some ICE requests if the agency didn't resolve the matter to the senator's satisfaction, according to the e-mails.

Satisfying Both

Both sides won in a 2012 decision. ICE kept 300 immigrant detention beds in the Alabama jail this year and 357 at the Georgia facility, which was forced into bankruptcy last year.

"Etowah County jail is a safe, secure facility to house detainees that operates with the high level of standards dictated by ICE, while providing a low cost-per-day rate," Aderholt said in a statement. Shelby spokesman Jonathan Graffeo didn't respond to requests for comment.

Republicans continued to defend the bed quota this year, rebuffing the Obama administration's request to spend \$120 million less on incarceration capacity.

Representatives Carter and Culberson, the Texas Republicans, and Jennifer Hing, a spokeswoman for Rogers, the Appropriations Committee chairman, and said keeping the quota compels ICE to do its job.

Enforcement Mandate

It "is an instrument to require ICE to actually enforce the law," Carter said in a statement. "The administration may want to reduce those levels by releasing dangerous illegal criminals into the streets of America, but I stand firm in my belief we must enforce the laws we have."

Culberson said jail company representatives have voiced support for the quota, and he says ICE's reliance on the providers helps save taxpayer money. He said his views weren't influenced by the contractors, and that ICE could detain even more people than it already does, were enforcement stepped up.

"They clearly have far more demand than they have current beds," he said.

A third to as many as half of the detainees on any given day are held at the discretion of ICE, which has focused on criminals, recent border crossers and those undocumented immigrants "who have seriously gamed the system," Morton told Congress in March. Others with certain criminal records must be held by law.

Petty Theft

Lisa Fernandez's husband, Orlando Fernandez Taveras, is one of the latter group. A legal resident who came to the U.S. as a baby in 1978, Taveras has been held since 2009, his wife said, because of two petty

thefts.

“Why are we spending hundreds of thousands to keep him in jail, when he could be out working and supporting his family?” she said. “Why would you keep someone in jail if you didn’t have to?”

Last year, U.S. District Court Judge Terry Hatter forced immigration judges to grant bond hearings for California inmates detained for more than six months. After 400 such hearings beginning in November, about two-thirds were released on bail, according to an April court filing.

Obama has deported record numbers of immigrants.

In e-mails between field-office workers and former ICE administrator David Venturella, and other documents obtained under an open-records request, employees were told to divert resources to increasing their arrests and deportations of those with criminal records because of concern in Washington that those numbers were too low.

Combing Records

Venturella, now a GEO executive, referred questions about the e-mails to the company’s Paez, who declined to comment.

The exchange of messages included suggestions from one field office, in Atlanta, for increasing the number of immigrant arrests and deportations. They included combing through old probation lists to find foreigners who had once committed a crime, searching driver license databases for aliens, setting higher bail, and participating in roadblocks set up by local police, according to the documents.

Such a roadblock caught Eduardo Zuniga in suburban Atlanta in 2011, his wife, Deborah, said. Police set it up where a road dead-ended at the drive of an apartment complex with a growing Latino population, she said, and Zuniga was arrested because he didn’t have a license.

A decade-old drug conviction, for which he got probation, made him a criminal alien and landed him in Corrections Corp.’s 1,752-bed Lumpkin, Georgia, detention center for months, said his wife, a U.S. citizen. Then he was deported.

Care Giver

A construction worker and church volunteer, Zuniga had put her through a two-year business school and helped her care for her four children, two of them disabled, his wife said.

“He would do anything for us, if it’s go out and pick up garbage, to make sure my kids ate,” she said.

This year, the Senate moved to recast the nation’s immigration laws, an effort that has drawn resistance from some Republicans because it would provide a path to permanent residence to those who came to the U.S. illegally.

Under the Senate bill, one provision would give ICE and judges greater discretion to release detainees that aren’t a risk to the community. Another part, tied to increased border enforcement, calls for spending \$1.6 billion over 10 years to prosecute immigrants who enter the U.S. illegally, according to Congressional Budget Office estimates.

Monitoring Revenue

Much of that would likely go to Corrections Corp. and Geo, which also contract with the Federal Bureau of Prisons to hold inmates, said Kevin Campbell, an industry analyst with Avondale Partners LLC in Nashville.

“It looks like there would be more enforcement and that would drive demand for more beds,” Campbell said. “That’s one of the long-term positives for the industry.”

Since Congress returned from its August recess, immigration issues have been pushed aside by questions over the use of force in Syria and a potential government shutdown next month if steps to fund operations aren’t taken.

For Romero, the former Phoenix cashier arrested at her job, any changes will come too late.

After a petition campaign by an activist group, Puente Arizona, Romero was released. Now she lives with her parents and takes community college courses.

Temporary legal status has been pushed out of her reach: Her arrest made her a criminal alien and ineligible for the program for those who entered the country illegally as children.

“I really have no option,” Romero said.

Before it's here, it's on the Bloomberg Terminal.